Moral Obligations to Non-Humans

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I confirm that the work presented in this thesis is my own:

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Abstract: Moral Obligations to Non-Humans

My PhD thesis provides an account of the moral obligations we have to non-humans. The project is divided into two sections: the theoretical and the applied. In the first section I examine the foundations of our moral obligations, answering two key questions: what types of thing have moral status, and how can we delineate our obligations to them? I maintain that those entities with the capacity for 'well-being' have moral status. I refute the claim made by some that all living organisms have well-being, and argue that only beings with 'phenomenal consciousness' (sentience) have lives that can go well or badly for themselves. At this point then, the thesis turns its focus towards sentient animals. Next I consider just how we should structure our moral obligations. I argue that a utilitarian or aggregative framework fails to individuate entities with moral status, treating them as mere 'receptacles' of value. I thus propose that an interest-based rights theory provides the appropriate means for delineating our obligations to non-human animals.

The second part of the thesis involves teasing out the implications of this interest-based rights theory for the ways in which we treat animals. To this end, I evaluate four different contexts in which we use non-human animals: in experiments, in agriculture, in entertainment, and by cultural groups. During these considerations, I argue that animals' interests in avoiding pain and continued life ground prima facie animal rights not to be made to suffer and not to be killed. This renders many of the ways we currently use animals impermissible, particularly with regards to factory farming and experimentation. However, unlike other proponents of animal rights, I do not see the use of animals as impermissible in itself. This is because I claim that animals have no intrinsic interest in liberty, whether liberty is construed as the absence of interference or as the ability to govern one's own life. Since animals have no interest in liberty for its own sake, this means that they ordinarily have no right not to be used or interfered with by humans. Thus, the ultimate conclusion of my thesis is that the moral obligations we have to animals do not involve liberating them from zoos, farms and our homes. Rather, they necessitate putting an end to the suffering and death that animals endure at our hands.

Acknowledgements

I became fascinated by the question of what we owe to non-human entities when studying as an undergraduate in the Department of Politics at the University of Sheffield. Indeed, it was there that I decided I would like to write a thesis on the topic. For giving me the opportunity to go there, I would like to thank my Mum and Dad: it was undoubtedly the best present I have ever received. For sparking my interest in animal rights, environmental philosophy and political philosophy more generally, I would like to thank James Meadowcroft, whose courses at Sheffield were hugely enjoyable.

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1. Introduction

The history of what we might loosely refer to as 'Western moral philosophy' has been dominated by one species: *Homo sapiens.* In one sense, this should be of little surprise, since human beings are the only species we know of that can both reason about morality, and act morally. However, in another sense, this domination is a bit more puzzling. For within this tradition, not only have human beings been considered the sole moral *agents*, but they have also been the exclusive moral *subjects.* That is to say, moral philosophy has exclusively centred on what we owe to human beings. In the last 40 years or so, however, this domination has come under question.[1] While few have questioned whether human beings are the sole moral agents, many have questioned whether they are the exclusive moral subjects. Simply put, it has been argued by some that we not only have obligations to our fellow human beings, but also to non-human entities such as plants, trees, animals, species, ecosystems and even the Earth itself.

While it is extremely difficult to pin down the exact reason for this shift, no doubt part of it can be put down to the increasing awareness in the 1960s of the impact that technology, industry, economic expansion and human population growth were having on the normal functioning of the environment and on animal welfare. Whatever the historical reasons behind it, we now find ourselves in a position where concern for non-humans is very much mainstream. For example, states like the UK have extensive animal welfare legislation, and debate over how best to tackle the potential environmental crisis appears to be at the top of the political agenda.

However, the shift in attitude towards non-humans should not be exaggerated. Animals may have achieved some welfare protections under most states' legislation, but they are still experimented upon in laboratories, displayed in zoos and circuses for human amusement, used in sport for our entertainment, and of course killed so that we may eat their flesh, perfectly legally in almost every country in the world. Moreover, it is surely fair to say that the primary impetus behind recent moves to protect the environment has not been any sudden realisation that we possess moral obligations to the environment itself; rather, it has been based on our desire to save ourselves from the

[1] Rod Preece would question my historical account here. He argues that there has been a strong tradition of concern for animals in Western morality, including Christianity. See, Rod Preece, *Brute Souls, Happy Beasts and Evolution: The Historical Status of Animals,* (Vancouver: University of British Columbia Press, 2005). While Preece's arguments are interesting and well-informed, I do believe that they exaggerate the levels of concern shown to non-humans in Western thought.

serious harms threatened by the environmental crisis. Accordingly, many advocates for non-humans argue that a much more substantial set of obligations to non-human entities should be recognised morally, and enforced politically. This thesis contributes to this debate by providing an original account of our moral obligations to non-humans.

1.1 The Contribution of the Thesis

Clearly, several different accounts of our obligations to non-human entities have been proposed since these issues have implanted themselves in the public consciousness. Indeed, 'environmental ethics' and 'animal ethics' are fairly well established disciplines in moral and political philosophy. Given this, it is necessary to place the claims of this thesis in context, and defend their contribution to the discipline. First off then, this thesis rejects recognising all living things as moral subjects, and instead provides a defence and application of a scheme of *animal rights*. Since theories of animal rights have been developed before, it can legitimately be asked why a new one is needed.

In the first place, rigorous philosophical defences of animal rights are in actual fact very thin on the ground. For example, the most famous philosophical advocate of 'animal liberation', Peter Singer, does not in actual fact argue for animal rights at all, but sees them only as a, "...convenient political shorthand."[2] This, of course, is of little surprise when one considers Singer's utilitarianism. However, one does not have to be a utilitarian to reject the appeal of rights. Indeed, many non-utilitarian philosophical proponents of 'justice for animals' or 'animal liberation', unreservedly reject defending their arguments in terms of rights.[3] Of course, it should be emphasised that this rejection is down to their scepticism about rights discourse as a whole, rather than a rejection of the idea that animals are moral subjects.

Accordingly then, my thesis is in the company of those philosophers who do explicitly propose a scheme of animal rights.[4] What sets my thesis apart from them? First of all,

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[2] Peter Singer, *Animal Liberation,* (London: 2nd ed., Pimlico, 1995), p. 8.

[3] For examples, see Ted Benton, *Natural Relations: Ecology, Social Justice and Animal Rights,* (London: Verso, 1993); Mary Midgley, *Animals and Why they Matter,* (Athens: University of Georgia Press, 1984); David DeGrazia, *Taking Animals Seriously: Mental Life and Moral Status*, (Cambridge: Cambridge University Press, 1996); and Mark Rowlands, *Animals Like Us,* (London: Verso, 2002).

[4] For examples, see Tom Regan, *The Case for Animal Rights,* (Berkeley: 2nd ed., University of California Press, 2004); Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement,* (Philadelphia: Temple University Press, 1996); Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights,* (Oxford: Oxford University Press, 2001); Bernard E. Rollin, *Animal Rights and Human Morality,* (Buffalo NY: revised ed., Prometheus Books, 1992); James Rachels, *Created from Animals: The Moral Implications of Darwinism,* (Oxford: Oxford University Press, 1990); S.F. Sapontzis, *Morals, Reason, and Animals,* (Philadelphia: Temple University Press, 1987); Steven M. Wise,

most other schemes of animal rights have been under-theorised. What I mean by this is that most schemes of animal rights fail to address in detail just what type of things rights are, and just how and on what basis we can assign rights.[5] Instead, rights are often used in a rather loose way, accepting that they impose limits on our actions, but without fully explaining why they impose such limits, and on what basis such limits are grounded. This thesis attempts to offer a much more thorough account and analysis of animal rights.

In fact, the specifics of this analysis form the second distinctive element of the scheme of animal rights defended in this thesis. That is, I adopt a Razian interest-based conception of rights and apply it to animals. Simply put, I argue that rights are based on interests, but for a right to be grounded it must be based on an interest that is sufficient to impose a duty on another.[6] On the one hand, this approach is uncontroversial, since many rights-theorists have pointed out that for animal rights to even be coherent, they will have to be based on something like interests.[7] However, on the other hand, this approach is novel, because no-one before has taken Joseph Raz's famous analysis of what it means to have a right and systematically applied it to animals.

The final element of my scheme of animal rights that sets it part from others stems from the *application* of this Razian account of rights. In short, I argue that animals have no *prima facie* moral right to liberty, because they have no intrinsic interest in liberty. Undoubtedly, for other proponents of animal rights, this is the most controversial aspect of my thesis. This is because most advocates of animal rights regard freedom as fundamental to animal well-being. I, however, disagree and claim that to have an intrinsic interest in liberty, one must have the capacity for autonomy: the ability to frame, revise and pursue a conception of the good. Because animals have no intrinsic interest in liberty, and thus no moral right to liberty, I claim that there is nothing wrong in itself with interfering with animals and using them for certain purposes. This leads me to make quite different claims than other proponents of animal rights concerning the

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Rattling the Cage – Towards Legal Rights for Animals, (London: Profile Books, 2000); Julian H. Franklin, *Animal Rights and Moral Philosophy,* (New York: Columbia University Press, 2005); and Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals,* (Durham and London: Duke University Press, 1995).

[5] Notable exceptions include, Tom Regan, *The Case for Animal Rights*; Evelyn B. Pluhar, *Beyond Prejudice*; and Paola Cavalieri, *The Animal Question.*

[6] Joseph Raz, *The Morality of Freedom,* (Oxford: Clarendon Press, 1988), p. 166.

[7] For examples, see Joel Feinberg, "The Rights of Animals and Unborn Generations" in William T. Blackstone (ed.), *Philosophy and Environmental Crisis,* (Athens: The University of Georgia Press, 1974), pp. 49-51; Peter Jones, *Rights,* (Basingstoke: Macmillan, 1994), p. 35; and Hillel Steiner, "Working Rights" in Matthew H. Kramer et al., *A Debate Over Rights,* (Oxford: Clarendon Press, 1998), p. 259.

permissibility of such things as using animals in experiments, keeping them in zoos, raising them on farms and so on.

1.2 The Method and Assumptions of the Thesis

I hope then, that this thesis makes a novel and original contribution to the debate concerning our obligations to non-humans. However, this begs a crucial question: how does the thesis show that we do in actual fact have these obligations? In other words, what is the methodology of the argument to be presented? This is an important and difficult question for any enterprise in normative philosophy. For ethical enquiry is quite unlike other modes of intellectual investigation. Take for example the natural sciences, where hypotheses can be tested as true or false based on observations and empirical data. Such a process is unavailable to the moral philosopher. For just what in the world could we point to in order to prove that torture, murder and rape are morally wrong? At the same time, however, work in normative philosophy aims to be something more than mere rhetoric. Thus, the aim of this thesis is not simply to *persuade* others that they should treat animals in this way, but not in that way. Rather, it is to show that these obligations to non-humans actually *exist* in some sense. But just how is this to be shown? Since there is huge controversy and debate concerning the plausibility and best means of constructing normative arguments, the method I outline in this section cannot be defended in sufficient depth. In spite of this, my methodological assumptions warrant being made explicit and given some limited justification.

1.2.1 Analytical Philosophy

First of all then, I wish to point out that this thesis is a work of analytical philosophy. What this means exactly is up for debate, but I take normative analytical philosophy at least, to have two main features: a certain style, and a certain set of assumptions. The particular style of analytical philosophy is straightforward enough. Essentially it involves addressing complex problems by breaking them down into and analysing them in terms of their simpler elements. Put directly then, one might argue that the method of analysis is piecemeal rather than holistic. That is not to say that analytical philosophy eschews the study of big ideas, but simply that it will tackle those big ideas by breaking them down into their constituent parts and analysing them systematically.

More controversially, perhaps, I also take normative analytical philosophy to embody what we might refer to as certain 'Enlightenment assumptions':

1. There is a reality independent of human knowledge of which we human beings are a part.
2. Reason and method, particularly as exemplified in science, offer us the proper way to explore that reality and our relationship to it.
3. In this exploration traditional preconceptions – in particular, traditional evaluative preconceptions – should be suspended and the facts allowed to speak for themselves.[8]

This emphasis on using reason to understand an objective reality can thus be contrasted with the anti-Enlightenment branches of philosophy, such as continental philosophy and postmodernism.

However, the fact that I am working within the analytical tradition should not be taken to mean that the question of our obligations to non-humans cannot be delineated within alternative approaches.[9] Of course, I have a preference for the analytical style and its assumptions. Moreover, I am inclined to believe that these features make it a *better* means with which to conduct normative philosophy. However, there is nowhere near sufficient room to substantiate this preference and belief. For this reason, I simply want to make it explicit that this thesis is a piece of analytical philosophy.

1.2.2 Reflective Equilibrium

It will be noted of course, that analytical philosophy is a broad church. For while we might agree to its piecemeal style and its search for objectivity through the use of reason, that still leaves open several different methods for reaching our ethical conclusions. The one I adopt and wish to endorse is the method of 'reflective equilibrium', also sometimes referred to as the 'coherence model', which has been famously outlined by John Rawls and Norman Daniels.[10] The basic notion is that we start our enquiry with a set of moral judgements that we consider to be reliable. That is to say, these judgements are not unreflective intuitions, nor are they mere personal preferences. Rather, they are considered judgements that we feel to be reasonable and

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[8] Philip Pettit, "The contribution of analytical philosophy" in Robert E. Goodin, and Philip Pettit (eds.), *A Companion to Contemporary Political Philosophy,* (Oxford: Blackwell, 1993), p. 7.

[9] For examples of work in animal ethics outside of the analytical approach, see Matthew Calarco and Peter Atterton (eds.), *Animal Philosophy: Essential Readings in Continental Thought,* (New York: Continuum, 2004); and Peter H. Steeves (ed.), *Animal Others: On Ethics, Ontology, and Animal Life,* (Albany, NY: State University of New York Press, 1999).

[10] John Rawls, "Outline of a Decision Procedure for Ethics", *Philosophical Review,* Vol. 60, No. 2, April 1951: 177-197 and, *A Theory of Justice,* (Oxford: revised ed., Oxford University Press, 1999); and Norman Daniels, "Wide Reflective Equilibrium and Theory Acceptance in Ethics", *The Journal of Philosophy*, Vol. 76, No. 5, May 1979: 256-282.

shorn of personal self-interest, societal convention and simple gut instinct. We then seek to devise a general set of principles which account for these judgements. However, these principles are not simply constructed in such a complex and detailed way so as to match each and every one of our judgements. Rather, these principles must display the virtues of simplicity, parsimony, generality and logical consistency. We then face a two-way system of revision and alteration. It is likely that some principles have such explanatory power that they will require the revision of certain judgements, and also likely that some judgements are so pressing they count against the adoption of certain principles. What we do then is revise upwards and downwards in this way until our ethical judgements and principles are in 'reflective equilibrium', and the theory hangs together as a coherent whole.

But why should this method be adopted? Again, I cannot offer a full defence here, but a few words in favour of the method seem to be in order. First of all, one of the merits of this approach is that it does not rely on controversial 'foundational' assumptions. That is, it does not take there to be some ultimate doctrine or principle from which all correct ethical judgements can rationally be deduced. For example, some people believe the Bible to be the ultimate source of morality, and that a correct reading of it will lead to the proper ethical judgements and principles.[11] However, this kind of ethical method relies on an acceptance of the truth of its foundational premise. But quite clearly, such a premise can be contested on perfectly reasonable grounds. Secondly, reflective equilibrium accepts a kind of vitality in ethical enquiry. Thus, while the ultimate goal of the method is equilibrium, such equilibrium can easily be shaken by new information and fresh insights. Accordingly, its conclusions are not static norms decided finally for all time. Instead, they are always open to contestation and debate. I believe that these twin components – what we might call reasonableness and vitality – are key virtues in support of the method of reflective equilibrium.

1.2.3 Foundations, Rationalism, Impartiality and Universalism

However, this method raises a number of questions that need to be tackled, even if only on a superficial level. First of all, one might consider starting with our own judgements to be an unsatisfactory means of intellectual enquiry. For don't we want our conclusions to be based on more concrete foundations? However, while we can accept that it would be

[11] For a Christian approach to animal rights, see Andrew Linzey, *Animal Theology*, (London: SCM Press, 1994).

better to have more concrete foundations for our ethical principles, it also seems reasonable to point out that none have yet been proven to exist. Indeed, without such firm foundations, we are forced to choose between moral scepticism – the view that there are no justified moral beliefs – and starting elsewhere. I reject moral scepticism and propose that we should start elsewhere. Since we must start somewhere, the best place seems to be with those moral judgements that we consider to be reliable. So, take for example a key assumption in Chapter 2, that it is generally good to make lives better and not worse for individuals. I have no means of proving that this judgement is ultimately true. However, since it is a reasonable assumption that virtually everyone accepts, it seems like a good place to start.

But how then are we to decide which judgements to hold onto and which to revise? I argued above that some judgements are so pressing they count against the adoption of certain principles, but that some principles explain so much they count in favour of revising those judgements. Is there any way of avoiding arbitrariness in this process? I believe that providing good reasons can help us avoid arbitrariness. For example, in Chapter 5 I claim that we should *not* revise our considered judgement that human babies and the mentally disabled have a moral right not to be killed. However, also in Chapter 5, I propose that we *should* revise our judgements, when I claim that using babies in experiments that do not cause pain or death can sometimes be permissible. This difference is not simply based on some whim of mine, but on good reasons. In these two cases, for example, I claim that babies have an *interest* in continued life, but have *no interest* in not being used in non-lethal and non-painful experiments. Providing good reasoned arguments like this provides the process of reflective equilibrium with as firm foundations as possible.

Some philosophers who study our obligations to non-humans might not be satisfied with this argument. They might argue that since this process of ethical reasoning starts with *human* judgements, its conclusions will always necessarily be skewed in favour of human beings.[12] They would claim that the emphasis in this thesis of such 'human capacities' as well-being, consciousness and cognitive ability is a reflection of the bias in its methodological assumptions. Such a criticism is, in my opinion, wrongheaded. I start my ethical enquiry with human judgements and human experiences quite simply because I have no means of transcending my humanity. That is to say, to undertake

[12] For a useful critical review of such arguments in relation to animal ethics see, Elisa Aaltola, "'Other animal ethics' and the demand for difference", *Environmental Values,* Vol. 11, No. 2, May 2002: 193-209.

ethical enquiry we must begin somewhere, and that somewhere must always be with human beings. After all, we are the only species we know of that undertakes this kind of ethical project. Thus, starting with human beings and their experiences is simply inevitable. However, this does not mean that my theory will inevitably privilege human beings when working out what ought to be done. It simply means that human beings and human experience must be the basis from which such enquiry begins.

Having said all this, even if we accept that we should start with the moral judgements of human beings, what follows from these judgements might be questioned. Indeed, the fact that the process of reflective equilibrium demands that these judgements be stripped of partial attachments, and then used to construct general principles is regarded by some as fatally flawed. Thus, a number of feminist philosophers have argued that this kind of methodological approach is unjustifiably impartial and rationalist, both of which are distinctively masculine approaches to morality.[13] In contrast, these thinkers propose a more feminine philosophy that is based on particular relationships and attachments, and also grounded in empathy and care.[14]

First off, it might help to shed the most controversial aspect of this critique. For while an ethic of care certainly provides a distinct moral approach when compared to a purely rationalist one, it is implausible to suppose that the former constitutes a *necessarily* feminine approach and the latter a *necessarily* masculine one. Having done this, we are then left with the proposal that we should construct our ethical theory on our feelings of empathy and care. Isn't there something to be said for this? Indeed there is, and the process of reflective equilibrium permits this. After all, our moral judgements – the things that get moral enquiry going under this method – will inevitably be founded on our capacities for benevolence and empathy.[15] However, what the process takes for granted is that these feelings are insufficient: we need more general principles to guide our action in particular circumstances. While I do not have the space to defend this view in full here, I believe that it is sound. In particular, general principles seem essential if we want our theory to impact on how we organise ourselves politically and legally.

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[13] See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development,* (Cambridge: Harvard University Press, 1982); and Nel Noddings, *Caring: A Feminine Approach to Ethics and Moral Education,* (Berkeley, CA: University of California Press, 1986).

[14] For such approaches in the context of animals, see Josephine Donovan and Carol J. Adams, *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals,* (New York: Continuum Press, 1996).

[15] Susan Moller Okin has argued that Rawls's general method – and in particular his veil of ignorance – models benevolence. See Susan Moller Okin, "Reason and Feeling in Thinking About Justice", *Ethics,* Vol. 9, No. 2, Jan. 1989: 229-249.

Of course, this feminist challenge does not just involve questioning rationalism, but also impartiality. For it might well be argued that a method that aims to construct general and impartial ethical principles is in denial of one of the most basic facts of moral life: that special relationships - such as parent-child and friend-friend - do matter. However, reflective equilibrium can well recognise that special relationships matter. In fact, there may well be good impartial reasons for endorsing certain partial principles. For example, it might be argued that *every* parent, and not just me, should do the best to give their own child a decent start in life.[16] But, of course, reflective equilibrium maintains that partiality cannot be the foundation of our ethical theory. For if it were, then our initial judgements would all differ, and we would have no hope of devising general principles that can apply to everyone.

This leads to the final question for my methodological approach: to what extent do its conclusions 'apply to everyone'? Well, since the method is meant to devise general ethical principles rather than a private personal morality, we can at least accept that its conclusions must apply to 'others'. But how far do these 'others' stretch? In particular, are these conclusions only applicable to the culture in which they are formed, as a cultural relativist would maintain, or are they universal? This question seems particularly pressing for an investigation of our obligations to non-human animals, which is often regarded as an ethical enquiry that can only be undertaken by those who can afford it. In other words, it is claimed by some that a concern for animals is a mark of a society that ignores or eschews more pressing concerns.[17] I believe that the impartial approach of reflective equilibrium implies that some norms are universal. After all, the considered judgements we start with should not be the judgements of any particular society, but judgements that we can all reasonably accept. Given this, the principles that stem from them must not just apply to us, but apply to all. This is not to deny that circumstance and context are irrelevant; clearly they matter, and feed into the theory. Hence we see throughout this thesis how animal rights are grounded in some contexts, but not in others. Moreover, it must be remembered that the theory is always open to contestation and debate on the basis of new information and insight.

As for the charge that this whole project is part of a kind of moral decadence within rich nations, I refute it categorically. Clearly there are historical reasons for a certain issue

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[16] This example is borrowed from David DeGrazia, *Taking Animals Seriously,* p. 30.

[17] Such a claim is made for example by Peter Carruthers, *The Animals Issue: Moral Theory in Practice,* (Cambridge: Cambridge University Press, 1992), p. xi.

hitting public consciousness, but such reasons do not determine the validity of the claims made about that issue. Thus, even if we accept the inaccurate premise that it took a certain standard of living for humans to become interested in the well-being of non-humans, that does not trivialise the ethical enterprise of working out how we should treat those non-humans.[18] Indeed, if the conclusions of this thesis are correct, what we do to the billions of animals who die and suffer for our own gratification must surely be one of the most serious moral injustices we face.

1.3 The Outline of the Thesis

Having outlined the background, the contribution and the methodological assumptions of the thesis, it is now necessary to sketch how it will proceed. Basically, I divide the enquiry in two: the theoretical and the applied. First, I evaluate the foundations of our moral obligations; and second, I examine the implications of these conclusions for our use of animals in experiments, agriculture, entertainment and culture.

I start the thesis in Chapter 2 by asking what types of entity possess moral status. An entity that 'possesses moral status' is one that merits ethical consideration in its own right, and thus imposes moral obligations upon others. I argue that entities whose lives can go well or badly for themselves possess moral status. Indeed, I claim that the capacity for well-being is a necessary and sufficient condition for an entity to have moral status.

Of course, this raises the question: what does it mean to have the capacity for well-being? To answer this question I examine two potential candidates: being a living organism and being conscious. I rule out the idea that living entities such as trees and ecosystems can have well-being, and claim that phenomenal consciousness (or sentience) is the crucial capacity. By so doing I argue that most vertebrates in the animal kingdom have moral status and are thus owed ethical consideration for their own sakes.

In Chapter 3, I then ask what it means for an animal's life to go well or badly. In so doing, I distinguish between persons and non-persons. The former are those beings, such as normal adult humans, with the capacities for moral agency and autonomy. The latter, such as non-human animals and human infants, are those beings without such capacities. This distinction is important for an account of well-being, because I argue

[18] The premise can easily be shown to be inaccurate by pointing to the high levels of concern shown to animals by followers of Buddhism, Hinduism and Jainism in some developing countries.

that persons have a distinct interest in leading their own freely-chosen lives, whereas non-persons do not. Thus, I claim that the well-being of persons is characterised by their capacity for autonomy, as epitomised by the capabilities approach; whereas the well-being of non-persons is characterised by their capacity for phenomenal experience, as epitomised by hedonism.

In Chapter 4, I then examine the *form* that our moral obligations to non-humans should take. That is to say, can these obligations be translated into non-human or animal rights? This section argues that they can and should, and proposes and defends a Razian interest-based account of rights.

In the second part of my research I put these theoretical considerations into practice. First, in Chapter 5 I look at the use of non-humans in experiments. Do animals have a right not to be used in experiments? I answer this question by considering three potential animal interests that might ground such a right: the interest in not suffering, the interest in not being killed, and the interest in being free. I argue that the first two of these interests ground in animals a moral right not to be made to suffer and not to be killed in experiments. However, because I argue that animals have no fundamental interest in liberty, I claim that animals have no moral right not to be *used* in experimentation.

In Chapter 6, I examine the use of animals in agriculture. In the first instance, I examine the implications of the conclusions reached in the previous chapter. That is to say, if animals possess *prima facie* moral rights not to be killed or made to suffer, how does this affect agricultural practice? I argue that it necessitates abandoning factory farms and the practice of raising animals to kill them. However, I also claim that it does not render raising animals for their eggs and milk impermissible.

I then go on in Chapter 7 to discuss the use of non-humans in entertainment. The conclusions of this chapter are perhaps the most different to those made by other proponents of animal rights. This is because here I argue that there is nothing inherently wrong with displaying animals in zoos and circuses, keeping them as pets, and using them in sport. For while these practices can be condemned when they cause animals to suffer and lead to the death of animals, I claim that they do not in themselves cause harm. To make this claim stand up to scrutiny I assess and refute several objections that all claim that using animals in these ways is disrespectful, and one objection that argues that they prevent animals from acting naturally.

Chapter 8 discusses the issue of non-humans in culture. Here I look at the issues of whaling, hunting, the religious slaughter of animals for meat, and animal sacrifice. Given the pressing and important interest that humans have in culture and religion, are the *prima facie* animal rights not to be killed and not to suffer still grounded in these contexts? Through a careful analysis of the basis and strength of these interests, I argue that they are.

Finally, in Chapter 9, I conclude by drawing the important claims of the thesis together, while offering some thoughts on possible future applications of the theory. Unfortunately, this thesis has to be selective, as there is simply no room to discuss every single human use of animals. However in selecting experimentation, agriculture, entertainment and culture, I do believe that I discuss the uses that involve the most numbers of animals, and which are the most politically controversial.

2. Well-Being and Moral Status

In order to consider the obligations that we have to non-human entities, we first need to establish whether we do have obligations to them, and if so, on what basis. To this end, this chapter introduces two important concepts: 'moral status' and 'well-being'. The concept of moral status is quite simply, "...a means of specifying those entities towards which we believe ourselves to have moral obligations..."[19] In other words, the ascription of moral status grants an entity a certain standing, imposing restrictions on our actions for the sake of that entity. This latter point is important because it is perfectly possible to have obligations *regarding* something, without necessarily having obligations *to* that thing. For example, imagine that I have an obligation not to kick your dog - on what basis might this obligation be founded? On the one hand, the obligation might be based on the fact that you own the dog and do not want him to be kicked. In this case, my obligation relates to the dog, but is ultimately owed to you; we need not consider the dog to have moral status of his own. Alternatively, my obligation not to kick your dog might persist even if you encourage me to kick him. This might be because my obligation is based on the fact that kicking the dog will cause him pain. Here, my obligation is owed to the dog himself, and so the dog *is* considered to have moral status. Moral status then, is a means of delineating the entities to which we have moral obligations.

One important contention of this chapter is that in order to have moral status, an entity must have the capacity for 'well-being'; in other words, it must have a life that can go well or badly for itself. The second claim of the chapter is that 'phenomenal consciousness' (or sentience) is the necessary and sufficient condition for the capacity for well-being. Taken together, these claims entail that we have moral obligations to sentient animals, but do not have moral obligations to such things as plants, trees and ecosystems. In effect then, this chapter defends a scheme of moral status that is centred on sentient animals. This separates it from two predominant rival schemes: one in which only human beings have moral status, and the other in which all living organisms have moral status. It thus stands between traditional 'anthropocentric' ethics that have dominated Western morality for so many years, and the many 'biocentric' ethics that have emerged in recent years claiming to overturn this entrenched human bias.

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[19] Mary Anne Warren, *Moral Status: Obligations to Persons and Other Living Things,* (Oxford: Oxford University Press, 1997), p. 9.

In the course of justifying the claims of this chapter, four broad questions are addressed in turn. First, what is well-being, and how does it relate to other common ethical concepts that will be used in the thesis? Second, why is well-being so important for the ascription of moral status? Third, what characteristics must an entity possess to have a life that can go well or badly for itself? And finally, what types of entity actually have moral status? In the first place then, we must examine more closely the concept of well-being.

2.1 The Meaning of Well-Being

In philosophy, well-being is the notion of how well someone's life is going for an individual.[20] Thus, we can say that if an individual *has* well-being then her life is going well for her; and if someone *lacks* well-being then her life is going badly for her. I regard an individual's well-being as synonymous with an individual's 'good' or 'welfare', and either of these terms could be substituted for well-being throughout the thesis. I tend to stick with the term 'well-being' out of personal preference and for consistency. In this section I explain that well-being is what is called a 'prudential value' in that it concerns how well life is going *for the individual whose life it is.* I then go on to demonstrate how other moral concepts that are frequently invoked in discussions of our moral obligations – the terms 'interests' and 'harm' – are best understood when related to the wider concept of well-being.

2.1.1 The Prudential Value of Well-Being

It is crucial to note at the outset that well-being is what is often called a *prudential value.*[21] That is to say, well-being relates to how well life is going for *the individual whose life it is.* Prudential values can thus be distinguished from aesthetic, perfectionist and ethical values.[22] For example, it might be said that something is beautiful (of aesthetic value), a good specimen of its kind (of perfectionist value), or even the right thing to do (of ethical value), but in making such judgments we need make no reference to how things are for the objects or acts themselves. Well-being, on the other hand, is a prudential value because something can only promote an entity's well-being if it is

[20] See Roger Crisp, "Well-Being" in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy,* (Summer 2003 Edition), <http://plato.stanford.edu/archives/sum2003/entries/well-being>.
[21] See ibid.; L.W. Sumner, *Welfare, Happiness and Ethics,* (Oxford: Clarendon Press, 1996), p. 20; and Thomas Scanlon, "Value, Desire and Quality of Life" in Martha C. Nussbaum and Amartya Sen (eds.), *The Quality of Life,* (Oxford: Clarendon Press, 1993), p. 185.
[22] L.W. Sumner, *Welfare, Happiness and Ethics,* pp. 20-25.

beneficial *for that entity itself.* Put another way, I may pursue a life that is devoted to looking beautiful, being a perfect example of a member of the species *Homo sapiens*, or doing the morally upstanding thing in every situation, but it is an open question whether any of these lives are valuable *for me.* For while these lives may be of some value, it not evident that they are of *prudential value.* Well-being is a prudential value and concerns how well a life is going for the possessor of that life. This is important to bear in mind for the subsequent discussion of what types of entity have well-being, as well the later examination in Chapter 3 of what makes an individual's life go well.

I should of course point out that none of this assumes that well-being can only ever be assessed by the individual herself, or that the individual is always right in such assessments. Indeed, it is perfectly possible for an objective account of well-being to recognise that well-being is a prudential value, but maintain that it is best measured in relation to certain definitive goods. For example, it could be claimed that individuals in extreme poverty can be duped into thinking that their lives are going well, when not even their basic needs are being met. Here, it might be argued, is a case where an assessment of well-being can be made in relation to objective criteria such as need-satisfaction, but that is nevertheless concerned with how life is going for the individuals themselves.

2.1.2 Interests

The concept of 'interests' is often deemed crucial for ethics. Indeed, it is widely claimed that in order to identify our moral obligations it is necessary to consider whether an entity has interests and what those interests are. For these reasons, accounts of what it means to have an interest are hotly contested.[23] In this brief section, however, I wish to propose that interests are best and most simply understood as components of well-being.

[23] For examples see, Brian Barry, "The Public Interest" in Anthony Quinton (ed.), *Political Philosophy,* (Oxford: Oxford University Press, 1967); Brian Barry, *Political Argument,* (London: revised ed., Harvester Wheatsheaf, 1990), pp. 175-186; William E. Connolly, *The Terms of Political Discourse,* (Oxford: 2nd ed., Martin Robertson, 1983), pp. 46-69; Andrew Reeve and Alan Ware, "Interests in Political Theory", *British Journal of Political Science,* Vol. 13, No. 4, Oct. 1983: 379-400; Christine Swanton, "The Concept of Interests", *Political Theory,* Vol. 8, No. 1, Feb. 1980: 83-101; and Grenville Wall, "The Concept of Interest in Politics", *Politics and Society,* Vol. 5, No. 4, 1975: 487-510.

Joel Feinberg has argued that to have an interest in x is to have some kind of *stake* in x; and to have a stake in x is to stand to gain or lose depending on the condition of x.[24] Of course, this raises the question, what does to gain or lose mean? For Feinberg, it means that one's *well-being* is affected by x's condition. That is to say, an individual's life goes better or worse as a result of the state of x. As Feinberg himself puts it:

> These interests...are distinguishable components of a person's well-being: he flourishes or languishes as they flourish or languish. What promotes them is to his advantage or *in his interest*; what thwarts them is to his detriment or *against his interest.*[25]

An individual has an interest in something when that something will or would affect that individual's well-being.

The fundamental issue then, is not the nature of interests, but the broader question of the nature of well-being. This question is tackled in the next chapter. The main thing to be taken from this briefest of discussions of interests is that they are components of well-being.

2.1.3 Harm

Harm is another concept that is often brought out during discussions of lives going well and moral obligations generally. Again, I argue that the best understanding of harm is achieved when it is related to well-being. Here once more we can turn to Feinberg who defines harm as, "...the thwarting, setting back, or defeating of an interest."[26] Since interests are components of the broader state of well-being, harm might thus be considered to be correctly understood as a setback or decrease in well-being. However, there are problems with simply defining harm as a *decrease* in well-being. Indeed, we can imagine examples where such a definition is counter-intuitive. For example, Stephen Wilkinson offers the hypothetical situation of a patient who visits a psychotherapist who sexually exploits her.[27] It is possible that after sessions with the psychotherapist the patient actually ends up with *higher* overall levels of well-being than before. That is to say, despite her exploitation, treatment is given and the patient's life goes better than it would have done without the treatment. Now if we accept the

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[24] Joel Feinberg, *The Moral Limits of the Criminal Law: Vol 1 Harm to Others,* (Oxford: Oxford University Press, 1984), p. 33-34.
[25] Ibid., p. 34.
[26] Ibid., p. 33.
[27] Stephen Wilkinson, *Bodies for Sale: Ethics and Exploitation in the Human Body Trade,* (London: Routledge, 2003), p. 60.

proposal that harm is a decrease in well-being, we would have to conclude that in this situation the psychotherapist has not harmed the patient. Such a conclusion seems manifestly wrong. What is therefore needed is a more complex conception of harm that does not always equate the term simply with a decrease in well-being. For instance, we might say that the psychotherapist has harmed the patient because she now possesses less well-being than she *would have had without the sexual exploitation*, or simply because she has less well-being than she *ought to have.* Wilkinson calls these the 'closest possible world' and 'normative' comparisons.[28] Clearly, it sometimes makes sense to use these more complex comparisons when ascertaining if harm has been caused. However, it is also clear that it remains the concept of *well-being* that plays the crucial role when making such assessments. In fact, we might say that to harm someone is to make their life go worse: either worse than it was or worse than it should be.

2.2 Well-Being and Our Moral Obligations

We have seen that to have well-being is to have a life that can go well or badly for oneself. Moreover, if one has the capacity for well-being, one can be benefited and harmed, and one has interests which can be set back or promoted. We can already start to see then, how well-being plays an important role in working out our moral obligations. After all, making lives better, or at least not making lives worse, seems to accord with what many of us think morality is all about. At first sight then, well-being certainly seems crucial for delineating our moral obligations. However, is the capacity for well-being so important for the possession of moral status? For don't we have moral obligations to things without the capacity for well-being, such as sacred objects or works of art? Alternatively, is something more than well-being required in order to possess moral status, like the ability to act morally oneself? This section addresses each of these questions in turn, and claims that the capacity for well-being is the necessary and sufficient condition for moral status.

2.2.1 Is Well-Being Necessary to Have Moral Status?

Later in the chapter we will examine in detail what types of thing have the capacity for well-being. However, even at this stage we can be relatively confident that some entities do not have lives that can go well or badly for themselves. For example, cars, sacred

[28] Ibid., pp. 61-63.

objects, works of art and the dead all lack lives, let alone ones which can go better or worse for themselves. Do we have moral obligations to any of these entities?

Let us start with the example of a car. It is generally accepted that no real cars have lives that can go well or badly for themselves. Does it therefore follow that we do not have moral obligations to any car? For example, would it be legitimate for me to smash the windows of the car that is currently sitting outside my flat? It is fairly obvious that I have an obligation not to smash up the car outside. However, this obligation is not due to the car itself, but to the car's owner. So, if the car's owner came to me and asked me to smash it up – say because he wants to turn it into scrap metal – it would no longer be wrong for me to do so, all things considered. My obligations *regarding* the car are really owed *to* the car's owner. So cars seem to be a relatively straightforward case of entities without the capacity for well-being and without moral status. But what of other entities?

Without doubt, things become more difficult when we consider such entities as sacred objects and works of art. For surely we have an obligation not to destroy such things, irrespective of whether they are the property of anyone. Indeed we do, but upon reflection we see that this obligation is based on the attitudes of other persons, not on the nature of the entities themselves. For example, some people believe that we have moral obligations to Uluru, the rock formation sacred to the aboriginal people of Australia. Taking a pickaxe to Uluru in order to obtain a chunk as a souvenir is regarded by some as a violation of our obligations to the rock itself.[29] However, while we can acknowledge that taking a pickaxe to Uluru is wrong, it would be incorrect to award the rock moral status. For to have moral status is to be ethically considerable *in one's own right*; but Uluru is considerable only because it is considered sacred by certain individuals. It is the aboriginal people's attitudes and beliefs that make the rock special, and without them it is simply a rock. And as with cars, I see no reason why we have moral obligations to rocks.

The same is true of beautiful works of art. I certainly have an obligation not to deface the Mona Lisa, even if its owner asks me to. However, this obligation is owed to people who wish to enjoy looking at it. I have no obligation to the painting itself. Indeed, if the last human being on Earth had a particularly strong disliking for the Mona Lisa - and we could be sure that she was the last human - it seems unclear to me why she would have an obligation not to deface the painting. So while we can acknowledge that we have

[29] Mary Anne Warren argues that sacred rocks such as Uluru have moral status. See Mary Anne Warren, *Moral Status*, pp. 170-172.

extensive obligations *regarding* sacred objects and beautiful pieces of art, these are founded on the obligations we have *to* other humans.

Another group of entities who seem to lack lives that can go well or badly for themselves is the dead. However, some people believe that we have moral obligations to the dead. In fact, the belief that the dead have moral status is prevalent in the practices and customs of many societies. For example, when we act according to the wishes of a deceased individual, say with regard to the division of an estate or the disposal of a body, we often feel that this is because we have an obligation to that dead individual. However, I want to deny this claim. Just as with sacred objects and works of art, I wish to argue that while our obligations regarding the dead might be demanding, they are actually founded on obligations owed *to* the living. Take for example the case of honouring wills. There seems to be two ways in which this obligation is based on the interests of the living: first of all, we enjoy life more if we know that our wishes will be carried out after our death; and secondly, family and friends are ordinarily happier if the deceased individual's will is honoured. Interestingly, because the obligation is founded on the interests of the living, this explains why sometimes we are under an obligation *not* to honour a will. This is reflected in UK law where if an individual feels that the deceased has not made suitable provisions for him, a will can be contested. Dead individuals should of course be considered in our ethical deliberations, but this is based on and tempered by our obligations owed to the living.

As a final point on the dead, consider once again the scenario mentioned above involving the last ever human and the Mona Lisa. While this last human has a strong disliking for the painting, it is clear that many deceased individuals' greatly admired it, and enjoyed looking at it. Do these considerations place this last human under an obligation not to deface the painting? I simply cannot see how, for sadly, the dead will never be able to enjoy looking at the Mona Lisa ever again. The dead do not have lives that can be affected by what happens to the painting. As with cars, rocks and paintings, dead bodies seem to lack the crucial ingredients for the ascription of moral status.

To sum up, in order to ascertain whether or not something has moral status, it is necessary to ask whether states of affairs can make its life better or worse. If an entity has no capacity for its life to go better or worse for it, then it is not ethically considerable in its own right. Of course, such entities are things that we might have obligations *regarding*, but not directly *to*. Put in the terms of other common moral concepts, such entities have no interests and cannot be benefited or harmed. For an entity to have

moral status then, it is necessary for an entity to have the capacity for its life to go better or worse for itself.

2.2.2 Is Well-Being Sufficient to Have Moral Status?

I have argued that possessing the capacity for well-being is necessary to have moral status. However, this does not mean that all such individuals actually possess moral status. Well-being might be necessary for the possession of moral status, but it might also be insufficient. That is to say, some other characteristic might be required in order to qualify for moral status. So what might this further characteristic be? In this section I briefly examine the claims that *being human* and *being a person* are further necessary characteristics for the possession of moral status.

Some philosophers have claimed that in order to have moral status one must be a member of the species *Homo sapiens.* Now it could be claimed that being human is itself ethically significant because human beings, unlike other species, are made in the image of God. However, even if we accept for the sake of argument that God has indeed made humans in His or Her image, and that humans are in this sense special, it does not follow that we have no direct obligations to non-humans. Indeed, our spark of Godliness may mean that we should extend our moral duties to all of God's creatures.[30]

Furthermore, it is extremely hard to see why being human is in itself ethically significant. After all, whether we have obligations to something surely depends on that entity's *characteristics* rather than its membership of a particular species. For example, if an alien arrived on Earth that was like a human being in every respect except that it belonged to a different species, it would be odd to deny that alien moral status. This highlights the fact that characteristics are what are important in ascribing moral status, not membership of the species *Homo sapiens.*

However, a better argument might claim that humans alone have moral status in virtue of the particular characteristics that humans possess. Many such claims have been made and most refer to the fact that only humans are 'persons'. By persons, it is usually meant that humans alone have the capacities for moral agency and autonomy: moral agency is the ability to reason and act upon moral principles, while autonomy is the ability to frame, revise and pursue a conception of the good life. Now some philosophers argue that to be part of the moral community, one needs to be able to understand and

[30] Once again, for a Christian foundation to our obligations to non-humans, see Andrew Linzey, *Animal Theology.*

act upon moral rules.[31] Such a claim would exclude non-persons such as animals from having moral status, because they cannot understand or act according to such rules. Unfortunately though, this argument conflates what it means to have an obligation with what it means to be the recipient of an obligation. Clearly, to have the obligation not to torture, one must be able to understand what torture is and be able to understand why it is wrong. However, to be the recipient of the obligation not to torture all one needs is the ability to feel pain.[32] For the wrongness of torture surely lies in the gross infliction of pain, not in the ability to understand why torture is wrong.

Immanuel Kant also claimed that it is necessary to be a person to have moral status, because he regarded it as necessary to possess a sense of justice and the capacity for autonomy to be part of the moral community. Kant argued that rational beings like humans are *ends-in-themselves*: individuals who can exercise moral judgement and free will, and who are not bound by instinct and emotion. Because rational beings are ends-in-themselves, Kant claimed that they have dignity. However, things that are non-rational are unable to choose, and are instead driven by instinct alone. Non-rational entities thus have no end-in-themselves and are mere 'things' to which no obligations are owed:

> If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it his duty to show towards mankind.[33]

Kant thus believed that while there are some ethical limitations upon our treatment of non-persons, these limitations are not derived from the moral status of non-persons, but from our duties to humanity. In effect, we should avoid cruelty to non-persons because it might make us cruel to mankind.

However, I believe we can criticise Kant's argument in two ways. First, it is not at all clear that being cruel to non-persons necessarily leads to being cruel to persons. Second, if only autonomous moral agents are to have moral status, then many humans must be excluded from the moral community. For example, given this definition of personhood, young infants and severely mentally disabled individuals are non-persons. However, if I were to torture an infant or a mentally disabled individual, then I would be doing more than just failing in some duty to mankind. Indeed, if that individual could

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[31] For example see Carl Cohen, "The Case for the Use of Animals in Biomedical Research", *The New England Journal of Medicine,* 315, No.14, (October 2, 1986): 865-870, p. 866; and Michael Fox, "Animal Liberation: a Critique", *Ethics,* Vol. 88, No. 2, January 1978: 106-118, p. 112.
[32] This point is also made by James Rachels, *Created from Animals,* p. 191.
[33] Immanuel Kant, *Lectures on Ethics,* trans., Louis Infield, (New York: Harper and Row, 1963), p. 239.

experience pain, as most babies and mentally disabled individuals can, it seems obvious that I would be neglecting a duty to that individual him or herself. An entity's capacity to invoke obligations seems to be independent of its ability to exercise moral agency or autonomous choice. That is to say, it seems to make sense that one can have moral status without being a person.

Carl Cohen and Michael Fox have accepted the claim that some non-persons have moral status. However, they claim that only *human* non-persons have moral status. They argue that it is unimportant that particular humans lack the usual necessary characteristics for inclusion in the moral community because, "the issue is one of kind"[34], and that what is important, "... are the characteristics that a certain class of beings share in general, even if not universally."[35]

For Fox and Cohen then, human non-persons possess moral status because they belong to a group whose members ordinarily possess the characteristics required for inclusion. Non-human animals are excluded, on the other hand, because they belong to a group whose members generally lack such capacities. However, Nathan Nobis has pointed out that even if we accept that we should base an individual's moral status on the characteristics of the group to which it belongs (which is extremely dubious), many animal non-persons still warrant entry into the moral community. After all, many animal non-persons belong to groups that human persons belong to. For example, both are living organisms, both are sentient, both have the capacity for well-being, both possess interests and so on. Since such animal non-persons belong to these groups whose members have the capacities required for moral status, it remains unclear why animals must be excluded from the moral community even on Fox's and Cohen's terms.[36]

More importantly, however, instead of an individual's kind, I wish to maintain that it is *the individual's own characteristics* that are crucial in the determination of moral status. Indeed, the characteristic that is of ultimate importance in assessing whether an entity is ethically considerable is whether it has a life that can go well or badly for itself. The crucial questions do not concern whether an entity is a member of the species *Homo sapiens*, nor whether an entity hold the capacities for autonomy and moral agency. Rather, we must ask, does the entity have a life that can go better or worse for itself? If it does, then it seems perfectly reasonable to suggest that we should limit and adjust our

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[34] Carl Cohen, "The Case for the Use of Animals in Biomedical Research", p. 866.
[35] Michael Fox, "Animal Liberation: a Critique", p. 110.
[36] Nathan Nobis, "Carl Cohen's 'Kind' Arguments For Animal Rights and Against Human Rights", *Journal of Applied Philosophy,* Vol. 21, No. 1, 2004: 43-59, pp. 50-51.

actions for the sake of that entity. In other words, we have moral obligations to that thing.

2.3 Life, Consciousness and Well-Being

Thus far I have argued that we have obligations to entities whose lives can go better or worse for themselves. But what types of entity are these? Do all living organisms have such lives, or only those with the capacity for conscious experience? In this section I set out to answer these questions. The section is divided into four: the first two sections ask whether life is necessary or sufficient for well-being; and the final two sections ask whether consciousness is necessary or sufficient for well-being. In this discussion I dismiss the notion that 'being alive' is the relevant criterion for determining whether an entity has a life that can go well or badly for itself. This is simply because for an entity to have a life that can go well or badly for itself, I claim that it must have some point of view with which to experience the world. Thus, I argue that this capacity for experience, what I call 'phenomenal consciousness', is the necessary and sufficient condition for well-being. Initially then, let us consider the question of 'life'.

2.3.1 Is Life Necessary for Well-Being?

In the first instance it is necessary to very briefly examine what life actually means. This is an incredibly difficult task, with many biologists and philosophers over the centuries having contested what being alive necessitates. In spite of these problems I wish to outline broadly what is meant when we say that something is living. I suggest that living organisms possess each of four particular characteristics. First, all living things have *cellular organisation*, and are composed of one or more cells. Second, all organisms have a *metabolism*, being able to assimilate energy and use it to grow. Third, all living things *reproduce*, passing on traits from one generation to the next. And finally, and related to reproduction, all organisms have a genetic structure, based on their *possession of DNA*.[37] This list may not be definitive, or uncontroversial, but it will do as a working definition. It includes as living such entities as animals, plants and bacteria, while excluding viruses, robots, computer programmes and inanimate entities such as rocks. Such a definition is therefore in keeping with our own common sense ideas regarding what kinds of things living organisms are, along with much of the thinking of

[37] I have taken these characteristics of life from Peter H. Raven and George B. Johnson, *Biology,* (London: 4th ed., WCB Publishers, 1996), p.73.

the scientific community. But if this, tentatively, is what life *is*, is it necessary to have well-being?

At first sight, it seems fairly obvious that being alive must be necessary to have well-being. After all, I have defined well-being as a *life* that can go well or badly *for* an individual. Given this, it would appear nonsensical to ascribe the capacity for well-being to non-living objects such as rocks; for rocks simply have no life that can go well or badly for themselves. However, when one considers things that are not living organisms, but which might be said to possess 'artificial lives', things become more complicated. For example, consider the case of robots. A robot will not ordinarily meet the definition of life that I have given: they are not cellular, metabolic, reproductive or in possession of DNA.[38] However, imagine if one day a robot could be built that falls outside of this biological definition of life, but which is so sophisticated that it can think, feel, understand and even care about its function. Would this robot have well-being? It seems to me that it would: it may not have a biological life that can go well or badly for itself, but it would certainly appear to have an artificial life that can go well or badly for itself.

Of course, many have argued that a 'thinking' robot such as this is an impossibility. This is because no matter how advanced the computer programme within the robot, it could never enable the robot to *understand* what it is doing. It may answer questions, solve problems and choose between alternatives, but it could never understand what it is doing. In John Searle's terms, a robot may have a grasp of *syntax*, but can never have a grasp of *semantics*.[39] However, while I disagree with Searle, the question of the possibility of this thinking robot is not the issue at hand. What we are concerned with is whether this *hypothetical* robot would have well-being. And one objection to the idea that it would might claim that the interests of this potential robot would not be its own, but the interests of whoever created the computer programme that runs it. The robot's well-being, it might be claimed, is defined by an outside party and thus really belongs to that outside party. However, I do not find this argument convincing. For surely my interests as a human being are shaped by the genes handed down to me by my parents and the environment in which I have grown up and exist within. Nevertheless, they are still *my*

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[38] Clearly, my definition of life is very much biological. Other non-biological definitions could of course be offered. Indeed, some scientists working with robots describe their field as 'Artificial Life', and have even created artefacts which they claim to be 'living'. See Christopher G. Langton, "Artificial Life", and Michael Wheeler, "From Robots to Rothko: the Bringing Forth of Worlds", in Margaret A. Boden (ed.), *The Philosophy of Artificial Life,* (Oxford: Oxford University Press, 1996).

[39] For a full discussion of Searle's argument, see Jack Copeland, *Artificial Intelligence: a Philosophical Introduction,* (Oxford: Blackwell, 1993), pp.122-132.

interests. It does make sense then, to say that a sufficiently complex and thinking robot will have its own interests, irrespective of who programmed it. For example, consider a robot with the capacity to feel and think in the pursuit of its function. Surely torturing or tormenting that robot, would harm that robot itself, irrespective of the effects on the individual who created it. Accordingly, pending evidence to the contrary, there seems to be no good reason to deny that a hypothetical, non-living, thinking robot could have a life that can go well or badly for itself. In other words, biological life is not strictly necessary for the capacity for well-being.

2.3.2 Is Life Sufficient for Well-Being?

So, I have claimed that entities other than living organisms can have well-being. However, that still leaves the question of whether the capacity for well-being is present in all living things. Paul W. Taylor and Robin Attfield have both proposed that all living things have well-being, or what they call, a 'good of their own'. Taylor explains that: "We can think of the good of an individual non-human organism as consisting in the full development of its biological powers."[40] Trees, plants and simple animal life may not be aware of their interests, but this does not matter for Taylor. What is important is that scientific study has allowed humans to objectively talk about what living entities need in order to achieve their ends - what is of advantage to them, and what disadvantages them.[41] So according to Taylor, achieving their biological ends is to be equated with organisms' well-being, meaning that all entities with biological ends must have well-being.

A thought-experiment proposed by Robin Attfield is intended to lend weight to the idea that all living things have well-being. In his article, "The Good of Trees", Attfield asks us to imagine a situation - for example, following a nuclear holocaust - in which there remains one last human (who is aware of her imminent death) and one last tree. For the sake of the argument, let us also assume that all the animals who depend on the tree have been extinguished. If the human were to chop down the tree, would she be doing anything wrong?[42] Attfield believes that the reason that many of us are uncomfortable with the idea of the last tree being chopped down is because trees have a good of their

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[40] Paul W. Taylor, "The Ethics of Respect for Nature" in Michael Zimmerman et al. (ed.), *Environmental Philosophy: From Animal Rights to Radical Ecology,* (London: 2nd ed., Prentice Hall, 1998), p. 72.
[41] Paul W. Taylor, *Respect for Nature: A Theory of Environmental Ethics,* (Princeton, NJ: Princeton University Press, 1986), pp. 60-63.
[42] Robin Attfield, "The Good of Trees", *Journal of Value Inquiry,* Vol. 15, No. 1, 1981: 35-54.

own based on their flourishing and reaching of ends. Attfield's argument is thus very similar to Taylor's: all living organisms have a life that can go well or badly, because they all have biological ends towards which they are striving.

Interestingly, this focus on biological functioning has also been used by other thinkers to say that 'holistic' living entities such as species and ecosystems have well-being. For example, Lawrence E. Johnson writes: "A species has an interest in continuing in equilibrium with its environment, in fulfilling its nature as a species, and in fulfilling its nature in its individual species members."[43] Thus for Johnson, the well-being of species is based on the "integrated functioning of their life processes".[44]

However, I wish to claim that Johnson, Attfield and Taylor all mistakenly conflate an entity's biological functioning with its own good or well-being, when in actual fact, the two should be kept distinct. You will remember that at the beginning of the chapter I argued that well-being is a prudential value, concerned with how life goes for the individual whose life it is. Prudential value is to be contrasted with perfectionist value, which can be defined as that which is good for an entity's kind. Clearly, in discussing what makes living organisms and species flourish in terms of their biological ends, Johnson, Attfield and Taylor are referring to an entity's perfectionist value. For example, a tree does well by being able to grow unimpeded, bear fruit, shed its leaves and so on. These events all equate to a healthy tree doing well in terms of its biological function. However, while all these activities might be of perfectionist value, they cannot be said to be of prudential value: they do not make life go well *for the tree itself.*[45] Quite simply, this is because a tree has no point of view, no mental states, and no cognitive life to experience the benefit of such actions. Without doubt, trees can flourish and be good examples of their kind, but they cannot have lives that can go well *for themselves.* In light of this, and contrary to these environmental ethicists, not all living organisms have the capacity for well-being.

2.3.3 Is Consciousness Necessary for Well-Being?

In the previous section I pointed out that many living organisms, like trees, cannot have lives that go well or badly for themselves, because they do not have their own point of view. Clearly, this implies that to have well-being, a level of consciousness is necessary.

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[43] Lawrence E. Johnson, *A Morally Deep World: An Essay on Moral Significance and Environmental Ethics,* (Cambridge: Cambridge University Press, 1991), p. 178.
[44] Ibid., p. 142.
[45] This same argument is found in L.W. Sumner, *Welfare, Happiness and Ethics,* p. 78.

However, accounts of what consciousness actually is and where it can be found differ greatly. Consciousness is not a single fixed concept; rather, there are various levels of conscious state that manifest themselves differently across and within species. The following two sections distinguish four different levels of consciousness that are often conflated: phenomenal consciousness, access consciousness, higher-order thought consciousness and self-consciousness. In these sections, I argue that the capacity for phenomenal consciousness is both necessary and sufficient for an entity to have well-being.

Phenomenal consciousness in the way I am using it refers to the qualitative, subjective, experiential or phenomenological aspects of conscious experience.[46] In other words, to be phenomenally conscious is to be able to *feel* and to *experience* the world. Furthermore, phenomenal consciousness is synonymous with sentience, the ability to have sensations, and thus has a strong relationship with the ability to feel pain and pleasure. Indeed, by definition things that feel pain must be phenomenally conscious. From what I have argued so far in this thesis, it certainly appears that phenomenal consciousness is necessary to have a life that can go well or badly. After all, this ability to experience the world gives an entity its own point of view, thus making it possible for that entity to have a life that goes well or badly *for itself.*

However, the necessity of phenomenal consciousness for well-being might be questioned. For example, sleeping and comatose individuals do not experience the world, but it seems sensible to say that they nevertheless possess lives that can go well or badly for themselves. This, I believe, is because most such individuals still have the *capacity* for phenomenal consciousness; the experiences themselves are just temporarily switched off. Because of the presence of this capacity then, and the likelihood that phenomenal consciousness will return, it still makes sense to say that sleeping individuals and individuals in temporary comas have lives that can go well or badly for themselves. For example, if we neglect someone in a temporary coma, allowing her to become infected, we make her life worse. She may not feel the harm, but what is important is that she has the capacity to feel it, and may come to feel it in the future. Similarly, if I am robbed while asleep, I am not aware of being robbed, but

[46] Colin Allen, "Animal Consciousness" in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy,* (Summer 2003 Edition), <http://plato.stanford.edu/archives/summer2003/entries/consciousness-animal/>.

because I have the capacity for such awareness I can quite legitimately be said to be harmed.

This claim of course leaves the question of those in permanent comas, or who are permanently asleep. In effect here, we are talking about individuals who have suffered cortical death. Can't we make things better or worse for the dead? In the previous section of the chapter, I assumed not – but perhaps I was too hasty. Joel Feinberg, for one, has argued that interests can survive death, and uses an interesting thought experiment to argue that even if a harm is not *felt*, it may nevertheless exist. He asks us to imagine that someone in a far-off place spreads lies and rumours about you without your knowledge, the result being that you are the object of ridicule within that place. Although you do not feel or experience these harms, Feinberg argues that you have nevertheless been injured. Similarly, he argues that although a dead individual can feel nothing, that same individual can still be harmed. Some interests, so the argument goes, like the interest in not having lies told about you, survive death.[47]

While this argument has some appeal, I am not convinced by it. Feinberg's thought experiment trades heavily on the feeling so many of us have that telling lies about people – even when they are dead or live in far-off places – is wrong. However, we can concede that it is wrong to spread malicious lies about people, and yet maintain that lies do not always make life worse for the individuals we tell lies about. For example, aside from its effects on the object of our lies, telling such lies might also be wrong because it reveals a bad character, because it upsets the friends and family of the object of our lies, or even because it simply spreads untruths. Given this, we can legitimately claim that telling lies about the dead is wrong, while also accepting that doing so does not make their lives worse. And, since the dead have no lives, I simply cannot see how spreading lies about them can make their lives worse. Without doubt, we might be able to tarnish a dead person's reputation or damage his legacy, but that is quite different to worsening how life goes *for the individual whose life its is.* This, quite obviously, is because there is no such life to be affected. Given this, we cannot say that the dead have the capacity for well-being; the capacity for phenomenal consciousness still seems to be necessary.

However, before finally accepting that the capacity for phenomenal consciousness is necessary for well-being, we must consider whether entities with lower levels of consciousness can have lives that can go well or badly. Indeed, there is a class of conscious state 'below' the level of phenomenal consciousness that we might call

[47] Joel Feinberg, "The Rights of Animals and Unborn Generations", p. 59.

'access consciousness'?[48] If an entity is access conscious I mean that it can absorb and process information via its senses, but those states *feel* like nothing for that entity. Clearly, from a human perspective it is difficult to imagine what it might be like to be access conscious and no more. Nevertheless, it seems reasonable to assume that some entities are able to access the world and even react to it, without being able to feel or experience anything of it in a qualitative sense. For example, consider the case of zombies in horror films. Zombies seem to be access conscious because they are able to appreciate and react to facts and events in their environment. Indeed, the main purpose of zombies in such movies is to attack human beings, and in order to attack these human beings the zombies' senses must be switched on to their presence and information processed through some rudimentary cognitive ability. Importantly, if the zombies were not access conscious, then why would they attack? However, when zombies attack, the characters in the film usually fight back. This often involves (keeping the levels of blood and gore high) knives, axes, guns and so on. What is distinctive about zombies is that they do not react to these blows. In fact, zombies can be stabbed, shot and have their limbs hacked off, but they do not flinch, and instead continue relentlessly in their attacks. All of this suggests that zombies possess access consciousness, but lack phenomenal consciousness.

I want to argue that zombies also lack well-being. Since zombies lack the capacity for qualitative experience, they are much like trees, plants and the dead, in that they have no point of view that is their own. Thus, while we might say that a zombie with all its limbs and a good range of helpless victims in its environment has a life that is going well, it is only going well in a perfectionist sense. That is to say, the zombie is doing well in terms of the type of entity that it is, but it is not leading a life that is going well *for itself.* Because access conscious entities like zombies lack the capacity to feel events, they lack the ability to have a life that can go well or badly for themselves.

2.3.4 Is Consciousness Sufficient for Well-Being?

While the capacity for phenomenal consciousness might be necessary for well-being, perhaps it is insufficient. In particular, perhaps a level of consciousness higher than mere experience and feeling is necessary to have a life that can go well or badly for oneself. Indeed, this argument is put forward by Peter Carruthers. For Carruthers, it is

[48] I have borrowed the concept of access consciousness from Ned Block, "Consciousness" in Samuel Guttenplan (ed.), *A Companion to the Philosophy of Mind,* (Oxford: Blackwell Publishing, 1994), p. 214.

impossible to have real phenomenal consciousness without possessing 'higher-order thought consciousness'. 'Higher-order thought consciousness' is a type of conscious state that exists when an entity is able to reflect on its thoughts and consciousness. In this sense, it is something more than mere phenomenal consciousness, because it necessitates evaluating and ruminating on experiences and feelings. Carruthers argues that it is wrong to conflate (as I have) the question of whether a thing has experiences with the issue of whether there is something that it *feels like* to be that thing.[49] Instead, Carruthers argues that an entity only feels like something when its experiences are available to conscious thought.[50]

To support his point, Carruthers offers the example of absent-minded driving. When driving absent-mindedly the driver may be able to perform quite complex and demanding manoeuvres. However, when asked to describe or recount the journey, the driver will not be able to recall anything. This, for Carruthers, is a clear example of a non-conscious experience. Importantly, the account of phenomenal consciousness that I have given in this chapter cannot explain why absent-minded driving is non-conscious. In fact, since there must be something experienced by the driver, my account suggests that this situation *is* an example of a conscious state. Carruthers's account, on the other hand, *can* explain why absent-minded driving is non-conscious. It is non-conscious because the driving experiences are not available to the driver's higher thought.

Of course at this stage it can be asked why any of this matters for the ascription of well-being. Carruthers provides the beginnings of an answer to this when he asks: what does it feel like to be the subject of a non-conscious experience, such as absent-minded driving? The answer is, 'nothing'.[51] So while entities may have experiences, unless these experiences are available to higher-order thought processes, they *feel like* nothing. And if experiences are not felt, they cannot affect how life goes *for* an individual. Thus, Carruthers would claim that entities that are only phenomenally conscious cannot have lives that can go well or badly for themselves.

I believe that Carruthers's account of non-conscious states is highly questionable. First, it is not clear that a state is non-conscious if one does not have thoughts about it. For example, is Carruthers's absent-minded driver a true example of a *non-conscious*

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[49] Peter Carruthers, *The Animals Issue*, p. 171.
[50] Ibid., pp. 181-182.
[51] Ibid., p. 170.

experience? I think a better explanation of it is selective attention.[52] For it is highly doubtful that lack of memory is a clear indicator that an experience is non-conscious. If it were, it would mean that our consciousness over any given day would be sporadic, to say the least.[53] Furthermore, it must be remembered that many of our experiences in life do not require further reflection in order to be truly felt. For example, if a flame burns my hand, I pull it away without consideration. It is the pain that makes me pull my hand away, and while I may not be reflecting upon that pain, it nevertheless *does* feel like something to me. In fact, it is quite possible to imagine situations in which an individual is so consumed by pain that higher-order thoughts about that pain are impossible. Nevertheless, surely we can say that the pain *feels* like something for that person: it feels bad, and it ordinarily makes life worse for the individual. Given all this it seems perfectly legitimate to say that one does not need the capacity to reflect on one's experiences to have a life that can go well or badly; all one needs is the capacity to experience.

However, perhaps this conclusion is too quick. Perhaps there is a further and different level of consciousness that is required in order to have a life that can go well or badly. One possible candidate is self-consciousness. In actual fact, self-consciousness commonly refers to two quite different states. First, it sometimes relates to an entity being self-aware - in other words, that it knows who it is. Second, self-consciousness can relate to what I referred to above as 'autonomy': an entity's ability to access an 'inner realm' from which it can frame, revise and pursue a particular type of life or conception of the good. Starting with the latter, it might be argued that if an entity has nothing to look forward to, nothing to plan for and nothing to reflect on, then it has no life that can go well or badly for itself. It may have good or bad experiences, but it does not have a 'comprehensive self' tied to goals and projects which can be hindered or thwarted.

However, requiring this type of self-consciousness to be necessary for a life to go well or badly fails to accord with our ordinary understanding of well-being. For example, consider the paradigm example of entity that has the capacity for this kind of self-conscious autonomy: an adult human. Can an adult human's life go badly or worse than it might, even in the absence of any effects on autonomous capacities or what I have

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[52] As do Dale Jamieson and Marc Bekoff, "Carruthers on Nonconscious Experience", *Analysis,* Vol. 52, No. 1, Jan. 1992: 23-28, p. 24.

[53] Michael Lyvers, "Who Has Subjectivity?", *Psyche,* 5 (31) December, 1999, <http://psyche.cs.monash.edu.au/v5/psyche-5-31-lyvers.html>.

called the comprehensive self? I believe that it can. Consider, for example, a case of chronic back pain in a musician. Imagine that the pain is such that although it is stabbing and persistent, it does not affect the musician's ability to pursue his love of playing music, nor does it prevent him from fulfilling other things valuable to him such as going to concerts, visiting friends and family, and raising children. Despite the fact that the musician's autonomous capacities are intact, it nevertheless makes sense to say that his life is going worse for him than it might. Quite obviously, this is because the musician is suffering from chronic back pain. In other words, bad experiences and feelings are sometimes sufficient to make a life go worse, irrespective of the effects on one's 'comprehensive self'.

But what of the other meaning of self-consciousness - that is, being self-aware? Once again, some philosophers regard this type of consciousness as something over and above phenomenal consciousness. Thus, while an entity might be able to experience the world, it may not have any understanding of its own place and existence within that world. Scientists have tested for this type of self-consciousness in animals and babies by using the 'mirror test'. That is, they place a mirror in front of the subject and observe its reactions. Interestingly, most tests conducted with mirrors to see if the reflection is acknowledged have concluded that , "...the great apes and human children over the age of two years have some understanding of the self, but no other species do."[54] Importantly, if some entities have no conception of self, it makes it doubtful whether they have their own point of view from which to experience the benefit or harm of actions and events in the world. Perhaps then, phenomenal consciousness is insufficient for well-being, because self-consciousness is also required. However, I am sceptical of this differentiation between the capacity to experience and the possession of a sense of self. I simply cannot comprehend how an entity could be able to experience the world and yet have no sense of self. For if there is experience and feeling in an entity, there must surely be some subject – some 'self' - having those experiences and feelings. While that subject might not be able to recognise its own reflected image, I fail to see why that negates the possession of a sense of self. Rather, it seems much more plausible to say that phenomenal consciousness *presupposes* some locus of experience, and thus some sense of self.

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[54] Marc Hauser, *Wild Minds: What Animals Really Think,* (London: Penguin, 2001), p. 125. Note, however, that since the publication of this book, elephants have also passed the mirror test. See *BBC News,* "Elephants' jumbo mirror ability", 31st October 2006, < http://news.bbc.co.uk/1/hi/sci/tech/6100430.stm>.

Of course, in response it might be claimed that self-consciousness does not merely refer to a locus of experience, but also a sense that one is *separate* from other entities. If this is right, we can accept that an individual can possess phenomenal consciousness, and thus feel events in the world, but also accept that the same individual can lack self-consciousness, and thus be unaware that it, and not some other individual, is feeling those states. However, even if all this is right – and I am highly doubtful that it is – it does not prove the capacity for phenomenal consciousness to be insufficient for well-being. For even if we assume that a dog say, is phenomenally conscious but not self-conscious in the sense defined, if that dog were to experience excruciating pain, it would still make sense to say that life was going badly for *that dog.* After all, even though the dog is not aware that the pain is exclusive to him, it still feels like something to him, and quite obviously makes his life worse. Given all of this then, it would appear that the capacity for phenomenal consciousness is sufficient for well-being.

In this section I have argued that phenomenal consciousness is the necessary and sufficient condition for well-being. In other words, in order for an entity to have a life that can go well or badly for itself, it must be able to experience and feel the world. While being a living organism or being able to process information and react to the world may give an entity some function or purpose, they are insufficient to give it a life that can go well or badly *for itself.* Moreover, entities do not need anything more than phenomenal consciousness to have well-being: being able to reflect on one's feelings is not necessary to have a life that can go well or badly; nor is the capacity to frame, revise and pursue comprehensive goals; and nor is the ability to recognise oneself in a mirror.

Of course, all of this is important because, as I argued earlier in the chapter, well-being is so crucial in determining who and what has moral status. Given this then, the next task is to consider just what types of entity are phenomenally conscious. For once this is established, we will know what types of entity we have moral obligations towards.

2.4 Locating Phenomenal Consciousness and Moral Status

To have a life that can go well or badly and thus to have moral status, an entity must be able to experience the world. Quite obviously this excludes such entities as rocks, trees and plants. But what does it include? It will seem fairly obvious to anyone who has had any contact with animals that many of them are phenomenally conscious in the sense that I have described above. However, the fact that it *seems* obvious is not enough to

prove the point, for it might be that a dog's yelp when kicked is in fact an unfelt reflex. It could be that dogs are really like zombies, reacting to events in the world but having no qualitative experience of them. Furthermore, our certainty in determining what kinds of creature are sentient varies greatly as we move around the animal kingdom. For example, do fish, lobsters or insects have phenomenal consciousness? In this section I will attempt to argue the case that many species of animal are indeed phenomenally conscious and so do possess moral status, while also cautiously proposing where the line for such consciousness can be drawn.

2.4.1 Evidence in Favour of Animal Experience

I mentioned above that a dog's yelp when kicked might be an unfelt reflex reaction. Given that we know from simple observation that dogs can access the world, process information about it and react to it, if this yelp were a mere reflex, this would suggest that dogs are access conscious, just like zombies. However, I believe that there are at least three good reasons for supposing that dogs and many non-human animals are not like zombies and do have experiences.[55] First, quite unlike zombies, many animals *behave* as if they possess sentience. Of course, this is illustrated by the fact that animals sometimes cry out or show distress when in pain. However, the reason we can often take such actions to suggest more than mere instinctive reaction or reflex response, is based on the fact that pain will lead many species to adapt their behaviour, say by avoiding those things that have caused them pain, or by protecting injured body parts.

Second, while there are obvious differences between humans and other species of animal, it is important to bear in mind that we are essentially made of the same stuff. For example, the zoologist Donald R Griffin writes:

> ...as mental experiences are directly linked to neurophysiological processes – or absolutely identical with them, according to strict behaviourists – our best evidence by which to compare them across species stems from comparative neurophysiology. To the extent that basic properties of neurons, synapses, and neeuroendocrine mechanisms are similar, we might expect to find comparably similar mental experiences. It is well known that basic neurophysiological functions are very similar indeed in all multicellular animals.[56]

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[55] These three reasons are also given in Mark Rowlands, *Animals Like Us,* pp. 5-9; Robert Garner, *Animal Ethics,* (Cambridge: Polity, 2005), pp. 28-29; David DeGrazia, *Animal Rights: a Very Short Introduction,* (Oxford: Oxford University Press, 2002), pp. 42-43, and, *Taking Animals Seriously,* pp. 108-112.

[56] Donald R. Griffin, *The Question of Animal Awareness: Evolutionary Continuity of Mental Experience,* (New York: The Rockefeller University Press, 1976), p. 70.

Humans share very similar neural mechanisms with animals and this in itself makes it likely that our experiences are to some extent alike. Indeed, in terms of pain, it has been pointed out that endogenous opiates, which function within organisms to alleviate pain, exist in all mammals, birds, reptiles, amphibians, fish and in some invertebrates such as earthworms and insects.[57] Furthermore, the effects of opiates and other drugs on behaviour are similar across many species of animal. Indeed, when laboratory animals are offered drugs that produce pleasurable states of consciousness in humans, such as cocaine, heroin and alcohol, the lab animals tend to devour them, often preferring them to food when offered the choice.[58] This strongly suggests that many animals possess conscious states something like our own.

The third reason for supposing that animals do have some mental experience is that it makes sense from an evolutionary perspective. The ability to feel pain, and experience comfort and pleasure makes it likely that mobile creatures will avoid the former and pursue the latter. The effect of such experiences on behaviour is of course vital for survival and successful reproduction. One would thus expect many successful species of roaming animal to have the capacity for some subjective experience.

2.4.2 Objectively Proving the Subjective

I have argued that the behaviour of animals, their physical structure and their evolutionary success makes it very likely that many of them have mental experiences. Of course I have not *proved* that animals are phenomenally conscious. Indeed, proving that phenomenal consciousness exists anywhere and in anything is an impossible task. For example, the fact that another human is behaving like me and is made of the same stuff as me does not mean that I can be certain that he or she has the same mental state as me. In fact I cannot be *certain* that all other humans are not zombies, and that I am not the sole being in existence with any conscious experiences. For phenomenal consciousness is subjective: it is about how things seem and what things feel like for an entity. Thus to find out *objectively* how things seem and feel like for other entities is problematic. As Nagel puts it: "...every subjective phenomenon is essentially connected with a single point of view, and it seems inevitable that an objective, physical theory will abandon that point of view."[59] And so, to say with certainty that other humans feel things

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[57] Mark Rowlands, *Animals Like Us,* p. 7.
[58] Michael Lyvers, "Who Has Subjectivity?".
[59] Thomas Nagel, "What Is It Like to Be a Bat?", *The Philosophical Review,* Vol. 83, No. 4, Oct. 1974: 435-450, p. 437.

like I do (or feel anything at all) is impossible. However, I am not inclined to believe that every other human is a zombie. I draw this conclusion because of certain things I notice about their behaviour and because I know they are like me physically. Similarly, I am not inclined to believe that all animals are zombies. Again, I am drawn to this conclusion from the ways in which they behave and from the facts I possess about their structure.

The fact that I believe that many animals are sentient does not make me think that all animals have the *same level* of conscious experience. Clearly, different animals behave in different ways, have divergent evolutionary histories and possess contrasting genetic structures. I believe, therefore, that animals have different capacities for conscious experience. However, I also believe that it is likely that different *humans* will often have contrasting levels of conscious experience. For example, it is extremely unlikely that the capacity for conscious experience amongst a newborn baby, a 12 year old, and a frail elderly individual in declining health will be identical. This is in keeping with my belief that consciousness is a fluid concept that exists differently across and within species.

However, while phenomenal consciousness is bound to manifest itself differently, what really matters is where it can be found. For if an entity does have this capacity, then it also has a life that can go well or badly for itself, and most importantly, has moral status. I have argued that it is very likely that many animals possess such lives. But of course, there still remains the important question of *which* animals. Having conceded that phenomenal consciousness can manifest itself differently makes drawing a line around consciousness an incredibly difficult task. Nevertheless, a few claims can still legitimately be made.

2.4.3 Drawing the Line

I believe that the case for conscious experience in vertebrates is overwhelming. Given their behaviour and physical structure (including complex central nervous systems) it is very likely that such animals are phenomenally conscious. For example, mammals are considered to be sufficiently similar to humans (remembering of course, that humans *are* mammals) in so many ways that they are regarded to be extremely useful in cosmetic and medical experiments.[60] It is extremely likely, due to their similar neural structures and nervous systems that such similarities extend to the capacity to have experiences.

The case for sentience in birds is also strong. For example, studies on factory-farmed chickens have shown that given a choice of two feeds, one with and one without

[60] For more on animal experimentation see Chapter 5.

painkillers, lame chickens choose the feed with painkiller more often than fit birds, and as levels of lameness increase, so too does consumption of the painkiller feed.[61] This provides compelling evidence that birds can experience pain and desire to alleviate it.

More controversial, however, is the case of fish. Two studies in 2003 provided different accounts of whether fish can feel pain. In the first, James D. Rose argued that fish brains are not sufficiently developed to experience pain. He claims that other studies which have put forward evidence of fish pain have in fact only provided evidence of *nociception*, the reflex reaction to threatening and injurious stimuli.[62] However, a later study also in 2003, this time by the Roslin Institute in Edinburgh, found evidence in trout of nociception *and* the experience of pain. In the later study, the fish were initially found to have nociceptors on their heads and mouths. Some fish then had bee venom injected into their mouths, which caused them to express anomalous behaviour. For example, the trout went into a 'rocking motion' similar to that exhibited by stressed mammals, rubbed their lips onto the gravel and walls of the fish tank, and took three times as long to resume feeding compared to the fish who were not injected.[63] Such behaviour appears to be more than simple reflex reaction, and seems to provide compelling evidence that fish can and do feel pain. Moreover, if fish have the capacity for phenomenal consciousness it is also likely that amphibians and reptiles have the capacity to experience the world. This is because fish, amphibians and reptiles possess similar neurophysiology and behavioural patterns.

When we turn to invertebrates, however, the evidence for phenomenal consciousness is much weaker. Taking insects, for example, there is no strong evidence for the existence of the capacity for phenomenal consciousness. It is true that insects do possess sophisticated apparatus to sense their environment, including sensory hairs to detect touch, tympanal organs to detect sound, and chemoreceptors to detect chemical signals.[64] Moreover, recent studies with insects have shown the presence of quite complex brain functions including sleep, learning, memory and attention.[65] All this provides compelling evidence for what I have called access consciousness. However,

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[61] *BBC News*, "Crippled chickens choose pain relief", 26th March 2000, <http://news.bbc.co.uk/1/hi/uk/691129.stm>.
[62] *The Daily Telegraph*, "Anglers are finally off the hook: fish feel no pain", 9th February 2003.
[63] Alex Kirby, "Fish do feel pain, scientists say", *BBC News*, 30th April 2003, <http://news.bbc.co.uk/1/hi/sci/tech/2983045.stm>.
[64] Peter H. Raven and George B. Johnson, *Biology*, p. 896.
[65] "Do fruit flies dream of electric bananas?", *New Scientist,* Vol. 181, Issue 2434, p. 32, 14th February 2004.

proof of phenomenal consciousness is limited. While endogenous opiates are present in many insects, their central nervous system is greatly limited when compared to that of other animals, and there is little behavioural evidence to suggest the ability to feel states such as pain. For example, insects continue with their normal behaviour even after severe injury, loss of limb, and sometimes even whilst being devoured.[66] More evidence is needed, but there is little reason at present to believe that insects can feel pain and thus that they are phenomenally conscious.

The same is true with other invertebrate animals: behavioural and physiological evidence suggests that they are not phenomenally conscious. However, we must be careful here, for invertebrates are a wide group, containing a quite diverse variety of species. For example, while we can be reasonably sure that creatures such amoebas and oysters lack the capacity for consciousness, there is some debate over such animals as lobsters and cephalods (octopi and squid). Indeed, it is widely reported that when a live lobster is plunged into boiling water (this is the way some people cook them), it thrashes about seemingly in pain. However, a recent Norwegian study declared that lobsters' nervous systems are too simple to feel pain, and that their thrashing when boiled alive is merely muscle contraction.[67] The case of octopi and squid is more difficult still, as their nervous systems are the most advanced of all invertebrates, but still much simpler than those of vertebrates. What is needed is more evidence, and no doubt this will come. At present then, it is probably most reasonable to conclude given the evidence available that all vertebrates (mammals, birds, fish, reptiles, amphibians) are phenomenally conscious, while most invertebrates (insects, molluscs, crustaceans, arachnids and so on) are not. Importantly, this means that the former have moral status, but the latter do not.

So much for phenomenally conscious animals - but what about humans? Throughout this chapter, I have simply assumed that all humans have the capacity for phenomenal consciousness. However, it would be odd to believe that this capacity is present within an individual human from the moment of conception. So just when does this capacity begin? What is certainly clear is that at around 25 days after conception, the brain comes into existence. However, it cannot be claimed that the capacity for conscious experience has also emerged at this stage; for although the brain exists, it has not yet begun to function. In fact, the earliest estimates of when electrical activity begins to

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[66] David DeGrazia, *Taking Animals Seriously,* p. 111.
[67] David Adam, "Scientists say lobsters feel no pain", *The Guardian,* 8th February 2005.

appear in the brain are at 6 weeks into gestation. Again, however, this proves little. The brain may be 'functioning' at a most rudimentary level at this stage, but that provides no evidence of consciousness. After all, when I switch on my computer prompting electricity to charge through it, I cannot be said to have switched on consciousness. It is at around 9 to 10 weeks of gestation that the foetus begins to respond to stimuli, for example by closing the fingers of its hand when its palm is touched. This does provide evidence of sensory ability, but of course provides no evidence of conscious experience. The behaviour in this situation may simply be a reflex reaction (perhaps like insects or lobsters). Indeed, although there is electrical activity in the brain of the foetus at an early stage of development, as well as signs of responses to stimuli, its brain does not in fact have the capacity for conscious experience until much later. Importantly, the human brain is not functional at all in any real sense until the nerve cells that form it are connected by synapses. Before this happens the brain is really just a mass of nerve cells. This synaptic connectivity appears at 25 weeks. Moreover, the cortex - regarded as a crucial property in the capacity for conscious experience – does not come into existence until between 25 and 32 weeks of gestation.[68] In sum, it is at around 25 weeks (at the earliest) that it appears that human foetuses possess the necessary neural development to have the capacity for conscious experience, and thus it as at this point that a human has moral status.

To summarise this section I wish to make three points. First, there is good behavioural, physiological and evolutionary evidence to support the view that many animals possess the capacity for phenomenal consciousness, and thus for moral status. Second, while it cannot be proved categorically that anyone or anything else has conscious experiences, it is reasonable to assume based on good evidence that some entities do have such experiences. Finally, current evidence supports the view that all vertebrates have the capacity for phenomenal consciousness, but that the majority of invertebrates do not. It also suggests that humans develop the ability to have a life that can go well or badly for themselves, at around the age of 25 weeks. In conclusion then, moral status cannot legitimately be assigned to all of the animal kingdom, but nor can it to all humans. The characteristics and capacities of the individual in question are what matters, and each case should be judged on the best available evidence. If the evidence that I have

[68] I have taken these stages of brain development in the human foetus from David Boonin, *A Defense of Abortion,* (Cambridge: Cambridge University Press, 2003), pp. 104-111.

presented here alters, as it undoubtedly will, then the lines around moral status need to be redrawn accordingly.

2.5 Conclusion

In this chapter I have hoped to do three things: first, to introduce and explain the concept of well-being; second, to explain why the concept of well-being is so important in working out what has moral status; and finally, to offer an account of what types of thing have moral status. In addressing these questions I have argued that well-being is a prudential value, concerning how life goes for the possessor of that life. To have the capacity for well-being is to have a life that can go better or worse, to be able to be benefited and harmed, and to have interests which can be set back or promoted. I have also claimed that the capacity for well-being is the necessary and sufficient condition for moral status. To determine what types of thing have moral status then, we need to ask what types of thing have lives that can go well or badly for themselves. I have argued that to have such a life, an entity must have the ability to feel and experience the world. These entities include many vertebrate animals such as mammals, birds, fish and reptiles, but exclude such things as rocks, trees, plants, dead people and most invertebrate animals.

Given all this, the ultimate conclusion of the chapter is that we have moral obligations to sentient animals. In the next chapter I anticipate the process of working out just what these obligations are by offering an account of animal well-being. That is to say, just what does it take for an animal's life to go well or badly?

3. The Well-Being of Non-Human Animals

In the previous chapter I argued that sentient animals have moral status because they have lives that can go well or badly for themselves. Now that we know the types of non-human entity towards whom we have moral obligations, we need to start thinking about what those obligations actually consist of. As I suggested in Chapter 2, most of us regard a fundamental purpose of morality to be about making the lives of individuals better, or at least, not making them worse. If this is right – and I think that it is - it appears that the content of our moral obligations depends in large part on what it is that makes life go well or badly for individuals. In a nutshell then, in order to work out our moral obligations to animals, we need an account of animal well-being. Just what is it that makes life go better or worse for sentient animals?

To answer this question, I once again draw on the distinction between persons and non-persons. I do this because I claim there to be an important difference between what makes life go well for persons and what makes life go well for non-persons. You will recall from Chapter 2 that I have claimed that persons are those entities with the capacities for moral agency and autonomy: they can reason about and act upon moral principles; and they have the ability to frame, revise and pursue a conception of the good. This is quite a high standard of personhood, the paradigm example being a normal adult human. Clearly, some philosophers regard such a standard as too high, while others deny that the concept of personhood has any value at all.[69] These concerns are primarily based around the fear of defining personhood in an arbitrary way, and then using it to ascribe moral status. However, I am not using personhood to assign moral status. On my account, some non-persons do possess moral status. I only wish to use the category of person as a convenient and recognisable short-hand to distinguish between entities with differing capacities.

Given my definition, the paradigm example of a person is a normal adult human being. Non-persons, on the other hand, include all those entities without the capacities for moral agency and autonomy. Non-persons obviously include such things as rocks, cars, trees and so on; but since such things do not have the capacity for well-being, I am not concerned with them in this chapter. Rather, the non-persons that interest me are

[69] For someone who provides a lower threshold for personhood than me, see Evelyn B. Pluhar, *Beyond Prejudice*. David DeGrazia and S.F. Sapontzis, on the other hand, regard the concept of personhood to be of no use, see David DeGrazia, *Taking Animals Seriously*, p. 210n; and S.F Sapontzis, "A Critique of Personhood", *Ethics*, Vol. 91, No. 4, July 1981: 607-618.

phenomenally conscious beings who fall short of personhood. To be explicit, I am obviously thinking of sentient animals here. For while many animals have the capacity to experience the world, it is extremely unlikely that any can reason ethically like most humans can, or reflect upon and pursue goals and ambitions like most humans can. This is not to deny that sentient animals have *desires* or sometimes *act altruistically*, for simple observation tells us that they do. However, altruism and desire are quite different from moral agency and autonomy. For the capacities of moral agency and autonomy require the ability to *reflect upon, consider, and revise* one's moral acts and desires. Moreover, autonomy also suggests the ability to choose and pursue a conception of the good life. We can see then, how personhood is closely connected to the more sophisticated levels of consciousness I referred to in the previous chapter: high-order thought consciousness and self-consciousness. There is simply no evidence to suggest that sentient animals possess these further levels of consciousness; and nothing to make us believe that they possess the capacities of personhood.[70] At this point, however, it is extremely important to note that not all humans possess such capacities either. For example, it is quite clear that young infants and the severely mentally disabled lack the capacities for moral agency and autonomy. According to this account then, such individuals are also non-persons.

As I mention above, the reason for differentiating between persons and non-persons is because I consider the capacities of personhood – and in particular, the capacity for autonomy - to have an important bearing on what makes the lives of individuals go well. Put simply, for a person, one's well-being is tied to the capacity for autonomy. However, for a sentient non-person, one's well-being is tied to the capacity for good and bad experiences. Thus the reason for discussing what makes life go well for persons in a thesis that is focused on our obligations to non-humans and non-persons, comes down to the importance of this difference between personal and animal well-being. For as we will see later in the thesis, I claim that our obligations to persons and non-persons are often different, and that this is because the two groups have different interests. To make this claim viable, the idea that different things make life go well or badly for persons and non-persons needs to be justified.

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[70] Of course, evidence may one day reveal that some non-human animals do possess such capacities. In particular, cetaceans and the great apes seem like possible candidates. If so, they can legitimately be described as persons, and thus be subsumed within the account of the well-being of persons I outline in this chapter.

In justifying this claim, the chapter is divided in three. First I provide an account of the well-being of persons, arguing in favour of the 'capabilities approach' advanced by Martha Nussbaum and Amartya Sen. Second, I evaluate whether this same account can be applied to non-persons. Given the differing capacities of non-persons, I argue that it cannot, and claim that hedonism provides the appropriate means of deciding what makes life go well for animals and other non-persons. Finally, I ask whether this differential account of well-being must lead to a differential and hierarchical account of moral status. I argue that it does not, and claim that persons and non-persons with lives that can go well or badly for themselves possess equal moral standing.

3.1 The Well-Being of Persons

This section looks at some accounts of what it means for a *person's* life to go well. There is a huge variety of rival accounts of what it means for a person to have well-being. Thus, an evaluation of all such possible alternatives is beyond the scope of this section. Instead, I claim that most recent theories of personal well-being can be placed into one of four groups: some theories assess well-being by the amount of pleasure in a life; others by reference to the satisfaction of desires; others by measuring whether goals are achieved; and still others by assessing whether particular objective goods such as needs, functionings and capabilities are met. In this section I evaluate some of the theories contained within each of these groups. I conclude by arguing that given the particular capacities that *persons* possess, a version of the capabilities theory offers the correct means of assessing personal well-being.

3.1.1 Pleasure

Hedonism claims that the well-being of persons can be measured solely by reference to the presence of pleasurable states and the absence of painful ones. Quite simply, life is going well for a person when he or she has more pleasurable experiences than painful ones, and badly for a person when painful states are predominant. However, while we might wish to acknowledge that pleasurable experiences are of crucial importance to a good life for persons, it is doubtful whether they are the end of the matter. Robert Nozick has highlighted this point with his famous 'experience machine' thought experiment:

> Superduper neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your

brain. Should you plug into this machine for life, preprogramming your life's experiences?[71]

Nozick points out that if pleasure were the only gauge of personal well-being, as hedonists claim, then we should all want to plug into the experience machine. The reason that many of us presumably would not want to plug in, he claims, is because pleasurable states are *not* all that are important to us. Nozick suggests instead that as persons we also want to *be* certain people and *do* certain things, and not just have the feelings that these situations engender.[72] Here, I believe, Nozick really gets to the heart of the matter. As autonomous persons, actually *being* a particular type of person, and actually *pursuing* certain goals are central to a good life. Pleasure cannot trump authenticity for autonomous beings; that is why we regard a life full of happiness, but where that happiness is based on fraudulent relationships, to be so tragic. For example, consider the case of Truman Burbank in the film 'The Truman Show'. Truman has a very pleasurable life with good friends and a loving wife. However, little does he know that his life is being filmed for a television show, and that his friends and wife are actors. Truman's life is pleasurable, but it is not a good life for him, because his life is a sham.

In the face of such a critique, L.W. Sumner has attempted to rescue hedonism in a revised form. Well-being, for Sumner, is related to happiness. However, happiness is not simply assessed in terms of pleasure over pain, but instead in terms of the wider concepts of enjoyment over suffering. Moreover, for a life to go well, this happiness must be *authentic* and, "...of an informed and autonomous subject."[73] For Sumner then, life is going well for a person when his or her subjective mental happiness is combined with the objective goods of authenticity, rationality and autonomy. Such a theory helps hedonism get round the problem of Nozick's experience machine, recognising as it does that feelings are not the sole determinants of well-being.

However, the problem with Sumner's theory stems from the fact that despite using authenticity, autonomy and rationality as filters, it still relies heavily on the individual's own expressions of satisfaction with his or her life. Staking so much on the individual's own feelings makes assessments of well-being extremely difficult. For just how are we to tell when an individual who expresses happiness is or is not autonomous and fully informed? It might be clear in the case of an addict or the victim of abuse, but it gets much more difficult in other circumstances. For example, consider the case of a poor,

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[71] Robert Nozick, *Anarchy, State, and Utopia,* (New York: Basic Books, 1974), p. 42.
[72] Ibid., p. 43.
[73] L.W. Sumner, *Welfare, Happiness and Ethics*, p. 172.

deprived and malnourished woman in the Third World who expresses satisfaction with her life. She may have all the relevant information on how many calories she needs to consume to be nourished properly; she may not have anyone standing behind her forcing her to say that she is happy; but surely we are rightly sceptical of the claim that her life is going well. Of course, it might be claimed that she has *not* come to her conclusion autonomously, but instead has been conditioned to accept her lot. But how are we to tell whether she has been conditioned or not? For it seems perfectly reasonable to point out that *everyone's* feelings are shaped by circumstance to some extent; so when does this shaping become non-autonomous conditioning?

The deep problem of answering such questions has led some theorists to avoid relying so heavily on the subject's own feelings when assessing personal well-being, and instead to make the objective goods of well-being (including autonomy) explicit at the outset. This is a position I endorse later in the section.

3.1.2 Desires

Despite the apparent benefits of a more objective account of well-being, many theorists feel that it is crucial to retain the subjective means of assessing personal well-being, especially since well-being concerns how well life is going *for the individual whose life it is*. For who is in a better position to measure how well a life is going than the subject of that life? However, rather than measure well-being by reference to the *feelings* of the subject, some philosophers have focused on the *desires* of the individual. These desire theories of well-being claim that a person's life is going well to the extent that his or her desires are satisfied, and badly to the extent that his or her desires are frustrated.

However, it is immediately evident that the satisfaction of some desires does *not* make us better off. For instance, if I am depressed I might desire to throw myself under a bus, if I am addicted to alcohol I might desire to drink myself into a stupor, and if I am conditioned to think of my life as worth less than that of others I might desire to go without food and medicine. In each case, it is fairly obvious that the satisfaction of these desires will *not* make my life better. Importantly, we can make this judgement by referring to factors *outside of* my own individual preferences.

In light of this, many theorists have adopted 'informed-desire' accounts of well-being which focus on those desires that a person *would have* under conditions of rationality,

information and autonomy.[74] In effect, informed-desire theories attempt to 'correct' for the fact that individual desires can be shaped by situation and circumstance. However, even setting aside the huge problem of measuring what desires individuals would choose in ideal conditions, it is unclear *why* desires are so important in the first place. Indeed, is the satisfaction of a desire good in itself, or good because what we desire is good? If desire satisfaction is good in itself then there would clearly be no need to filter out 'bad desires' as informed-desire accounts do; the satisfaction of *any* desire would make our lives better, because desire satisfaction is *itself* the good-making property. Thus, given our previous conclusion that the satisfaction of some desires will *not* make our lives better, the only plausible answer seems to be that satisfying a desire is good to the extent that what we desire is good.[75] For example, satisfying my desire for recreation makes my life go better because recreation is good, whereas satisfying my desire for self-harm makes my life worse because self-harm is bad. Of course, this seems to leaves us in a situation where what is important for well-being is what is good, rather than what we desire. In light of this, it seems preferable to examine and assess which goods make life better, rather than what persons do want, would want or should want.

3.1.3 Goals

Joseph Raz claims that the good that makes persons' lives better is the pursuit of goals. For Raz, 'goals' cover a broad range of pursuits including "...projects, plans, relationships, ambitions, commitments and the like."[76] Furthermore, "...our well-being consists in the whole-hearted and successful pursuit of..." such goals.[77] Given the autonomy of persons, this certainly seems like a plausible account of personal well-being. However, the same problem that applies to desire theories seems to apply to this goal-based theory: is the pursuit of *any* goal good in itself, or must the goal be good?

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[74] For examples of informed-desire accounts, see R. Brandt, *A Theory of the Good and the Right,* (Oxford: Clarendon Press, 1979); James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance* (Oxford: Clarendon Press, 1986); and John Harsanyi, "Morality and the Theory of Rational Behavior", in Amartya Sen and Bernard Williams (eds.), *Utilitarianism and Beyond,* (Cambridge: Cambridge University Press, 1982), pp. 39-62.

[75] Roger Crisp offers a similar analysis. See Roger Crisp, "Well-Being".

[76] Joseph Raz, *The Morality of Freedom*, p. 291.

[77] Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics,* (Oxford: revised ed., Clarendon Press, 1994), p. 3.

For Raz, the goal does need to be good[78], but it is its pursuit that is valuable in itself. Indeed, pursuing valuable activities is good precisely because we are what I call *persons*: we are self-governing agents who should control our conduct and take charge of our own lives.[79] A person with a sedentary, passive life inevitably lacks well-being, according to Raz's theory.

But while projects, plans and ambitions are undoubtedly important for personal well-being, we must ask whether they are the sole determining factor of a good life. After all, it seems fairly obvious that goods we receive passively can benefit us. For example, it is not necessary to *pursue* food to be benefited by having something to eat; simply *having* food makes life go well. Raz does recognise this, and thus acknowledges that the satisfaction of biological needs is important for well-being, irrespective of whether they are adopted as goals.[80] Importantly though, Raz believes that other events, unrelated to biological need, *only* contribute to well-being when they relate to our comprehensive life goals.[81] Still, if the satisfaction of biological needs can benefit us 'passively', why not other goods? For example, it clearly makes sense to say that access to education makes all individuals' lives better, even when being educated is not a life goal. Indeed, access to education will allow persons (if they so choose) to pursue greater and more sophisticated life plans and projects. It seems then, that Raz should acknowledge that some goods are valuable to a person's life even when they are received passively and even when they are not part of his or her comprehensive life goals.

3.1.4 Needs, Functionings and Capabilities

The idea that there are some goods that make a person's life go well irrespective of whether they are attached to an individual's own feelings, preferences or life goals, has led some theorists to adopt a more objective theory of well-being. For example, a needs-based theory might claim that all persons share basic biological needs; and that when these needs are met, a life is going well, and when they are not, a life is going badly. However, while it is clear that the satisfaction of basic biological needs is crucial for a life to go well, it does not seem to tell us the whole story. If it did, it would mean that a person locked up against his or her will but fed and watered would be leading a

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[78] We must approve of them, have valid reasons for pursuing them, they must be morally sound and they must be socially formed. See Joseph Raz, *The Morality of Freedom,* pp. 300-319.
[79] Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, p. 4.
[80] Joseph Raz, *The Morality of Freedom*, p. 290.
[81] Ibid., pp. 292-3; and Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, p. 7.

life going well. For this reason, most needs-based theories go beyond mere biological functionings and tend to relate needs to the avoidance of harm, or the ability to function physically *and* socially.[82] A person's life is then considered to be going well to the extent that these needs are satisfied.

However, most of these theories focus solely on the *achieved* satisfaction of needs and thus provide an unsatisfactory account of personal well-being. To explain, imagine two individuals who are equally malnourished. One is the victim of a famine and is unable to feed himself. The other is a wealthy religious devotee fasting out of choice.[83] Under the needs-based accounts outlined above, the two individuals have the same level of well-being, based on the fact that they each have the same level of need-(dis)satisfaction. Most of us would be reluctant to accept this conclusion because of the fact that the religious devotee, unlike the famine victim, *freely chooses* to be malnourished and is *capable* of being well-fed. These elements of choice and capability appear to play a crucial role in our assessment of personal well-being.

In light of such considerations, Amartya Sen has argued that it is not just a person's achieved functionings that need to be taken into consideration when assessing well-being, but also his or her *capability* to achieve these functionings. For Sen, a person's well-being can be measured by reference to, "A person's capability to achieve functionings that he or she has reason to value..."[84] In this way, Sen recognises that there are important objective goods (functionings) that make life go well, and by focusing on capabilities acknowledges that the *freedom* to achieve these functionings is itself a crucial determinant of well-being.

Having said all this, it nevertheless remains to be asked what the functionings that 'one has reason to value' are, and while Sen proposes that they may range from being alive to having self-respect, he is not concerned to offer any definitive list. Yet without at least some content we are again in difficulty when it comes to accurately measuring the well-being of persons. In response to this, Martha Nussbaum has provided a list of the 'central human functional capabilities'. For Nussbaum, there are ten core human

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[82] See David Braybrooke, *Meeting Needs,* (Princeton: Princeton University Press, 1987); Len Doyal and Ian Gough, *A Theory of Human Need,* (London: Macmillan, 1991); and David Wiggins, *Needs, Values, Truth: Essays in the Philosophy of Value,* (Oxford: 3rd ed., Oxford University Press, 2002). Doyal and Gough, and Wiggins claim that needs are those goods that when satisfied keep us from harm, while Braybrooke relates needs to physical and social functioning.

[83] This example is borrowed from Amartya Sen, "Well-Being, Agency and Freedom: The Dewey Lectures 1984", *The Journal of Philosophy,* Vol. 82, No. 4, April 1985: 169-221, p. 201.

[84] Amartya Sen, *Inequality Re-examined,* (Oxford: Clarendon Press, 1992), pp. 4-5.

functional capabilities: life, bodily health, bodily integrity, imagination and senses, emotion, practical reason, affiliation, relationship with other species, recreation and control over one's environment.[85] Nussbaum claims that for a person's life to go well he or she must be capable of achieving all of these functionings. However, she also claims that this list is not final, and is always open to amendment and addition.

An obvious objection to Nussbaum's account is that it moves too far away from a person's own feelings, tastes and preferences in assessing how well a person's life is going. For surely our interests – which remember constitute our well-being – include things other than these core capabilities. For example, it makes sense to say that my life goes well for me when I have certain personal interests met, such as the interest in gardening, being a good teacher and fighting for a political cause. Since these interests are not shared by everyone, it would be a mistake to include them in an objective list of core capabilities. Given all this, the capabilities approach appears to be an incomplete account of personal well-being. However, the incompleteness of the theory is its virtue. The capabilities approach should be regarded as providing the *necessary but insufficient* criteria for personal well-being. To put it another way, Nussbaum is providing a list of the necessary goods *to frame and pursue* a good life. These goods are the basic elements a person requires access to in order to live well; how and whether they live well after that is up to them.

But that still leaves us with the question of what to do about these more subjective elements of well-being? Is it simply illegitimate to talk of my interest in being a good teacher, for example? I think that we can recognise such interests by distinguishing between what Feinberg has labelled 'welfare interests' and 'ulterior interests'.[86] Welfare interests can be thought to correspond with Nussbaum's core capabilities. These are the things that all persons require in order to live well, and to achieve their more personal aims. These personal aims are one's ulterior interests, and correspond to the individual desires, aims, goals and conceptions of the good that persons have. Although in reality both types of interest will usually make up an individual's well-being, for a philosophical account of well-being welfare interests are sufficient. They are sufficient for a philosophical account of well-being for four reasons. First of all, including ulterior interests in the theory is problematic, for we face the difficult problem of having to filter

[85] Martha C. Nussbaum, *Women and Human Development: the Capabilities Approach,* (Cambridge: Cambridge University Press, 2000), pp. 78-80.
[86] Joel Feinberg, *The Moral Limits of the Criminal Law: Vol. 1 Harm to Others,* pp. 37-45.

out those personal aims and desires that clash with individuals' well-being. Secondly, if a different path is taken and the ulterior interests of persons are listed in an objective list, this will lead to perfectionism, counting against the fact that individuals have different goals and conceptions of the good. Thirdly, the ultimate purpose of our theory of well-being is to work out obligations that improve the lives of persons (or at least not make them worse), and it seems unrealistic to suppose that we have a moral duty to facilitate every single private aim and desire of persons. Finally, given the autonomy of persons, what matters most for well-being is the ability to frame, revise and pursue a conception of the good - not the particular content of that good.

The advantages of the capability approach as a theory of personal well-being should hopefully be clear. First, it provides a realistic means of assessing the well-being of persons. Under this scheme there is no need to filter out inauthentic feelings, or ill-informed desires, because it can assess well-being without having to rely on the mental states of individuals. Second, it does not claim that goods are only valuable to persons when they are attached to desires or life goals. Instead, it recognises that goods that we have received passively can sometimes benefit us. Thirdly, it does not see the simple achievement of these goods as the ultimate determinant of well-being, but by relating them to our capability to achieve them, acknowledges the importance of *freedom* and *choice* in making the lives of persons go well. Finally, by focusing on the welfare interests of individuals, rather than their ulterior interests, it does not seek to outline a perfectionist blueprint for the good life of all persons.

Having arrived at an account of what it means for the life of a person to be going well, it is now necessary to consider whether such an account also applies to the lives of non-persons.

3.2 The Well-Being of Non-Persons

To have well-being is to have a life that is going well for oneself. To be a non-person is to lack the particular capacities for moral agency and autonomy outlined above: non-persons are not entities that are able to reflect on and pursue conceptions of the good; and nor can they act morally. A clear example of a non-person in these terms, is of course a sentient animal. This section examines four different accounts of what it might mean for a non-person's life to go well: capabilities, achieved functionings, desire satisfaction and hedonism. In the course of this examination, I claim that the well-being of non-persons *cannot* be accounted for by capabilities. This is based on the fact that

non-persons lack the capacity for autonomy. Instead, I argue that the well-being of non-persons, including human non-persons, is accurately accounted for by their experiences. To be specific, I endorse a hedonistic account of the well-being of non-persons, in which a non-person's life goes well or badly in relation to the amount of enjoyment or suffering in that life. In the final part of the section, I address the difficult problem of where to draw the line between persons and non-persons, arguing that each entity's well-being must be assessed with regard to that individual's own capacities.

3.2.1 Capabilities and Non-Persons

Martha Nussbaum claims that her capabilities approach not only captures the well-being of humans, but also of animals. Indeed, Nussbaum argues that all animals are entitled to a dignified existence which encompasses a range of different capabilities:

> Dignified existence would seem at least to include the following: adequate opportunities for nutrition and physical activity; freedom from pain, squalor, and cruelty; freedom to act in ways that are characteristic of the species...; freedom from fear and opportunities for rewarding interactions with other creatures of the same species, and of a different species; a chance to enjoy the light and air in tranquility.[87]

However, Nussbaum's emphasis on the *freedom* and *opportunity* of animals to achieve valuable functionings is quite misplaced here. To explain, remember that the capabilities approach works so well for persons because it reflects the autonomy of persons. In a nutshell, the theory builds *choice* into the account. The theory does not list all the components of the good life, but lists all the goods that must be available in order for a person to frame and pursue a good life. In this way the theory reflects the fact that persons are autonomous agents pursuing their *own* ends.

However, the advantages of this theory of personal well-being are largely irrelevant in the case of non-persons. Non-persons lack the levels of reflection and deliberation required to be described as autonomous agents pursuing their own ends. For example, while a baby may have desires that she acts upon, and a certain level of rationality to choose between options, it is evident that these do not amount to the capacity to frame and pursue a good life of her own. In light of this, the *capability* to achieve valuable functionings is not relevant to whether life is going well for a baby, because as a non-person she cannot forge and pursue her own conception of the good life. Or, to put it in terms of the types of interest outlined above, a baby has welfare interests, but no ulterior

[87] Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership,* (London: The Belknap Press of Harvard University Press, 2006), p. 326.

interests. For example, it does not matter for the baby's well-being whether she has, in Nussbaum's terms, '*opportunities* for nutrition', but only whether she actually *has* decent nutrition. This is because a baby is unlike a religious devotee, and cannot choose to pursue a life devoted to fasting. Contrary to Nussbaum then, the capabilities approach works well for autonomous persons, but not for non-autonomous non-persons.

3.2.2 Achieved Functionings, Needs and Non-Persons

Given all of this, it might seem reasonable to suppose that it is *achieved* functionings which account for the well-being of non-persons. If so, our focus should shift to determining what these achieved functionings are. One claim might be that life is going well for a non-person when his or her biological needs are satisfied. Thus, a dog's life might be regarded as going well for herself when she has enough of the goods she needs in order to survive. However, even after momentary reflection it becomes evident that this does not provide an accurate picture of the well-being of non-persons. For example, a dog may have enough of the goods she needs to survive, and yet be chained to a wall for her entire life, making her suffer from boredom and frustration. It would be odd to regard such a dog's life as going well for herself.

Perhaps then, goods other than mere biological needs should be added to the account. For example, we might claim that for a dog's life to go well, she not only needs to achieve her 'survival functionings', but also her 'species-specific functionings'. In other words, to have a good life the dog must be able to roam around, exercise curiosity, generally act like a dog, and, "...flourish as the kind of thing it is."[88] In this light, we can easily see how chaining the dog to a wall prevents her from having a good life.

However, by relating well-being to the achievement of species-specific functionings, we are starting to move away from an account of how life goes *for the individual whose life it is.* For such an account suggests that what makes life go well for an individual is the extent to which that entity is a good example of its species. But as I argued in the previous chapter, this is to make a perfectionist assessment of a life; whereas what we are after is a prudential assessment. To take an example, consider the case of another non-person, a stag. A stag will undoubtedly be a better example of a stag if he engages in fights over territory and mates. Such fighting, one might say, is a natural functioning

[88] Martha C. Nussbaum, "Beyond 'Compassion and Humanity': Justice for Nonhuman Animals" in Cass R. Sunstein and Martha C. Nussbaum (eds.), *Animal Rights: Current Debates and New Directions,* (Oxford: Oxford University Press, 2004), p. 306.

of stags. However, it is hard to see how such fighting always makes life better for stags. Indeed, it seems nonsensical to suppose that the losers of such fights who often suffer painful and life-threatening injuries have lives that are going well for themselves. So, in some cases, achieved species-specific functionings seem to result in lower levels of well-being overall.

Perhaps one way of resolving these problems would be to adopt Bernard E. Rollin's claim that the only functionings that relate to an animal's well-being are those that *matter* to that being.[89] For Rollin, an animal's interests are tied to its *telos:* "...a nature, a function, a set of activities intrinsic to it, evolutionary determined and genetically imprinted."[90] However, not just any function tied to the *telos* of a being can be classed as in its interest: it must also *matter* to the individual in question. In this way, Rollin's account recognises that well-being is a prudential value. By tying his account to subjective experience, Rollin can explain why being chained to a wall is bad for the dog, and why fighting could be bad for a stag: it *matters* to the dog that she is not chained, and it matters to the stag not to be injured and in pain. However, as promising as Rollin's account is, his reliance on the experiences of animals makes it questionable whether achieved functionings are left with any explanatory force. After all, what matters to these animals is not that their *telos* has been violated, but that they are in pain. Given this, might it not be more straightforward to explain animal well-being *solely* in terms of these feelings and experiences, without any mention of the animal's *telos* or natural functionings? For surely the most obvious reason the chained dog has a life going badly for her is because she is suffering, not because she lacks the natural functionings of a dog. Similarly, the reason the vanquished stag has low well-being is simply because he suffers, not because the fulfilment of his natural *telos* has been impeded. Perhaps then, we should turn away from accounting for the well-being of non-persons in terms of natural functionings and needs, and instead look towards subjective experiences.

3.2.3 Desires and Non-Persons

One way of tying subjective experience to well-being is to propose a desire or preference based account of well-being. In fact, this way of accounting for the well-being of animals (and indeed humans) has been proposed by Peter Singer, who claims that one's

[89] Bernard E. Rollin, *Animal Rights and Human Morality*, p. 75.
[90] Ibid.

interests can be equated with what one desires.[91] Unfortunately, this account suffers from considerable problems. Simply put - and as we saw was the case with persons – the successful pursuit of one's desires does not necessarily lead to a better life. For example, I know of a dog with an enormous appetite who desires to eat as much as possible. However, the satisfaction of such desires is not in her interests; she is overweight and the weight is adversely affecting her health, making her suffer. Having her desires satisfied is in this case bad for the animal. Similarly, when we brought our pet cat home for the first time we were told not to let him outside for the first week or so. This was to prevent him from running outside and never returning. Judging by his actions at the time, keeping the cat indoors ran contrary to his preferences. However, it is perfectly reasonable to say that frustrating his desires in this way was for the cat's own good; he is not currently wandering the streets as a stray with all the hardship that involves, but has a life full of pleasure as part of our family. Once again, preventing the satisfaction of desires was good for the animal. It seems clear then that preference-satisfaction does not provide the correct account of the well-being of non-persons.

3.2.4 Pleasure and Non-Persons

Having ruled out these various accounts of the well-being of non-persons, it seems that we are left with hedonism. To recap, hedonism claims that an individual's life goes well in relation to the presence of pleasure and the absence of suffering. As we have already seen, tying the well-being of non-persons to subjective experience in this way certainly seems plausible. Moreover, hedonism can explain the well-being of the different examples of non-persons that I have used throughout the section with great ease. For example, the baby *suffers* from being malnourished, the dog *suffers* from being chained to the wall, the stag *suffers* from being injured and in pain, the dog with the enormous appetite will *suffer* from weight-related illnesses, and my cat would have *suffered* from becoming a stray. Given all this, should we recognise hedonism as the correct account of the well-being of non-persons? Before doing so, we need to consider some potential problems.

First of all, I claimed above that measuring the quality of a person's life solely in terms of the amount of pleasure experienced in a life fails to acknowledge the value of authenticity in persons' lives. It was argued that a person leading an artificially pleasant life, as in the example of the experience machine, would not be leading a life going well

[91] Peter Singer, *Practical Ethics,* (Cambridge: 2nd ed., Cambridge University Press, 1993), p. 13.

for him or herself. Is this not also true in the case of non-persons? I believe not. For what makes authenticity valuable for persons is the fact that they are autonomous. Autonomy involves the ability to frame and pursue a conception of the good, and thus implies some degree of control over one's own life. This is what makes a happy life based on lies and deceit so tragic for persons: it undermines a self-chosen, self-governing, and authentic life. However, since non-persons are not autonomous, authenticity loses its importance. It is quite possible for a happy non-person to have a life going well, even when his happiness is based on lies and deceit. To illustrate this point, consider the administration of medicine. Ordinarily, it would be wrong to deceive an adult human by concealing medicine in his food without his knowledge, even if that medicine would make that individual healthier. This is because an adult human is a person, who should have some control over his own life, including whether he wishes to take a particular medicine. However, the situation is quite different for non-persons. Deceiving non-persons in the administration of medicine is quite correctly considered to be permissible. This is why it is quite normal for us to hide medicines in the food of our babies and pet animals. We deceive them so that they may feel better. For non-persons then, it appears that good subjective experiences trump a self-governing life without deceit.

However, another potential problem with hedonism lies in the fact that it accounts for well-being *solely* on the basis of pleasure and pain. For aren't there other mental states which are good and bad for non-persons? Take for example, feelings of satisfaction, relief, and contentment; and on the other side, feelings such as boredom, frustration, anxiety and depression. However, I do not regard this criticism to be devastating for hedonism. I think that we can accept that these other states contribute to the well-being of non-persons, and still retain hedonism. After all, these states are still good and bad *mental experiences.* Perhaps then we should follow the proposal of Sumner outlined above, and instead of pleasure and pain, adopt the wider concepts of 'enjoyment' and 'suffering'. These wider concepts can absorb these different mental experiences, and still allow us to adopt hedonism. For if we follow this proposal, we can say that a non-person's life goes well to the extent that she enjoys life and does not suffer.

But still it might be denied that the well-being of non-persons can be reduced solely to subjective experience. For consider two non-persons, let us say two dogs, who are in equal levels of pain, but one of whom is malnourished and the other well-fed. Surely it would make sense to say that the well-fed dog's life is going better for himself compared

to the malnourished dog. If this is true, this suggests that the well-being of non-persons does not depend solely on experiences, but also on objective goods such as needs-satisfaction. However, I believe that our instinct that the well-fed dog's life is going better is actually based on his likely subjective experiences. This is because the well-fed dog is likely to have better experiences overall in his life, even if not presently. For example, being well fed will keep the dog *feeling well* by preventing pangs of hunger, relieving frustration and preventing painful illnesses. The malnourished dog, on the other hand, will no doubt suffer from these burdens of malnutrition for some time into the future. In other words, in the vast majority of cases, malnutrition will lead that dog to suffer more overall in his life when compared to the well-fed dog.

Of course, this might not be true in all cases. One can certainly conceive of a situation in which a well-fed dog could suffer just as much as a malnourished dog. For example, the well-fed dog might suffer some kind of long-term chronic pain. In this case, would it still not make sense to say that the well-fed dog's life goes better for himself? I fail to see how: given their equal levels of suffering, it seems more plausible to say that their lives are going equally badly *for themselves.* Of course, we might recognise that the well-fed dog is a better specimen of a dog, just as a watered plant is a better example of a plant, but this is a perfectionist judgement. When we consider how life goes for the individuals themselves, both dogs suffer equally, which strongly suggests that their lives are going equivalently badly for themselves.

However, there remains one final potential problem with hedonism. Enjoyment and suffering are mental states, but mental states cannot simply be observed and counted. Given this, how can we tell when an individual non-person has more pleasant states than painful ones, or vice versa? For this is just the type of information we will need to judge whether a life is going well or badly. In fact, this might seem a particular difficulty for non-persons, since most non-persons cannot use language to tell us how they are feeling. However, while it must be acknowledged that it is impossible to get inside the mind of another, it would be wrong to then assume that we can make absolutely no assessment of subjective feelings. After all, we can and do derive strong evidence for the presence of particular feelings from individuals' behaviour and physical appearance. For example, it is fairly obvious when a dog is suffering, and this is indicated by such things as her cries, whimpers, subdued posture, lack of appetite, shabby coat, lethargy and so on. I believe that such evidence is obtainable and reliable, and allows us to measure the subjective feelings of non-persons. In particular, and relevant to the

hedonistic assessment of well-being, it allows us to measure whether a non-person is primarily suffering, or primarily enjoying life. Moreover, the fact that non-persons cannot tell us how they are feeling might in fact be an advantage. As I have mentioned above in the case of persons, expressed satisfaction with a life may be the result of lack of information or conditioning. Perhaps then, physical and behavioural evidence is more reliable.

3.2.5 Potentiality and Drawing the Line for Personhood

Of course, claiming that hedonism is the correct theory of well-being for non-persons does not just have significance for non-human animals. As I have argued, this theory also accounts for the well-being of human non-persons, such as young infants. This notion, however, seems to raise two problems that have not yet been discussed. First of all, it might be objected that the lives of such human non-persons cannot be judged solely on the basis of pleasure, because human non-persons have the *potential* to be persons. Because of this potentiality, perhaps it would make more sense to account for the well-being of all humans in the same way: namely, the capabilities approach. I think there are two big problems with such a claim. First of all, quite obviously not all human non-persons possess the potential for personhood. Those individuals with severe and permanent mental disabilities, for example, will never develop the capacities moral agency and autonomy. This fact seems to negate the basis of this claim's justification for subsuming all humans under one account of well-being. Secondly, it would be both bizarre and negligent to account for a young infant's present well-being on the basis of her potential. Of course, most babies have the potential for autonomous choice, but to treat them as if they have it now would be disastrous. This is why we ensure that babies *are* well-fed, not that they have the *capability* to be well-fed. This is why we ensure that babies *do* take their medicine, not that they have willingly consented to receive it. In other words, we *ordinarily* regard the well-being of human non-persons to be quite different to that of persons: the primary aim of care is to keep such individuals from suffering.

However, this discussion raises a second problem with the account given so far. For if the well-being of non-persons is accounted for by hedonism, and the well-being of persons by the capabilities approach, we need an account of when it is that non-persons become persons. Clearly this is not a problem for animals and the permanently mentally disabled who will be non-persons throughout their lives, but it is a very big problem for

the lives of most human beings. For just when does a child develop the capacities for moral agency and autonomy? Without doubt, these capacities are not 'all or nothing' concepts and will develop gradually over time, making each child different. However, there is no need to be particularly worried about not having a clear date identifying the moment when all infants suddenly become persons. For one thing, we deal with these complexities and subtleties in the development of human children every day. That is to say, parents and guardians do everything for newborn babies and try to keep them happy and comfortable. Here hedonism seems a most apt account of well-being. However, as babies grow older and become children, parents begin to foster and facilitate their child's individuality by gradually giving them space to frame and pursue their own particular ends. As this development occurs goods other than simple pleasure begin to become valuable to the child. The unfolding of this process will occur at different rates for different children, and their well-being can be judged accordingly. I do not think it a devastating problem that there is no clear and definitive date when all human infants become persons. Indeed, a flexible approach to the well-being of infants that is sensitive to each individual's own capacities seems entirely appropriate.

This more complex picture of well-being is also attributable to non-humans. For example, it may one day be shown that cetaceans, the great apes, or other animals have some capacity for moral agency and autonomy. If so, the well-being of such animals will have to be judged accordingly. All we can do, in both the human and non-human cases, is to determine well-being based on that entity's own particular capacities. While this is a difficult task in many cases, I believe that hedonism for non-persons and capabilities for persons can serve as a useful rule of thumb.

3.3 A Hierarchy of Moral Status?

However, this differential account of well-being that I have offered may have an impact on the moral status of entities. As a reminder, I argued in Chapter 2 that sentient animals have moral status. Moreover, their moral status is based on the fact that they have lives that can go well or badly for themselves. However, I have now claimed in this chapter that the well-being of persons is quite different to that of non-persons: personal well-being is related to core capabilities, non-personal well-being is related to pleasurable experiences. This difference is down to the fact that persons are entities for whom autonomy is valuable, whereas non-persons are not. Given this difference, and given these extra capacities of most human beings, perhaps we can say that while

animals do have moral status, they have a *lower* moral status than that of persons. In this way we could construct a hierarchy of moral standing, with those beings with the greatest capacities at the top, and those with the fewest at the bottom. Since those entities at the top would have weightier moral status, it would make sense to grant their interests greater weight.[92]

There are two problems with this approach. First of all, and as I have stressed throughout this chapter, animals are not the only non-persons, for there are many *human* non-persons. If animals possess a lower moral status on the basis that they are non-persons, then so too must many humans. This would mean subordinating the interests of individuals such as young infants and the severely mentally disabled. This is not a route many of us want to head down. However, even if we accept this route, and maintain that all non-persons have lower moral status, there is a second problem with constructing such a hierarchy. Quite simply, it makes all the interests of one group weightier than the interests of another without sufficiently good reason. For while we might acknowledge that persons have different, further and even more complex interests than non-persons, this seems insufficient as a ground to grant all of their interests absolute priority. For surely it is only logical and fair to consider the interests of individuals *on their own merits.* Thus, rather than constructing a hierarchy of moral status, which stipulates the priority of the interests of one group, we should instead adopt a theory of *equal moral status*, where the weight of an interest is judged on its own worth. Philosophers who have proposed this method have called it, 'the equal consideration of interests.'[93] This does not mean that we treat all those entities with moral status in exactly the same way; for it would of course be absurd to give pigs the vote, or vaccinate school children against foot-and-mouth disease. But it does mean that we consider the interests of those beings with moral status equally, and grant interests with equal weight the same moral importance, no matter to whom they belong.

3.4 Conclusion

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[92] Hierarchies of moral status and interests have been constructed by Donald VanDeVeer, "Interspecific Justice", *Inquiry*, Vol. 22, No. 1-2, 1979: 55-70; Robin Attfield, *The Ethics of Environmental Concern,* (Oxford: Basil Blackwell, 1983); and Gary Varner, *In Nature's Interests?,* (Oxford: Oxford University Press, 1998).

[93] Peter Singer, *Animal Liberation,* p. 2, and *Practical Ethics,* p. 21; David DeGrazia, *Animal Rights – a Very Short Introduction,* pp. 19-34, and, *Taking Animals Seriously*, pp. 36-74; and Mark Rowlands, *Animals Like Us,* pp. 32-34.

In this chapter I hope to have shown that one cannot provide an account of well-being that is the same for everyone and everything. Entities that have lives that can go well or badly for themselves, have quite different capacities, which determine what makes their lives go well. For a person, one's well-being is tied to the capacity for autonomy. While for a non-person, one's well-being is tied to the capacity for good and bad experiences. More specifically, life goes well for persons when they are capable of achieving valuable functionings; and life goes well for non-persons when they enjoy life and do not suffer. Importantly, none of this has any bearing on the ascription of moral status: all entities with well-being hold moral status equally.

Now that we have decided that sentient animals have moral status, and know what makes their lives go better or worse, we next need to consider how to frame our moral obligations to them. For example, do we have an obligation to maximise animals' well-being, or can we consider the well-being of animals to be protected by moral rights? I address these questions in the next chapter.

4. Non-Human Animals and Moral Rights

I have argued that sentient non-human animals have moral status: sentient animals merit ethical consideration in their own right, and because of this we have certain moral obligations to them. However, such a conclusion only gets us so far. What must be considered next is the *type* of obligations that we have to non-human animals. To do this, we need some form of ethical framework with which to delineate our obligations.

It could reasonably be claimed that the arguments that I have presented thus far lend themselves to a welfarist scheme such as classical utilitarianism. After all, I have argued that phenomenally conscious animals have moral status because they have the capacity for well-being. Moreover, I have put forward a hedonistic account of animal well-being: animals' lives go well for them when they have more pleasurable states than painful ones. One might then assume that the obligations we have to animals are based around the principle that we should seek to maximise their overall well-being. That is, we should aim to achieve, 'the greatest happiness of the greatest number'.

However, despite these appearances, adopting classical utilitarianism as our theoretical framework would actually be at direct odds with my account of moral status. Classical utilitarianism is aggregative, seeking to produce the best overall balance of good over bad consequences for all under consideration. While each and every individual counts under an aggregative theory, the individual is neither the prime focus, nor the prime source of value. Instead, individuals are merely 'receptacles' of value, with ultimate value residing in what is deemed good: in this case, pleasure.[94] However, the account of moral status that I have put forward is in stark contrast to this. As we saw in Chapter 2, entities with moral status have a certain standing, meaning that they merit ethical consideration *in their own right*, and are not valuable simply because of their contribution to some other goal, such as aggregate pleasure. To be specific, non-human animals are valuable in themselves because they have lives that can go well or badly for themselves; or, to put it another way, they are valuable because they have interests that can be set back or promoted.

This is not to claim that increasing or maximising well-being can never be the right thing to do with regards to our treatment of animals. It is merely to state that maximising aggregate well-being is not the *fundamental* principle that guides our moral obligations to

[94] Tom Regan, *The Case for Animal Rights,* p. 205.

them. What is needed then, is a theoretical framework that is consistent with this account of moral status, by individuating animals rather than treating them aggregatively. I wish to claim that 'rights' can meet this need, by acknowledging the value of individual animals themselves and by acting as brakes on the pursuit of aggregative well-being.

Of course, this raises several questions. What are rights? How do we assign particular rights to individuals? Are animals the type of entity that can possess rights? This chapter aims to provide answers to each of these questions in turn. The first section of the chapter asks what is distinctive about rights. In the second section of the chapter I ask how we can assign moral rights. Finally, in the last section, I outline and refute some specific objections to the idea that animals can possess rights.

4.1 What Kinds of Thing Are Rights?

If we are to build a theoretical framework around rights, it is important to have a clear understanding of what rights are. Such an understanding will also help us to evaluate whether it is even possible for non-human animals to hold rights. In light of this, we need to discover what it is that makes a right a right. Most theories of rights attempt to come up with some common feature that *all* rights share. This is a difficult task, primarily because so many different *types* of rights exist. For example, one obvious distinction is between legal and moral rights. However, even within each of these limits, further different kinds of right can be distinguished. Before going on to examine what the essential feature of rights might be, it will be useful to briefly distinguish some of these various types of right.

4.1.1 Legal Rights, Moral Rights and Hohfeldian Incidents

Legal rights are those rights that are established by the law. Most theorists tend to follow Wesley Hohfeld in identifying four types of legal right: claim-rights, liberty-rights, powers and immunities.[95] A claim-right exists when a person owes another a corresponding duty. For example, in the UK I have the legal claim-right not to be assaulted: you have a legal duty not to assault me. Liberty-rights enable an individual to do something, in the sense that he or she has no duty *not* to do it. For instance, I have the legal liberty-right to walk to the end of my street, because there is no law preventing

[95] Just a few of the more detailed analyses of these relations are, Peter Jones, *Rights*, pp. 12-25; Matthew H. Kramer, "Rights Without Trimmings" in Matthew H. Kramer et al., *A Debate Over Rights*, pp. 7-22; and Leif Wenar, "The Nature of Rights", *Philosophy and Public Affairs*, Vol. 33, No. 3, 2005: 223-253.

me from so doing. Powers, as the name suggests, empower individuals to carry out actions. Legal powers in the UK include voting and getting married. Finally, immunities enable individuals *not* to be subject to another's power. For example, in the UK individuals have the legal immunity not to be married against their will.

In contrast, moral rights exist, not in virtue of some piece of legislation, but in virtue of normative justification. So, while it is possible for legal and moral rights to correspond, they might not. For example, some think that prisoners in the UK have the moral right to vote, even though they are denied such a right by UK law.[96] This example illustrates an important relation between moral and legal rights: we often invoke moral rights in order to establish (or challenge) legal rights. We might claim then, that moral rights sometimes serve as a *foundation* for legal rights.

Although Hohfeld's classification was intended as a description of legal relations, it can also be applied to the notion of moral rights. For it would not be too difficult to make the case that an individual has the moral claim-right not to be assaulted, the moral liberty-right to walk to the end of the road, the moral power (right) to vote, and the moral immunity (right) not to be married against one's will.

So, we can see already that there are many different types of right. Rarely, however, does any one right fall exclusively into just one of these various categories. Very often rights are 'clusters' of these Hohfeldian incidents:

> For example, if morally I have the right to marry whomever I choose, that may be understood as bringing together the moral liberty-right to marry the partner of my choice, the moral claim-right that others should not impede my use of that liberty, the moral power to enter into a marriage of my own choice and a moral immunity against being 'married off' against my will.[97]

Despite the fact that there are so many different types of right, most accounts of rights attempt to offer some common feature that each of these rights possesses. If we can determine what this feature is, we will be able to explain what kind of thing a right is.

4.1.2 The Will Theory of Rights

For the 'will' or 'choice theory' of rights, the essential feature of a right is the presence of choice in the right-holder. To be more specific, it is claimed under this theory that when

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[96] Interestingly, the right of prisoners to vote has been acknowledged by the European Convention on Human Rights. This illustrates that determining legal rights is by no means straightforward. For a recent case concerning UK prisoners' right to vote, see *BBC News,* "Convicts 'will not all get vote'", 6th October 2005, <http://news.bbc.co.uk/1/hi/uk/4315348.stm>.

[97] Peter Jones, *Rights,* pp. 47-48.

an individual has a right to something, then that individual is able to demand or waive enforcement of the relevant duty.[98] To clarify, let us take the example of a loan: I have lent you some money, and you have agreed to pay me back. It is clear that in this situation you have a duty to repay me. Moreover, it is perfectly legitimate for me to demand repayment from you, or, if I so choose, I can waive your duty to repay, thereby cancelling the debt. Similarly, if the loan has been confirmed by a valid legal contract, I can be said to possess the legal right to repayment: I can demand enforcement through the relevant channels, or I can cancel the contract and waive your duty. The overarching criterion of these rights and all rights, according to the will theorist, is the ability to demand or waive enforcement of the relevant duty.

However, we can question whether all rights possess this feature of choice. Let us take the example of the right against being tortured to death.[99] In the UK, I do not have the legal power to waive anyone's duty not to torture me to death: I cannot relieve someone of that duty, for instance by signing it away. Even if my killer were able to prove that I had rationally consented to death by torture, he would still be convicted, other things being equal, for torture and for murder. According to the will theory, since I have no ability to waive the performance of this duty, I have no legal right against being tortured to death. Naturally, this seems rather odd. After all, in view of laws against murder and torture, it seems uncontroversial that I possess the legal right not to be tortured to death. Indeed, not only would many see it as uncontroversial that I possess this right, they would also regard it as one of the more fundamental rights that I possess.[100]

Hillel Steiner has attempted to get around this problem with the will theory by suggesting that under the criminal law the will theory vests rights in *state officials* rather than citizens.[101] So, although *I* may not have the power to waive anyone's duty not to torture me to death, some state official does. At first glance this might seem strange. For which state official could possibly waive this duty not to torture? Steiner claims that if we go high enough up the chain of officials we will eventually find someone with the ability to waive such a duty. For example, the Crown Prosecution Service could choose

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[98] For just some examples of the will theory see, H.L.A. Hart, "Are There Any Natural Rights?" in Anthony Quinton (ed.), *Political Philosophy*; L.W. Sumner, *The Moral Foundation of Rights,* (Oxford: Clarendon Press, 1987); N.E. Simmonds, "Rights at the Cutting Edge" in Matthew H. Kramer et al., *A Debate Over Rights*; and Hillel Steiner, "Working Rights".

[99] I borrow this example from Leif Wenar, "The Nature of Rights", pp. 239-240.

[100] This point is also made in Neil MacCormick, "Rights in Legislation" in P.M.S. Hacker and Joseph Raz (eds.), *Law, Morality, and Society: Essays in Honour of H.L.A Hart,* (Oxford: Clarendon Press, 1977).

[101] Hillel Steiner, "Working Rights", p. 250.

not to prosecute my killer, effectively annulling my right. However, *even if* we accept that there exists someone with the power to waive this duty, it still fails to rescue the will theory from the initial objection. For under Steiner's account the legal right against being tortured to death lies not with me but with the relevant state official. Steiner is happy to accept this implication of the will theory of rights. However, many find this implication too perverse to accept, because it is at direct odds with our common understanding of rights.[102] For as stated above, it seems uncontroversial that *I* have the legal right not to be tortured to death, *not* some state official on my behalf. Thus the implications of the will theory are *so* at odds with our common understanding of rights that it seems better to search for an alternative candidate that explains what kind of thing rights are.

4.1.3 The Interest Theory of Rights

For interest theorists of rights, the essential feature of all rights is the benefit afforded to the right-holder. According to this theory of rights, when an individual has a right to something, then that something will be of benefit to that individual.[103] So, to go back to the torture example, we can explain my right against being tortured to death by appealing to my interests in not being tortured and not being killed. For the interest theory, my ability to waive the right is irrelevant to my possession of it.

Unfortunately, it is not clear that all rights necessarily confer benefits on anyone. For example, I may have the right to inherit something, but that inheritance might impose a considerable burden upon me. While the inheritance would not benefit me, it would still surely make sense to say that I have the right to that inheritance. Having said this, I do not think that this example proves a devastating problem for the interest theorist. Although a particular right may not benefit the right-holder, the interest theorist can nevertheless point out that such rights *generally* do.[104] Thus, although I may have no interest in this particular instance of inheritance, I do have an interest in inheritance generally, thus making sense of my right to inheritance in this case.

Nevertheless, defining the overarching criterion of rights as the benefit provided to the right-holder remains problematic, particularly when it comes to dealing with rights as powers invested in particular offices. For example, I mentioned above that some powers are rights, such as the legal right to vote. The interest theory can explain this right by

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[102] Leif Wenar, "The Nature of Rights", p. 240.
[103] For some examples of the interest theory of rights see, Neil MacCormick, "Rights in Legislation"; Joseph Raz, *The Morality of Freedom*; and Matthew H. Kramer, "Rights Without Trimmings".
[104] Ibid., p. 93.

pointing to the benefits that individuals accrue from participating in the political process. However, powers that are vested in positions of office are less easy for the interest theory to cope with.[105] For example, it makes sense to say that doctors have the right to prescribe medicine for their patients. And yet it is unclear how the doctor benefits from this particular right. In fact, the point of the right to prescribe is not that the doctor herself benefits, but that her patients do.

Of course, the interest theorist might claim that it *is* in the interests of a doctor to be able to prescribe medicine. After all, the doctor would not be able to do her job if she were unable to prescribe medicine, and no doubt the doctor has an interest in doing her job. However, while this rebuttal has some initial plausibility, one does not have to dig very deep to reveal its limitations. For the right of doctors to prescribe medicine is fundamentally based on the very fact of being a doctor, irrespective of one's interest in the power of prescribing. For example, I may have a very strong interest in being able to prescribe medicine: it may be my life-long goal to become a doctor and I may have a deep yearning to make the sick better. However, no matter how strong and overriding this interest is, I could only possess the right to prescribe by *qualifying* as a doctor. That is to say, the right to prescribe is based upon someone legitimately holding the office of 'medical doctor', not on anyone's interest in prescribing.

Another solution to the problem of powers of office is simply to bite the bullet and claim that such powers are not in fact rights. Unfortunately such an approach suffers from the same problem that beset the will theory. That is, our ordinary understanding of rights suggest that many powers of office *are* rights: the right of the doctor to prescribe; the right of the judge to sentence; the right of the policeman to arrest; the right of the traffic warden to fine; and so on. To adopt an overarching criterion of rights that denies that such powers are rights would again be at too great a cost to our ordinary use of the term. As we shall see later, however, it may be possible to recognise interests as the basis for the vast majority of rights, despite the problems the theory faces with powers of office.

4.1.4 The Entitlement and Several Function Theories of Rights

[105] Peter Jones, *Rights*, p. 31; and Leif Wenar, "The Nature of Rights", p. 242.

In view of the limitations of the interest and will theories, some theorists have proposed broader conceptions of what rights are. For example, Peter Jones has put forward the idea that the essential feature of rights is the establishment of titles in individuals:[106]

> What is distinctive about legal or moral systems that incorporate rights is that they invest people with titles. The possession of a title means that the possessor becomes (immediately if not always ultimately) the locus of legal or moral concern. If his title concerns his own actions (as in the case of liberty-rights), it justifies or legitimates those actions. If it concerns the actions of others (as in the case of claim-rights), it provides the ground for others' being required to act in ways that the title requires.[107]

Jones argues that rights are rights because they are *possessed.* Thus, when a right is violated, the right-holder him or herself is wronged. It is not just that some legal or moral rule has been broken, but that what is *owed* to the right-holder has not been forthcoming.[108]

While what Jones says is reasonable, it tells us little about the essential feature of rights. This is because, under the entitlement theory, in any particular right-statement the word 'right' is simply replaced by the word 'title'. To clarify, let us return to an example of a right already given in the chapter and examine how the entitlement theory illuminates our understanding of the right. The right against being tortured to death would presumably be explained by the fact that the right-holder has been entitled (either legally, morally, or both) to not be tortured to death. While this may be true, we are none the wiser regarding what a right is. Yes, the right makes the right-holder the locus of legal or moral concern, and yes, it requires others to refrain from acting in certain ways. But we already know this from the right-statement itself. The investing of a title may well be part of what rights do, but it does not tell us what rights are.

Another alternative to the will and interest theories has recently been advocated by Leif Wenar. Wenar claims that there is no one thing that all rights do for right-holders, because they have various functions.[109] Wenar's 'several functions theory' offers the following conception of rights:

> All rights are Hohfeldian incidents. All Hohfeldian incidents are rights so long as they mark exemption, or discretion, or authorization, or entitle their holders to protection,

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[106] Note that H.J. McCloskey also sees rights as entitlements. H.J. McCloskey, "Rights", *The Philosophical Quarterly,* Vol. 15, No. 59, Moral Philosophy Number, April 1965: 115-127.
[107] Peter Jones, *Rights,* p. 36.
[108] Ibid. pp. 36-37.
[109] Leif Wenar, "The Nature of Rights", p. 248.

provision, or performance. Therefore, rights are all those Hohfeldian incidents that perform these several functions.[110]

Wenar believes that his theory better captures the essence of rights when compared to 'single function theories' like the interest and will theories. This is because it acknowledges that rights play a number of roles in our lives, and thus can account for every single instance of every right-claim.

Wenar's theory might be regarded as the logical extension of seeking a theory that attempts to ascertain the essential feature of each and every instance of a right-claim. Because rights are so numerous and various in type, it should be of little surprise that some will 'protect', others will 'authorise', others will 'provide' and so on. Unfortunately, by opting for a theory that is so disparate we start to lose focus on the *essential* feature that unites the vast majority of these functions. For it is clear that we ordinarily grant exemption, discretion, protection and so on to individuals in order to *benefit* them. To illustrate, let us consider some examples of these different functions of rights. As an example of an 'exemption-based' right, Wenar offers the licence to drive a car. This is an exemption from a general duty not to operate dangerous machinery at high speeds.[111] As an example of a 'protection-based' right, we might offer an individual's right against assault. Finally, a 'provision-based' right can be illustrated by a child's right to a decent education.[112] While we can agree with Wenar that all of these examples of rights have different functions, it is nevertheless clear that all of these functions afford *benefits* to the right-holder. So we might concur that rights grant their holders exemption, discretion, authorisation, protection, provision or performance, but still maintain that these functions serve primarily to secure and further the *interests* of individuals.

Of course, it will be pointed out at this stage that I have brushed under the carpet the fact that interests do not ground every single one of these functions. In particular, rights that serve to 'authorise' an individual with a power of office are not always based on the interests of the right-holder. As we saw above, a doctor who is authorised the power to prescribe can be considered as possessing a right even though that right is not grounded in her interest in prescribing drugs. In light of this, I think it is best to accept that the interest theory is incomplete. However, while the interest theory cannot account for every single instance of every single Hohfeldian incident, it nevertheless captures the

[110] Ibid., p. 252.
[111] Ibid., p. 226.
[112] Ibid., p. 229.

true essence of the *vast majority* of rights. So while Wenar is correct to point out that rights serve different functions, in his quest for a complete theory he loses sight of the fact that most of these functions – with the exception of authorisation - are themselves based on the interests of the right-holder. By aiming for absolute completeness in our account of rights, we end up with a theory that tells us little about what they are. Moreover, since animals are not the types of entity that can possess rights which correlate to the powers of office, the interest theory adequately accounts for the types of moral right that are the concern of this thesis.

However, while all of this is useful at a conceptual level by explaining the kind of thing that rights *are*, it is not particularly useful in helping us *assign* moral rights. Rights might well be based on interests, but when is it justified to invest someone or something with a right? And what type of entity can be legitimately described as possessing a right? These important questions are addressed in the following two sections.

4.2 Assigning Moral Rights

The project of assigning moral rights is crucial, both to this thesis and to anyone who considers rights to have moral force. For if rights are to provide the theoretical framework within which to formulate our obligations to individuals (human or otherwise), we are in crucial need of a means to determine which moral rights (if any) such individuals possess. However, for most analyses of rights, the question of the grounds on which we might legitimately assign moral rights has been left somewhat neglected. Indeed, most theories of rights focus solely on identifying and defending the essential feature (or features) of rights.

To illustrate, consider the entitlement theory, which tells us that rights are always ascriptions of titles. This theory by itself fails to offer an account of when such ascriptions are justified. For example, up until 1979 husbands in the UK were legally entitled to rape their wives. Does this mean that these men possessed a *moral* right to rape? On its own, the entitlement theory can tell us nothing. We need further argumentation to either justify or deny the possession of particular titles.

The will theory claims that rights are choices that an individual holds over whether to demand or waive enforcement of a relevant duty. However, it cannot by itself tell us when such choices and duties are morally legitimate. For example, a slave-owner has the power to demand or waive the duties of his slave. Does he then have a *moral* right to the services of his slave? Again, the will theory by itself is silent on the matter. We

require further argument to determine whether the slave in this example possesses a moral duty to serve his master.

The interest theory as set out above also suffers from the same problem. The interest theory claims that rights are benefits afforded to the right-holder. However, it does not determine *which* benefits should be afforded the protection of rights. For example, I might benefit from the possession of my neighbour's house, but does that mean I have a right to it? The interest theory as set out above can provide no answer.

What is clearly needed then is a means by which to determine when the ascription of moral rights is justified. I claim in this section of the chapter that Joseph Raz has provided the appropriate framework with which to do this. Before proceeding with the defence of this claim, I should point out that in defending Raz's framework I do not address the objections that his account cannot explain group rights, powers of office and rights involving third-party beneficiaries.[113] While I do consider Raz's theory to at least be able to account for group rights and the rights of third-party beneficiaries, such rights are not relevant to this thesis, making any such discussion superfluous. That is to say, the animal rights I consider in the remaining chapters of the thesis are neither group rights, powers of office, nor the rights of third-party beneficiaries. With this qualification in mind then, let us move to the explanation and defence of the Razian framework.

4.2.1 Joseph Raz's Interest Theory

Raz has argued that an individual has a moral right when that individual has an interest that is sufficient to impose a duty on another:

> 'X has a right' if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.[114]

What we have here is an interest-based theory that sets out a means by which to determine *which* interests correspond to rights. The theory exhibits two important features. First of all, having an interest in something does not mean that one automatically has a right to that thing. Instead, in order to have a right the interest must give grounds for holding another to be under a duty. Thus, while we might recognise some interest of an individual, other considerations might mean that no-one is under a duty with respect to it, and therefore that no relevant right exists. For example, if I do not

[113] The latter objection is made by H.L.A. Hart, "Are there any Natural Rights?", pp. 57-58.
[114] Joseph Raz, *The Morality of Freedom,* p. 166.

like the look of my face, I might have an interest in being provided with a face-lift. However, given the expense of face-lifts and given the nature of my interest, it may be that no-one is under a duty to provide me with one, and thus that I have no right to be provided with a face-lift.

The second important feature of Raz's theory is that it is a scheme in which rights ground duties. In other words, rights do not just correlate with duties; sometimes a duty exists *because of* the establishment of a right. I say 'sometimes' because not all duties are rights-based: some duties are justified by reasons other than rights.[115] Nevertheless, the fact that rights ground duties is worth noting because it shows that the determination of who has a right often precedes the determination of who has the corresponding duty and what that duty is.[116] Thus, although we may establish that someone or something has a moral right, there may still be work to be done with regards to formulating our precise moral obligations.

4.2.2 The Peremptory Force of Rights

One interesting claim that Raz makes about rights is that they have 'peremptory force'.[117] The peremptoriness of rights is generally taken to mean that rights are not simply important considerations to be weighed and balanced against other considerations in our moral deliberations. Instead, rights *end* such balancing by delineating what ought to be done. The peremptory force of rights is not a notion unique to Raz. Most rights theorists regard rights as acting as constraints on aggregative reasoning, rather than as things to be subsumed by it.[118] Thus, rights mark important limits on what can be done to an individual. All this, of course, is in keeping with the comments made at the very beginning of the chapter: rights appropriately reflect the value and separateness of individuals, by not treating them aggregatively. It thus seems important that the scheme we use to assign moral rights reflects the peremptoriness of rights.

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[115] For example, it could reasonably be claimed that I have a duty not to destroy the rare flowers growing in my garden. Such a duty does not seem to be necessarily founded on anyone or anything's moral right.
[116] Joseph Raz, *The Morality of Freedom*, pp. 184-185. See also, Jeremy Waldron, *Liberal Rights,* (Cambridge: Cambridge University Press, 1993), p. 16.
[117] Joseph Raz, *The Morality of Freedom,* p. 192.
[118] Rights have been regarded as 'limits', 'trumps', and 'side-constraints' on an aggregative framework. For examples see, Robert Nozick, *Anarchy, State and Utopia*; Jeremy Waldron, "Rights in Conflict", *Ethics,* Vol. 99, No. 3, April 1989: 503-519; and, Ronald Dworkin, *Taking Rights Seriously,* (London: Duckworth, 2004).

However, as Nigel Simmonds has pointed out, Raz's scheme actually seems to count *against* the peremptoriness of rights:

> Establishing the existence of a right will, for this theory, be only the first step in a potentially complex course of reasoning that may or may not lead to the conclusion that a certain individual is under a duty.[119]

After all, we have seen that the establishment of a right under Raz's theory will not always allow us to distinguish the precise duty or the particular duty-bearer in relation to that right. Often, much more work needs to take place in order to determine what morally ought to be done. Thus, far from *ending* moral deliberation, establishing a right under this theory seems to be just the tip of the iceberg.

However, while under Raz's scheme it may not always be obvious *who* has a duty when a moral right is identified, establishing a right does involve the claim that *someone* is under a duty. Otherwise, the right could not have been established in the first instance. There thus seems to be a simple way to rescue the idea that rights are peremptory. That is, we can claim that all rights impose duties that determine finally what ought to be done. However, because of the complexities of ethical choices and decisions, the establishment of the right alone will not always tell us who has the relevant duty and what it consists of. There is no contradiction in claiming that a right has peremptory force, while also claiming that the duty that it is connected to is sometimes unclear.

This notion of peremptoriness also brings up the issue of rights conflicts. For as Jeremy Waldron has pointed out, if we follow Raz's analysis of rights, conflicts of rights seem inevitable.[120] For example, imagine that you and I are in hospital, both with some terminal disease that requires a particular pill to cure it. It would seem that we both have an interest that is sufficient to impose a duty on the doctors to provide us with that pill. However, what if there is only one pill? Here it seems is a case where rights clash, and thus do not seem to be peremptory. I believe that Raz's scheme is able to deal with such clashes if it invokes the idea of '*prima facie* rights'. *Prima facie* rights are those rights that exist outside of specific circumstances, and such rights can conflict. So, to return to the hospital example, it can legitimately be argued that we both have a *prima facie* right to healthcare. However, once we examine the specific details of a situation, *prima facie* rights might not always translate into the actual assignation of those rights.

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[119] N.E. Simmonds, "Rights at the Cutting Edge" p. 204.
[120] Jeremy Waldron, "Rights in Conflict", p. 503.

Thus, if it transpires that the pill will give me just a few more months of life (imagine that I have some other disease, for example), but is likely to give you many more years, it could be argued that your interest in the pill outweighs mine, and you have a right to the pill, and I do not. Hence, *prima facie* rights might clash, but concrete rights cannot. This allows rights to retain their peremptory force in finally deciding what morally ought to be done.

Clearly, Raz's scheme is not the end of the process by which we ascribe moral rights. That is to say, on its own it cannot finally determine the validity of any putative moral right. We need to identify relevant interests and assess whether they are sufficient for the imposition of a duty. Thus, a good deal of argument and justification needs to be done in order for a right to be assigned. Moreover, even when a moral right is assigned, that does not signal the end of moral deliberation: we also need to go on to identify the appropriate duty-bearers and the nature of the duty itself. In other words, Raz's scheme only provides the framework for deciding who has which rights, and who has which duties. This is the framework that shall be used in subsequent chapters when deciding what obligations we have to animals in the fields of experimentation, agriculture, entertainment and culture.

4.3 Can Non-Human Animals Have Moral Rights?

Before getting on to the examination of these different contexts, however, one crucial problem remains. For it may not have gone unnoticed that one important aspect of Raz's scheme has thus far been neglected. Raz writes that, "'X has a right' *if and only if X can have rights...*"[121] Thus Raz, like so many other philosophers, claims that not all entities can possess rights. It might be the case then, that although Raz's scheme is the appropriate means for assigning moral rights, it is ill-suited to the formulation of our moral obligations to non-human animals, because animals are not the sort of creatures that can be right-holders. In this section I examine certain capacities that some philosophers regard as necessary for an entity to be a right-holder. Since most of these conditions refer to some aspect of 'personhood' (moral agency, autonomous choice and so on), they bar animals from being right-holders. However, I will conclude that these characteristics are unnecessary for being a right-holder, and that any entity with the capacity for well-being is able to possess a right.

[121] Ibid., p. 166 (emphasis added).

4.3.1 Choice and Autonomy

While I have proposed that the essential feature of rights is that they benefit the right-holders, and that we should assign rights on the basis of interests, it does not follow that anything with interests must also have rights. After all, having interests might be a necessary but insufficient condition for possessing rights. In light of this, perhaps we can resurrect the will theory and use it as an account of who or what is capable of possessing rights.

The will theory holds that only those creatures capable of exercising choice can possess rights. This is due to the fact that it claims that in order to have a right, one must be able to demand or waive enforcement of the duty of another. Thus, if one lacks the capacity for such waiving or demanding, one cannot possess a right. Since it is uncontroversial that animals are incapable of such choice, the will theory denies rights to animals and other 'unempowerable creatures'.[122] Hart makes the point clearly:

> These considerations should incline us not to extend to animals and babies whom it is wrong to ill-treat the notion of a right to proper treatment, for the moral situation can be simply and adequately described here by saying that it is wrong or that we ought not to ill-treat them or, in the philosopher's generalized sense of 'duty', that we have a duty not to ill treat them.[123]

What is interesting about Hart's claim is that he is not denying the possibility that animals merit ethical consideration in their own right; he is simply stating that because they lack the capacity for autonomous choice, animals are incapable of possessing rights.

Of course, it is necessary to ask why the capacity for choice is so important. As we saw earlier, an individual *can* have a right even when he is unable to waive or demand a duty in a particular circumstance. For example, individuals have the legal right not to be tortured to death, even when they themselves cannot waive the duty of others to refrain from torture. Given this, why would we want to limit the range of right-holders to those with the capacity for choice? The answer comes from the relationship between rights and autonomy. As Angus Taylor puts it:

> Unlike animals, it is argued, each human being is confronted with the question of how to live his or her life. It is because we can make moral choices that we require a

[122] 'Unempowerable creatures' is taken from Hillel Steiner, "Working Rights", p. 259.
[123] H.L.A. Hart, "Are There Any Natural Rights?", p. 58.

> sphere of personal jurisdiction within which we can exercise this capacity. Our rights define this sphere.[124]

Here we get to the nub of the matter. For will theorists, rights demarcate spheres of non-interference in which humans should be left to formulate and pursue their plans.[125] If individuals lack the capacity for such autonomous choice - as animals, children and the mentally disabled do – then such individuals are not creatures whom one can legitimately speak of as possessing rights.

Of course, this way of looking at rights does have some appeal. For we do often speak of rights as essentially connected to freedom, autonomy and choice. To take some examples, the rights to free speech, religion, association and so on, all endow their holders with entitlements to non-interference. However, as we have seen, rights are frequently unrelated to or founded upon autonomy. To maintain that they are would make the list of rights we possess implausibly narrow. For example, my right not to be tortured is not based on the fact that torture will interfere with my personal dominion of autonomous choice, but on my clear interest in avoiding excruciating pain. We can thus see that the things that we possess as rights are not solely related to autonomous choice. In fact, I have argued that rights are based on our *interests*. Furthermore, our interests are not exhausted by our interest in autonomous choice. This fact helps to explain why it is generally regarded as uncontroversial that children can possess rights. That is, while children may lack the capacity for autonomous choice, they do have *interests*. Moreover, some of a child's interests, such as her right not to be abused, are entitled to protection in the form of rights.

Some theorists, however, are willing to face up to the implications of the will theory and maintain that the capacity for autonomous choice *is* necessary to possess a right. Nevertheless, it is claimed that this does not entail important interests being left unprotected by rights. For example, Hillel Steiner acknowledges that many people want to ascribe rights to children and animals (and other 'unempowerable creatures') because of the fact that they have interests that merit protection. Moreover, they want to ascribe *rights* to such individuals because rights are viewed as 'peremptory'. Steiner, however, does not see this as a problem for the will theory. That is, he claims that the interests of children and animals *do* merit protection in the form of rights, even under the will theory. However, Steiner claims that the right lies not with the child and animal themselves, but

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[124] Angus Taylor, *Animals and Ethics,* (Ontario: Broadview Press, 2003), p. 59.
[125] Hillel Steiner, "Working Rights", p. 238.

with the individual capable of demanding or waiving the relevant duties.[126] For example, a child has an interest in not being abused, but the right lies not with her, but with someone else such as her parents, the police, a state official and so on.

This approach is unsatisfactory for two reasons. First, this scheme is it too much at odds with our common understanding of rights. Ordinarily in right claims, the right-holder and the object of our moral concern coincide. However, under Steiner's scheme, the individual who possesses the right and our object of moral concern are different people. This seems strange because we are used to conferring rights on individuals on the basis of what they are owed, rather than on the basis of what someone else is owed. Second, for Steiner a right only exists when there is someone with the ability to exercise choice over the right: to waive or demand enforcement of the relevant duty. However, this is implausible. For example, it is evident that no-one can legitimately waive our moral duty not to abuse children. Such a duty is unwaivable. Thus, for Steiner, it must be the case that not only do children have no moral right against abuse, but *no-one* has a moral right against child abuse. Thus we are back to the situation where a child's interest in not being abused is unprotected by a right.

Employing the will theory as our means of determining what kind of entity can have moral rights is fatally flawed. The claim that only beings capable of choice can possess moral rights needs defending. The defence must point to the fact that rights demarcate spheres of autonomous choice. However, this is not all that rights do: they serve individuals' interests, not all of which relate to autonomy. Once it is recognised that moral rights are founded on interests, the will theory is unable to explain why moral rights should be denied to entities with the capacity for well-being, but without the capacity for autonomous choice.

4.3.2 Reciprocity and Moral Agency

However, perhaps non-human animals cannot be right-holders because they are unable to morally reciprocate. That is to say, while we might be said to have duties or obligations to animals, animals cannot be said to have any such duties to us, since they lack moral agency. This inability to reciprocate might bar animals from being able to possess rights. Of course, this begs the question: *why* is the ability to reciprocate necessary to possess rights?

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[126] Ibid., pp. 259-261.

The importance of reciprocity is frequently advanced by 'contractarian' political and moral philosophers. These philosophers regard the obligations we have to one another as the result of some kind of hypothetical contract. Thus the benefits, burdens, rights and duties we hold as individuals are justified to the extent that we would have chosen them in the formulation of this contract. Clearly animals are incapable of deliberating and acting morally, and would thus be unable to choose or consent to any such contract. For this reason alone, animals might be said to be incapable of possessing moral rights.

Even if we accept that moral principles and moral rights derive from such a contract, however, it remains unclear why animals must therefore be excluded from the class of rights-holders. True, animals cannot participate and *select* moral rights in a hypothetical contract, but it does not follow from this fact that animals cannot *be selected* as legitimate right-holders.[127]

At this stage, it might be pointed out that I have missed one of the crucial features of many such hypothetical contracts. That is, the parties formulating the moral principles are not just rational and moral, but also *self-interested.* It is here that this notion of reciprocity really kicks in, because individuals formulating the contract choose principles restricting their own conduct on the basis that others will accept similar restrictions. The end result, it is claimed, will thus be of mutual advantage. With this in mind, it would seem that the parties would have little motivation to formulate principles restricting their conduct with regards to animals. Indeed, the parties would surely benefit from *denying* rights to animals: they could then use animals however they please. The contractarian Peter Carruthers makes this same point:

> Since it is rational agents who are to choose the system of rules, and choose self-interestedly, it is only rational agents who will have their position protected under the rules. There seems to be no reason why rights should be assigned to non-rational agents.[128]

However, it must be pointed out that for any contract theory based on mutual advantage to be plausible, self-interest must be qualified. For if self-interest were left unchecked, any particular individual might choose principles that favour his own race, gender, religion, social group and so on. This seems, in terms of fairness, an unreasonable way of selecting principles of justice. For this very reason, John Rawls

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[127] Having said that, since the contract is hypothetical it remains unclear to me why animals could not be given the hypothetical capacity for moral deliberation and thus be able to participate. However, the idea that reciprocity necessitates excluding animals from the class of right-holders can be defeated without delving into such a difficult (and contentious!) proposal, so I leave it aside.

[128] Peter Carruthers, *The Animal Issue*, pp. 98-99.

places his contracting parties behind a 'veil of ignorance'.[129] Behind the veil of ignorance, individuals are unaware of their race, gender, religion, class, natural abilities and so on. This means that parties must choose principles without knowing who they will be and what social position they will hold. In this way, impartiality is built into the contracting process. Rawls sees self-interest and impartiality as the two means of achieving fair principles.

However, none of this suggests that we can use the Rawlsian model to ascribe rights to animals. For even behind the veil of ignorance, the parties know that they will be members of society: a cooperative community for mutual advantage. In other words, the parties know that they will bring something to this scheme, and in return will receive something. So once again, we are left to wonder on what basis parties formulating principles for such a scheme would allocate rights to animals who cannot reciprocate.

Perhaps the most obvious point to make in reply to this is that the contractarian scheme as constructed here would also exclude many humans from possessing rights. After all, many humans due to disability or age bring nothing to the cooperative venture. And yet, most of us regard children and the disabled as legitimate possessors of rights. A contractarian who wishes to include such humans in the class of right-holders and yet exclude animals, will need to show on what basis it would be rational and in their interests for the choosing parties to do so.

One possible argument a contractarian might make is to point out that children, unlike animals, will eventually be able to reciprocate. It would thus be rational for parties to protect children with rights to ensure their future contribution to the cooperative scheme. Building an argument along these lines might thus be able to keep children among those beings capable of possessing rights. However, this argument does not work for those disabled humans who will never be able to contribute to society in the relevant way. Nevertheless, a plausible but different argument could be made. For it might be claimed that parties could imagine themselves, through accident or illness, becoming disabled in the future. This would make it rational and in their interests for parties to give rights to the disabled. And since the parties know that there is no chance of them changing

[129] John Rawls, *A Theory of Justice*. Of course, I should point out that Rawls's contractarianism as outlined in *A Theory of Justice* pertains to the principles that should regulate the 'basic structure' of society. In other words, the scope of its application is limited to such things as the legal, political, financial and economic institutions of society; it is not intended to provide the basis for a general theory of morality. However, since Rawls's arguments could be used for such a theory, and given the legacy and force of his ideas, they are valuable and necessary to this discussion.

species in the future, there will be no such rational and self-interested reason to assign rights to non-humans.

However, this argument clearly fails to work for individuals who are disabled for their whole lives. The parties would not seek to protect these individuals, for just as they could never change species, nor could they become individuals who have been disabled their entire lives. This, of course, is because the parties are rational self-interested parties who can and do contribute to society. In light of all this, there seems to be no rational and self-interested reason for contracting parties to assign rights to those disabled individuals who have been unable to reciprocate throughout all of their lives. And yet, most of us believe that such permanently disabled humans beings can and do have rights.

There seems to be two options available to the contractarian. First, she could steadfastly maintain that all those individuals who have never or will never be able to reciprocate should be excluded from holding rights. This, of course, would lead to the exclusion of many disabled human beings from the class of right-holders. The immediate unattractiveness of this conclusion suggests that we should at least look to see if there is a legitimate alternative option. I believe that there is a better alternative. Simply, she could propose a contract that is not fundamentally based on the notions of reciprocity and self-interest. Instead, more emphasis could be placed on the role of the contract in modelling what is fair.[130] For example, we might argue that parties should select principles *impartially*, so that they not only apply to those who contribute to a society based on mutual advantage, but also to those whose lives can go better or worse for themselves.[131] This would not only allow for the straightforward ascription of rights to children and the disabled, but also to animals.

To conclude this section, I wish to state that the capacity for moral reciprocity is not necessary to be a right-holder. Even if we assume that moral principles (and thus rights) are derived from a hypothetical contract, it does not follow that animals should be excluded. While it is clear that animals could not *select* the principles of justice, they could nevertheless *be selected* as right-holders under those principles. If it is claimed

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[130] Mark Rowlands takes this option, arguing that if one pays attention to the notion of 'intuitive equality' in Rawls's argument, an effective Rawlsian and contractarian basis for animal rights can be achieved. He does this by putting knowledge that one is a rational agent behind the veil of ignorance. Mark Rowlands, "Contractarianism and Animal Rights", *Journal of Applied Philosophy,* Vol. 14, No. 3, 1997: 235-247.

[131] This suggestion is influenced by Brian Barry's argument in favour of a conception of justice as impartiality, rather than justice as mutual advantage. See Brian Barry, *Justice As Impartiality,* (Oxford: Oxford University Press, 1995).

that animals would not be selected because they bring nothing to a community based on mutual advantage, we must ask whether mutual advantage is so fundamental to our moral principles. Our ready ascription of moral rights to children and the disabled suggests that it is not.

4.3.3 Well-Being

As stated above, Raz does not think that all entities are capable of being right-holders. Instead, he regards only those creatures whose well-being is of *ultimate value* as capable of possessing rights:

> *Capacity for possessing rights:* An individual is capable of having rights if and only if either his well-being is of ultimate value or he is an 'artificial person' (e.g. a corporation).[132]

So some entities, according to Raz, have ultimate value, while others are only valuable instrumentally or derivatively. Entities with instrumental or derivative value are valuable only in terms of their consequences for other things. As an example of an entity that is only valuable instrumentally, Raz offers a fine work of art. He argues that the value of any piece of art is derivative: "It derives from their contribution to the well-being of persons."[133]

Let us assume that Raz is correct, and that only beings whose well-being is of ultimate value can possess rights. Is the well-being of non-human animals derivative or ultimate? Raz himself offers no answer to the question, simply stating that some people regard creatures such as dogs to have derivative value, while others regard them to be of ultimate value.[134] However, this is rather unsatisfactory. What we need is some means by which to determine whether dogs have ultimate or derivative value. This, I believe, I have already provided. In my discussion of well-being in Chapter 2, I claimed that the capacity for well-being is a necessary and sufficient condition for having moral status. To have moral status is to be ethically considerable *in one's own right.* That is to say, to have moral status is to merit particular treatment for oneself, and not just because of one's contribution to someone else's well-being or to some greater good. Thus, entities with the capacity for well-being are necessarily of ultimate value. In sum then, to have interests and the capacity for well-being is to be an entity capable of possessing rights.

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[132] Joseph Raz, *The Morality of Freedom,* p. 166.
[133] Ibid., p. 178.
[134] Ibid.

In this section I have argued that sentient animals can have moral rights. This is based on their capacity for well-being and, thus, their possession of interests. Rights are sometimes thought to be held only by those beings who are 'persons': those creatures capable of moral agency and autonomous choice. However, once we recognise the fact that some of our rights are unrelated to our status as persons, but instead are based on other interests, then the justification for limiting the class of right-holders to persons vanishes. All entities with interests, with lives that can go well or badly for themselves, are capable of possessing moral rights.

4.4 Conclusion

This chapter has defended an interest-based rights framework for the purpose of delineating our moral obligations to non-humans. Moreover, it has claimed that non-human animals can legitimately be ascribed moral rights. This rights-based framework is in keeping with the account of moral status given in preceding chapters. For rather than treating animals as receptacles of value, it marks out limits on the pursuit of aggregative goals. After all, sentient animals are ethically considerable in their own right, and *each* sentient animal is considerable in their own right. To put it in Raz's terms, the well-being of each sentient animal is of ultimate value.

With all of this in mind, it must now be asked which moral rights non-human animals possess, and what moral obligations we have to them. The task of the remaining chapters of the thesis is to examine whether animals have rights not to be experimented upon, not to be raised for food, not to be used for human entertainment, and not to be used in cultural practices.

5. Non-Human Animals and Experimentation

Non-human animals are used for a wide range of experiments in laboratories across the globe. To simplify, we can distinguish two different types of animal experimentation: therapeutic and non-therapeutic.[135] The former are often also referred to as 'medical experiments' and include those procedures that are carried out to research diseases and biological processes, to develop new drugs, and to test drugs for safety. While most of these experiments are designed to bring improvements to *human* health, it should not be overlooked that experiments for animal medicines also fall under this therapeutic umbrella. Non-therapeutic experiments, on the other hand, include those procedures that are carried out for general biological research, for educational purposes and for testing household products and cosmetics. While the testing of toiletries and cosmetics is now banned in the UK, non-therapeutic experimentation is currently permitted in most countries, is claimed to confer considerable benefits to humans, and is thus worthy of being included within the analysis of this chapter.[136]

Of whichever form, the issue of animal experimentation is more politically heated than any other question relating to our treatment of animals. This, I believe, is partly due to the fact that *prima facie* both sides have convincing arguments. Proponents of animal experimentation point to the incredible benefits that humans are claimed to receive from experimenting on animals, and conclude that such experiments are absolutely essential for human well-being. Those against animal experiments point to the enormous levels of suffering that such experiments inflict on animals, and provide gruesome details of practices within the laboratory that create incredible distress to millions of sentient beings.

In this chapter, I explore whether animals have a moral right not to be experimented upon. To determine this, and following the Razian conception of rights that I outlined in Chapter 4, I will examine whether animals possess an interest that is sufficient to impose upon us a moral duty not to experiment on them. To this end, the chapter is divided into four sections. First, I propose a means of assessing the strength of an individual's welfare interests. In the subsequent three sections I examine three potential interests of

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[135] I borrow this distinction from Robert Garner, *Animals, Politics and Morality,* (Manchester: Manchester University Press, 1993), p. 121.

[136] The testing of cosmetics and toiletries on animals in the UK has been banned since 1998. In 2002 the EU decided to ban such use by 2009-2013. For a recent call for the return of cosmetic testing, see Alok Jhan and Paul Lewis, "Scientist backs animal testing for cosmetics", *The Guardian,* 4th March 2006.

animals that might ground a right not to be experimented upon: the interest in not suffering, the interest in continued life and the interest in being free. I will claim that while the first two of these interests give strong grounds for an animal's right not to be experimented upon, the latter interest does not. For this reason, I will conclude that animal experiments that result in pain or death are morally illegitimate, while painless experiments in which the animal does not die are permissible.

5.1 Establishing the Strength of an Interest

In order to establish whether animals have an interest that is sufficient to ground a right not to be experimented upon, we need some way of determining the strength of their interests. You will recall that in Chapter 3 I proposed that we should consider the interests of those entities with moral standing equally and on their own merits. But just how are we to determine their strength? In this section I argue that there are two broad factors relevant to the strength of an interest: the value of the particular good to the well-being of the individual in question, and the level of psychological continuity between the individual now and when the good or goods will occur.[137] Before commencing, I should make it clear that what I have to say in this section concerns determining the strength of individuals' *welfare interests*, as defined in Chapter 3, rather than their ulterior interests. I am not concerned with what makes a personal aim or personal conception of the good weaker or stronger for individuals. First of all, this is because these types of interests rarely translate into moral rights. To take an example I gave in Chapter 3, I may have an interest in being a good teacher, but it would be odd to say that I have a moral right to be a good teacher. Secondly, welfare interests are held by animals, whereas ulterior interests, being related to one's personal conception of the good, are only held by persons. For these reasons then, I am concerned with the strength of welfare interests: those necessary goods for a life to go well.

5.1.1 Value to the Individual and Psychological Continuity

The first obvious way in which we can determine the strength of an interest is to consider its *value* to the individual in question. This, of course, is an incredibly difficult task, but is by no means entirely futile. For example, I have an interest in both having enough to

[137] This account of the strength of an interest is greatly influenced by Jeff McMahan's account of the strength of what he calls 'time-relative interests'. However, as I make clear later in the chapter, my account differs in one important regard. See Jeff McMahan, *The Ethics of Killing,* (Oxford: Oxford University Press, 2002), p. 80.

eat, and in receiving paid holiday. However, the value of having enough to eat is greater for me than that of receiving holiday pay. I could live a life of high quality without paid holiday, but would find it hard to do so without having enough to eat. It therefore makes sense to say that my interest in having sufficient food is stronger than my interest in receiving holiday pay.

The second factor which often contributes to the strength of an interest concerns the relationship between the individual at the time when we attribute the interest, and the individual when that interest will be satisfied. Jeff McMahan calls this the 'psychological continuity' of the individual between now and when the future good or goods will occur.[138] By psychological continuity McMahan means those psychological connections that link ourselves over time. Examples of such connections include: the relation between an experience and the memory of it; a desire and the later experience of its satisfaction or frustration; and the earlier and later manifestation of a character trait, value or belief.[139] Without doubt, not everything and everyone has equal levels of psychological continuity over time. For example, ordinarily a newborn infant has negligible levels of psychological continuity with her future self at age 21, while a 21 year old has strong continuity with herself as a 25 year old. Now McMahan's claim is that an individual's interest in a future good varies with the strength of this psychological continuity. So, if the level of psychological continuity between the individual now and the time when the goods are received is strong, then the interest in that good becomes stronger. However, if the level of psychological continuity is weak, then the corresponding interest becomes weaker.

But why is psychological continuity over time important at all? Perhaps the total amount of good in a life should be the factor in ascertaining the strength of an interest, irrespective of psychological continuity. However, this claim is mistaken. As I argued in Chapter 4, individuals should not be regarded as receptacles of value contributing to the net amount of good in the universe; rather, what matters from a moral point of view are individuals themselves. Maximising the good in a life is important because it is of value to the individual whose life it is, not because it contributes to the total good in the world. And if we are concerned with the value individuals receive from the good in their lives, psychological continuity must be important. For surely a good is of more value to an individual when that individual can strongly identify with the subject receiving that good.

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[138] Ibid., p. 59.
[139] Ibid., p. 39.

In this way, a future good of mine will be of more value to me the more I can identify with the future self who receives that good. For these reasons, psychological continuity over time is a contributing factor to the strength of interests that relate to future goods.

5.2 A Right Not to Be Subject to Painful Experimentation?

Given this account of the strength of interests, we must now consider whether animals possess any interests that are sufficient to ground in them right not to be experimented upon. First of all then, we must consider the animal interest in not suffering. After all, it is evident that most experiments carried out on animals *necessitate* the infliction of pain: experiments are usually designed to model particular diseases, to assess the effects of drugs, and to test how much of a particular product can be administered before it becomes dangerous. Furthermore, the animal subjects are often kept in caged, cramped conditions that cause considerable suffering. More recent practices, such as the production of genetically engineered animals, also usually involve the infliction of considerable pain on animals, even when this is not intended.

I wish to claim that animals have a very strong interest in avoiding suffering. Take, for example, the value of avoiding pain for animal well-being. The account of animal well-being I gave in Chapter 3 was hedonistic: an animal's life goes better for that individual when he or she has more enjoyment and less suffering in that life. The absence of pain is thus absolutely crucial for an animal's life to go well, and we can reasonably claim that a sentient animal has a very strong interest in avoiding pain. In fact, some philosophers have suggested that an animal's interest in avoiding suffering is equivalent to that of a human's. For suffering by its nature is a bad experience for whoever feels it and, as discussed in Chapter 2, there is good evidence to support the notion that pain is experienced in a similar way by both humans and sentient animals.[140]

However, the claim that animals and humans have an equivalent interest in avoiding suffering might be questioned. For example, it might be pointed out that human persons are capable of more than simple phenomenal consciousness, making their suffering worse. To illustrate, imagine that my dog and I break a leg which causes us both to suffer. It could be claimed that this suffering is worse for me because of my extra cognitive capacities. For instance, I might dwell on and become obsessed by the pain, thus spiralling into a depression. Also, as a person I have certain aims and projects I

[140] Peter Singer, *Animal Liberation,* pp. 7-17.

wish to fulfil that might be frustrated by my broken leg, exacerbating my suffering. Both capacities are lacking in my dog, perhaps making the break less bad for him.

However, these types of arguments can also be used to support the idea that the dog suffers *more* from his leg being broken. For example, perhaps my additional capacities allow me to rationalise my pain, understanding that it will come to an end. A dog on the other hand, might be totally consumed by his suffering. Similarly, it might be that my plans and projects actually lessen the effects of my pain, helping me to enjoy a decent quality of life despite the break. It seems to me that such arguments could run and run, without ever reaching an adequate solution. For this reason, I doubt that we can come up with any definitive basis for saying that avoiding suffering is more valuable for humans, more valuable for animals, or equally valuable for both animals and humans. Instead then, we must recognise that suffering is sometimes worse for humans and sometimes worse for animals. However, we can also say that ordinarily, avoiding suffering is extremely valuable for both.

But what about the other factor relating to the strength of an interest, psychological continuity? First of all, it seems clear that animals, as non-persons, possess weaker psychological continuity with their future selves when compared to human persons. This is quite simply because animals have fewer earlier and later mental states that refer to one another.[141] It is true that animals are not trapped in the present and do have desires which are future-oriented. However, lacking higher forms of consciousness, they cannot conceive of themselves in the future like persons can, and certainly cannot reflect on long-term future events like persons. Given this, does this make the animal interest in not suffering weaker than that of humans? Not necessarily, for the interest in not suffering does not always refer to some future good, to be obtained by some future self; in fact, it usually relates to an immediate good to be received by one's present self. In light of this, we can acknowledge that this difference in psychological continuity gives adult humans a stronger interest than animals in, say, not contracting arthritis when they get older. However, we must also recognise that it does not give them any stronger interest in not contracting arthritis *now*.

Clearly, there are serious difficulties in measuring the relative strength of the human and animal interests in avoiding suffering. However, I propose that we accept these difficulties and simply recognise that suffering is ordinarily a serious harm for both. In sum, both humans and animals have a strong interest in avoiding pain. Given that

[141] Jeff McMahan, *The Ethics of Killing*, p. 198.

suffering is a serious harm for animals, and that we have moral obligations to animals, the *prima facie* case for an animal right not to be subject to painful experiments looks good. However, at least three different arguments have been suggested to question the justifiability of assigning such a right. First, the great benefits provided by animal experimentation have been pointed to, with the accompanying claim that such benefits trump animals' interests in avoiding pain. Second, some have argued that we have special obligations to our fellow human beings which override our obligations to individuals from different species. Finally, it is claimed that human life is worth more than animal life and thus that painful experiments on animals are permissible. I examine each of these claims in turn in the remainder of this section.

5.2.1 The Benefits of Experimentation Justify its Continuation

The most common argument put forward by those in favour of animal experimentation is what we might deem 'the argument from benefit'. This argument takes a simple cost-benefit analysis approach, and concludes that the interests of animals in avoiding pain are outweighed by humans' interests in the life-saving treatment offered by therapeutic experiments. In other words, the benefits of animal experimentation are simply too great to warrant any thought of its discontinuance. For example, "...proponents cite progress in the area of Alzheimer's disease, AIDS, basic genetics, cancer, cardiovascular disease, haemophilia, malaria, organ transplantation, treatment of spinal cord injuries and countless others."[142] Moreover, it is claimed that this progress has not just been to the benefit of humans: improved treatment for sick and injured animals has also been generated by animal experimentation. The argument suggests that all future progress in these areas would be lost should painful experimentation be stopped.

The first thing we have to consider when assessing this argument is its factual validity. For if it can be shown that no benefit has derived or will derive from painfully experimenting on animals then the argument from benefit becomes redundant. To this end, many proponents of animal rights argue that animal experiments are not only unnecessary, but also a hindrance to future medical progress.[143] This is a large and difficult topic, which I lack the space to explore fully here. Moreover, an assessment of the scientific validity of using animal models in experiments is best conducted by those

[142] David DeGrazia, *Animal Rights – a Very Short Introduction,* p. 103.
[143] For a philosophical example of such an argument see, Hugh LaFollette and Niall Shanks, *Brute Science: Dilemmas of Animal Experimentation,* (London: Routledge, 1996).

with much greater scientific expertise than me. However, this by no means entails that there is nothing left for the moral philosopher to say. For without doubt, an empirically based cost-benefit analysis of animal experimentation will not definitively decide the moral question. For example, animal experiments may provide wide-ranging medical benefits *and* be morally impermissible. Indeed, it is this possibility that I now wish to explore.

Let us assume then, for the sake of argument, that painful experimentation on animals can and does provide some contribution to medical progress. This assumption cannot by itself legitimate painful experimentation on animals. For if we were concerned solely with medical progress, then we should begin whole scale programmes of experiments on *human beings*. This is because *human subjects* provide the best experimental models for researching human diseases or testing the effects of drugs on humans. For while an experiment on a rat may provide clues as to the effect of a particular drug on humans, an experiment on a human being will provide much harder and more reliable evidence. This is precisely why programmes of clinical trials on humans are conducted. Importantly, however, such trials always require consent, and very rarely involve the kind of invasive and painful experimentation that takes place on animals. So, if we recognise that painful and non-consensual experiments on animals can contribute to medical progress, we must also recognise that painful and non-consensual experiments on humans will confer even greater benefits.

Of course, most of us believe – quite rightly - that such programmes of painful human experimentation would be impermissible, even in the face of such potentially enormous gains. Many, including myself, would consider programmes of painful and non-consensual human experimentation to violate important human rights based on well-being and autonomy. And as we saw in Chapter 4, rights are meant to act as 'side-constraints' on the pursuit of social goods such as medical progress. Of course all of this begs the question: why do non-human animals not also possess such rights? Why can animals, but not humans, be painfully experimented upon for the sake of the social good?

5.2.2 Species Membership is Ethically Significant

Perhaps the difference between the human and the animal interest in not being experimented upon comes down to species membership. Some argue that it is legitimate for humans to grant extra weight to the interests of fellow humans. This is

because it is claimed that species membership itself is morally relevant, and that it is normally justifiable for individuals to favour the interests of the species to which they belong. Thus as humans, it is legitimate for us to give extra weight to the human interest in not suffering and translating this into a right, while denying such a right to non-humans.

At first, this theory looks like it stipulates a hierarchy of moral standing as discussed and refuted in Chapter 3. However, this relationship-based argument can accept that humans and animals have equal moral standing and that we should give equal consideration to their interests. All it does is claim that these interests are not equivalent: the human interest in avoiding pain is weightier because of species solidarity, and thus legitimately trumps the interest of animals. Anders Nordgren is an advocate of just such a position:

> Being a member of our own species is...an ethically relevant trait. We do have special obligations to members of our own species. Vital human interests may outweigh animal interests. This means that to the extent that we have good reasons to expect that severe human suffering can be relieved, animal experimentation involving harm should be accepted.[144]

There is an obvious intuitive appeal in such a position. It acknowledges that animals possess important interests which should be judged on their merits, but claims that when those interests conflict with the important interests of humans, that it is legitimate to favour the latter. Unfortunately, intuitive appeal by itself cannot justify the position. Indeed, the enormous problem facing the proposal that species membership is ethically relevant is to explain *why* it is. The theory needs to explain why it is legitimate and not prejudicial to favour our own species at the expense of others.

Perhaps the most comprehensive attempt to offer such an explanation has come from Lewis Petrinovich.[145] First of all, Petrinovich argues that speciesism (favouring one's own species) is a natural fact of life:

> Humans, as well as all other social animals, are speciesists. Animals of all species show a clear preference for their own kind: They associate and mate with their own species; they fight alongside their own kind against members of a foreign species to

[144] Anders Nordgren, "Animal Experimentation: Pro and Con Arguments Using the Theory of Evolution", *Medicine, Health Care and Philosophy,* Vol. 5, No. 1, March 2002: 23-31, p. 30.
[145] Another important advocate of this relationship-based approach is Mary Midgley. See Mary Midgley, *Animals and Why they Matter.*

> secure resources; and they defend the young of their own species. Any species that did not show preference for its own kind would become extinct.[146]

Petrinovich then argues that favouring our species can be likened to favouring our kin members: both 'moral feelings' have evolved in order to protect the replication of genes. Furthermore, he argues, both are justified as ethical positions because we have stronger emotional bonds to our kin and fellow species members.[147] In light of this, subordinating the interests of other species can be justified, a position directly relevant for the case of animal experimentation:

> I maintain that, when push comes to shove, the interests of members of our species should triumph over comparable interests of members of other species. This position does not imply that any human whim should take precedence over essential needs and deep welfare interests of nonhuman animals. It only means that human interests should be read as high cards in any game where costs and benefits are taken into consideration.[148]

Unfortunately, Petrinovich's argument as stated has clear and obvious problems. In the first place, one can question the rather simplistic model of species solidarity that Petrinovich presents. He claims in the previous quote above that members of a species breed with one another, defend themselves against other species and protect each other's young. Of course, none of these traits are without significant exceptions. Individuals can and do breed with mates outside of their species, fight and kill members of their own species and kill and eat each other's young. Drawing ethical inferences from empirical facts about nature is undermined by the huge problem of attempting to discover what 'natural' is.

More fundamentally, Petrinovich also appears to commit the naturalistic fallacy of deriving an *ought* from an *is*. His argument suggests that we *do* favour our own species, that evolution explains *why* we favour our own species, and thus that we *should* favour our own species. But, of course, the question of what is right can be decoupled from the question of what is natural. For example, it is no doubt natural for humans to rape and murder one another. Clearly, however, the fact that rape and murder are natural does not make them right.

In light of such arguments, Petrinovich argues that compatibility with the laws of biology is a *necessary but insufficient* condition for a valid moral claim. Thus, on his view, an

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[146] Lewis Petrinovich, *Darwinian Dominion: Animal Welfare and Human Interests,* (London: MIT Press, 1999), p. 217.
[147] Ibid., pp. 220-222.
[148] Ibid., pp. 3-4.

ethical position must also be consistent with the "basic freedoms of human beings".[149] This would seem to get round my examples of rape and murder, where clear violations of basic freedoms take place. Essentially then, Petrinovich permits a degree of rational thinking to supplement his biological thesis. But, once a degree of rationality is allowed in, it is unclear why we must stop at basic human freedoms. After all, if rationality is allowed to supplement the basic biological argument then one could provide a rationally based defence of *non-human* freedoms. Or, rather, one could offer a rational defence of non-human well-being, and claim that an animal's interest in avoiding pain is equivalent to and is not trumped by a human being's interest in avoiding pain. Without doubt, Petrinovich owes us an argument for why some supplementary rational arguments are acceptable, and why others are not.

There remains a further problem with the claim that species membership is ethically relevant. Of all the classes and types of living organisms, why is *species* membership the relevant one? As noted in Chapter 2, we all belong to a wide variety of groups and classes. In light of this, it might be deemed arbitrary to choose species membership as ethically relevant, instead of say biological class, biological order, race, gender or religion.[150] For it is no doubt the case that many of us have closer emotional bonds to some of these groups than to our species.

Putting the boot on the other foot also highlights the difficulty with claiming that it is justifiable to favour the interests of one's own species. In effect, the argument states that it would be legitimate for an alien species to experiment on human beings in order to further its own interests. I do not believe that this is a morally acceptable conclusion. Indeed, the example works well to highlight the fundamental prejudice inherent in theories that favour the interests of one's own group: they end up favouring the strong at the expense of the vulnerable.

In conclusion, the position that species membership is ethically relevant as outlined by Petrinovich fails. Claiming membership of a similar species is simply not enough to justify granting extra weight to human interests. If subordinating an animal's interest in avoiding pain is to be justified, a morally relevant difference between humans and animals must be proposed. Perhaps, for example, human life is worth more. This is the issue to which I turn in the next section.

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[149] Ibid., p. 238.
[150] See Hugh LaFollette and Niall Shanks, *Brute Science,* p. 229.

5.2.3 Human Life is Worth More than Animal Life

Many philosophers seem to accept the claim that human lives are worth more than animal lives. Perhaps then, an animal's interest in avoiding pain can be overridden in order to protect human lives, because of the simple fact that human lives are worth more. To make the claim stand up to scrutiny, it is necessary to point to those particular characteristics that humans possess that make their lives more valuable. This section examines one such attempt to do this.

Bonnie Steinbock has proposed that animal experimentation is justified, and bases her argument on the fact that humans are morally autonomous, whereas animals are not:

> Both rats and human beings dislike pain, and so we have a *prima facie* reason not to inflict pain on either. But if we can free human beings from crippling diseases, pain and death through experimentation which involves making animals suffer, and if this is the only way to achieve such results, then I think that such experimentation is justified because human lives are more valuable than animal lives.[151]

Immediately, however, a problem becomes obvious. For as I have argued elsewhere, the capacities for autonomy and moral agency are not possessed by all human beings. So do human non-persons such as newborn infants and the mentally disabled also have less valuable lives, making painful experiments on them permissible?[152] Steinbock addresses this problem directly and argues that it is not justifiable to experiment on such humans. On her view, humans that lack moral autonomy cannot survive in the world without our special care, whereas non-human animals survive very well despite having fewer capacities than ordinary humans. Because of this difference, Steinbock argues that it is justifiable to experiment on animals but not on so-called 'marginal humans'.[153] However, even if we concede the premise that there is this difference between non-human animals and non-autonomous humans, it does not appear to lead to the conclusion Steinbock wants it to. What is needed, but not provided, is a case to be made for the moral relevance of being able to survive with or without special care. After all, and as Angus Taylor points out, Steinbock first wanted to subordinate the interests of

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[151] Bonnie Steinbock, "Speciesism and the Idea of Equality", *Philosophy,* Vol. 53, No. 204, April, 1978: 247-256, pp. 253-254.

[152] The claim that we should treat non-humans and humans with similar capacities in the same way is often called, 'the argument from marginal cases'. See Daniel Dombrowski, *Babies and Beasts: The Argument from Marginal Cases,* (Urbana: Illinois University Press, 1997).

[153] Bonnie Steinbock, "Speciesism and the Idea of Equality", p. 255.

animals because of the fact that they possess fewer capacities than humans, and yet now she wants to subordinate them because they possess greater capacities.[154]

In reality, Steinbock's argument concerning special care is a red herring. Her fundamental argument for why we should experiment on animals but not on humans essentially comes down once again to the assumption that species membership is ethically relevant. Her real argument is based on our ability to identify with members of our own species and to empathise with others. She writes that:

> ...when we consider the severely retarded, we think, "That could be me." It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey.[155]

It is hard to know what to make of such an argument. Importantly, *why* does it make sense to think that one might have been born retarded, but not to think that one might have been born a monkey? Surely considering being born as someone or something else are equally far-fetched imaginative flights of fancy. In any case, determining whether lives are more valuable than others solely on our capacity for empathy with them is both dubious and dangerous. As pointed out above, people have variously strong sympathies with different groups: does this mean that the suffering of our fellow nationals, religious believers or gender counts more in each case?

Of course, Steinbock's overall thesis could be bolstered to circumvent such arguments, even if at the cost of intuitive plausibility. That is to say, she could claim that *all* non-persons' interests can be subordinated, whether human or not. After all, every single non-person lacks the capacity for autonomy, and so, according to Steinbock, possesses a less valuable life. So, she might bite the bullet and claim that animals, babies, and the severely mentally disabled can all be painfully experimented upon for the sake of persons.[156] While abhorrent to our intuitions, this position is at least consistent and must be considered.

In order to tackle this proposal it is necessary to take a closer look at the suggestion that persons' lives are more valuable than non-persons' lives. *Why* do the capacities of personhood make the lives of persons more valuable? Clearly the claim is not that persons' lives are *prudentially* more valuable: that is, more valuable to the individuals themselves. For clearly neither a baby nor a pig are concerned that they do not have

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[154] Angus Taylor, *Animals and Ethics*, p. 127.
[155] Bonnie Steinbock, "Speciesism and the Idea of Equality", p. 255.
[156] Of course, I should make it absolutely clear that Steinbock does not and has not made such an argument.

the capacity for moral action. The life of a happy pig is just as valuable to a pig, as the life of a happy human is valuable to a human.

Instead, the claim is that persons' lives are *inherently* more valuable. Persons can write books, worship gods, build monuments, create beautiful works of art, discuss the past, consider the future, act righteously and so on. Such capacities, so the argument runs, are intrinsically more valuable than non-persons' capacities. For while non-persons can feel pain, desire food, take shelter, flee from danger and so on, such capacities, it might be claimed, are of a different and lower order. The argument then seems to be that the capacities of persons are inherently more worthwhile than those of non-persons, and thus that their lives are also of more value.

However, there are two clear problems with such an argument. First of all, the claim that the capacities of personhood make persons' lives inherently more valuable than those of non-persons is extremely dubious. While we can readily acknowledge that the capacities of persons are remarkable, it is unclear to me that they are necessarily more valuable. Without doubt, persons can write books, build monuments, act righteously and so on; but they can also wage wars, destroy environments, enact genocide and act in other terrible ways. It is surely doubtful that a person's capacity to act sadistically is inherently more valuable than a whale's capacity to use echolocation. However, perhaps the rejoinder would be that even an immoral person has the capacity for choice. Such autonomy, so the argument would go, *necessarily* leads to a richer, fuller and thus more valuable life than that which a non-person is capable of.

But even if we accept this, there remains a further problem with this overall line of argument. If we claim that individual lives can be rated as more or less valuable depending on the richness of their lives, we must also apply such reasoning to persons themselves. After all, different persons have different levels of richness in their lives. For example, imagine two individuals, Bill and George. Bill has a fairly nervous disposition and leads a blinkered life of routine in a mundane job. George, on the other hand, has an outgoing disposition and leads a spontaneous life, seizing any opportunity that comes his way. I think we can say, and with little controversy, that George's life is richer than Bill's. For while both share the basic capacity for an autonomous existence, George is much more able to *exercise and realise* such autonomous capacities. But surely we cannot reasonably claim that George's life is inherently more valuable than Bill's. And even if we did want to make this bizarre claim, I cannot think of anyone who

would deem it legitimate to sacrifice Bill's interests for the sake of George.[157] And yet, in effect, this is the logic of the 'more valuable life argument'. If non-persons' interests can be sacrificed for the sake of persons because the former have lives that are less valuable, there seems to be no good reason why the interests of persons with less valuable lives should not also be sacrificed. However, the conclusion that the weak and dull can justifiably be exploited for the benefit of the strong and vibrant is not one that I am prepared to endorse.

To conclude this long section, I wish to end with the claim that animals have a moral right not to be subjected to painful experimentation. The interest that animals have in avoiding pain is fundamental to their well-being. If we are to take animal well-being seriously, as I have suggested we should, then those who claim that we can subordinate animal interests by conducting painful experimentation on them need to provide convincing arguments to support their case. However, none of the arguments presented by proponents of animal experimentation do the work that their advocates want them to. If our primary moral injunction were medical progress, painful and coercive experimentation on human beings would be legitimate. If we consider it legitimate to favour our own species at the expense of others, we must ask whether it is also legitimate to favour our own biological class, race, gender, religion and so on. Finally, if we consider humans to possess inherently more valuable lives than non-humans, and that the latter's interests can legitimately be sacrificed for the former's, we must also face up to the fact that not all human lives are equally valuable. But do we want to endorse the idea that some humans' interests can be sacrificed for the sake of other humans with supposedly more valuable lives? I for one, do not. In sum then, the non-human animal interest in avoiding pain is sufficient to impose a duty upon us not to subject sentient creatures to painful experimentation.

5.3 A Right Not to Be Killed by Experimentation?

If animals have a right not to be subjected to painful experimentation, it might seem fairly obvious that they also have a right not to be killed by experimentation. However, upon reflection this is by no means obvious at all. First of all, one can conceive of experiments whereby animals are anaesthetised, experimented upon and then killed

[157] Nazis, social Darwinists and followers of Nietzsche might well endorse such a sacrifice. Happily, I personally do not know any such people.

painlessly. That is to say, not all experiments that end in death need also involve pain. Secondly, the interest that an animal has in avoiding pain is clearly different to the interest that an animal has in continued life. In fact, while the animal's interest in avoiding pain is relatively clear - especially given the hedonistic account of animal well-being that I have presented - there are question marks over whether animals even possess an interest in continued life. In light of this, in order to ascertain whether animals have a right not to be killed by experimentation, we must first ask whether they even have an interest in continued life. For if animals don't possess such an interest, they cannot possess the corresponding moral right.

5.3.1 Do Animals Have an Interest in Continued Life?

Some might argue that if causing animals to suffer harms them (as I have claimed) then so too does killing them. Such a judgement would presumably be based on the assumption that being killed is a greater misfortune than being made to suffer. However, the claim that an entity has an interest in not suffering does not entail that it also has an interest in continued life; nor can we take it for granted that death is a greater misfortune than suffering. In fact, there is one obvious and important difference between death and suffering: it feels like something for an animal to be in pain, while it clearly does not feel like anything for an animal (or anyone else) to be dead. This considerable difference between suffering and being dead is, I think, reason enough to warrant a separate justification for the claim that animals have an interest in continued life.

I should point out that in the discussion that follows I will be considering *painless* death and killing. For it is clear from my argument above that a painful death harms an animal, since animals have an interest in avoiding pain. However, I am concerned here with assessing whether death and killing are *in themselves* harmful to animals.

As a reminder, I have argued that interests are components of well-being, and that animals' lives go well when they have more pleasurable experiences than painful ones. In light of these considerations, do animals' lives go better when their lives will continue? I wish to claim that often, when assessing the well-being of individuals, we use what might be called an 'immediate' understanding of well-being. That is to say, we judge the well-being of an entity as it currently stands. For example, to assess whether a dog's life is going well or badly for him, we try to determine how he feels at the moment; we add up and evaluate those things that affect the animal's life as it now stands. Indeed, it would usually be odd to judge a dog's well-being by things that might or might not

happen to him at some point in the future, or by reference to events in his past. For example, a dog may have been treated cruelly in his past, and may suffer from some disease in the future, but if the dog is currently fit, healthy and happy then it makes sense to say that his life is going well.

If we use this so-called immediate understanding of well-being, it remains unclear in what way continued life improves the quality of life of animals. After all, it is extremely doubtful that animals' lives are presently made better by the fact that they might have pleasant experiences in the future. This is because most animals have weak psychological continuity with their future selves, and are unable to conceive of themselves having pleasant experiences in the future. Of course, a dog may desire to go for a walk in the future. A dog will surely even have some understanding that my going to get the lead means that a walk is on its way. However, none of this entails that the dog can conceive of herself enjoying this walk in the future. The dog cannot put herself in the future in the way that a self-conscious entity is able to. Since non-persons cannot conceive of themselves in the future in this way, it is difficult to see how the prospect of continued life makes life immediately better for animals. Thus we might conclude that continued life does not contribute to the immediate quality of life of animals and is thus not in their interests.

However, this is not the only way to judge quality of life. It is also possible to judge well-being in an 'overall' sense, measuring well-being in terms of the overall life of an individual. For example, it is often difficult to get domestic cats to take medicine that the vet has provided for them. Indeed, often it is necessary to hold them and force the medicine down their throats. Without doubt, such a process causes the animal some distress, and it would be reasonable to conclude that at that moment a cat's immediate well-being is reduced. However, most of us consider that it is perfectly permissible and even proper that we make the cat suffer in this way in order to increase her *overall* well-being, making her life better in the long-term.

This overall sense of well-being measures the quality of life of an individual by the total amount of good in a life. I have argued that the good in animals' lives are pleasant experiences. It thus seems reasonable to claim that an animal has more well-being overall in a life the more pleasurable experiences she has in that life. Importantly, it is clear that when an animal dies or is killed, the amount of possible good in her life is ended. We can thus conclude that ordinarily animals have an interest in continued life in

order that they may have more pleasant experiences and greater overall well-being in their lives.[158]

5.3.2 The Strength of the Interest in Continued Life

Many animal rights proponents share my conclusion that sentient animals have an interest in continued life. In similar arguments to my own, such philosophers tend to argue that death harms animals because it forecloses animals' opportunities for future valuable experiences.[159] However, most of these philosophers regard the interest in continued life as one of the strongest that animals' possess. Thus, the move from interest to moral right to life would be easy for such philosophers to make. But is the animal interest in continued life as strong as such philosophers tend to assume?

Earlier in the chapter I argued that the interest that animals have in avoiding pain is sufficient to ground a right in animals not to be made to suffer. Indeed, the interest that animals have in avoiding suffering is extremely similar to – but not necessarily equivalent to – the human interest in avoiding suffering. However, the foundation and strength of the human interest in continued life is quite different to that of non-humans. To explain, remember that an animal's interest in continued life is founded on an overall assessment of the individual's quality of life. Now the same is true of humans: overall, my life will be better the more valuable experiences I have over its course. However, there are at least two other factors that contribute to the value of continued life for human persons. First of all, continued life contributes to most humans' *immediate* well-being. For example, it makes me now happy to think of my plans for this coming weekend and the visit of some friends. I can imagine being with my friends and having a good time, and such a thought makes me happy now. As argued above, putting oneself in the future like this is unavailable to non-human animals, and thus does not contribute to their interest in continued life. Secondly, as a person, I have certain aims, desires, projects and goals. Continued life provides me with the opportunity to pursue such ambitions, change them, and hopefully eventually to realise them. Again, as non-persons, animals do not possess such goals, let alone the ability to reflect on or realise them. Thus animals' interest in continued life is not supported by life's contribution to the shaping and

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[158] Of course, the other side of this means that if animals have no prospect for pleasant experiences, for example because of some illness, they have no interest in continued life. For more on this, see my discussion of euthanasia in Chapter 7.

[159] This view is put forward by David DeGrazia, *Animal Rights – a Very Short Introduction,* pp. 59-64; Bernard E. Rollin, *Animal Rights and Human Morality,* p. 86; and S.F. Sapontzis, *Morals, Reason and Animals*, p. 169.

fulfilment of goals. From all this we can see that continued life is of more value to a person than to an animal. Perhaps then, we can say that an animal's interest in continued life is weaker than that of persons.

However, we must remember that the value to the individual is not the sole determining factor of the strength of an interest, the level of psychological continuity between the individual now and when the goods will occur is also relevant. This provides a further reason to consider the animal interest in continued life to be weaker than that of human persons. For unlike the absence of suffering, continued life necessarily relates to a future good. And since, animals have lower levels of psychological continuity with their future selves, their interest in that future good is weaker. In sum then, while we can recognise that animals possess an interest in continued life based on the overall amount of good in their lives, we must recognise that such an interest at any particular time is weaker than that of human persons, since the connection between the animal now and when those goods will occur is weaker.

5.3.3 A Moral Right Not to Be Killed by Experimentation?

So what does all this mean for an animal's putative right not to be killed by experimentation? Remember that in order to possess a right an animal's interest must be sufficiently important to impose a duty upon us. Perhaps because an animal's interest in continued life is only weak, it is insufficient to impose a duty on us not to kill them. However, to make such a claim would be a step too far. After all, the interest that animals have in continued life exists and cannot simply be ignored. Moreover, in some circumstances there may be an absence of competing interests, providing good grounds for acknowledging an animal's right to life. For example, my cat's interest in continued life certainly seems sufficient to ground a duty in me not to kill him. So there seems to be good grounds for acknowledging sentient animals' *prima facie* right to life.

However, we must remember that if an animal's interest in continued life is weak, then the basis of its subsequent right to life is also weak. Thus it might be proper not to assign it in cases where there are sufficiently strong and pressing competing interests at stake. Some would argue that the case of therapeutic animal experimentation is one context in which such sufficiently strong and pressing interests exist. For while it might be acknowledged that the interest we have in cosmetics or detergents is insufficient to trump the animal interest in continued life, the interests that are promoted by *therapeutic* experimentation, such as basic human health, are sufficiently strong.

Unfortunately, there is a serious problem with this line of argument. An animal's interest in continued life is weak because animals are non-persons: they do not have goals and projects to pursue, and they have weak psychological continuity with their future selves. But as has been mentioned many times before, there are also human non-persons who lack these capacities. So, human babies and the severely mentally disabled, like animals, must only have a weak interest in continued life. However, in spite of this weakness, most of us regard the interest of human babies and the mentally disabled in continued life to be sufficiently strong to ground a right not to be killed, even in situations where great benefits could be gained from killing them.[160] If we follow the principle that I proposed in Chapter 3, that we judge the strength and sufficiency of an interest on its own merits, it appears that if we grant this right to human babies and the mentally disabled, we should also grant it to animals.

Before accepting this conclusion, however, we must consider two alternative proposals. First, we could simply conclude that it is permissible to conduct painless but deadly experiments on *both* animals and human non-persons. However, even utilitarians, aiming to maximise overall welfare balk from embracing such conclusions.[161] Here, I believe is a situation where we have a considered judgement that is so strong that it stands in the way of going down this path. Alternatively then, we could try to build a case supporting the idea that human non-persons have a *greater* interest in continued life than animals do. If we establish this, it will be just a short step to arguing that this human interest is sufficient to impose on us a duty not to kill them, while that of animals is not.

One way of constructing such an argument is to return to the account of the relevant factors in determining the strength of an interest. You will recall that part of the strength of an interest depends on the levels of psychological connectedness between the individual now and the individual later when the goods will occur, and part depends on the value of the good for the individual in question. However, Jeff McMahan presents this latter factor in a slightly different way. He claims that the second determinant of the

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[160] For a notable exception concerning human infants (but based on desires rather than interests) see Michael Tooley, "Abortion and Infanticide" in Peter Singer (ed.), *Applied Ethics,* (Oxford: Oxford University Press, 1986).

[161] R.G. Frey has faced up to the possibility of using human (and animal) non-persons in medical experiments based on the potential benefits to human persons. See his contribution in R.G. Frey and Sir William Paton, "Vivisection, Morals and Medicine: An Exchange" in Helga Kushe and Peter Singer (eds.), *Bioethics: An Anthology,* (Oxford: Blackwell Publishers, 2002). However, he categorically rejects the use of humans in R.G. Frey, "Animals" in Hugh LaFollette (ed.), *The Oxford Handbook of Practical Ethics,* (Oxford: Oxford University Press, 2005).

strength of an interest is the 'net amount of good' that will occur from the satisfaction of that interest.[162] In keeping with this account, many would make the reasonable claim that the net amount of good a human non-person will receive from future life will be greater than that which an animal will receive. As mentioned above, the added richness of experience that human beings are capable of could be pointed to as evidence of this greater level of good. For example, McMahan himself writes:

> Because of their limited cognitive and emotional capacities, most animals lack the capacity for many of the forms of experience and action that give the lives of persons their special richness and meaning, and without which our lives would be greatly impoverished.[163]

In this way then, one might claim that the interest of human non-persons in continued life is greater than that of non-humans. In turn, perhaps human non-persons have a right not to be killed by therapeutic experimentation, but non-humans do not.

Unfortunately, this 'extra goodness' argument has some important problems. First, it assumes that *all* human non-persons' lives will be capable of such richness in the future. However, while most babies and infants will come to have such capacities, those with permanent mental disabilities and those with degenerative conditions will not. The logic of this extra goodness argument thus concludes that the interest in continued life of human non-persons with permanent or degenerative disabilities is insufficient to ground a duty in us not to kill them in therapeutic experiments. This jars against our considered judgements and is a very unappealing conclusion.

However, I think there is another problem with the extra goodness argument that does not rely on an appeal to our intuitions. For when we talk about the 'net amount of good' in a life, this raises the question, good for whom? In McMahan's account, when determining the strength of an interest the value of the good *for the individual whose life it is* does not matter, all that matters is that there is 'more net good'. But this takes us away from the notion of interests and well-being as prudential values. If, as I have claimed, the interests of an individual relate to how well life goes for the individual whose life it is, then an interest must only be stronger if it relates to a good that is of more value *for that individual.*

For example, a baby usually has the opportunity to realise more good through continued life than a dog. The baby will grow to be able to act morally, have loving

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[162] Jeff McMahan, *The Ethics of Killing*, p. 233.
[163] Ibid., p. 195.

relationships, worship gods, write poetry, appreciate art and so on. A dog, on the other hand, while able to realise some goods, such as eating, exercising, companionship and so on, will produce 'less net good' compared to the human. These goods, we might concede for the sake of argument, are straightforwardly less valuable than those of the human. However, none of this says anything about the value of these goods *for* the human and the dog. The goods the dog receives may be less valuable than those of the human, but the value of these goods *for* the dog will be just the same as the value of the other goods are *for* the human. After all, both the dog and human have lives that can go well or badly, so each possesses from their point of view, an equivalent stake that they go well. If interests relate to how life goes *for* the individual whose life it is, the fact that babies can produce more net good does not by itself make their interest in continued life any stronger.

In conclusion, non-human animals possess a moral right not to be killed by experimentation. I have argued that most animals have an interest in continued life, albeit a weaker one than that of persons. However, the relative weakness of that interest does not mean that it can be thwarted without good reason. Of course, many would regard the benefits of experimentation for persons to be a sufficiently good reason to override this interest. But we do not think the same with regards to human babies and the mentally disabled. That is to say, most of share the considered judgement that the interest of human non-persons in continued life is still strong enough to ground in them a right not to be killed in therapeutic experiments. If we want to hold on to this judgement, to be consistent, we must also accept that animals have a moral right not to be killed by experimentation.

5.4 A Right Not to Be Used in Experimentation?

So far I have argued that animals' interests in not suffering pain and in not being killed are both sufficient to ground in us a duty not to conduct experiments on animals that cause pain or result in death. However, perhaps animals have a more general interest in not being experimented upon: perhaps animals have an interest in not being *used* in experimentation. Such an interest would be founded upon the more general interest animals might have in *being free.* The claim that animals have an interest in being free can take one of two forms, each relative to the particular conception of freedom that is used. First, one might take a negative conception of freedom, and argue that animals

have an interest in not being interfered with. Alternatively, one might take a positive conception of freedom and argue that animals have an interest in being in control of their own lives.[164] Whichever conception of freedom is adopted, it is clear that experimenting on animals imposes on that freedom, because it both interferes with them and inhibits their ability to control their own lives. Importantly, if animals do have an interest in freedom, and if that interest is sufficient to ground a duty in us not to impose on their freedom, then we can say that *all* forms of experimentation on animals are morally illegitimate. For even if an experiment causes an animal no pain and does not result in death, we can be almost certain that by using an animal in an experiment we are *necessarily* interfering with the animal and inhibiting that individual's ability to control his own life.[165] Thus it is imperative to discover at the outset whether animals do have this interest in freedom.

5.4.1 Do Animals Have an Interest in Negative Freedom?

When philosophers talk of negative freedom they are referring to those times when we consider individuals to be free from constraints and interference.[166] Without doubt, there are numerous ways in which experimentation interferes with an animal. First of all, an experiment might involve removing an animal from his natural habitat in order to take him to the laboratory for experimentation. This is a clear and obvious case of interference. However, it also makes sense to say that those animals that are bred in captivity for experimentation are interfered with and constrained. Being held in cages is

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[164] The notion that animals have an interest in freedom – however it is construed – is pervasive in the animal rights literature. For examples see, Paul W. Taylor, *Respect for Nature: A Theory of Environmental Ethics*, pp. 106-108; Bernard E. Rollin, *The Unheeded Cry: Animal Consciousness, Animal Pain and Science,* (Oxford: Oxford University Press, 1989), pp. 173 and p. 203; Bernard E. Rollin, *Animal Rights and Human Morality,* p. 90; Evelyn B. Pluhar, *The Moral Significance of Human and Nonhuman Animals*, pp. 248-249; Paola Cavalieri, *The Animal Question*, pp. 88 and p. 138; Dale Jamieson, "Against Zoos" and "Zoos Revisited" in *Morality's Progress: Essays on Humans, Other Animals, and the Rest of Nature,* (Oxford: Oxford University Press, 2002), pp. 167 and pp. 179-180; Tom Regan, *The Case for Animal Rights*, pp. 92 and pp. 97-98; Elizabeth Anderson, "Animal Rights and the Values of Nonhuman Life" in Cass R. Sunstein and Martha C. Nussbaum (eds.) *Animal Rights: Current Debates and New Directions*, pp. 283-284; and Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, p. 345. David DeGrazia also explicitly recognises this interest, but in my opinion is more equivocal. See David DeGrazia, *Taking Animals Seriously,* pp. 233-234. Peter Singer claims that animals' interests are exhausted by their preferences; hence liberty may or may not be in their interests. See Peter Singer, *Practical Ethics,* p. 13.

[165] I say *almost* certain because it is conceivable that an 'experiment' could be conducted that simply involved observing the animal in its natural environment without interference. Whether such fieldwork should properly be referred to as an experiment, I do not know.

[166] For the classic exposition of the distinction between negative and positive liberty see, Isaiah Berlin, "Two Concepts of Liberty", in Anthony Quinton (ed.), *Political Philosophy.*

a fairly obvious form of constraint, while being injected or force fed are clear cases of interference. What needs to be considered is whether this interference necessarily harms animals.

A difficulty in answering this question relates to the fact that these interferences and constraints almost always involve suffering. For example, taking animals from their natural habitat is usually traumatic for both the animals involved and often – if they are social animals – those animals that are left behind. Keeping animals in cages can inhibit movement, causing cramp and sores, as well as boredom, frustration and other forms of suffering. Finally, forcing animals to take particular substances by injection or other means will often be distressing for the animal subjects. So while we can say that in these examples the animals are being harmed by being interfered with and by being constrained, this is based on their fundamental interest in not suffering. To discover whether interference and constraint are *in themselves* harmful to animals, we need to consider those instances when such impositions do not involve the infliction of pain.

To help us ascertain whether interference and constraint are in themselves harmful to animals, it will be useful to look at why interference on human persons is usually considered harmful, and to see if the same applies to animals. By way of an example, imagine experimenting on a human person against her will. As we have discussed above, most of us consider such an experiment to be morally illegitimate. However, imagine that the individual is drugged so that she is caused no pain by the experiment and will have no memory of it (perhaps she is anaesthetised without her knowledge while asleep). Finally, suppose that we can somehow guarantee that the experiment will not affect that individual's health in any way throughout the remainder of her life. Even with these provisos, most of us still regard this experiment to be morally wrong. And I believe that such a judgement is correct. The reason why this experiment would be wrong comes down to the fact that human persons have an interest in leading freely chosen lives, as autonomous beings. As I argued in Chapter 3, the well-being of persons depends on the existence of core capabilities in order to pursue a freely chosen life. Clearly, using individuals in non-consensual experimentation, even when it causes no suffering or distress, violates this interest of human persons.

However, the same is *not* true with regard to most non-human animals. As I have argued previously, animals lack the capacity for autonomy: the ability to frame, revise and pursue a conception of the good. Because of this, animals have no interest in leading freely-chosen lives. Rather, what matters to their well-being is that they have

good experiences. In light of this, interfering with, constraining and using animals do not *in themselves* harm animals. Interfering with an animal does not violate that animal's autonomy, simply because the animal lacks the capacity for autonomy. This, of course, has important implications for using animals in experiments. If an animal born in captivity is drugged and anaesthetised, experimented upon painlessly and without being killed, then that animal's well-being is not affected. Thus such an experiment can be deemed to be harmless.

5.4.2 Do Animals Have an Interest in Positive Freedom?

I have concluded above that animals do not have an interest in avoiding interference. This is based on the fact that they are not autonomous beings and do not possess an interest in leading a freely chosen life. In light of this, the question of an animal's interest in positive freedom – being in control of one's own life – might seem obvious. That is to say, if animals are not autonomous beings, it would be extremely unlikely that they have an interest in being in control of their own lives. However, a slightly different understanding of positive freedom is often put forward in relation to animals, and is worth considering. This understanding of positive freedom is less about individuals having control of their own lives, but about individuals being able to exercise their natural capacities.

Indeed, other proponents of animal rights refute much of what I have said so far with regards to animal well-being. They claim that a purely hedonistic account of animal well-being as put forward in this thesis is naïve. Non-human animals, these thinkers suggest, have interests not just in avoiding pain and seeking pleasure, but also in exercising their natural capacities. Being used for experiments in a laboratory necessarily harms animals, so the argument goes, because such use violates the animals' ability to exercise their natural capacities. Thus, the human use of animals, whereby animals are held in captivity and kept in conditions in which they cannot act naturally, is deemed to be wrong, even when they do not suffer pain.

Interestingly, one such argument has been put forward by Paul W. Taylor whom we encountered in Chapter 2, in the discussion over whether living things, such a plants and trees, have lives that can go well or badly for themselves. Taylor argues that one plausible way of understanding freedom is as the ability to pursue one's ends. Moreover, although animals (and other living things) lack autonomy and so cannot choose their own ends, they nevertheless have their own biological ends which are

valuable to them. Being free to pursue these ends, according to Taylor, is thus in the interests of animals.[167]

One problem with this argument, I believe, is determining what the biological ends of animals are. For example, what are the biological ends of an individual kangaroo? This is a hugely difficult question and poses an enormous problem for Taylor's argument. However, for the sake of argument, it might be useful to concede some ground. After all, one reasonable proposal as to the biological end of kangaroos is that they are gene replicators; thus a kangaroo's end might be to produce as many healthy offspring as possible. However, does this explain why it would harm a kangaroo to keep him in captivity or to use him for certain purposes? Unfortunately, it does not. For it would be quite possible to allow a kangaroo to breed while in captivity or while being used for some other purpose. Indeed, keeping the animal in captivity might allow for an increased opportunity for the kangaroo to fulfil his ends, by facilitating breeding programmes and engineering conditions so that his offspring have good survival chances.[168]

The more important problem with this argument over biological ends, however, is that it imposes aesthetic and perfectionist judgements on what makes animals' lives go well. For example, many of us find it distasteful to keep animals in captivity, and many of us prefer to see animals in their natural habitats; but that does not mean that living in their natural habitats contributes to the quality of life for animals themselves. It is simply a mistake to regard that individuals' lives *necessarily* go better when they fulfil their biological ends. As I argued in Chapter 3, an animal may be a better specimen of her kind if she engages in species traits like fighting with her rivals. However, if such fighting leads to painful injury, it is unclear how such fighting makes life better for the individual whose life it is. Animals are complex, phenomenally conscious creatures, but they are not autonomous in the way I have defined it. It thus remains something of a mystery as to why animals can be said to have an interest in positive (or negative) freedom for its own sake. Those who believe that freedom itself is a component of the well-being of animals must show that non-human animals are autonomous agents.

Of course, some philosophers have argued that sentient animals *are* autonomous agents, and thus do have an interest in liberty. For example, Tom Regan has argued

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[167] Paul W. Taylor, *Respect for Nature,* pp. 106-109.

[168] Of course such policies are pursued in many zoos and wildlife parks around the world. Rare species are taken into captivity and bred, in the hope that the resultant offspring will have a better chance of survival.

that the definition of autonomy that I give (the ability to frame, revise and pursue a conception of the good) is not the only legitimate one. In fact, he labels my definition of autonomy as 'Kantian', and contrasts it with what he calls, 'preference autonomy'. Regan argues that this latter type of autonomy resides in all those creatures who have preferences, and who are able to act in order to attempt to satisfy them.[169] However, even if we accept this alternative understanding of autonomy, it does not warrant recognising an intrinsic interest in liberty for those who have it. After all, animals are perfectly able to act in order to satisfy their preferences even when they are unfree. For example, consider an animal in a well-run wildlife park, who has all of his desires met: he has no desire to leave the park and has his desires for food, company, stimulation, sex and the like all satisfied.[170] Clearly this animal is unfree, and yet he is also able to exercise his 'preference autonomy'. However, as I argue above, the case is quite different for humans (or to be more accurate, persons): being unfree *necessarily* violates Kantian autonomy.

Of course, I should make it explicit that none of this suggests that holding animals in captivity or preventing them from exercising their natural capacities is always harmless. As I have pointed out above, such activities will often cause great suffering and distress. And this is certainly true of the practices carried out currently in animal experimentation. But it is important to bear in mind that this harm is caused by the pain inflicted, and not by the lack of freedom itself. Most animals are not autonomous beings with interests in leading freely chosen lives; they are creatures whose lives can better or worse based on their capacity for sentience. This means that any animal that is used or kept by humans should not be made to suffer. It does not mean that each and every animal kept or used by humans is harmed.

5.4.3 Human Non-Persons, Freedom and Experimentation

Of course, if animals do not have an interest in freedom because they are not autonomous creatures, the same must also be true of human beings who lack autonomy. Thus we can conclude that human non-persons such as babies and the mentally disabled have no interest in freedom and thus have no interest in not being

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[169] Tom Regan, *The Case for Animal Rights,* p. 84. Similar arguments emphasising the importance of this kind of agency are put forward by Evelyn B. Pluhar, *The Moral Significance of Human and Nonhuman Animals,* pp. 248-249; and Paola Cavalieri, *The Animal Question,* pp. 137-138.

[170] This example is inspired by a similar one given in David DeGrazia, *Animal Rights – a Very Short Introduction,* p. 55.

used in experimentation that is painless and which does not result in death. In other words, such forms of experimentation on human babies and the mentally disabled must also be morally legitimate.

While such a conclusion might at first sight seem odd, I do believe that it is valid. The first thing to make clear is the fact that such human experimentation would *rarely* be morally permissible. Human non-persons are usually part of families who have close ties of love and affection to them. They also usually have guardians or carers who have their own stake in how life goes for the individual. Clearly, if such individuals do not want their loved ones to be experimented upon, then those wishes should be taken into account. Secondly, any experimentation that takes place must be in keeping with the well-being of the individual being experimented upon. If an experiment will cause or threaten either immediate or long-term suffering, then it is impermissible, as is experimentation that results in death. So really, all we are talking about here is painless actions that will have no adverse harmful effect on the individual whatsoever.

To those who remain unconvinced by this, and still feel that non-autonomous humans have an interest in freedom, I would point out that we do regularly and uncontroversially impinge upon the freedom of non-autonomous humans. For example, we make children go to school, provide medical care for the incapacitated and deny the severely demented freedom of movement. Of course, it can be legitimately objected that all these examples are for the individuals' own good; experimenting on babies and the severely mentally disabled, on the other hand, will not necessarily benefit those individuals. However, not all of our uncontroversial interferences in the lives of non-autonomous humans confer benefits on them. When we dress children in outfits that we think are attractive or that have been given as gifts, there is no definite benefit to the child. Similarly, when we hold naming ceremonies for children or encourage them to take up hobbies that we ourselves are interested in, this is rarely for the benefit of the children themselves. Also, when we get babies to perform 'tricks' such as pointing to their nose when asked, or saying 'Dada' on command, this is surely for the benefit of adults, rather than the children. Finally, full-time carers will often make whomever they are looking after go and stay with someone else for a few days. This is not for the benefit of the individual with the disability, but to give the carer a break. In all these cases, however, it would be incredibly odd to say that any harm has been inflicted. These practices are perfectly permissible because they are in keeping with what is of value to the individuals in question: they restrict freedom, but they do not cause short or long-term suffering, and they do not inhibit future

development and well-being. Given then that we already treat human non-persons as if they have no interest in freedom, perhaps using them in experiments that cause them absolutely no harm is not quite so unappealing.

In sum, I refute the suggestion that simply by using animals in experimentation we harm them. While I concede that using animals and keeping them in captivity can be wrong, I believe that this can be assessed solely on the basis of whether they are made to suffer or are killed. First of all, animals are not autonomous entities with an interest in leading freely chosen lives without interference. Secondly, arguing that it is in an animal's interests to pursue his natural biological ends poses the enormous problem of discovering what these biological ends are. Moreover, it seems that animals can very successfully pursue what is natural to them in 'artificial' conditions. Since non-human animals do not have an interest in freedom itself, they cannot be said to possess the moral right not to be used in any form of experimentation. However, if this is to be our conclusion with regards to animal non-persons, the same must be true of human non-persons. I believe that such a conclusion is acceptable. For when we consider how few such experiments would take place given family interests, the complete lack of harm that would be administered, and the fact that we regularly interfere with and constrain such individuals currently, out initial concern regarding the proposal subsides.

5.5 Conclusion

In this chapter I have argued that painful experiments on non-human animals and those that end in death are morally illegitimate. Animals possess the moral right not to be subjected to experiments that cause them pain or that end in death. Since the vast majority of animal experiments cause pain and/or end in death we must conclude that most animal experimentation that takes place is morally unacceptable. Animal experimentation as it currently stands is an affront to the clear moral obligations we have to sentient animals. However, this does not necessarily entail an absolutist stance to the issue. Animal experimentation can be justified when animal well-being is respected; and I believe that animal well-being and animal experimentation are not mutually exclusive. If scientists can find ways of experimenting on animals that cause no pain and that do not end in death, then such experiments are permissible.

6. Non-Human Animals and Agriculture

Of all our uses of animals, animal experimentation generates the fiercest debate. However, experimentation does not constitute our greatest use of animals. While 2.9 million animals were used in scientific experiments in the UK in 2005[171], around 913.6 million farm animals were slaughtered in the UK in the same year.[172] While the volume of farm animals slaughtered every year is staggering, it really should be of little surprise. After all, the most regular and direct contact many of us have with animals comes through eating their flesh, their milk and their eggs. In fact, for most people in affluent societies nearly every meal involves the consumption of some kind of animal product. To meet this demand, intensive farming techniques have been developed in order to raise productivity: that is, to extract as much protein out of the animals at as little cost as possible. The lives of intensively farmed poultry and dairy cattle illustrate this well. For example, in order to rear more birds per square metre, battery chickens are often held in cages so small that they cannot even stretch their wingspan. To get more meat from birds, broiler chickens are fed huge amounts to grow quickly and to unnaturally large sizes. Once again, to exploit the space, the birds are usually kept in darkened sheds together with both hundreds if not thousands of other birds (dead and alive) and their excrement. To get as much milk as possible from dairy cows, the cows are artificially inseminated, have their calves removed and are then milked several times a day. They are then inseminated again, milked until before they give birth, have their calves removed, and milked again. This cycle continues until the animals are 'spent' and slaughtered.

While the development of such intensive farming practices has undoubtedly reduced farming costs and resulted in the cheap meat, milk and eggs that so many of us now enjoy, it has undoubtedly come at the cost of animal welfare. For example, the cramped conditions to which poultry are subjected not only leads to the breaking of limbs, but also 'necessitates' the painful process of debeaking. For if the beaks of confined poultry were not trimmed, the cramped conditions would lead them to simply peck each other to death. Additionally, not only does the dairy cow suffer from both her confinement (often

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[171] *Statistics of Scientific Procedures on Living Animals: Great Britain 2005,* (London: HMSO, 2006), p. 6.
[172] This figure comes from combining the statistics from two sources: for slaughtered poultry, National Statistics, "Poultry and Poultrymeat Statistics Notice", 30th November 2006; and for other slaughtered animals, "Slaughterhouse surveys, Defra, SEERAD, DARD (NI)", 23rd November 2006. Both datasets are available from <www.defra.gov.uk>.

she is kept indoors all her life) and the removal of her offspring, but she is also particularly vulnerable to mastisis, an infection of the udder.

For such reasons, many proponents of animal welfare have been campaigning for better conditions for farm animals, and the abolition of so-called 'factory farming'. They favour a return to more traditional farming techniques where animals are given the freedom to move and exercise their natural capacities. At the same time, however, more radical animal rights advocates see animal agriculture as not something that can be 'fixed' by improved welfare legislation. Instead, they see the practice of raising animals for food as in itself morally objectionable. Such groups claim that animal agriculture is necessarily exploitative and will always violate the rights of animals, whether free-range or not.

In this chapter, I will explore the permissibility of animal agriculture. In particular, I intend to examine whether animals have a right not to be raised for food. In so doing, the chapter is divided into four sections. In the first section I return to some of the claims I made regarding animal rights in the previous chapter and apply them to the case of animal agriculture. You will recall that I argued that animals have *prima facie* moral rights not to be killed or made to suffer, but that they have no moral right to liberty. Just what implications does this theory have for animal agriculture? Having argued that it implies that we have an obligation not to make animals suffer and not to kill them for food, in the subsequent sections I examine and rebut three possible objections to such a claim. In the first place, won't resorting to a purely plant-based agriculture actually kill and harm *more* animals? Secondly, since non-human animals in the wild kill and eat one another, why can't we do the same? Finally, how can farm animals be wronged by being raised for use in agriculture, when had they not been raised for use in agriculture, they would never have existed? In the course of refuting this final objection, I also examine the implications of this so-called 'non-identity problem' for the permissibility of genetically modifying farm animals.

6.1 Applying the Rights Theory to Animals in Agriculture

I have claimed that for an individual to have a moral right he or she must have an interest that is sufficient to impose a duty on another. In the previous chapter I claimed that the animal interests in avoiding pain and in continued life were indeed sufficient to ground animal rights not to be killed and made to suffer in experimentation. At the same time, however, I argued that animals have no intrinsic interest in liberty, and thus have

no general moral right not to be used or interfered with by humans. This theory has profound implications for the moral permissibility of animal experimentation as it is currently practised. In this section I will briefly outline the implications of these conclusions for animal agriculture.

6.1.1 Factory Farming

If animals have a moral right not to be made to suffer, much of what we do to animals in intensive farming practices is morally impermissible. While it is true that I have argued that animals have no fundamental interest in liberty, this does not mean that we can confine them and use them in any way that we see fit. In particular, it does not mean that we can subordinate animal well-being in search of increased protein and increased profit. Animals may have no interest in liberty itself, but they do suffer from the confinements of the factory farm. In the introduction to this chapter, I gave examples of the ways in which chickens and dairy cows are intensively farmed. However, these are by no means the only ways in which these animals suffer, nor indeed are they the only types of animal that suffer. To make the point, let us consider the suffering of an intensively reared pig. Pigs are useful to consider not just because so many people enjoy eating them in their sausages and bacon, but also because pigs are widely acknowledged as highly intelligent and social animals. Indeed, in terms of their intelligence and sociability, pigs compare favourably with domestic dogs. Given this, consider the behaviour sometimes evidenced in intensively farmed pigs who are housed indoors all their lives:

> One type of behavioural abnormalities are so-called stereotypies, which are repetitive invariant behaviours, apparently without function. Stereotypies are often thought to develop as strategies to cope with the limited stimuli available in captivity. In pigs stereotypies consist of bar biting, head-weaving, vacuum chewing, tail biting, rooting bare floor, and maintaining dog sitting position in relation to apathy.[173]

Many practices of what has been labelled the 'factory farm' without doubt make animals suffer. From the rights perspective defended in this thesis, such suffering is *prima facie* unacceptable.

However, banning the rearing of animals in such ways will of course lead to the end of cheap meat, milk and eggs. As anyone thoughtful enough to have sought out the free-

[173] Sam Millet et al., "Welfare, performance and meat quality of fattening pigs in alternative housing and management systems: a review", *Journal of the Science of Food and Agriculture,* Vol. 85, No. 5, 15 April 2005: 709-719, p. 710.

range products from the supermarket or local shop will tell you, animal welfare comes at a price. Perhaps then, this price counts against recognising an animal right not to suffer in factory farms. I find this argument unconvincing. Interests cannot be ignored and violated just because they are slightly burdensome. Moreover, animals have a strong interest in not being made to suffer. If living up to one's moral obligations involves having to pay a bit more for one's shopping, then so be it. In any case, it is not obligatory to choose meat, milk or eggs for your meal, and vegetables remain perfectly affordable to most.

6.1.2 Killing Animals for their Flesh

Of course, animals do not just have the right not to be made to suffer under my scheme, they also have a *prima facie* right to life. This has much more radical implications for animal agriculture than a simple end to factory-farming. It means that killing an animal in order to eat that individual's flesh is a rights violation and thus ordinarily morally impermissible. Thus, even if an animal leads a good life under free-range conditions, it is still wrong to kill that animal for food. For as I have argued in Chapter 5, animals have an interest that their lives continue in order that they may have future valuable experiences. Essentially then, if this right to life is grounded, we should stop raising animals in order to kill them and eat their flesh. I wish to examine four common objections that might count against assigning a right to life for farm animals.

First of all, it might be argued that granting such a right would be a gross violation of our fundamental human freedoms. It is often claimed that while some people may want to be vegetarian for whatever reasons, that is up to them. However, to force it on people is to impose a way of life that not everyone accepts. To stop people eating meat, it could be argued, is akin to making people follow the same religion: both are unwarranted infringements upon our liberty. However, this argument fails because it does not understand the purpose of this thesis. I am not outlining a theory of what I think is the good life. Rather, I am delineating a scheme of moral rights and obligations. If one of our obligations is not to kill animals for food, then this is an obligation for all. And yes, of course this limits our freedom, just as our obligation not to kill humans for food limits our freedom.

Secondly, it is sometimes claimed that if we cease killing animals for food, this will mean thousands of people losing their livelihoods. Farmers, farm labourers, slaughtermen, animal feed suppliers, animal transporters, butchers, restaurateurs, pet

food suppliers and the leather industry all face losing their means of making a living. For some, the idea of a complete cessation to the killing of animals for their flesh comes at too great an economic price. In response to this, I think it is only reasonable to concede that there is a price to be paid for shutting down the meat industry. However, there is almost always some kind of cost to be paid for respecting the core interests of individuals, but this cost should not prevent us from following the morally right action. For example, there were economic costs in the abolition of slavery – particularly in the southern states of the USA – but that did not render abolition the wrong course of action. In any case, I am not advocating simply abandoning those that work in the meat industry. As when any industry shuts down, care must be taken to ensure that the process is gradual, that adverse impacts on communities and their families is kept to a minimum, and that sufficient resources are provided for retraining.

Third, it might be objected that we simply must eat meat in order to survive. This objection seems somewhat old-fashioned these days, for as so many lifelong vegetarians have shown, a diet without animal flesh is perfectly healthy. However, it might be countered that this does not answer every situation. For example, some ice-bound people are simply unable to live off a plant-based diet: to survive they need to kill and eat animals.[174] In such extreme cases of survival I think we can concede that the killing and eating of animals is permissible. After all, it is completely unreasonable to expect people to sacrifice themselves in order to respect another's interests. That is why we allow people to harm others in cases of self-defence, for example. However, we must face the fact that the vast majority of us simply do not need to eat meat in order to survive.

The final objection probably lies behind most people's refusal to give up eating meat: that is, the flesh of dead animals tastes nice. This objection is often dismissed by proponents of animal rights out of hand. They argue that our interest in eating the tastiest food is only trivial, whereas the interest that animals have in continued life is one of the most fundamental that they have. However, at first sight, it might appear that my rights theory is more sympathetic to the argument that dead animals taste nice. For in Chapter 5 I recognised that animals have an interest in continued life, but also claimed that it was weaker than that same interest of persons. So perhaps the human interest in eating animals outweighs the animal interest in continued life? Unfortunately it does not.

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[174] David Benatar, "Why the Naïve Argument against Moral Vegetarianism Really is Naïve", *Environmental Values,* Vol. 10, No. 1, Feb. 2001: 103-112, p. 106.

Like other proponents of animal rights, I claim that the human interest in eating animals *is* only trivial, and certainly not a key welfare interest. In contrast, the animal interest in continued life – while weaker than that of persons – *is* fundamental. To explain, human beings can ordinarily lead exceptionally good lives with high levels of well-being without eating meat. Contrary to much popular opinion, vegetarians can even enjoy immense pleasures of the palate. The welfare costs of following a diet without meat are thus extremely low for human beings. Animals however, have a more fundamental interest in staying alive, as this is the only means by which they can actually *lead* good lives through having valuable experiences. The value of life to animals is thus high indeed. Unfortunately then, although the flesh of animals might well taste nice, this does not justify our raising and killing of them for food.

6.1.3 Raising Animals for their Milk and Eggs

It will be remembered of course, that I also claimed in Chapter 5 that animals have no *prima facie* right to freedom. In light of this, animals generally have no moral right not to be used by human beings. Given this then, it might seem that we are under no obligation not to raise animals to enjoy their milk and eggs. I believe that this is the case. However, we should be cautious here. The majority of milk and eggs presently consumed come from animals who suffer terribly. Indeed, I have already outlined some of the pains that are inflicted on intensively raised chickens and dairy cows. Thus if we are to raise animals for their milk and eggs, we must raise them in accordance with their well-being. This will require an end to intensive farming practices, some of which are outlined above, and of course will result in more expensive dairy products.

At this point, many proponents of animal rights will disagree. They argue that veganism is mandatory, and not only because pain is presently inflicted on farmed chickens and dairy cows. The claim is that even in 'ideal' free-range conditions, where animals do not suffer pain and have room to move about outdoors, deliberately raising them, confining them, and extracting food from them is exploitative and undermines their dignity. Furthermore, some would probably point out that the implications of my argument *do not* even lead to vegetarianism. For clearly, if an animal leads a good life and dies of natural causes, my thesis would ordinarily see no wrong in eating the flesh of that animal. Once again, it might be claimed that such a conclusion undermines the dignity of animals.

First of all, I should make it clear that I do accept this implication of my thesis: there is nothing wrong in itself with eating animals who have died naturally. Our obligations to

animals relate to the interests of animals, and interests concern how life goes for the individual whose life it is. If the animal has no life to go well or badly, she has no interests. So while a living animal has a clear and discernible interest in not being killed, a dead animal has no interest in not being eaten (or in anything else). Our obligation is not to kill animals, rather than not to eat them once they are dead.

However, by eating animals do we fail to respect their dignity, as some have suggested? After all, if dead animals have no right not to be eaten, the same must be true for humans. And yet most of us see cannibalism as an affront to human dignity. I say more on the notion of dignity in the next chapter, but I should make it clear now that I am unclear what dignity means. Appeals to dignity are ordinarily invoked when we find something distasteful. For example, in the field of bioethics some regard cloning, genetic engineering and embryonic research as all affronts to human (and sometimes animal) dignity. The point here is not that these practices necessarily violate rights or interests, or cause pain or suffering, but that they somehow violate some higher or natural order. The fact that so many of us feel distaste or disgust when we consider such practices, so the argument goes, is evidence that this order has been wrongfully disrupted and dignity undermined. Similarly, we feel disgust at cannibalism, and this is because it violates human dignity.

Nevertheless, the feeling of distaste by itself cannot be a valid argument for the moral impermissibility of an action. If so, all sorts of bodily functions, sexual practices and bad habits would have to come under censure. But if a feeling of disgust is not sufficient to signal a violation of dignity, then what is? To be truthful, I have no idea. The problem with relying on notions such as dignity rather than interests to formulate our obligations is that dignity is an ethereal quality, and is thus hard to pin down. I might see dignity in the flowering of a plant. Does that mean picking that flower is a violation of dignity and thus wrong? Or have I ascribed dignity where it is not warranted? Without falling back on some intrinsic property of the object in question – such as its interests or welfare - it is difficult to know how to make a case either way. Dignity is simply too vague a concept to be the basis of our moral obligations. But if this is so, since human corpses have no interests, do we do no wrong in eating them? Fortunately, we do not have to rely on the notion of dignity to find good reasons not to make the flesh of dead humans available for consumption. The interests and wishes of the living seem sufficient to do the job: I for one do not want to be eaten after my death, and do not want my friends and relatives to be eaten. In other words, I am happier now for the knowledge that I will not be eaten

once dead, and neither will those close to me. This seems like a good reason to prevent humans from dining on one another. But of course, this argument must cut both ways. If an individual does want to offer his dead body for consumption, I see no wrong done; just as I see no wrong done when people eat dead humans in survival situations.

However, perhaps my argument concerning eating dead animals could be objected to on 'slippery-slope' grounds: eating animals who have died naturally will provide an opportunity to maintain the meat industry, thereby inevitably leading to rights violations. I have to say that I am extremely sceptical that applying my argument would somehow prop up conventional animal farming. A farmer who breeds animals, lets them lead full lives of good quality, and then sells their flesh for food once they have died naturally will not be very profitable. For one thing, just how many of these corpses would be edible? Older animals produce tougher meat, which is why meat animals are slaughtered in the early stages of their life. Moreover, death by 'natural causes' often means death by disease. If this is the case, some flesh may be contaminated and thus inedible. Considering that the farmer would have to spend large sums of money on feeding and sheltering the animals for the whole length of their natural lives without much reward at the end, it would no doubt be more efficient for most to stick to cultivating plant crops. Nevertheless, if an individual does decide to take this route (maybe it would make more sense on a small-holding to feed one's own family), I see no reason why it would necessarily encourage him or others to start violating animals' rights.

In this section I have applied the rights theory of this thesis to the issue of animals in agriculture. I have argued that the rights theory demands that agriculture must change. While I cannot be absolutely certain how this new rights-respecting industry will look, a few things can be said. It will not be permissible to raise animals in ways that cause them to suffer. It will not be permissible to raise animals in order to kill them for their meat. Animals may permissibly be raised for their milk and eggs (and potentially, their corpses) provided that they have a good quality of life. What this means essentially, is that in order to respect animal rights, agriculture will have to focus its attention on the production of crops, and on free-range poultry and dairy animals. While I have examined some initial objections to these proposals, what I regard as three more substantial criticisms are examined in the following sections.

6.2. Animals Killed in the Field

While it might seem obvious that a vegetarian diet does not involve the deaths of animals, unfortunately this is not true. Even if one adopts a purely vegan plant-based diet, animals will still be killed in order that one can eat. This is because many animals – particularly birds, mice and other small rodents – are killed through working the fields. For anyone who has seen a modern harvester in action, this may not be much of a surprise. This fact has raised two specific objections to the idea that we are under a moral obligation to be vegetarian. First of all, one philosopher has argued that to meet everyone's nutritional needs, a crop-only system of agriculture will kill more animals than one in which cattle are also killed. Secondly, it might be argued that if we are under an obligation not to violate the rights of field animals not to be killed, then we will perish. Since this absurd, it is argued that the whole case for vegetarianism is undermined. In this section I discuss and refute both of these objections.

6.2.1 Crop Cultivation and Numbers of Animals Killed

Steven L. Davis has claimed that more animals would be killed by following a vegetarian or vegan diet than following one that involves the consumption of large herbivores as well as plants.[175] Davis compares two agricultural systems: one which involves only the cultivation of crops; and one which involves half crops and half ruminant pasture (e.g. grass-fed cows). Davis argues that tending to the ruminants will involve fewer animal deaths, given that the land devoted to this system does not need to be worked so much. In effect then, Davis claims that if we all switched to a diet whereby both large herbivores and crops were consumed, fewer animals would die than if we switched to a diet of plants only.

What can we make of Davis's argument? In the first instance, it should of course be pointed out that even fewer animals would die if we did not eat those ruminant cattle used for grazing, but only used them for their milk. This rather obvious point seems to lend further weight to my advocacy of lactose-vegetarianism. However, Gaverick Matheny has made a much more devastating objection to Davis's argument. Matheny argues that Davis's comparison of animal deaths rests on a mathematical error:

> Davis mistakenly assumes the two systems – crops only and crops with ruminant-pasture – using the same total amount of land, would feed identical numbers of

[175] Steven L. Davis, "The Least Harm Principle May Require that Humans Consume a Diet Containing Large Herbivores, not a Vegan Diet", *Journal of Agricultural and Environmental Ethics,* Vol. 16, No. 4, 2003: 387-397.

people. In fact, crop and ruminant systems produce different amounts of food per hectare – the two systems would feed different numbers of people.[176]

Matheny's essential point is that one can extract far more protein from a hectare of crops than from a hectare of cattle. Indeed, crop production uses so much less land than ruminant pasture to produce the same amount of protein, that fewer animals would actually be killed by a crop-only system than by a crop and ruminant pasture system. Thus, in actual fact, fewer animals would be killed by the mass adoption of a diet based on plants.

6.2.2 Crop Cultivation and Rights Violations

However, all this still leaves the issue of those animals that are killed in the field. For surely it is the case that field animals have an interest in continued life, just like any other animal. Moreover, I have argued that this interest is sufficient to ground a prima facie moral right in animals not to be killed. Given this, it appears that by working the field to cultivate our crops, we are violating the rights of many animals. Does the rights theory outlined in this thesis demand then that we stop cultivating crops?

The rights theory outlined in this thesis does not demand that we stop producing crops in order to avoid the deaths of animals in the field. We must remember that I have argued that the rights of animals not to suffer and not to be killed are *prima facie.* Thus, we say that the animal interests in avoiding pain and in continued life are *ordinarily* sufficient to ground in us a duty not to cause them pain and not to end their lives. However, whether these interests ground duties in any particular instance depends on a range of factors. For example, in Chapter 5 I evaluated whether the human interest in therapeutic advances trumped the animal interest in not being killed by experimentation. I claimed that it did not, based on the fact that this would be inconsistent with our considered judgement that lethal experiments on non-autonomous humans are impermissible. The circumstances in this context are, of course, quite different. It is certainly true that field animals have an interest in continued life which would be set back if we killed them while cultivating crops. However, we as humans need to eat to survive, and need to cultivate crops in order to survive. In effect then, our interest in continued life clashes with the field animals' interest in continued life. Given the arguments I made in the previous chapter about animals having a weaker interest in continued life than

[176] Gaverick Matheny, "Least Harm: A Defense of Vegetarianism from Steven Davis's Omnivorous Proposal", *Journal of Agricultural and Environmental Ethics,* Vol. 16, No. 5, 2003: 505-511, p. 506.

human persons, it is evident that the field animals' interest in continued life is insufficient to ground in us a duty not to cultivate crops. Quite simply, field animals have no moral right not to be killed by us when we cultivate crops.

To conclude this section I wish to claim that the argument from killings in the field does not undermine the case for vegetarianism. In the first place it is simply false that more animals will die if we adopt a vegetarian or vegan diet. Moreover, given the fact that humans must cultivate crops in order to survive, field animals' interest in continued life is insufficient to ground in them a moral right not to be killed by us when we cultivate crops.

6.3. The Predation Argument

Rather than entering into complex assessments of how many animals are killed in the field, it might be argued that there is a much more straightforward objection to my proposal that we should not kill animals for their flesh. This is simply the point that some animals kill other animals in order to eat, so why shouldn't we? The argument is sometimes put in terms of a supposed *reductio ad absurdum*: if vegetarians are correct and we have an obligation to refrain from killing animals to eat them, then we must also have the seemingly bizarre obligation to prevent predator animals from killing their prey. In this section, I examine the argument from predation by evaluating three common rebuttals that have been put forward by advocates of vegetarianism. First, it has been argued that animals are not moral agents. So it is argued that while we - as humans and moral agents - have an obligation not to kill other animals, we are under no duty to prevent animals from so doing. Second, it is pointed out that predator animals need to kill in order to survive while we do not, making their killings permissible and ours impermissible. And finally, some argue that if we were to interfere with predator-prey relations we would actually end up causing more overall harm to sentient animals. I argue that while the first objection fails, the second and third rebuttals effectively defeat the predation argument against vegetarianism.

6.3.1 Animals Are Not Moral Agents

It is sometimes claimed that there is an important difference between the killing of animals by humans, and the killings perpetrated by predator animals. As moral agents, humans are able to reflect upon and decide on the appropriate moral action. Animals, on the other hand, lack such capacities. Thus, while most humans can be held morally

accountable for the killing they inflict, animals cannot. So the claim is that when we as humans kill animals for food, we are blameworthy and such killing should be prevented; but when animals kill other animals for food, they are not blameworthy and this should not be prevented.

However, this argument suffers from a significant problem. As several thinkers have pointed out, while it seems clear that moral agents cannot be held accountable for their actions, that does not mean to say that we should not prevent them from causing harm to others.[177] To illustrate this point, Peter Alward gives the following example:

> Consider, by way of analogy, a child too young to know the difference between right and wrong, attempting to slit the throat of his sleeping father. If the child succeeded in his attempt, he would have performed a morally wrong act albeit one for which he ought not to be blamed. However, despite the lack of blameworthiness for his act, we would be morally required to prevent the child from slitting his father's throat if we could.[178]

The simple fact that children and animals are not moral agents does not mean that we should prevent them from causing harm. And predator animals do cause harm when they kill their prey: prey animals have an interest that their lives continue. Moreover, if this interest is sufficient to ground a right to life for animals in agriculture and in experimentation, why should it not be sufficient to ground a right for prey animals in the wild? Of course, this putative right to life of prey animals would not be held against their predators: predators are not moral agents, so cannot have moral duties. Rather, it would be held against us: we are moral agents, and can act to prevent their deaths.

So all this seems to suggest that if it is true that we should not kill animals to eat their flesh, then maybe we should also act to prevent predator animals from killing their prey. However, perhaps there is an alternative moral difference between the deaths that humans inflict and the deaths that predator animals inflict.

6.3.2 Killing for Survival and Overall Harm

While the vast majority of humans do not need to kill animals in order to survive, predatory animals do need to kill to stay alive. This, I think, marks an important moral difference between the deaths we inflict upon animals, and those that are caused by predatory animals. One might argue that the killings of predatory animals are

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[177] S.F. Sapontzis, *Morals, Reason, and Animals*, p. 230; and Peter Alward, "The Naïve Argument against Moral Vegetarianism", *Environmental Values,* Vol. 9, No. 1, Feb. 2000: 81-89, p. 83.
[178] Ibid., p. 83.

'necessary', while those of humans are 'unnecessary'. Thus prey animals have a moral right not to be killed by us to be eaten, but have no right not to be killed by predator animals to be eaten.

However, there remains a difficulty with this argument. Dale Jamieson has correctly observed that not *all* the kills enacted by predators on prey animals are strictly necessary.[179] Sometimes predators will kill more animals than they need to survive. Moreover, and as owners of pet cats will testify, in the process of killing, predatory animals will often inflict more pain on an animal than can be deemed necessary for survival. Given this, Jamieson wonders whether it would thus be better if we as humans raised the prey animals, killed them humanely, and then fed them to the predator animals ourselves.

I believe that the vegetarian can resist this conclusion by pointing out that to interfere with the predator-prey relationship would undoubtedly cause more overall harm in the long-term. To avoid the unnecessary harms inflicted on prey animals we would either have to segregate the prey animals as Jamieson considers, or segregate the predator animals. Both options seem impossible in practical terms. Nevertheless, even if we could do either, the impact on the ecosystems in which they reside would be catastrophic. For example, if we were to remove predator animals to avoid the unnecessary harms they inflict, there would be many so-called 'cascade effects'. First of all, many scavenger animals who once fed on the corpses of the prey would suffer and die. Second, the prey animals would become abundant and out-compete other species for the best habitat, again leading to the suffering and death of animals from rival species. Moreover the prey animals might begin to decimate particular plant species. This might deny an important food source to other animals, who again would suffer and die. Such harms are also inevitable if the prey species are segregated: predator animals and scavengers would start to roam miles in the vain search for food; rival species would grow in number and decimate other populations; and the vegetation they once fed on might become abundant, adversely altering the habitat of other species.

Given all this, it is better that we do not interfere with predator-prey relations. While this will inevitably result in *some* unnecessary killings, where animals are killed and suffer without necessarily contributing to the survival of their predator, in the long run it will lead to far less harm to sentient animals. For this reason, we can say that in general prey

[179] Dale Jamieson, "Rights, Justice, and Duties to Provide Assistance: A Critique of Regan's Theory of Rights", *Ethics,* Vol. 100, No. 1, Jan. 1990: 349-362, p. 354.

animals have no right against us that we prevent their deaths at the hands of predator animals. As a final point, however, I should stress that where it is clear that killings by predator animals are unnecessary for survival, and where we know that we will not cause more harm in the long term, we do have an obligation to interfere. So, for example, cat owners ordinarily have an obligation to try to prevent their cats from killing and inflicting pain on other sentient animals.[180]

The conclusion of this section is that it is wrong for us to kill animals to eat their flesh, despite the fact that some animals kill and eat one another. This is not because humans are moral agents, and animals are not. Rather, it is because predator animals need to kill their prey to survive, and we do not. While it might be objected that not all of their killing is necessary for their survival, we simply have to face up to these unfortunate deaths. For the alternative – greatly interfering with predator-prey relations – comes at too great a cost.

6.4. The Non-Identity Problem and Farm Animals

So far in this discussion I have argued that farm animals have certain rights: the right not to be made to suffer and the right to continued life. We thus have a moral duty not to kill farm animals and not to make them suffer. However, there remains a problem with this overall line of argument that has not yet been addressed. How can animals who are killed or who suffer under intensive farm practices be wronged, when without such practices they would not have existed in the first place? Non-vegetarians make this point regularly: "If I and others didn't eat chickens, there simply wouldn't be any chickens." In this section I discuss and refute this so-called non-identity objection. I claim that animals can still be wronged by the pain and killing they suffer at the hands of agricultural practices, despite the fact that they owe their existence to those practices. I also consider the implications of this claim for the permissibility of modifying farm animals whether by selective breeding or genetic engineering.

6.4.1 The Non-Identity Problem

Consider a chicken who is raised on a battery farm. If that chicken would not have existed had that farm not been intensively rearing chickens, can the chicken meaningfully be said to be wronged by the practices of the battery farm? In one set of

[180] Sapontzis makes this same point. See S.F. Sapontzis, *Morals, Reason, and Animals*, p. 232.

circumstances, the chicken can quite obviously be said to be wronged. For example, if the chicken suffers so much under these conditions that her life is not worth living, then the chicken clearly has been wronged. Given the terrible suffering that many intensively raised animals live under, I think that we can plausibly argue that millions of farm animals have lives that are not worth living and are thus wronged.

However, that still leaves those many farm animals whose lives *are* worth living. Take the example of a different chicken living on a farm under free-range conditions. Let us assume that the chicken has a good quality of life replete with valuable experiences. We can also safely assume that her life will inevitably be cut short (remember that she is killed young, so that her meat is tender) in order that humans may eat her flesh. Is it wrong to raise this chicken for the purpose of killing her? Of course, I have argued that ordinarily it is wrong to kill chickens. But the problem here is slightly different: is raising a chicken to be killed wrong? For if the farm had not been raising and killing chickens in this way, that chicken would never have existed, and never have led a valuable life.

At this point many might be tempted to declare that no wrong has been done. However, they would probably be more reluctant to reach the same conclusion if the problem were recast with humans instead of chickens. So, imagine a programme in which we produce groups of humans (to remove family ties, we might do this *in vitro* from anonymous volunteer donors), raising them and letting them lead independent lives of good quality. However, at some point throughout their lives we kill them – if you find the idea of slaughtering them for their meat too implausible, perhaps we might slaughter them for their organs which will be used in transplants.[181] Can we claim that a wrong has been done to these individuals by bringing them into existence? For without this programme of raising and killing humans, these individuals would never have existed and never led valuable lives. This question of doing wrong by bringing people into existence with worthwhile lives is what Derek Parfit has referred to as 'the non-identity problem'.[182]

I think it is perfectly plausible to claim that a wrong has been done in both the chicken and human examples. In fact, two different types of argument have been put forward by philosophers to defend the notion that a wrong is done in such cases: person-affecting

[181] This example borrows a little from Kazuo Ishiguro's novel, *Never Let Me Go,* (London: Faber and Faber, 2006).
[182] Derek Parfit, *Reasons and Persons,* (Oxford: Clarendon Press, 1986).

arguments, and impersonal arguments.[183] Person-affecting arguments claim that one can be harmed or have one's rights violated by an action (and thus be wronged) even if one is on balance no worse off as a result of that action.[184] So, we might claim that the humans are wronged by the transplant programme, despite the fact that they are better off for the programme's existence. And again, the chicken too might be wronged by being raised to be killed for her meat, even though she is better off for having been so raised.

Impersonal arguments, on the other hand, see the wrong done not in terms of how the action affects the individuals concerned, but in terms of how it affects the amount of well-being in the world.[185] So, raising humans and killing them for their organs is wrong because it leads to a world with lower well-being when compared to one in which humans are born and not killed for their organs. Similarly, raising chickens and killing them for their flesh is wrong because it leads to a world with lower well-being when compared to one in which chickens are raised but not killed.

Clearly, however, there is a rather obvious problem with the latter approach. It only seems to work in 'same-number situations': that is, when we compare the actual world with an alternative world in which there are the same number of individuals. For example, it demands that we compare the world in which x number of chickens are raised and killed, with a world in which x number of chickens are raised but not killed. Unfortunately, though, the case of farm animals does not seem to be a same-number situation (and neither does the human transplant programme). Free-range farmers raise chickens, after all, in order to kill them. If they cannot kill them, farmers would simply not bother raising them. So the problem we face is a 'different-number situation': we must compare the actual world where chickens are raised, lead valuable lives and are inevitably killed, with the alternative world where chickens are not raised. Moreover, if the impersonal argument is concerned with the amount of well-being in the world, it would have to say that the world in which chickens are raised and killed for their flesh

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[183] Because the vast majority of this literature has been written on humans, the terminology has been framed with regards to 'persons'. However, the arguments are equally applicable to 'non-persons' (whether human or otherwise): so maybe the terms 'individual-affecting' and 'non-individual-affecting' would be better. For convenience, though, I will stick with the common terminology.

[184] For an example of this approach, see James Woodward, "The Non-Identity Problem", *Ethics*, Vol. 96, No. 4, July 1986: 804-831, pp. 810-811.

[185] For an example of an impersonal approach, see Dan W. Brock, "Preventing Genetically Transmitted Disabilities while Respecting Persons with Disabilities" in David Wasserman et al. (eds.), *Quality of Life and Human Difference: Genetic Testing, Health Care and Disability,* (New York: Cambridge University Press, 2005).

would be best. Given that it would also say that a world in which humans are raised and killed for their organs would be best, this seems improbable.

We are left then to consider the person-affecting explanation of the wrong. One version of this argument would say that the chicken on the free-range farm and the humans in the transplant programme are wronged because being raised to be killed inevitably violates their rights, and this is true even though they are better off for having been raised to be killed. Is this argument reasonable? Some philosophers have argued that it is not. They claim that this argument has a rather implausible outcome: it implies that a wrong is committed when we violate someone's right in the process of saving their life.[186] So, as an example, imagine that we are scaling a remote mountain and you get your arm stuck. The only way that I can possibly free you is to break your arm. If I do not free you, you will undoubtedly die as there is an icy storm on its way that you will be exposed to. If bringing into existence a chicken (or human) to kill her wrongs her by inevitably violating her rights, it must also be the case that my saving you (keeping you in existence) wrongs you by inevitably violating your right not have your arm broken.

However, I do not think that this argument defeats the person-affecting response to the non-identity problem. For given the account of rights offered in this thesis, it is extremely difficult to accept that you have a right not to have your arm broken in this mountaineering example. If anything, it seems that you actually have an interest in having your arm broken, and that this is strong enough to ground a duty on my part to break it! Moreover, and as Doran Smolkin has argued, the two cases are quite radically and importantly different.[187] In the rescue case, I am faced by a presently existing person in desperate need of help. It would of course be wrong not to offer assistance – even if that assistance involves inflicting some 'harm'. However, in the chicken case I am not faced with a presently existing person in desperate need of help. Rather, I am faced with a problem of whether to bring an individual into the world. This is a different type of problem altogether. Furthermore, it is reasonable to suggest that this problem is best approached not just by considering whether her life will be worthwhile, but also whether she will have her rights respected.

To be clear then, I have argued that it is wrong to raise individuals when their rights will inevitably be violated, even though those individuals are no worse off for having been so

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[186] For example see, Jeff McMahan, "Wrongful Life: Paradoxes in the Morality of Causing People to Exist" in John Harris (ed.), *Bioethics,* (Oxford: Oxford University Press, 2001), p. 454.

[187] Doran Smolkin, "Toward a Rights-Based Solution to the Non-Identity Problem", *Journal of Social Philosophy,* Vol. 30, No. 1, Spring 1999: 194-208, pp. 200-201.

raised. This brings up the question of whether these individuals have a *right* not to be raised. To discover if such a right exists, we need to establish whether these individuals have a sufficiently strong interest in not being raised when their right to life will inevitably be violated. Since individuals must have a sufficiently strong interest in continued life to ground the right to life in the first place, I think there is good reason to believe that they have a very strong interest in not having that right violated. However, in response to this, many will reason along the following lines: overall, the interest in existing with a valuable life must surely outweigh the interest in not having one's rights violated. That is to say, is it not better to have led a worthwhile life with violations of one's rights, than never to have lived at all? If this is the case, the interest in not having been raised seems insufficiently strong to ground a corresponding right in not having been raised. I believe that this objection can be overcome. For importantly, one can have one's rights violated by the performance of some action, even if overall one is left no worse off by the performance of that action. To illustrate, consider an example put forward by James Woodward:

> Suppose that Smith, who is black, attempts to buy a ticket on a certain airline flight and that the airline refuses to sell it to him because it discriminates racially. Shortly after, that very flight crashes killing all aboard.[188]

Here, I believe is a clear case where Smith's interest in not being racially discriminated is sufficient to ground in him a right to be sold a ticket on equal terms to everyone else. Moreover, this interest still remains sufficient to ground the right even though its setback can reasonably be said to leave him better off overall. Likewise, individuals such as free-range chickens and humans raised for their organs, can be said to have a right not to be raised when their other rights will inevitably be violated, even though the violation of that right might leave them better off overall.

Having said all of this, if this right not to be raised is ascribed, isn't that tantamount to assigning rights to unborn individuals? Assigning rights and interests to unborn individuals would be particularly problematic for this thesis, since I have claimed that only those entities with phenomenal consciousness possess interests, and thus can possess rights. Given this, it would seem that I will either have to retract much of what I have said about our obligations regarding raising individuals who will inevitably have their rights violated, or I will have to relax my commitment to the claim that the capacity for phenomenal consciousness is necessary to possess interests. In response to this, I

[188] James Woodward, "The Non-Identity Problem", p. 810.

wish to claim that individuals do have a right not to have been raised when their rights will inevitably be violated, but also that this right is held by phenomenally conscious individuals, not the unborn. To make it plain then, the right should not be regarded as a right of the unborn not to be raised when their other rights will inevitably violated. Rather, it is the right of existing individuals not *to have been* raised when their other rights will inevitably be violated.[189] In other words, the right is held by existing sentient individuals that those events should not have happened in the past. And yet, a problem remains: does this mean that there is no right to violate when we consider whether to raise a free-range chicken, thus rendering such a policy permissible? No it does not. For we must recognise that we cannot fulfil our *future* obligation to respect the chicken's right if we raise that chicken.[190] This renders the policy of raising such chickens impermissible. With this change in emphasis, it is perfectly possible to assign the right not to be raised, while maintaining that interests and rights can only be possessed by entities with the capacity for phenomenal consciousness.

6.4.2 Is Modifying Animals Inherently Wrong?

To recap then, I have argued that one can be wronged by an action, even if that action does not make one worse off overall. This means that it is wrong to raise animals to kill them, even when they will have worthwhile lives. However, this conclusion has an impact on another contentious issue in animal agriculture: deliberately producing animals that have capacities that suit human ends. Is it permissible to breed or genetically modify farm animals so that they have capacities (reduced or otherwise) that benefit humans? Before looking at how the implications of my claims concerning the non-identity problem affect this issue, it will first be valuable to consider whether modifying animals is simply wrong in and of itself.

It is clear that domesticated farm animals are far removed from their wild ancestors. The process of domestication has involved the deliberate breeding of animals which has radically altered their nature. Without fail, this change has been engineered for human purposes: so that hens lay more; so that cows produce more and leaner meat; so that sheep produce more wool; and so on. With the technology of genetic engineering now

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[189] This line of reasoning is influenced by the argument found in Allen Buchanan et al., *From Chance to Choice: Genetics and Justice,* (New York: Cambridge University Press, 2000), p. 236.

[190] The idea that we can partly assess the permissibility of current actions on how they impact on our ability to meet our future obligations is proposed by Steve Vanderheiden, "Conservation, Foresight, and the Future Generations Problem", *Inquiry,* Vol. 49, No. 4, Aug. 2006: 337-352.

at our disposal, even greater opportunities to alter the nature of farm animals to better suit our goals are available: goats that produce hormones in their milk to cure human disease; pigs that grow bigger and leaner than any of their ancestors; turkeys that do not get broody and thus lay more; and even sheep that produce their own insecticide in their skin to prevent the need for dipping.[191] Is there any reason to think that such alterations are just inherently wrong? There seems to be three possible routes one might take.

First off, one might claim that these alterations offend nature and are thus wrong. In this spirit Michael Fox writes:

> To change that which is natural is to alter the harmony within living beings and the harmony in their relationship with the external environment. This is the meaning of harm: to cause injury by disrupting the harmony of life.[192]

It will probably be evident from some of my previous arguments that I disagree with Fox. Harm cannot be simply equated with disrupting the natural. As I have argued in Chapter 5 and elsewhere, disrupting the natural can in actual fact often be ethically valuable, such as when we prevent the realisation of humans' murderous instincts. However, Fox's argument is not quite as simple as this quotation suggests. He sees the wrong in modifying animals not in the disruption of nature generally, but in the fact that we disrupt animals' telos; that is, their 'nature or beingness'.[193] Unfortunately, such arguments take a rather static view of species and their individual members. According to evolutionary theory, the 'natures' of both individuals and species change all the time. Given this, it is unclear why nature's alterations are permissible, but ours are not.

Second we might argue that altering animals for our purposes in ways such as these fails to treat animals with the appropriate respect.[194] Here 'respect' might involve something like the Kantian injunction that we should not treat others only as means but also as ends. Of course, by treating someone as an ends, Kant means that we should respect the autonomy, rationality and moral agency of persons. Since animals are non-persons, this type of respect argument needs to be modified. Perhaps then, we might define treating an animal as an ends as having proper concern for the animal's well-being. In this case, respecting an animal would mean that we should not simply use an

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[191] These examples are taken from a useful summary given in Michael J. Reiss and Roger Straughan, *Improving Nature? The Science and Ethics of Genetic Engineering,* (Cambridge: Cambridge University Press, 1996), pp. 166-174.

[192] Michael Fox, "Transgenic Animals: Ethical and Animal Welfare Concerns" in Peter Wheale and Ruth McNally (eds.), *The Bio-Revolution: Cornucopia or Pandora's Box,* (London: Pluto Press, 1990), p. 33.

[193] Ibid. p. 31.

[194] I talk more about this idea of respect in the next chapter.

animal however we see fit, but must pay due consideration to her own interests. Now, by modifying animals solely for our own ends, it might well be argued that we are using animals as mere instruments, thus failing to show them respect. However, there is a problem with this claim. For while altering animals for our purposes is an uncontroversial case of using animals as means, it is not clear that such alteration also *necessarily* involves denigrating their ends. In other words, to treat something as a means or as an instrument is not incompatible with showing it respect.[195] For example, imagine genetically engineering a dairy cow so that she is resistant to mastisis. Ultimately, we might do this so that we can extract more milk from the cow, and in this way we obviously use the cow as a means. However, if we allow the animal to lead a life of high quality with a full range of valuable experiences, it seems that we are also respecting the cow's well-being, and treating the cow as an ends. In other words, altering animals need not involve treating them with disrespect.

Finally, it has been argued that modifying animals is wrong because it fails to show humility. David Cooper argues that humility is a virtue for human beings because it turns us away from mere selfish concerns. However, when we, "...programme animals with ends to suit ourselves and otherwise bend them to our will"[196], we wrong animals by abandoning our 'proper humility'.[197] Clearly, this argument rests on a judgement of the actions and attitudes of the modifiers, rather than the interests and well-being of the entity being modified. However, this focus leads to some rather strange implications. For example, consider a brilliantly talented yet supremely arrogant surgeon who performs many life-saving operations over the course of any week. Let us assume that his success rests on the satisfaction he takes from his skills conquering nature and cheating death, rather than any concern for his patients. It is probably safe to assume that this surgeon fails to show 'proper humility'. Despite this, however, it would be extremely odd to judge his actions impermissible, given the lives he saves. Humility may often be a virtue, but it should not hold us back from facilitating great benefits at no cost.

6.4.3 Is Modifying Animals Ever Wrong?

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[195] Alan Holland makes this same point in, Alan Holland, "The Biotic Community: a Philosophical Critique of Genetic Engineering" in Peter Wheale and Ruth McNally (eds.), *The Bio-Revolution: Cornucopia or Pandora's Box*, p. 170.
[196] David Cooper, "Intervention, humility and animal integrity", in Alan Holland and A. Johnson (eds.), *Animal Biotechnology and Ethics,* (London: Chapman and Hall, 1998), p. 155.
[197] Ibid.

I have argued then that there is nothing inherently wrong with modifying animals. However, is it ever wrong? In answering this, we return once again to the non-identity problem, and our previous conclusions will prove useful here.

First of all, and in keeping with my argument above, we can claim that animals who are modified and then have lives that are not worth living have been wronged. We should not create animals whose lives are full of pain and suffering just to suit ourselves. Unfortunately many farm animals that are currently genetically engineered do have such lives. The classic example is that of the Beltsville pigs, named after the US Department of Agriculture research station where they were born. The pigs had a human growth hormone gene inserted into them so that they would grow faster and leaner. In some respects, they were a success: the pigs' rate of gain increased by 15%, their feed efficiency by 18%, and their carcass fat was reduced by 80%.[198] However, these 'gains' came at considerable costs to the pigs' own well-being. For not only did the pigs suffer from liver and kidney problems that shortened their lives:

> The animals also exhibited a wide variety of disease and symptoms, including lethargy, lameness, uncoordinated gait, bulging eyes, thickened skin, gastric ulcers, severe synovitis, degenerative joint disease, heart disease of various kinds, nephritis and pneumonia.[199]

We have an obligation not to produce animals who suffer so terribly in this way. And while it might be objected that these side-effects were unwanted, that provides little excuse. Adopting a 'precautionary principle' seems apt when we are embarking on such radical alterations of sentient beings: when we have little idea concerning the effects of an alteration, we should refrain from making it. Given the somewhat random nature of genetic modification, this precautionary principle would indeed be prohibitive. To explain, the genetic modification of animals usually involves the technique of pronuclear microinjection. This is the injection of the prospective gene into the single cell embryo of the prospective animal. The procedure breaks up the chromosomes in the cell, and in the process of self-repair, the gene is incorporated. It is hard to tell exactly how these genes will be incorporated, and very often the process is lethal, with those that do survive regularly suffering from serious pathologies.[200] Given all this, the

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[198] Bernard E. Rollin, *Science and Ethics,* (New York: Cambridge University Press, 2006), p. 169.
[199] Ibid.
[200] This summary is taken from, Ben Mepham, "'Wurde der Kreatur' and the Common Morality", *Journal of Agricultural and Environmental Ethics,* Vol. 13, No. 1, March 2000: 65-78, p. 67.

onus must be on those who wish to make genetic alterations to animals to prove that their changes will not cause harm.

Clearly, however, not all farm animals who are modified – genetically, or more conventionally through breeding – have lives that are not worth living. Many animals in actual fact have valuable lives. So what about the permissibility of altering animals for our purposes, but who have lives worth living? Well, if one of our purposes is to kill them, or violate their rights in some other way, then that would be wrong. As I argued above, animals have a right not to be raised to be killed, even if they would not have existed had they not been raised to be killed. Really then, this leaves the question of modifying animals who will not be killed or have their rights violated, and who will have worthwhile lives: is that permissible? I believe that much depends on the type of modification that is being considered. To help us then, we might consider two extremes. First, we might alter an animal in such a way so that she has very similar opportunities for well-being compared to her predecessors. So, take the example given above of altering sheep so that they produce their own insecticide. If this alteration had no other effects, and if it is neither inherently objectionable to raise sheep for their wool nor to alter them (and I do not think that it is), then such an alteration would be permissible.

On the other hand, we might alter an animal so that she has limited capacities and reduced opportunities for well-being compared to her predecessors. So, imagine creating a chicken with reduced capacities: let us say that she is incapable of spreading her wings and has no desire to nest. If the animals does not suffer as a result, and has a worthwhile life, would such action be wrong? Bernard E. Rollin thinks not. His 'Principle of the Conservation of Welfare' concentrates only on the absence of suffering:

> Any animals that are genetically engineered for human use or even for environmental benefit should be no worse off, in terms of suffering, after the new traits are introduced into the genome than the parent stock was prior to the insertion of the new genetic material.[201]

But if it is permissible to reduce the capacities of animals so long as they do not suffer, surely then the same must also be true for humans? This raises the repugnant idea of producing happy idiots, as envisaged in *Brave New World.* However, Rollin thinks that we cannot alter humans in this way, and that this is because reason and autonomy are

[201] Bernard E. Rollin, *The Frankenstein Syndrome: Ethical and Social Issues in the Genetic Engineering of Animals,* (Cambridge: Cambridge University Press, 1995), p. 179.

nonnegotiable ultimate goods for humans.[202] But we can question Rollin's reasoning here. While I agree that rationality and autonomy are intrinsic goods for most humans, they are not so for all humans. As I have argued before, autonomy is of no value to someone who is not autonomous, such as a young baby for example. So if autonomy and rationality are only valuable for autonomous and rational creatures – which seems plausible – is there any problem with deliberately creating non-autonomous and non-rational humans who have worthwhile lives?

I think that there is a problem with deliberately creating humans who will never be autonomous or rational. The problem here is in deliberately creating individuals with fewer capacities than most other humans. And this is problematic because fewer capacities means fewer opportunities for valuable experiences. True, these individuals will have lives that are worth living. Also true, had they not been created with reduced capacities they would not even have existed at all. But as I argued above, one can be wronged even if one is left no worse off overall. When we are confronted with the question of whether to bring an individual into existence, we must not just consider whether they will have a life worth living. Nor must we only consider whether they will have their rights respected. We must also consider whether they have sufficient opportunities for well-being.

This begs the question, what counts as sufficient? Quite simply, a sufficient number of opportunities equates to those available to an individual with 'species-typical normal functioning'.[203] Of course, basing the threshold of sufficiency on 'normality' raises the difficult question of determining what normal is. However, I do not think that this difficulty is insurmountable, for we do often have clear ideas as to what counts as normal functioning. So to take an example, imagine considering whether to modify a human being so that she will have permanent mental disabilities which are such that she will never be autonomous, but she will have a life worth living. I claim that such deliberate creation would be wrong, because the individual will have insufficient opportunities for well-being. Her opportunities are insufficient because they are lower than the normal functioning of human beings.

Let us now return to the question of modifying chickens; modifying them so that they have reduced capacities but worthwhile lives. Remember that our example concerned

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[202] Ibid., p. 173.

[203] The concept of species-typical normal functioning is taken from Norman Daniels's work on justice and healthcare. See for example, Norman Daniels, "Health-Care Needs and Distributive Justice", *Philosophy and Public Affairs,* Vol. 10, No. 2, Spring 1981: 146-179, p. 153.

deliberately creating birds who cannot spread their wings and have no desire to nest. In this case, the same argument as outlined above must apply. Do these chickens have sufficient opportunities for well-being? To answer this, we must compare the birds against their species-typical normal functioning. In short, chickens normally are able to spread their wings, and normally are able to nest; and ordinarily these are valuable experiences for chickens. By reducing the capacities of these chickens, we have reduced their opportunities for well-being. On this basis, and contrary to Rollin, it would be impermissible to deliberately create such chickens.

Before concluding this section, we must once again consider whether individuals have a *right* not to have been modified so that they have insufficient opportunities for well-being. Do individuals have an interest in not having been modified with reduced capacities that is sufficient to impose a duty on others not to conduct such modifications? I believe that they do. After all, sentient beings of all types have a very strong interest that their capacities are not reduced *during their lives.* Quite rightly, we consider it to be a very serious harm when someone is injured or suffers from some disease that significantly reduces their capacities for well-being. This harm is not simply explained by the *reduction* in their capacities however, but also by the fact they have fewer capacities compared to the species norm. Accordingly, I think it makes good sense to say that individuals, including animals such as chickens, have a strong enough interest to impose on us a duty not to modify them with insufficient capacities for well-being. In short, animals have a moral right not to have been modified with significantly reduced capacities.

To end this section, I want to briefly summarise its main conclusions. First of all, I have argued that the fact that farm animals would not have existed had we not deliberately raised them to kill them, does not justify raising animals to kill them. For one, many animals suffer so terribly under intensive farming that existence is simply of no benefit to them. Moreover, those animals that do lead worthwhile lives can still be wronged and have their rights violated by farm practices, even though they may be no worse off for having been brought into existence. Indeed, it makes sense to say that animals have a moral right not to have been raised when their other rights will inevitably be violated. Secondly, I have claimed that there is nothing inherently wrong with modifying animals for human ends. However, and finally, I have argued that not all modifications are permissible. For example, if we are modifying animals to kill them or modifying them so

that they suffer terribly, such modifications are wrong. Moreover, those modifications that lead to animals possessing worthwhile lives but with insufficient opportunities for well-being are also impermissible. In fact, animals have a moral right not to have been modified so that they possess insufficient opportunities for well-being.

6.5 Conclusion

Given the numbers of farm animals we raise and slaughter, the issue of animals in agriculture is indeed pressing. In this chapter I have applied the rights theory as initially sketched in Chapter 5 to the question of farm animals. I argue that animals have a right not to be killed and not to be made to suffer by agricultural practices, but have no right not to be used in farming at all. This has two radical implications: an end to a great many intensive farming methods, and an end to raising animals for their meat. The objection that more animals will be killed by the mass adoption of vegetarianism fails: the agricultural system that will kill fewest animals is actually a 'crop-only' one. The objection that animals kill one another, so we should be able to, also fails: predator animals need to kill to survive whereas we do not. The fact that not all predator kills are strictly 'necessary' is unfortunate, but we have to accept that interfering with them may cause more harm than good. Finally, the objection that farm animals would not exist at all had they not been raised to be killed also fails: one can still be wronged by a policy even if one benefits overall from it. This final conclusion has implications for our modifications of farm animals. Importantly, we can still wrong an animal by creating an animal with reduced capacities, even if that animal does not suffer. We will see that this latter argument is of relevance to the breeding of animals in another context: animals used in entertainment. It is to this topic that I turn in the next chapter.

7. Non-Human Animals and Entertainment

In the last two chapters I have claimed that non-humans animals possess *prima facie* moral rights not to be killed and not to be subjected to pain. Given that the infliction of pain and death are often intrinsic elements of animal experimentation and modern industrial farming techniques, the implications of my theory for these practices was reasonably clear. In this chapter, however, I wish to examine a more complex use of animals: their use in our entertainment. This use includes such practices as pet-keeping, displaying animals in zoos, keeping them in safari parks, making them perform in circuses, and using animals in sport. I say that this use is more complex than that of experimentation and farming, because these entertainment activities affect animal well-being in such different ways. For example, the well-being of a dancing bear who is chained and beaten every day is markedly different to that of a cosseted pedigree cat. However, the bear and the cat are alike in that they are both being kept and used for the entertainment of human beings. In this chapter I wish to examine whether such use is permissible. Or, to put it another way, do animals have a moral right not to be used to entertain human beings?

To address this question, the chapter is divided into two sections. In the first section I again outline the rights theory that I have developed so far in the thesis and apply it to the question of using animals in entertainment. If, as was argued in Chapter 5, animals have no right not to be used by humans, but do have rights not to be killed or made to suffer when they are so used, what implications does this have for the ways in which we use animals to entertain us? Secondly, I examine four possible objections that might be raised against my proposal, all of which claim that it is too permissive. The first three all relate to the notion of 'respect': first, that it is disrespectful to use animals to entertain us because it undermines their dignity; second, that it is disrespectful in that it involves our having a flawed attitude towards them; and third, that it is disrespectful to treat animals as property – and most animals used in entertainment are very much the property of others. The final objection argues that using animals for entertainment violates animals' interest in exercising their natural functionings. I claim that all of these potential objections fail, and thus that my conclusion that animals have no moral right not to be used in entertainment is valid. First however, I need to say more about how I reach this conclusion, and I do this at the beginning of the next section.

7.1 Implications of the Rights Theory for Animals in Entertainment

I have claimed in both Chapters 5 and 6 that animals have *prima facie* moral rights not to be made to suffer and not to be killed. However, I have also argued that because animals have no fundamental interest in liberty, ordinarily they have no right not to be used by human beings. Perhaps the most obvious implication of this theory is that I do not condemn any use of animals for entertainment *per se.* Such a claim stands in opposition to many other proponents of animal rights. For although only some of these proponents condemn the practice of pet-keeping[204], the vast majority of philosophical and political advocates of animal rights regard keeping animals in zoos and making them perform in circuses as necessarily harmful and thus morally illegitimate.[205] I do not share these views. I claim that none of these practices are intrinsically harmful to animals. However, this does not mean that they are *never* harmful. Often these practices result in the infliction of suffering and the loss of life; in these cases, we have a moral obligation to amend our ways. Indeed, for the remainder of the section I look more closely at just how we should amend our ways.

7.1.1 Pet-Keeping

With regards to pet-keeping, keeping animals as pets is permissible so long as it does not lead to the infliction of suffering and the loss of life. While this does not sound very demanding to most of us, given the love and affection so many of us heap on our non-human family members, it is evident that the practice of pet-keeping involves a significant amount of animal pain and death. For example, in the UK reported cases of cruelty to pet animals are going up. The RSPCA reported a 77% rise in the number of animals it dealt with in 2005. Of the 94,130 abused animals that the RSPCA saw in 2005, 24,000 were dogs and 11,400 were smaller domestic animals.[206] Moreover, pet animals also suffer from less obvious acts of cruelty. For example, millions more animals are kept in inappropriate conditions that cause harm. Animals need sufficient

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[204] For two notable examples see John Bryant, *Fettered Kingdoms,* (Winchester, Hants.: revised ed., Fox Press, 1990); and Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?,* (Philadelphia: Temple University Press, 2000). These two authors should be commended for facing up to the implications of their theory. In my view too many other proponents of animal rights propose an animal interest in liberty and yet ignore the implications of this claim for the practice of pet-keeping. This inconsistency is also pointed out by Stuart Spencer et al., "History and Ethics of Keeping Pets: Comparison with Farm Animals", *Journal of Agricultural and Environmental Ethics,* Vol. 19, No. 1, Feb. 2006: 17-25.

[205] Two examples of such a view can be found in Dale Jamieson, "Against Zoos" and Mark Rowlands, *Animals Like Us.*

[206] *The Guardian,* "RSPCA reports year of shocking animal abuse", July 26th 2006.

room to move around, sufficient stimuli to prevent becoming frustrated and sufficient company to prevent being bored. They also need the right type and amount of food, and the opportunity to exercise. The amount of bored, frustrated and/or morbidly obese pet animals is not a statistic that the RSPCA produces. However, the number of animals suffering in this way is surely vast. For example, obesity is causally linked to health problems such as diabetes, and heart, kidney and liver damage, and yet it has been estimated that one third of Britain's pet dogs is obese.[207] In terms of boredom, some argue that confining birds such as parrots in cages for all of their lives frustrates them as they are unable to carry out significant aspects of their behaviour such a flocking, social interaction and foraging for food.[208] At this stage, it might be objected that to assign such conditions as boredom and frustration to animals is to anthropomorphise. However, when one considers that many of these animals are, like us, naturally social animals, and have similar neurological structures, it is little surprise that they have similar emotional responses. Indeed, the biologist Michael W. Fox argues that this explains why domestic dogs suffer from similar behavioural disturbances to humans, such as, compulsive eating, sympathy lameness, sibling rivalry, extreme jealousy, aggression, depression and refusal to eat.[209] Animals have a moral right not to be made to suffer in such ways, and this requires more on our part than simply housing, feeding and refraining from beating them.

The practice of pet-keeping also results in huge numbers of animals being killed. Ignorance about what keeping a pet involves often means that humans take on pet animals with little thought. However, once the costs of owning a pet are realised, or a family is started, or a move of house is undertaken, many pets are abandoned. This abandonment might take the extreme form of dumping them with the rubbish or in the canal, but more often involves leaving them in the street to become strays, or handing them to a rescue home. Many strays, including those in rescue homes, are killed. For example, according to a report by the Dogs Trust, 100,000 stray dogs were found in the

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[207] Roger A. Mugford, "Canine Behavioural Therapy" in James Serpell (ed.), *The Domestic Dog: Its Evolution, Behaviour and Interventions with People,* (Cambridge: Cambridge University Press, 1995), p. 150.

[208] M. Engebretson, "The welfare and suitability of parrots as companion animals: a review", *Animal Welfare,* Vol. 15, No. 3, August 2006: 263-276.

[209] Michael W. Fox, *The Dog: its Domestication and Behaviour,* (New York and London: Garland STMP Press, 1978), pp. 258-9.

UK in 2005, and 7,800 were killed.[210] Animals have a moral right not to be killed simply because we have gone off them or are moving home.

If animals have a moral right not to be made to suffer or be killed by their use as pets, then the practice of pet-keeping as it currently stands is morally unjustifiable. However, I do not believe that this necessarily leads to the conclusion that pet-keeping must be entirely phased out. Rather, I believe that pet-keeping must be regulated much more rigorously. One good suggestion that has been put forward is the idea of licences for pet-ownership.[211] If humans wish to keep an animal as a pet for their entertainment, then they have a moral obligation to take responsibility for the well-being of that animal. That does not just mean they must refrain from beating the animal or prevent him from starving. Instead, potential pet-owners should be made to prove that they have the appropriate accommodation, time and knowledge to care for that particular animal. After all, when we entrust human children to foster guardians or adoptive parents, great care is taken that those individuals will act in the best interests of the child. It seems to me that similar steps should be taken for those wishing to have pet animals.

Of course, the practice of pet-keeping raises three further and more complex issues that have rarely been discussed in the literature: euthanasia, neutering and breeding. These are common practices amongst pet-owners, and it is necessary to assess them in the context of the rights theory. I believe that the issue of euthanasia can be handled quite straightforwardly by the rights theory established in this thesis. Animals have an interest in continued life on the sole basis that they may have future valuable experiences. If an animal is so sick that she has no opportunity for future valuable experiences, and instead will suffer for the remainder of her life, then her interest in continued life fades, her right to life is not grounded, and killing that animal, other things being equal, is permissible.[212] However, huge numbers of sick animals are killed every single day even though they still have the opportunity for future valuable experiences. Presumably this is because the owners cannot or do not wish to pay for the necessary operation and/or subsequent care of the animal. This is wrong. If an animal has the opportunity for valuable experiences, then she has an interest in staying alive that cannot simply be ignored on the grounds of cost alone. As mentioned above, pet-

[210] Figures from the "Stray Dog Survey 2006" conducted by GfK NOP on behalf of Dogs Trust, <http://www.dogstrust.org.uk/press_office/stray_dog_survey_2006/>.

[211] In the UK it used to be necessary to have a licence to own a dog. However, this was phased out in 1987.

[212] We ordinarily refer to the killing of sick animals as 'putting them down'. Presumably this phrase is used (just as the term 'culling' is used) because it is easier to stomach than 'killing'. I will mainly stick with the term 'killing' in this discussion to avoid the bias inherent in these 'softer' terms.

owners have a responsibility for the well-being of their animals. Perhaps then, as a necessary condition of being awarded their licence, pet-owners should be made to take out insurance for their pets so that they can cover the costs of illnesses and accidents when and if they occur.

Of course some might object to this account of the permissibility of euthanasia on the grounds of its implications for killing humans. For if it is permissible to kill animals if they have no opportunity for future valuable experiences, surely the same must be true for humans. Given the current legislation on euthanasia in most states around the world, such a claim is hugely controversial. There is not the space here to provide a full account of the permissibility of human euthanasia. Nevertheless, a few words are in order. First of all, unlike an animal, a human may lack the capacity for future valuable experiences but still have an interest in continued life. This might be based on his desire to stay alive, his future projects and his interest in being a self-governing agent. Secondly, even if the human no longer has any interest in continued life, it may still be impermissible to kill him: his wishes before he was incapacitated, and perhaps the interests of his family, merit consideration. Third, however, just because these other interests merit consideration, that does not mean that they finally *determine* the permissibility of killing the individual in question: his pain could be such that he actually has a *moral right* to be killed, despite the presence of these other factors. Finally, while this latter conclusion runs contrary to many people's intuitions, it is nevertheless a conclusion worth accepting. For I believe that the intuition against permitting human euthanasia is insufficiently reflective, often grounded in something like the Christian doctrine of the sanctity of life. However, my considered judgement sees no sanctity in prolonged and intolerable suffering.

Returning to animals then, let us consider the more difficult issue of neutering. For if we are concerned with the well-being of animals, might we not claim that pet animals have a moral right not to be neutered? There are several ways in which such an argument could be made. First, it might be claimed that animals suffer from the process itself. However, this argument seems to be negated by the fact that anaesthetic can be used to make the process painless. Second, it could be argued that animals have an interest in not being interfered with and in being made to undergo such surgery without their consent. But as I have argued in Chapter 5, animals do not have a fundamental interest in this kind of negative liberty. Perhaps then, it might be argued that neutering animals is a constraint on their ability to control their own lives. Once again, however, as

non-autonomous beings, it is extremely difficult to maintain that animals have an interest in being 'self-governors'. Fourthly, it might be claimed that it is wrong to change animals, so that they are prevented from having their natural sexual desires and from acting upon them. But this argument once again assumes that what is natural for an individual is equivalent to what good for an individual. And as I have argued in several chapters – notably in Chapter 5 - this simply is not the case. Finally, and perhaps most persuasively I think, it might be claimed that neutering diminishes an animal's opportunities for well-being. This claim is significant given one of the arguments of Chapter 6. There I claimed that modifying an animal with reduced capacities for well-being was wrong, even if that animal has a worthwhile life. If this is true, surely it must also be true that operating on a pet animal to reduce his or her capacities for well-being is wrong, even if that animal subsequently has a life worth living. Animals, we might argue, have an interest that they not be neutered in order that they may have opportunities for well-being which are equivalent to the species norm. What are we to make of such an argument?

If this argument is valid, it needs to be shown that both mating and rearing young necessarily contribute to the well-being of pet animals. This is an extremely difficult topic. However, I think we can make several remarks. There is evidence that some animals take pleasure from sexual intercourse in much the same way as human beings. Dolphins and bonobos, for example, are both well known for engaging in sexual relations simply for the pleasure of it, rather than solely for the purpose of reproduction.[213] Furthermore, Jonathan Balcombe has recently argued that a whole range of animal species can and do enjoy sex.[214] And if animals can suffer like us, perhaps it should be of little surprise that they also receive pleasure like us. However, in spite of this, we should be hesitant in believing that the possession of sexual desire and sexual capacities necessarily makes life better for domestic pet animals. Take the case of pet cats, for example. It is doubtful that female cats take much pleasure from sexual relations, since the penis of the male cat is barbed and scratches the walls of the vagina in order to induce ovulation. And while male cats may enjoy the act itself, it is questionable whether this outweighs the suffering their sexual urges bring about. For example, the bites and scratches that tomcats suffer from fighting with rival males often

[213] Frans De Waal, "Bonobo Sex and Society", *Scientific American* (March, 1995): 82-86.
[214] Jonathan Balcombe, *Pleasurable Kingdom: Animals and the Nature of Feeling Good*, (Basingstoke, Hants.: Palgrave Macmillan, 2006).

cause great pain and infections. These animals can also be driven to travel many miles in order to satisfy their urges, often leading to attacks from other cats defending their territory, as well as the possibility of traffic injury and malnutrition. In terms of rearing young, we should again be cautious to assume that female cats necessarily take great value from the act itself. For one thing, cats can easily become pregnant, often producing 2-3 litters a year. Producing such volumes of offspring can be a great strain on the cat's body and leads to unsprayed female cats living much shorter lives than their spayed counterparts.

Turning to dogs, it is certainly possible that dogs take more pleasure than cats from sexual intercourse itself. However, it is still doubtful that dogs have an interest in not being neutered on the basis of increased opportunities for well-being. Once again, the value that dogs take from the sexual act must surely be outweighed by the frustration and suffering that such sexual desires induce, and the greater likelihood of disease and injury. For example, in keeping with cats, rates of cancer in both male and female dogs are greatly reduced by spaying, although there is evidence that the process should not be enacted too early in the animal's life.[215] For all of these reasons, I am sceptical of the claim that pet animals have an interest in not being neutered in order that they may have opportunities for well-being equivalent to the species norm. Given this, pending further evidence to the contrary, I claim that ordinarily pet animals have no moral right not to be neutered.

Now, if we combine the idea that pet animals have no moral right not to be neutered with the fact that thousands of unwanted domestic animals are being killed each year, might we not conclude that we all have a moral obligation to neuter our pet animals? This is certainly the claim of those animal charities that have to deal with the grave problems of strays and overpopulation generally. However, we must bear in mind that the problem that these charities faces comes down to the fact that these animals are unwanted, rather than from the breeding itself. In other words, if the animals were wanted and were well looked after, then there would be no problem. Given this, perhaps we might claim that our obligation is not necessarily to neuter our animals, but to guarantee the welfare of any offspring if we do allow our pets to reproduce.[216] Once

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[215] C. Victor Spain, Janet M. Scarlett, and Katherine A. Houpt, "Long-term risks and benefits of early-age gonadectomy in dogs", *Journal of the American Veterinary Medical Association,* Vol. 224, No. 3, February 1 2004: 380-387.

[216] This same argument can be found in Keith Burgess-Jackson, "Doing Right By Our Animal Companions", *The Journal of Ethics,* Vol. 2, No. 2, June 1998: 159-185, pp. 183-184.

again, this could easily be woven into the conditions for granting licences to potential pet-owners.

Finally, we come to the issue of breeding. As I discussed in the previous chapter, domestic animals are far removed from their wild predecessors. Domestic animals have been bred for particular purposes, and many of these breeds have become popular as pets. For example, different breeds of dog have been established for fighting, hunting, sheep-herding, looking pretty and countless other reasons. Some human beings prefer to keep a particular breed of animal for a pet rather than a mongrel, and have continued these lines of breed through deliberate mating. I argued in the previous chapter that there is nothing wrong in itself with breeding (or even genetically engineering) animals in this way. However, I also claimed that animals can be wronged when creating them will inevitably lead to their rights being violated (they will be killed or made to suffer), and when creating them will cause them to have reduced opportunities for well-being. Unfortunately, some pet animals do inevitably suffer from their breeding. For example, both Manx cats and Dachshunds suffer from spinal defects, boxer dogs are more vulnerable to cancers, and bulldogs suffer from breathing difficulties. In all cases, these sufferings are the result of the deliberate mating of animals to reproduce genetic traits.

Now it might be claimed that Manx cats, Dachshunds, boxers, bulldogs and so on do not lead lives of complete misery and suffering. Rather, these animals are still capable of a reasonable quality of life. In this case, it might be argued, we cannot claim to have harmed these animals, because by bringing them into existence we have given them some positive quality of life. However, as I argued in Chapter 6 it is perfectly possible to harm an individual, violate an individual's rights, and wrong an individual even if one benefits them overall. And because these animals have insufficient opportunities for well-being and suffer because of their breeding, such breeding is impermissible. Such a conclusion of course places limits on the freedom of breeders, and even requires the phasing out of some breeds. Again, the implication in practical terms seems to lean towards much tighter regulation than we have now.

To sum up this rather long section, I have argued that it is permissible to keep animals as pets so long as they are not killed or made to suffer as a result. Rather than a justification of the status quo, however, this conclusion demands a radical transformation of the practice of pet-keeping as it currently stands.

7.1.2 Circuses and Zoos

Once again, the implication of my theory is that it is permissible to use animals in zoos and circuses so long as they are not killed or made to suffer as a result. Of course, circuses and zoos have historically come under attack for cruel practices. Clearly, such practices are illegitimate and should cease. However, what we need to consider is whether keeping animals in zoos and circuses is permissible even if such acts of cruelty do not take place.

First of all then, do animals kept in zoos and circuses *necessarily* suffer? It is hard to see how the traditional circus animals – elephants, lions, tigers, monkeys, horses, dogs and so on – can have much quality of life when in a circus. Even if these animals are trained successfully in a way that does not cause them to suffer (which itself seems far-fetched given the bizarre tasks they are made to do), and perform acts that are not dangerous or onerous, it would be practically impossible to provide these animals with the type of living conditions they require in order to live well. Circuses travel, meaning that the performing animals must also travel. None of the animals mentioned above could live well when locked up in a cramped cage on a trailer. They are all large, intelligent and social animals that need plenty of room to exercise and follow their instincts. I cannot envisage a travelling circus being able to meet such requirements. However, this is not to say that it is impossible to produce an ethically permissible circus. If the circus did not travel, or did not travel much, and the animals were kept in the appropriate conditions – including many acres of space – then it might be possible for a circus to violate no rights. However, whether such a circus would be economically viable is quite another matter. Indeed, it may well be that adopting practices that cause no suffering to animals simply makes the use of animals in circuses not worthwhile.

Given that zoos do not travel, it seems much more possible to envisage an ethically permissible zoo. Once again, however, to be permissible, the conditions of the zoo must be absolutely appropriate to the animals involved. This requires much more space and much more thought on stimulation for the animals than has traditionally been provided. Furthermore, it may even be the case that some species of animal *necessarily* suffer from being held in captivity. For one, as I have mentioned in previous chapters, it is possible that some animals such as the great apes and cetaceans will one day be shown to be sufficiently autonomous to have an interest in freedom. If this is proven to be the case, then such animals have an interest in leading their own lives and must never be held in captivity, including in zoos. Secondly, it might be incredibly difficult in practice to provide for the well-being of some non-autonomous animals in captivity. For

example, polar bears and elephants are often cited as animals that need quite specific and unique environments to have their interests satisfied. However, as the zoologist Brian Bertram argues, "there is no reason in principle why it is not possible to build a polar bear...enclosure of such a scale and design that almost everyone would consider it adequate."[217] Once again, it may well be that implementing these conditions is not so much impossible as impractical given financial constraints.

Of course, many zoos claim to function not just for the entertainment of human beings, but also to keep rare species alive. What does the rights theory presented in this thesis make of such claims? First of all, I should reiterate a point I made in Chapter 2: that is, species themselves have no moral status. You will recall that I argued that moral status resides in those entities that have a life that can go well or badly for themselves. Since a species is not such an entity, we have no direct obligations to them. However, this is not to say that we have no obligations *regarding* species. I can think of at least two good reasons for preserving species that do not rely on the notion that we have obligations to species themselves: first, the loss of a species will have an impact on the ecosystem in which it resides, which will very often adversely affect other sentient animals to whom we do owe obligations; and second, the diversity of life is a source of great pleasure to many human beings, to whom we also have direct moral obligations. Of course, these are not good reasons to use *zoos* for breeding programmes, but are simply good reasons to have breeding programmes. Nevertheless, whichever environment such breeding programmes take place in, the interests of the individual animal must be respected. The animal has rights, and these rights cannot be violated simply to maintain the species. This reminds us that the best way to keep species alive is to respect the rights of individual animals in the first place. This does not involve granting whole species moral status. But it does involve respecting the rights of individual animals, and thus not destroying their habitats so that humans may profit.

7.1.3 Sport and Hunting

Using animals for sport is permissible so long as they are not killed or made to suffer as a result. The fate of hunting, and sports such as cock-fighting, bear-baiting and bull-fighting is thus fairly obvious. Each of these activities causes pain and death and should cease. However, what about less obviously cruel sports? First we must look at fishing, one of the most popular sports in the UK, and which is not commonly regarded as cruel.

[217] Brian Bertram, "Misconceptions About Zoos", *Biologist,* Vol. 51 (4), Winter 2004: 199-206, p. 205.

Indeed, many fishermen would no doubt be opposed to practices such as hunting with hounds and cock-fighting. However, fishing necessarily involves the painful capture of sentient animals and often involves their death. Quite simply then, fishing violates the rights of animals and should be condemned as such. Perhaps the reason that fishing is regarded as morally unproblematic by so many comes down to the fact that it does not involve mammals. Indeed, many are reluctant to accept that fish can feel pain. Others, judging by the vast numbers of people who refer to themselves as vegetarian but who eat fish, are even reluctant to admit that fish are animals. However, fish clearly are animals, and as I pointed out in Chapter 2, the latest scientific evidence strongly suggests that they can feel pain.[218] The routine suffering that the practice of fishing involves renders the sport ethically impermissible.

Other hugely popular sports in which animals are used include greyhound-racing, horse-racing and equestrianism generally. The implications of the rights theory is that these sports are permissible so long as they do not lead to the suffering or death of the animals involved. Once again, however, these sports as they currently stand routinely involve the suffering and death of animals. For one thing, many of the methods used to train animals for use in these sports involve instilling discipline by causing pain. For example, traditional methods of 'breaking' a horse have usually involved the use of violence. However, once again the fact that these types of training techniques are currently used does not mean that using animals in sport is necessarily wrong. For one thing, it is perfectly possible to train a horse or a dog without inflicting pain on the animal. The rights theory defended in this thesis demands that such non-painful training methods be adopted.

Not only is the animal interest in avoiding pain relevant to these sports, but so too is the animal interest in continued life. For example, those horses and dogs who are past their peak, and those that never attain the required level of achievement, are routinely killed. Although retirement homes for horses do exist, as do rehoming centres for greyhounds, the lucky animals that end up in these places are very much in the minority. A concrete figure for the number of animals that are killed once their racing life is over is hard to come by, but *The Sunday Times* recently claimed that one builder's merchant in County Durham had killed over 10,000 dogs in the last 15 years.[219] A recent investigation by

[218] See also Quirin Schiermeier, "New evidence that fish feel pain", *Nature,* 30th April 2003; and James Randerson, "Fish 'capable of experiencing pain'", *New Scientist,* 30th April 2003.
[219] Daniel Foggo, "Revealed: the man who killed 10,000 dogs", *The Sunday Times,* 16th July 2006.

The Observer newspaper found that around 7,000 racehorses are killed per annum in the UK, with many being sold abroad as meat. In the United States the figure is as high as 90,000.[220] With so many animals being killed within these sports, a radical overhaul of them is required. At present the horseracing industry spends just £250,000 per annum on retired animals.[221] This sum is paltry. Animals have a right not to be killed even when they cannot run as fast or jump as high as they used to. Upholding these rights will be costly, but that does not diminish their moral validity.

The implications of the rights theory demand not only tight regulation on the training of these animals and the way they are kept, but also the establishment of suitable provisions for when these animals are past their peak or get injured. Animals cannot be discarded when we have finished with them. The owners of animals that are used in sport must guarantee the quality of life for their animals for their entire lifespan. Without doubt these measures will be costly; indeed these sports will inevitably have to downscale dramatically. Moreover, some of the uses of animals where death and injury are simply inevitable, as is the case with the Grand National, should stop. Animals have rights not to be made to suffer and not to be killed, and these rights cannot be violated just for our amusement.

Despite my attacks on current practices concerning the use of animals in entertainment, and the challenges they pose to the status quo, it nevertheless remains the case that my position puts me outside of the animal rights orthodoxy. Many proponents of animal rights will attack my claim that animals have no right not to be used for our entertainment for being too permissive. For this reason, in the next section of the chapter I wish to look at some of the possible objections that can be raised against my position.

7.2 Objections to Using Animals for Our Entertainment

Some thinkers claim that animals do possess rights not to be used to entertain us. Many argue that this is because animals have an intrinsic interest in liberty. Since I have refuted this claim elsewhere in the thesis, I will not repeat myself here. Instead, I will examine four alternative objections to the use animals in entertainment: three claim that using animals to entertain us is wrong because it is disrespectful, and the other claims that animals have an interest in exercising their natural capacities. I refute these

[220] *The Observer*, 'The slaughtered horses that shame our racing', 1st October 2006.
[221] Ibid.

objections in turn and maintain that pending further argument to the contrary, animals have no right not to be used in entertainment.

7.2.1 Respectful Treatment: Dignity

Some will claim that using animals in entertainment is inherently wrong because it is disrespectful. Respect is a rather nebulous concept and is cashed out differently by different philosophers. However, one common understanding of it relates back to dignity, which I discussed briefly in Chapter 6. It might be argued that we fail to respect an individual when we ignore or undermine that individual's dignity. In this sense, failing to respect someone need not necessarily involve causing them to suffer, or involve affecting their well-being in some other way; it can also involve negating their dignity, which is distinct from an individual's well-being. This idea is pertinent in the case of using animals in entertainment. For while it might be the case that practices such as keeping animals as pets or confined in zoos do not cause them suffering, they might nevertheless be wrong on the basis that they are disrespectful and undermine animal dignity. Just such an argument is put forward by Dita Wickins-Dražilova who compares putting animals in zoos for human entertainment with the 18th and 19th century practices of opening mental asylums to the paying public.[222] Wickins-Dražilova argues that although the patients did not seem to mind the visitors, and thus did not have their well-being adversely affected, the practice came to an end because, "...we perceive using the mentally ill for entertainment as bad, because we respect their dignity."[223] So if the dignity of non-autonomous humans is undermined by being on display for the amusement of others, perhaps the same is true for non-autonomous zoo animals.

However, as I mentioned in Chapter 6, I am rather unclear as to what dignity is. Balzer, Rippe and Schaber say that for human beings, dignity comes down to the capacity for self-respect.[224] But if that is the case, why does Wickins-Dražilova assign the capacity for dignity to the seriously mentally disabled, who presumably lack the cognitive capacities for this kind of self-respect? It is because Wickins-Dražilova's understanding of dignity is somewhat different to that of Balzer et al, and is much closer to a simple notion of well-being. Indeed, Wickins-Dražilova herself describes dignity as a

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[222] Dita Wickins-Dražilova, "Zoo Animal Welfare", *Journal of Agricultural and Environmental Ethics,* Vol. 19, No. 1, Feb. 2006: 27-36, p. 32.
[223] Ibid., p. 32.
[224] Philipp Balzer et al., "Two Concepts of Dignity for Humans and Non-human Organisms in the Context of Genetic Engineering", *Journal of Agricultural and Environmental Ethics,* Vol. 13, No. 1, 2000: 7-27.

combination of the self-interest of the being, and the respect of an outside party. So she explains:

> ...good zoos that provide sufficient living conditions for animals enable the animals and the keepers to maintain their dignity. But a bad zoo makes it impossible for the animals to keep their dignity if it prevents them from their basic natural behaviour, like cleaning themselves, or socializing with their own kind.[225]

However, by allowing interests back into the discussion, Wickins-Dražilova has now conceded that good zoos can respect animals' dignity. It seems then, that 'dignity' has just collapsed here into respect for interests.

But if dignity is unable to do much work in these arguments, and we are left with the consideration of interests, is there nothing wrong with opening the care homes of the mentally disabled to the paying public? It seems to me that there are good reasons not to open up these homes, but reasons based on the interests and rights of individuals rather than on appeals to dignity. It is wrong first of all, because in practice it must surely affect the well-being of the mentally disabled individuals that live there. These individuals may not be fully autonomous and rational, but I find it hard to believe that all of them would be oblivious to and unaffected by being put on display for tourists. Nevertheless, let us for the sake of argument imagine that they would be so unaffected. There seems to be a second powerful reason why it would be wrong to open these homes in this way: the family and friends of these individuals would surely have strong objections to their loved ones being displayed like this. The interests of these individuals provide good reason not to open these homes to the public. However, this might seem to imply that if some of these individuals had been abandoned by their friends and family, or simply had none, then it would it be permissible to display them provided that they did not thereby suffer. But I think that we can resist this conclusion on the basis of our own self-interest. For example, an accident or a disease could lead to you or I becoming severely mentally disabled, and it is possible that our families might decide to have nothing to do with us. When we think about this possibility, most of us would hope that we were looked after in a decent home, and most of us would hope that we were not displayed to the paying public. In fact, it makes us happier now to think that we could never be so treated. So once again there is a third reason not to open the care homes of the mentally disabled: the interests and well-being of current individuals. However, the astute will note that all of this still leaves open one final possibility: displaying those

[225] Dita Dražilova, "Zoo Animal Welfare", p. 34.

who will not suffer or be harmed by being put on display, who have no friends or family, and who are and always have been *permanently* mentally disabled. Our own self-interest cannot do the same work here, as we could never end up in the same situation as these permanently disabled individuals. Here my arguments run out. Such displays would be permissible, as there is simply no possibility of any harm being caused. However, we are talking about such a distinct and small group of individuals, one wonders how any such practice could be operationalised. And in any case, in terms of the paying public, who on earth would want to be 'entertained' in this way?

So, despite the arguments of Wickins-Dražilova, one can effectively maintain that there is a difference between displaying animals in zoos and displaying the mentally ill. The question is not one of dignity, but rather the concrete interests and well-being of the patients themselves, their loved ones, and society at large. While my argument does leave open the door for the theoretical permissibility of a tiny number of human displays, I think this is preferable to invoking the mystical concept of 'dignity' for the simple purpose of affirming our intuitions.

7.2.2 Respectful Treatment: Virtue

Wickins-Dražilova does not just see dignity as something that resides within particular individuals, however. She also sees it inherent within the individual *giving* the respectful treatment. In this case, part of the problem or wrongness in disrespecting another is the act of disrespect itself; that is, it is more than the fact that one offends or undermines a property of the individual in question. David DeGrazia has something similar in mind when he discusses the role of respect in animal ethics. DeGrazia takes it for granted that we can harm animals and that such harm is a *prima facie* wrong. However, DeGrazia wonders whether it is possible to *disrespect* animals, irrespective of whether the animal is benefited or harmed, and if so, whether we have a duty not to show such disrespect.[226] To illustrate his point DeGrazia offers the following example of a potential instance of disrespect shown to animals:

> (A) A family dyes its white-haired poodle in the colors of the American flag on the Fourth of July and walks him in the town parade. The dog shows no sign of distress...[227]

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[226] David DeGrazia, "Animal Ethics Around the Turn of the Twenty-First Century", *Journal of Agricultural and Environmental Ethics* Vol. 11, No. 2, 1998: 111-129, p. 128.
[227] Ibid. p. 128.

This act may not cause the dog to suffer, but perhaps it is a sign of disrespect, and objectionable as such. DeGrazia explains:

> I am inclined to believe that the human conduct described in (A) ... (is) objectionable for evincing disrespect towards the animals. If this and similar judgments are defensible, an adequate account may implicate virtue ethics, which connects the manner in which we act, our attitudes, and our character.[228]

Maybe then, dyeing poodles, keeping them as pets, displaying them in zoos, using them for our entertainment and so on are all instances of disrespect and thereby wrong in that they illustrate flaws and defects in our character. However, this is not what DeGrazia thinks. For he also considers the example of creating a massive zoo that meets:

> ...the physical and psychological needs of its animals, and provides them with lives at least as good (long, healthy and satisfying) as the lives they would probably have in the wild.[229]

Such a zoo, DeGrazia claims, is not obviously disrespectful and would probably be permissible. So, not all uses of animals in entertainment are disrespectful according to this account. Some are impermissible, like dyeing poodles, and others are permissible, like keeping them in good zoos. DeGrazia presumably bases this judgement on the fact that the zookeepers act out of concern for the animals, and thus somewhat virtuously; while the poodle's owners act for their own amusement, and thus viciously.

However, we should be extremely sceptical of judging the permissibility of actions on the virtuous attitude or character of those behind them. For example, imagine a film star who decides to devote a considerable amount of time to promoting some worthwhile charity. Suppose further that because of her involvement, the charity raises more money than it would have otherwise been able, and uses that money to improve the lives of many individuals. At this point, not only does this act seem permissible, but positively virtuous. However, imagine now that we somehow found out that this star had no concern for the charity's goals whatsoever. Instead, she spent her time in this way because she had a new film to promote, and was actually using the charity work to boost her profile and that of the film. Clearly, this changes our attitude to the character of the film star: we would no longer find her virtuous, and many would see her actions as exploitative and vicious. Nevertheless, I find it hard to believe that anyone would actually want to *stop* the film star from working for the charity. Her motivation may be unfortunate, but surely the film star's actions are perfectly permissible. They are

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[228] Ibid. pp. 128-129.
[229] Ibid., p. 128.

perfectly permissible because no harm (and indeed, a great deal of good) has been done by her actions.

So why then do so many of us have the intuition that the poodle owners should not dye their dog? We intuitively think that the poodle is wronged by the dyeing comes down to much the same reason as we think that the mentally disabled are wronged by being put on display to the paying public: we simply cannot imagine how the poodle or mentally disabled individuals would not be harmed by such actions. It is true that the poodle is not autonomous like you or I, but he is sentient and social creature that needs affection. If he is being mocked and laughed at, it is extremely likely that he will be able to sense that, and will suffer as such. On the other hand, because the zoo animals in DeGrazia's example have a high quality of life, we can legitimately maintain that no wrongdoing has taken place. Once again, we can explain these differences in terms of the interests and well-being of individuals, without having to rely on much more dubious ideas of respectful attitudes and character.

7.2.3 Respectful Treatment: Property Status

The most famous invocation of respectful treatment in animal ethics focuses not on the attitude of the respect-giver, but the properties and welfare of the respected party. For Tom Regan, those beings with what he calls 'inherent value' have a fundamental right to respectful treatment. Regan argues that all entities who are 'subjects-of-a-life' - that is, those entities with beliefs and desires, perception and memory, the ability to feel pain and pleasure, the ability to initiate action, an individual welfare and so on – possess a value in and of themselves, irrespective of their value to anyone or anything else.[230] This inherent value grounds Regan's respect principle: "We are to treat those individuals who have inherent value in ways that respect their inherent value."[231] Essentially, this is a Kantian injunction whereby, "...individuals who have inherent value must never be treated *merely as means* to securing the best aggregate consequences."[232]

I have made similar arguments to Regan in this thesis, even if the terminology has been somewhat different. For example, what Regan calls 'inherent value', is roughly equivalent to what I have been referring to as 'moral status' throughout this thesis. If an entity has moral status or inherent value it means that we have obligations to that thing

[230] Tom Regan, *The Case for Animal Rights*, p. 243.
[231] Ibid., p. 248.
[232] Ibid., p. 249.

for its own sake. As I argued in Chapter 2, entities whose lives can go well or badly for themselves (phenomenally conscious animals, for example) possess moral status and are owed certain obligations as such. Since we owe such entities direct obligations, we cannot treat them only as means to the achievement of the best overall consequences. Rather, we must pay due heed to what we owe them for their own sake. For example, I cannot torture a cat to entertain a group of sadists: if I did, the aggregate consequences might be higher levels of pleasure overall, but I would be ignoring the important interests of the individual cat. Thus, to this extent I can endorse Regan's respect principle. But does using animals for our entertainment violate this norm of respect?

Gary Francione thinks that it does. Francione claims that the respect principle logically entails the animal right not to be the property of others.[233] This is because he claims that once a thing is the property of another, it is necessarily treated in a purely instrumental way:

> The status of animals as property renders meaningless our claim that we reject the status of animals as things. We treat animals as the moral equivalent of inanimate objects with no morally significant interests or rights. We bring billions of animals into existence annually simply for the purpose of killing them. Animals have market prices. Dogs and cats are sold in pet stores like compact discs; financial markets trade in futures for pork bellies and cattle. Any interest that an animal has is nothing more than an economic commodity that may be bought and sold when it is in the economic interest of the property owner. That is what it means to be property.[234]

This argument has obvious implications for using animals in entertainment, for most animals kept as pets, in zoos, circuses and for sport are usually considered to be 'property'.

However, notwithstanding the rhetorical force of Francione's argument, we must question whether owning a piece of property necessarily leads to disrespecting it. For once we start to analyse the criteria of ownership, we soon see that things are more complicated than Francione suggests. For example, A.M. Honoré has famously listed

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[233] Gary L. Francione, "Animals – Property or Persons?" in Cass R. Sunstein and Martha C. Nussbaum (eds.), *Animal Rights: Current Debates and New Directions,* p. 124. Steven M. Wise is another important writer who argues that animals' property status necessarily renders them being treated as a 'thing'. See Steven M. Wise, *Rattling the Cage*, and, *Unlocking the Cage – Science and the Case for Animal Rights,* (Oxford: The Perseus Press, 2002). Since his argument is more concerned with legal rather than moral rights, my discussion focuses on Francione.

[234] Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?*, p. 79.

twelve standard incidents of ownership.[235] These incidents include such things as the right to exclusive physical control of that property, the liberty to use that property at one's discretion, and the power to sell or destroy that property. If such incidents are present without any qualification in each and every case of ownership, then Francione's claim concerning the necessary connection between ownership and disrespect must be valid. That is to say, if one can control, sell and destroy one's property *as and when one wishes*, then the property status of animals would seem to obstruct the goal of respecting animals' interests. However, as Jeremy Waldron has pointed out, the incidents outlined by Honoré should not be regarded as the necessary or jointly sufficient conditions of ownership, but are rather the general and qualified features of ownership.[236] Thus, just because the power to sell a piece of property or the liberty to use it as one wishes might be very limited in some situations, that does not mean that it would be wrong to acknowledge ownership of that thing. For example, I sometimes have to let state officials onto my land, I cannot sell beer from a barrel to passers-by on the street, and I cannot burn down my listed cottage; but none of these facts mean that I do not *own* my land, my barrel and my cottage.

What I am getting it at here is that people can be said to own property, without being able to do what they like with that property. Accordingly, Francione is wrong to contend that the property-status of animals *necessarily* means that animals will not be respected. For example, most people regard pet-keepers to own their animals. However, pet-keepers do not usually treat them 'merely as means to securing the best aggregate consequences'. For as noted before, torturing a cat for the pleasure of sadists might lead to the best overall consequences, but not many cat-owners would consider performing such an act. The cat may well be property, but that does not necessarily lead to treating, 'animals as the moral equivalent of inanimate objects with no morally significant interests or rights', as Francione contends.

Francione's more persuasive argument, however, is that even if we recognise that animals possess significant interests, so long as they remain property, their interests will always be subordinate to those of property-owners:

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[235] A.M. Honoré, "Ownership" in A.G. Guest (ed.), *Oxford Essays in Jurisprudence,* (Oxford: Oxford University Press, 1961).
[236] Jeremy Waldron, *The Right to Private Property,* (Oxford: Clarendon Press, 1988), pp. 49-50.

> As property, animals are *chattels,* just as slaves once were. And just as in the case of human slaves, virtually *any* interest possessed by animals can be 'sacrificed' or traded away as long as the human benefit is sufficient.[237]

Unfortunately, just as the ownership of animals does not necessarily entail ignoring their interests, nor too does it necessarily entail subordinating their interests. As Cass Sunstein has pointed out, it is perfectly possible for us to protect and support animal interests, and even grant them rights, without necessarily declaring that they cannot be owned.[238] Indeed, some of the suggestions I make above with regard to tighter regulations and licences for owning animals can be regarded as examples of such interest-protection.

However, perhaps the more important aspect of Francione's claim is his analogy of owned animals with human slaves. Because slaves and animals are owned, we might maintain that both are *dominated.*[239] Thus, even if we treat slaves and animals well and protect their interests, as property they still remain second-class beings who are dependent on our benevolence and goodwill for the protection of their interests.

But while this domination argument works well for adult humans who are autonomous beings, it is not convincing in the case of non-autonomous animals. Most humans have a clear and important interest in being free from domination. This is based on the value of autonomy for human beings: they have an interest in being in control of their own lives and choosing their own ends in life. As I have argued elsewhere, however, autonomy holds no such value for animals. As non-autonomous beings, animals have no intrinsic interest in being in charge of their own life and pursuing their own self-chosen ends. Given this, there seems to be no reason why animals have an intrinsic interest in being free from domination.

However, if all this is true with regards to animals, then presumably it must be true for non-autonomous humans. In which case, does the argument I present here make it permissible to treat non-autonomous humans as mere property, who can be bought and sold on the market? No, it does not. First of all, while I have argued that it is permissible to own animals, my argument does not justify the existing property status of animals. What I mean by this is that there should be many more restrictions on the freedom of animal owners than are currently present. Importantly, the rights theory defended in this

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[237] Gary L. Francione, *Rain Without Thunder,* p. 127.

[238] Cass R. Sunstein, "Introduction: What are Animal Rights?" in Cass R. Sunstein and Martha C. Nussbaum, *Animal Rights: Current Debates and New Directions* , p. 11.

[239] This kind of domination is often referred to in Republican thinking. See for example, Philip Pettit, *Republicanism,* (Oxford: Clarendon Press, 1997).

thesis prevents animals from being bought and sold at will. Animals have *prima facie* rights not to be made to suffer, and without doubt being bought and sold can cause suffering. For example, distress is often caused by uprooting animals from a familiar environment and settled social group. Thus under this scheme, neither animals nor children can be bought and sold on the whim of their parents or owners; their best interests must take priority.

Nevertheless, this leaves one remaining problem: my position is that animals cannot be bought and sold at will because it often causes suffering. Of course, the flip-side of this is that it is permissible to buy and sell animals when no such suffering is caused. Does this also mean that parents can sell their young children so long as their best interests are protected or promoted? Strictly, this does seem to be the implication of my argument. However, I find it hard to conceive of many situations in which infants would benefit (or not be harmed) from being bought and sold. First of all, the distress caused by being so uprooted would for most children be overwhelming. Secondly, there is the additional factor that human infants are 'potential persons'. In other words, the trauma from being bought and sold may well come later in life, with individuals feeling huge resentment at being so treated. Indeed, non-commercial adoption often causes great distress for the adopted individual, with feelings of loss, grief and anger all common, together with the difficulty for individuals of forming a coherent sense of self.[240] If such feelings are engendered by adoption where money is not exchanged, it is likely that the realisation that money was exchanged may exacerbate such resentment. Thirdly, the parents and the children are not the only relevant interested parties in the human context. Family and friends surely have *some* stake in the future of the child, and may have strong objections to the selling of the child. Finally, we must ask what impact such child-trades would have on society as a whole. Would it encourage treating children as mere 'things', whose interests are insignificant? Personally, I doubt it, but if this can be shown, it would further diminish the case for such exchanges. So while the implication of my argument is that non-autonomous infants can be bought and sold when their interests are protected, the number of permissible trades would in fact be miniscule.

To sum up this section then, I have argued that although animals can be said to have an interest in respectful treatment, this does not entail that animals cannot be used to

[240] B. J. Lifton, "The Adoptee's Journey", *Journal of Social Distress and the Homeless,* Vol. 11, No. 2, April 2002: 207-213.

entertain us. Rather, in Regan's words, it means that animals cannot be used 'merely as means to securing the best aggregate consequences'. In other words, we can use them, but we must not use them in ways that violate our obligations to them. That does not involve awarding them 'dignity', having a 'virtuous attitude' towards them, nor does it entail rejecting owning them. Instead, it involves protecting animals' fundamental interests: that is, not making them suffer and not killing them.

7.2.4 The Interest in Exercising Natural Functionings

Several proponents of animal rights claim that animals have natural functionings that they have an interest in exercising. Thus, to domesticate animals and keep them as pets, to display them as exhibits in zoos, to train them to perform acts in circuses, and to make them compete against each other for our amusement, are all violations of the interest that animals have in exercising such capacities.

We have seen in Chapter 5 that Paul W. Taylor puts forward just this type of argument in relation to freedom and the 'biological ends' of animals. I have criticised such arguments throughout the thesis for erroneously treating the well-being of animals in a perfectionist way. I have pointed out that well-being is a prudential value and thus that determining the interests of animals must be based on what makes an individual's life go better for him or herself, rather than on what makes an individual a better example of his or her kind. So, to claim that we cannot use animals to entertain us because they have an interest in living as nature intended, is to mistakenly impose a perfectionist standard on what makes animals' lives go well.

However, a more recent functioning-based argument has been put forward by Martha C. Nussbaum. While this theory was referred to in Chapter 3, it has not yet been fully considered, and has direct relevance for the issue of animals in entertainment. Nussbaum claims that animals are entitled to a 'dignified existence' which involves the ability of an animal to flourish as the kind of being that he or she is.[241] Interestingly, however, unlike other thinkers concerned with the natural functionings of animals, Nussbaum does not see animals' entitlement to dignified existence as prohibiting the use of them for our entertainment. Indeed, Nussbaum explicitly maintains that paternalism is permissible for animals, so long as it is in keeping with their flourishing.[242]

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[241] Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership,* p. 325.
[242] Ibid., p. 376.

Thus zoos and animal parks can be permissible[243], as can the training of horses and dogs for their use in sport.[244] As noted, however, for Nussbaum it is crucial that such use does not violate the ability of the animal to flourish as the kind of being she is.

But none of this means that my position and Nussbaum's are identical. Indeed, while I claim that we can use animals to entertain us so long as we do not kill them or cause them pain, Nussbaum claims that we can use animals to entertain us so long as we allow them to flourish as the types of entity they are. However, for Nussbaum, flourishing involves more than just being free from pain and continuing to live. Nussbaum writes that:

> It seems plausible to think that there may be goods they (animals) pursue that are not felt as pain and frustration when they are absent: for example, free movement and physical achievement, and also altruistic sacrifice for kin and group. It is also possible that some animal pains may even be valuable: the grief of an animal for a dead child or parent, or for the suffering of a human friend, may be a constituent part of an attachment that is intrinsically good...[245]

But while some of these 'attachments' might be valuable in some perfectionist sense, it is far from clear that any of them are valuable for individuals themselves. Clearly, free movement and physical achievement are valuable for animals, but only insofar as they contribute to pleasure and feelings of satisfaction. Thus, the physical achievement of a gazelle outrunning a lion is clearly valuable for the gazelle, but only to the extent that the achievement leads to the survival of the animal. It is simply bizarre to claim that the anxiety, stress, pain and fear of the chase are in themselves valuable for the gazelle. As for the pain induced by an altruistic sacrifice or the loss of kin, again I see no reason why these make life better for individual animals themselves. Nussbaum might hold altruistic sacrifice and grief as instances of some moral ideal, but she must surely acknowledge that such suffering ordinarily makes life worse for individual animals themselves.

So, as with other theories that emphasise the fulfilment of one's natural ends or the exercising of one's natural functionings, Nussbaum erroneously imposes perfectionist values on what it means for an individual's life to go well. Animals have no intrinsic interest in exercising their natural capacities, or in flourishing as the types off being that they are. Thus, to use them for our entertainment is not in itself harmful.

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[243] Ibid., p. 375.
[244] Ibid., p. 377.
[245] Ibid., p. 345.

7.3 Conclusion

I have argued that animals have no moral right not to be used for the entertainment of humans. However, this is not a justification of the status quo. Many of the ways in which we currently use animals to entertain us violate their rights. We violate the animal right not to be made to suffer by keeping pets, zoo, circus and sport animals in conditions that while convenient and cost-efficient for us, ignore their basic needs. We violate the animal right to life by killing them when they have become too costly and have served their purpose. However, the problem here is not that we use animals to entertain us and thereby disrespect them or fail to allow them to flourish. Rather, the problem is that we ignore their interests and fail to uphold their rights. For this reason I propose amending rather than prohibiting the use of animals in entertainment.

8. Non-Human Animals and Culture

I have argued that animals have *prima facie* moral rights not to be killed and not to be made to suffer. These rights are *prima facie* because in some contexts, other considerations will count against the ascription of either right. Given that circumstances and competing interests are so important to the grounding of these animal rights, it is crucial to look at one last controversial context of animal usage: culture.

Some cultural groups have claimed that they should be allowed to continue with their traditional practices, even when it appears that such practices cause harm to animals, and even when such practices violate the state's animal welfare legislation. Several such claims have been made in recent years. Fox-hunters in the UK have claimed that a ban on fox-hunting is an attack on the rural way of life.[246] Native peoples in North America, Greenland and Russia have argued that bans on hunting whales threaten their very existence. Jewish and Muslim groups in several states claim that legislation requiring the stunning of farm animals prior to slaughter violates their religious freedom. Representatives of the Santeria religion have gone to the Supreme Court in the USA arguing that state legislation banning animal sacrifice prevents them from following the traditions of their faith. Advocates of bullfighting in Spain have claimed that attempts to reform the practice to make it more humane involve importing, "Anglo-Saxon prejudices".[247]

All such calls have been controversial and have been opposed by animal welfare groups. Moreover, and interestingly, these cultural claims have achieved markedly different levels of success. For example, on the one hand, Jewish and Muslim communities are exempted from UK law which requires animals to be stunned in order that they are rendered unconscious before they are slaughtered. This is because:

> The Government is committed to respect for the rights of religious groups and accepts that an insistence on a pre-cut or immediate post-cut stun would not be

[246] It might be claimed that fox-hunters do not constitute a cultural group. Perhaps instead, they are a group who share a common source of enjoyment, much like football supporters. There is simply not the room in this chapter to discuss the extremely difficult issue of what counts as the necessary and sufficient conditions of culture. For this reason, I will simply assume that all of the groups mentioned in this chapter can justifiably be referred to as cultural groups.

[247] Giles Tremlett, "Bullfight reform plan is red rag to aficionados", *The Guardian,* 21st December 2006.

compatible with the requirements of religious slaughter by Jewish and Muslim groups.[248]

On the other hand, the UK government has not seen fit to overturn or allow exemptions to recent legislation on banning hunting with dogs, despite hunters' claims that it is a traditional cultural practice. In fact, in direct response to such claims DEFRA publicly states that, "There is no right to be cruel."[249]

Perhaps the UK government's differing reactions to these two issues is based on there being a relevant difference between the two types of claim. After all, cultural groups usually assert one of three quite different types of argument when making their case. The first type of argument is the one often made by fox-hunters: quite simply, the human interest in culture trumps the interests of animals. For it might be argued that what is at stake here is something more than the therapeutic benefits garnered by animal experimentation, the pleasures of the palate offered by animal agriculture, or the amusement we gain from using animals in entertainment. Rather, the very integrity and survival of a cultural group is in question. Given this, it might be claimed that animal rights not to be killed and not to be made to suffer are *not* grounded in the context of culture, because the rival human interests are so strong and pressing.

The second type of claim made by cultural groups invokes religion, and this is clearly the type of argument made by Jewish and Islamic groups regarding animal slaughter. In these claims, groups argue that treating animals in certain ways and using them for certain purposes is integral to their religion. Thus to prevent such treatment or to restrict such uses is effectively to undermine the ability of religious believers to practise their faith. As in the case of culture above, it might well be argued that the human interest in freedom of religion trumps the interests of animals, thus negating the ascription of animal rights in this context.

A final type of claim made by some cultural groups is that it is illegitimate to judge one culture's practices by a different culture's ethical standard. In short, some groups claim that so-called Western standards of animal welfare and rights simply do not apply to them. In this chapter, I will not discuss this latter type of claim, for it assumes that ethical

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[248] DEFRA, *Government's Final Response to the Farm Animal Welfare Council Report,* 8th March 2005, available from: <http://www.defra.gov.uk/animalh/welfare/farmed/final_response.pdf>.

[249] Quotation taken from DEFRA website, "Hunting with Dogs – Questions and Answers", <http://www.defra.gov.uk/rural/hunting/hunting_qa.htm>.

standards are relative to the culture in which they are formed. Like many others, and as I point out in Chapter 1, I regard such cultural relativism to be mistaken, and believe that some ethical standards can be applied universally. Unfortunately, given the limits of this thesis, this rejection of relativism will have to remain as an assumption.

So we are left then with the possibility that the human interests in culture and freedom of religion should take precedence over the interests of animals. If such an argument is correct, animal rights not to be killed and not to be made to suffer are not established in the context of cultural practices involving animals. The interests in culture and freedom of religion will be examined in turn. I will argue that while the human interests in culture and religious freedom are strong, they do not automatically trump the pressing interests of animals: animal rights are still grounded in the context of cultural practices. Moreover, throughout the chapter I argue that it is a mistake to overestimate the conflict between animals' rights and the human interests in culture and religion. For abiding by the rights theory outlined in this thesis will not lead to the destruction of vast numbers of cultures, nor will it prevent significant numbers of people from practising their faith.

8.1 The Interest in Culture

My claim has been that animals have strong interests in not being killed and not being made to suffer, but these only ground moral rights when those interests are sufficient to impose duties on others. As I have noted above, it might be claimed that in the context of culture, these animal interests are insufficient to ground rights. In other words, it could be claimed that the human interest in culture trumps the interests of animals. In this section I assess just such a claim. To this end, the section is divided into four. First, I consider the strength of the human interest in culture. Second, I consider the competing interests at stake in cultural practices that cause pain to animals. Third, I evaluate the competing interests at stake in cultural practices that kill animals. And finally, I assess whether prohibiting cultural practices will lead to the annihilation of some cultures. I conclude by arguing that although culture is of great value to humans, it does not trump animals' interests in avoiding pain or in continued life. Furthermore, I claim that because it is extremely unlikely that any cultural group's identity is defined solely in terms of its practices relating to animals, the cessation of these practices will not lead to the destruction of cultures.

8.1.1 The Strength of the Human Interest in Culture

Virtually every philosopher who has addressed the topic of culture acknowledges that living within a cultural context is of great importance to the well-being of individuals. Clearly, humans are social animals and culture provides a context within which they can flourish: humans can pursue projects, plans and ideals that would never be available to them in isolation. For example, this very project of outlining our moral obligations to non-humans depends very much on a culture in which intellectual endeavour and ethical debate is valued and supported. In this way, my culture increases my well-being by helping me pursue and realise a project of mine.

However, it is not just the support that culture offers to one's *personal* plans that contributes to well-being; individuals also often take great satisfaction from living by the *communal* norms of their culture. Thus, religious believers benefit from being able to worship with individuals who share their faith, ethnic communities benefit from performing customs that celebrate their shared heritage, individuals within nation-states benefit from the taking part in the joint support of a national sporting team, and so on. Clearly then, these communal cultural practices make an important contribution to the well-being of human individuals. And this is no doubt true for those cultural practices that involve the use of animals. But are such practices permissible?

From the arguments that I have presented so far in this thesis, my conclusions regarding cultural groups simply *using* animals should be clear. Animals have no fundamental interest in liberty and thus have no interest in not being used for certain purposes. Thus, if a cultural practice involves the use of an animal, and that use does not cause that animal pain or death, then that practice is permissible. So, if a cultural group claims that racing pigeons, riding horses, using dogs to pull sleighs, and so on are traditional practices of theirs, such uses of animals are permissible so long as they do not cause the animals to suffer, and do not result in their death. However, what about those cultural practices that do cause harm to animals?

In the first instance, I wish to claim that the interest that an individual has in performing a cultural practice does not serve as an absolute trump that always takes priority over any competing interest. For example, imagine a cultural group claiming that a practice of theirs is 'honour killing', where women are murdered for supposedly bringing shame on their family. No sensible person would suggest that the group's interest in performing honour killings should take priority over the interests of the potential victims in continued life. That is to say, surely we can all agree that in this instance the potential victim's interest in continued life trumps the perpetrators' interest in performing the cultural

practice. However, perhaps this conclusion is more controversial than I am making out. Chandran Kukathas, for example, has argued that freedom of association is of such value to humans that groups who have freely associated should be left to run their affairs and conduct their practices with the minimum restriction.[250] Indeed, in one paper, he argues that these restrictions should be so minimal that:

> ...there would in such a society be (the possibility of) communities which bring up children unschooled and illiterate; which enforce arranged marriages; which deny conventional medical care to their members (including children); and which inflict cruel and 'unusual' punishment.[251]

Maybe then, Kukathas's framework provides means to argue that the human interest in culture is so great that it can justify practices involving 'cruel punishments' such as honour killings. However, upon closer examination of Kukathas's writing we see that despite the value he places on free association, it cannot permit all cultural practices. For example, he writes that group members are bound and restrained by the norms of the wider communities to which they belong.[252] Thus, honour killings would not be permissible if conducted by a cultural group residing in the UK, because wider UK values forbid such practices.

Unfortunately, with this type of reasoning, Kukathas seems to be taking us into strange and dangerous territory. In effect, he is arguing that honour killing is only impermissible when a community (like the UK) says it is. This would mean that honour killing is perfectly permissible in a culture that values its version of moral propriety over the lives of women. But such an argument is bizarre. Honour killing is wrong *everywhere* and should not be permitted *anywhere*. Quite simply, this is because a woman has an interest in continuing to live that trumps her family's interest in avoiding shame or ridicule. Usually, individuals get over feelings of shame or being ostracised, and if they cannot, can still lead lives of extremely high quality. However, there is no hope of overcoming death, and thus no opportunity to have a decent quality of life.

I want to put forward the reasonable claim that sometimes the human interest in performing a cultural practice can be defeated by a competing interest. What remains

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[250] Chandran Kukathas, "Are there any Cultural Rights?" in Will Kymlicka (ed.), *The Rights of Minority Cultures,* (Oxford: Oxford University Press, 1995).
[251] Chandran Kukathas, "Cultural Toleration" in Ian Shapiro and Will Kymlicka (eds.), NOMOS XXIX: *Ethnicity and Group Rights,* (New York: New York University Press, 1997), p. 87.
[252] Chandran Kukathas, "Are there Any Cultural Rights?", p. 251, and, *The Liberal Archipelago,* (Oxford: Oxford University Press, 2003), pp. 141-145.

then, is to examine which interests win out in the case of cultural practices that involve animals.

8.1.2 Cultural Practices that Cause Animals to Suffer

Some cultural practices involve the gross infliction of pain on animals. For example, take the Indian equivalent of bullfighting which takes place in the state of Tamil Nadu. 'Jallikattu', as the practice is known, differs from Spanish bullfighting in two crucial respects. First, the primary purpose of jallikattu is not to fight with the bulls, but to grab prizes that have been tied to their horns. Secondly, no bulls are intentionally killed in the Indian practice, unlike in Spanish bullfighting. Despite these differences, however, it is perfectly clear that just as bulls suffer from bullfighting, so too do they suffer from jallikattu. Individuals will go to great lengths to obtain the prizes that are tied to the bulls, tormenting them, clinging to their horns, and throwing stones at them. The suffering that the hundreds of bulls used in jallikattu endure from anxiety, harassment and injury is without question. However, it is also clear that many of the people of Tamil Nadu have a strong interest in participating in this practice. Indeed, they even fight with one another for a chance to approach the bull, and put their own health and lives at risk for the sake of a prize. In fact, in 2005 5 people were killed and over 200 were injured during the fights.[253] Moreover, organisers of jallikattu claim that it is a sacrosanct tradition that has been carried out for over 2,000 years. Given then the strong interest that the people of Tamil Nadu have in this cultural tradition, might we argue that the bulls' interest in not suffering is insufficient to ground a duty in the participants to stop the practice? Do bulls have no right not to be made to suffer from the practice of jallikattu?

Although the interest of the people of Tamil Nadu in jallikattu is undoubtedly strong, I fail to see how it can take priority over the interest of the bulls in not suffering. You will recall from Chapter 5 on animal experimentation that suffering is a serious harm for both humans and animals. Certainly, their extra cognitive capacities might make humans capable of the more extreme forms of suffering, such as severe depression. However, such capacities also provide humans with the opportunity to rationalise their pain (for example, they might be able to see an end to it in sight), and take comfort from other goods (for example, relationships, art, culture, the pursuit of ambitions and so on), thus mitigating the overall effect of pain on their lives.

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[253] Sampath Kumar, "Dangers of taming the bull", *BBC News,* 21st January 2005, <http://news.bbc.co.uk/1/hi/world/south_asia/4188611.stm>.

With all of this in mind, imagine a cultural group who practised a 'human jallikattu' where prizes are tied to individuals, who are then mauled, beaten and generally tormented against their will. Every reasonable person would condemn this practice for violating the fundamental rights of the victims in not suffering. And such condemnation would stand even if the practice was ancient and greatly enjoyed by the cultural group. However, maybe we can acknowledge this human right, but deny it to bulls, because in this case the human's interest in not suffering is much greater. I am sceptical of such a claim. For even if we concede that in one sense the human victim will suffer more from the practice because of added feelings of shame and rejection (and personally I'm not convinced that bulls in jallikattu do not also have such feelings), it can be replied that this additional suffering is balanced by the fact that the human victim is likely to understand the value of the cultural practice, that the suffering will soon be over, and ultimately that he or she will survive. A bull has no such resources to draw upon, and will be consumed by terror. For these reasons, it is most reasonable to regard the bull's and the human's interest in not suffering as roughly equivalent. Since the interest of humans is sufficient to ground a human right not to be made to suffer by cultural practices, the interest of bulls must also be sufficient to ground an equivalent animal right.

8.1.3 Cultural Practices that Kill Animals

It will be remembered that I claimed in Chapter 5 that the animal interest in continued life is ordinarily weaker than that of humans. Perhaps then we might argue that the interest of individuals in performing cultural practices that kill animals trumps the animals' interest in continued life. One problem with this line of argument comes from the fact that those cultural practices that involve killing animals also invariably include the infliction of pain. For example, hunting foxes with hounds ends with the fox being ripped apart by the hounds. Even though this means of death is now banned in the UK, meaning that the fox must be killed 'humanely', it would be absurd to claim that the fox does not suffer from being chased for miles by dozens of humans, horses and dogs. Whaling is another practice where the primary purpose is death, but where the infliction of pain is inevitable. Indeed, in a recent study by Steve Kestin it was found that some whales live for up to an hour after being harpooned, and Kestin claims that he cannot, "currently visualise an acceptably humane way of killing whales."[254] Moreover, it goes without saying that while

[254] Alex Kirby, "Harpooned whales 'seldom die instantly'", *BBC News,* 14th March 2001, <http://news.bbc.co.uk/1/hi/sci/tech/1218720.stm>.

most bullfights culminate in death (including those in Portugal, where the killing is not conducted in the ring), the majority of the spectacle itself involves tormenting and injuring the bull. In a Spanish-style bullfight, for example, lances are first speared into the bull, sticks with harpoon points are then driven into the bull, the bull is then made to chase and circle his agitators until exhaustion, before the matador finally kills him with a sword. Cultural practices that involve killing animals also involve the infliction of extreme pain on animals, and are impermissible as such.

However, let us consider the possibility of a cultural practice that kills animals but which does not involve the infliction of pain. For example, imagine a group that wants to kill a pig as part of some kind of public celebration, which ultimately culminates in a hog-roast. Imagine further that this practice involves the infliction of no pain on the pig: the pig is not tormented, harassed or injured before his death, and he is killed in a manner that causes no pain, say by a shot through his head while he is sleeping. If this group has a strong interest in this cultural practice, might it trump the pig's interest in continued life? I believe that it would not. While it is true that an animal's interest in continued life is ordinarily weaker than that of most humans, it is still strong and must be considered fairly. Indeed, I argued in Chapter 5 that some humans like young infants have an interest in continued life equivalent to that of animals. Given this, consider the not implausible notion of a cultural group claiming that infanticide is a traditional custom of theirs. They might argue that as part of the ceremony a child must be taken to special spot and sacrificed painlessly. Without doubt, this child's interest in continued life is weaker than that of most adult humans. Furthermore, the group has a strong interest in performing this practice; imagine for example that the child's parents have willingly consented to it, or will even perform the sacrifice themselves. Do these considerations mean that the child has no right not to be killed in such a ritual?

I claim that they do not. The interest of infants in continued life is weaker than that of adult humans. However, 'weaker' does not mean 'non-existent'. Moreover, the interest of infants in continuing to live is sufficient to ground a moral right to life even when there are very strong competing interests. For example, the therapeutic benefits offered by conducting deadly experimentation on infants might be huge, and certainly more beneficial than relying on results obtained from rats and mice. However, I argued in Chapter 5 that these potential benefits do not destroy human infants' rights to life. Accordingly, it seems not unreasonable to propose that an infant's right to life is also grounded even when a group has a strong desire to sacrifice that infant as part of a

cultural practice. Furthermore and to be consistent, if an infant's interest in continued life is sufficient to ground a right not to be killed by a cultural practice, so too must an animal's interest in continued life. On this basis, the pig execution and hog-roast are impermissible.

8.1.4 The Destruction of Cultures?

If, as I have argued, animals have moral rights not to be killed and not to be made to suffer by cultural practices, what impact does this conclusion have for the future of particular cultural groups? Some communities have claimed that prohibiting such practices is tantamount to destroying their cultures. In light of this, and since I have argued that the existence of culture is important to the well-being of humans, we might still have a reason to deny these animal rights in the context of the cultural use of animals.

One way of refuting such an argument would be to claim that while the existence of culture is important to the well-being of individuals, the existence of *any particular* culture is not so important. Thus, if one culture dies out, this is not problematic as long as there is another culture to take its place. So, for example, it might be claimed that we need not be concerned if the 'traditional rural way of life' in Britain dies out, since individuals living in the country can adopt more modern British values. This argument essentially claims that it is the general context of culture that matters for individuals' well-being, rather than the particular details of the culture. However, this type of rebuttal is unconvincing for two reasons. First, it can plausibly be argued that the details of culture *do* matter, that the existence of different cultures is a good thing in itself, and that such diversity is valuable. Secondly, and more importantly for the purpose of delineating interests, individuals usually have close bonds with and interests in their *own* culture. Having to switch cultures then, often incurs considerable costs to one's well-being.[255] Thus, if ending certain cultural practices leads to the destruction of some cultures, this is a serious cause for concern.

However, we can question whether prohibiting certain uses of animals really will result in cultural destruction. In actual fact, in the vast majority of cases, claiming that an entire culture will be destroyed by the prevention of certain practices relating to animals is something of an overstatement. As Brian Barry writes:

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[255] This point is made in Will Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights,* (Oxford: Oxford University Press, 1995), p. 107.

> ...we can at least reject the idea that the elements in a way of life are so rigidly locked together that no part can change without causing the whole to disintegrate.[256]

For example, it would be bizarre to suggest that the Spanish culture is so bound up with the practice of bullfighting that it would simply disintegrate if bullfighting ended.

Having said all of this, however, several native peoples in Greenland, Canada, the United States and Russia do claim that whaling is so central to their culture that to prevent it would mean destruction. I believe that we should treat such claims with great caution. After all, when the Makah tribe in the United States asserted their 'cultural right' to kill whales in 1999 they had survived as a people despite having not killed a whale for over seventy years.[257] Nevertheless, it is not too far-fetched to imagine that there *might be* a community or communities whose group identity is so bound up with whaling that to prevent it would threaten their very existence. In such a case, should such groups be permitted to harm animals through whaling?

First of all, we must ascertain just how this group is under threat, and separate the different possible means of destruction: destruction of groups via starvation, destruction from destitution, and destruction of a cultural way of life. Often these three types of threat are conflated when whaling peoples make their claims. Given this then, if a group needs to kill whales for *subsistence*, then the rights theory defended here permits such killing. As I argued in Chapter 6, animals' rights to continued life are not grounded when human survival is at stake. We need not sacrifice ourselves for the sake of animals' interests. However, if a community kills whales because whale meat is their only source of income, then such killing is impermissible. Once again, I argued in Chapter 6 that economic benefit does not trump animals' interest in continued life. Both meat-farmers and whalers need to change their activity and find new sources of income; while this will undoubtedly be costly and sometimes painful, and assistance from other communities in easing these burdens should be provided, that does not make any such change less required.

But what if a community kills whales, not primarily for subsistence or money, but because they define themselves entirely as whaling people, and because whaling is their entire way of life?[258] In other words, to prevent this group from whaling would mean that a discrete cultural community is lost, and that the individuals comprising that community

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[256] Brian Barry, *Culture and Equality*, (Cambridge: Polity Press, 2001), pp. 256-257.
[257] Janet Williams, "US Judge Blocks Tribal Whaling", *BBC News,* 4th May 2002, <http://news.bbc.co.uk/1/hi/world/americas/1967677.stm>.
[258] Once again, I should point out that I am extremely sceptical that there is any such community.

might suffer a crisis of identity and a subsequent severe diminishment of well-being. First of all, I should point out that although cultural diversity is valuable, it is not valuable at any cost. If some cultures are defined fundamentally in terms of causing serious harm to others - and whaling is a serious infliction of harm - then the loss of such cultures cannot sensibly be considered regrettable in itself. Secondly, while I concede that preventing the individuals of such a group from hunting whales would impose considerable costs on them, I deny that it would lead to a complete loss of identity and the disintegration of their well-being. People change cultural communities all the time, and not only do not suffer irreversible breakdowns, but often flourish and have increased well-being.[259] A particular culture may be a source of well-being for individuals, but it is by no means the only source. Because of this, even if preventing a cultural practice that causes harm to animals results in the loss of that culture, animal rights not to be killed and not to be made to suffer are still grounded.

To end this section I would like to summarise its main points. I have evaluated whether the human interest in culture trumps animals' interests in avoiding pain and in being killed. I have concluded that it does not. Although humans have a strong interest in living within a cultural context generally, and their own cultural context specifically, this does not excuse every possible cultural practice. Just as we would not let humans suffer intolerably in the name of culture, nor should we let animals. And just as we would not let human infants be killed in the name of culture, nor should we let animals. Some might argue that such restrictions on cultural practices will lead to the destruction of certain cultural communities. I am extremely sceptical of such arguments: I can think of no community whose entire identity is based on a particular use of animals. However, even if such a community could be found, it would still not mean that that community could permissibly harm animals. The loss of a culture that is defined entirely by the harm it causes to animals is not much of a loss; and humans can lead lives of extremely high quality even when they change cultures.

8.2 The Interest in Freedom of Religion

If the human interest in culture does not trump animals' interests, what about the interest humans have in religion? Freedom of religion is widely recognised to be a human right.

[259] Michael Hartney, "Some Confusions Concerning Collective Rights", in Will Kymlicka (ed.), *The Rights of Minority Cultures*, p. 206.

It is rightly argued that individuals should not be persecuted or discriminated against because of their religion. Moreover, the right to religious freedom also means that individuals should ordinarily be free to practise their religion and live by the customs and values of their faith. However, it is clear that some religious practices violate the standard of animal rights that I have outlined in this thesis. In light of this, we must examine whether the interest that humans have in religious freedom trumps the interest of animals. Of course, at this stage one might claim that given the close connection between religion and culture, this interest does not merit separate attention. That is to say, we might simply argue that because the human interest in culture does not trump the interests of animals, nor can the interest in religious freedom. However, because some people have argued that the human interest in religion is of the highest order, and something stronger and more pressing than mere culture, a specific examination of the interest in religious freedom seems warranted.

In undertaking this examination, this section of the chapter is divided into four. First of all, I briefly spell out the basis for the human interest in religious freedom and evaluate which religions actually *require* harm to be inflicted on animals. I then look at some possible justifications for the idea that the interest in religion is special and merits priority, including: religion makes claims on the whole lives of believers; religion transmits ethical values; religious practice permits individual integrity; and religious belief has throughout history been especially persecuted. Thirdly, I assess whether the interest in religious freedom should be considered stronger and worthy of priority on the basis of equal opportunity. Finally, I evaluate the claim that it is simply hypocritical and unfair to prevent religious groups from conducting their practices that harm animals when other harmful practices are ignored. I argue that none of these arguments justify giving the human interest in religious freedom a special status and priority over other interests. Thus, pending further evidence to the contrary, I argue that animals have rights not to be killed and made to suffer by religious practices.

8.2.1 Freedom of Religion and the Requirement to Harm Animals

I have claimed that most adult humans have an interest in liberty. As autonomous beings they have an interest in not being interfered with and in framing and pursuing their own conception of the good. Given that religion is very much a conception of the

good, we might claim that freedom of religion is fundamental to human well-being.[260] In other words, preventing someone from exercising their chosen religion and living by the terms of their faith is ordinarily a serious harm. Unfortunately, religious freedom sometimes leads to harm being caused to animals.

For example, consider the method of slaughtering animals for kosher and halal meat as advocated by Judaism and Islam respectively. There has been much controversy around these practices, because stunning animals before slaughter – a requirement under UK and EU law for animal welfare reasons – is forbidden under Jewish and Islamic methods. Currently these religious groups are exempted from the requirement to stun before slaughter in the UK on the basis of freedom of religion. However, even though Jewish and Islamic leaders invoke religious freedom to defend and justify their exemption, such arguments are extremely dubious. Quite simply this is because neither Judaism nor Islam *demands* that its followers slaughter animals to eat meat; vegetarianism is perfectly permissible under these religions.[261] All these faiths do require is that *if* an animal is slaughtered to be eaten it must be killed in a particular way. Thus, preventing Jews and Muslims from killing animals in the first place – as a *prima facie* application of my animal rights theory mandates – does not prevent free religious practice. Clearly this application would be burdensome to those Jews and Muslims who enjoy eating meat, as it would be burdensome to other individuals who enjoy eating meat, but it would not interfere with religious freedom.

Of course, that still leaves us with those religious practices that cause harm to animals, and which are *required* by the mandates of the faith. Interestingly, and I would argue fortunately, these are few and far between. However, perhaps the clearest example is the animal sacrifice conducted by the Santeria religion. Paula Casal provides a useful summation of the religion's history and beliefs:

> Santeria, or the Way of the Saints, is a syncretic religion from the nineteenth century. It originated when hundreds of thousands of the Yoruba people were brought as slaves from West Africa to Cuba, and conjoined Catholic iconography and sacraments to their traditional religion in order to escape persecution. Santeria now counts on 50-60,000 practitioners in Dade County, Southern Florida, and has many more in other states and countries. Santeros worship *orishas*, living spirits of African

[260] Martha Nussbaum essentially makes this argument, but phrases it as 'the intrinsic value of religious capabilities'. See Martha C. Nussbaum, "A Plea for Difficulty" in Susan Moller Okin et al., *Is Multiculturalism Bad for Women?*, (Princeton, NJ: Princeton University Press, 1999), p. 107.
[261] This same point is made by Brian Barry. See Brian Barry, *Culture and Equality*, p. 45.

origin which, they suppose, can help people fulfil their destinies. Orishas are powerful but not immortal, and their survival depends on animal sacrifices.[262]

The exact numbers of animals slaughtered each year by the religion are unknown. However, one of its churches in Florida has estimated that it alone kills over 10,000 animals each year as part of its services, including goats, sheep, guinea pigs, ducks and turtles.[263]

Without doubt, preventing these sacrifices would interfere with the religious freedom of Santeros, which I claim to be key human interest. On what grounds, if any, could this interest of free religious practice trump the interests of the animals who are killed?

8.2.2 Freedom of Religion as a Special Interest

It might be claimed that the interest human beings have in freedom of religion merits priority because it is somehow 'special'. Indeed, it is certainly undeniable that for many people in the world their religion is one of their most pressing concerns. To justify the idea that our interest in religion is special and thus merits being given priority, we need to point to something about it that differentiates it from other interests. Several candidates have been put forward in the literature which might make the interest in religion 'special'. They run as follows: religion makes claims on the whole lives of believers; religion is based on immanent beliefs; religious-based desires are intense; religion provides a context for self-understanding; religion transmits ethical values; religious practice permits individual integrity; and finally, religion has been the focus of particularly acute acts of persecution and oppression.[264] I will consider each of these candidates in turn.

First of all, it is pointed out that religious believers cannot turn their values on and off, like others can, but must abide by them for life. This, one might claim, makes the interest in living by those beliefs special and worthy of priority. However, this argument is not very persuasive. In the first place, religious beliefs can be changed: individuals can abandon religion, and even swap religion, thus altering their beliefs. Furthermore, those without ties to religion can also have beliefs which last all of their lives. For

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[262] Paula Casal, "Is Multiculturalism Bad for Animals?", *The Journal of Political Philosophy,* Vol. 11, No. 1, 2003: 1-22, p. 6.

[263] F. Barbara Orlans et al., *The Human Use of Animals: Case Studies in Ethical Choice*, (Oxford: Oxford University Press, 1998), pp. 307-311.

[264] I have taken these candidates from four main sources: Paul Bou-Habib, "A Theory of Religious Accommodation", *Journal of Applied Philosophy,* Vol. 23, No. 1, 2006: 109-126, pp. 114-121; Kent Greenawalt, "Freedom of Association and Religious Association" in Amy Gutmann (ed.), *Freedom of Association,* (Princeton, NJ: Princeton University Press, 1998), pp. 121-122; Martha C. Nussbaum, "A Plea for Difficulty", p. 106; and Paula Casal, "Is Multiculturalism Bad for Animals?", pp. 14-15.

example, a white supremacist might have the sincere belief lasting his entire life that black people are criminally-minded and that lynching is permissible as such. However, we would not want to assign any force to this man's desire to perform lynchings, let alone grant it primary importance.

Secondly, it could be argued that religion is based on beliefs about the divine and the spiritual realm, thus giving the interest in acting upon such beliefs much more importance than our 'Earthly' interests. However, this claim really just begs the question: for *why* are our spiritual interests more important? Perhaps it might be responded that our very salvation depends on religious freedom and practice, thus making it the highest interest of all. Unfortunately, there seems to be no way of proving that there is such a thing as salvation, let alone that certain practices necessarily lead to it. It thus seems difficult to maintain that free religious practice is our highest interest because it leads to salvation.

However, this argument might be recast in terms of the intensity of religious belief: it is not the fact that a particular practice *does* lead to salvation that gives it priority, it is the fact that individuals *believe* it to lead to salvation. And because they believe it to lead to salvation, individuals' desires to perform the practice are incredibly intense and thus deserve priority. There are two obvious responses to this. First of all, it is extremely dangerous to grant priority to an interest just because it rests on an intense belief. For example, religiously-motivated suicide bombers no doubt have an intense belief that their actions will lead to salvation. However, it would be perverse to grant the bombers' interest in carrying out such actions priority over their victims' interest in continued life. Secondly, one can question the idea that religious beliefs are *always* more intense than non-religious beliefs. After all, religiously-motivated suicide bombers are not the only individuals prepared to bear high costs for their beliefs. Consider, for example, the many cases of individuals who go on hunger strikes for certain political causes.

The fourth and fifth candidates for granting the interest in religious freedom special status and thus priority are as follows: that religion provides a context for self-understanding; and that religion transmits ethical values. I put these two candidates together because I think they both suffer from the same problem: they do not prove that religion is special, because humans can achieve self-understanding and learn ethical values in the absence of religion. While religion is often an important source of identity, so too are nationality, culture, gender, race, family, ambitions, talents and so on. Moreover, although many individuals learn their ethical values from religion, many also

learn them from family, friends, society, school, books and so on. Clearly then, religion is not special in either of these regards. Moreover, if we were to grant priority to our interests in all of these different goods, we would have no means of resolving inevitable clashes between them.

Sixth is the idea that our interest in religious practice merits priority because it allows us to live a life of integrity, where integrity is defined as living in accordance with one's perceived duties.[265] Chandran Kukathas certainly seems to regard this notion of integrity as of the highest importance, although he frames it in terms of adherence to one's conscience:

> If there are any basic human interests, that interest is *at a minimum,* an interest in living accordance with the demands of conscience. For among the worst fates that a person might have to endure is *that he is unable avoid acting against conscience* – that he be unable to do what he thinks is right.[266]

So, to prevent religious believers such as the Santeros from practising their religious customs denies them the opportunity to do what they think is required of them, which has the most serious impact on their well-being. In response, it must be pointed out that leading a life in line with one's perceived duties or conscience is not unique to religious believers. If it is integrity that makes religion special, it also makes other ways of living special. However, granting special status and priority to all religious and non-religious practices because they encompass integrity is problematic. For example, consider someone – and there are surely many such people - who truly believes in the mandate, 'an eye for an eye, and a tooth for a tooth'. If the interest in leading a life of integrity is special and merits priority, then this man should have the moral right to enact his own form of justice whenever he is transgressed. However, granting such a right would plainly be wrong. This is because the interest of individuals in having a fair and impartial trial trumps the interests of individuals whose conscience demands immediate justice. It seems very unlikely then that our interest in integrity always merits priority.

The final claim that the interest in religious freedom is special and should take priority is based on the fact that religious groups have been persecuted in the past. However, while we can acknowledge that serious crimes and harms have been inflicted upon religious groups in the past, it seems odd to atone for that by awarding absolute priority to the interest in religion. For one thing, if persecution in the past means priority now,

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[265] Paul Bou-Habib, "A Theory of Religious Accommodation", p. 117.
[266] Chandran Kukathas, *The Liberal Archipelago*, p. 55.

then priority must also be granted to individuals' interests in culture, nationality, gender and so on. Moreover, given that animals have been persecuted and seriously harmed in the past, then on the basis of this argument, their interests too must merit special status and priority. Once again, it appears that the argument for special status proves too much.

In sum, I can find no justification for the view that humans' interest in religion is special and thus merits priority. This, of course, is not to deny that freedom of religion is an important interest of humans. Rather, it is merely to point out that religion cannot be invoked as some kind of absolute trump to defeat any competing interest. Given this, if Santeros wish to argue that their interest in religious freedom trumps the interests of animals in not being killed and not being subject to pain, they will have to find another way.

8.2.3 Freedom of Religion and Equal Opportunity

One course that the Santeros could take is to argue that their interest in religious freedom should be given extra weight on the basis of fairness and equality. This is because without such extra weighting Santeros will have a diminished opportunity to pursue their conception of the good, something that I have argued is so crucial for human well-being.[267] So, to focus on the example of the Santeria religion in Florida specifically, the argument might run as follows. Established groups and religions in Florida have ample opportunity to pursue their conceptions of the good and live by its mandates: Catholics can take the sacrament at mass; Baptists can gather to sing in worship; Muslims can congregate for prayers; and so on. The animal rights theory that I have outlined does not restrict any of these practices, thus allowing members of such groups to lead what they consider to be a good life. However, the theory I am proposing has the clear potential to outlaw a core Santeria practice, thereby denying its adherents the opportunity to pursue their conception of the good. Thus the burden of abiding by this animal rights standard falls much more heavily on members of the Santeros than it does on other groups. This, so the argument might go, is unfair, unequal, and must be rectified by giving greater weight to the interest in religious freedom of the Santeros.

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[267] Basing minority rights on the value of equality is proposed by Will Kymlicka, *Multicultural Citizenship,* pp. 108-115. Basing them specifically on equality of opportunity is advanced by Jonathan Quong, "Cultural Exemptions, Expensive Tastes and Equal Opportunities", *Journal of Applied Philosophy,* Vol. 23, No. 1, 2006: 53-71.

One easy way of rebutting this suggestion would be to suggest that religion is a matter of choice. If religion is chosen, we cannot claim that adherents of Sanetria have a diminished opportunity to pursue their conception of the good. Rather, they possess an opportunity equal to that of every other individual; but because they choose to follow the Santeria religion, they cannot avail themselves of that opportunity. However, this rebuttal is far from convincing. For one thing, given that many individuals are born into a particular religion and brought up and educated in terms of its norms, it is far from clear that all followers of a religion have straightforwardly chosen it. If this is the case with followers of Santeria, as it surely is, we might still justifiably say that an application of my animal rights standard will lead to many Santeros possessing a diminished opportunity to pursue their conception of the good.[268]

However, at this stage we must ask how far we are prepared go for equal opportunity. Looking back at some of the examples given so far in this chapter, it is extremely doubtful that we would allow *any* type of religious practice in the name of equal opportunity. For example, if a religion claimed that human jallikattu, honour killing or infant sacrifice were all practices of theirs, I cannot think of anyone who would seriously suggest that religious groups should be permitted to conduct such practices in the name of equal opportunity. Rather, we would say that opportunity to pursue one's conception of the good is *justifiably* diminished for groups who want to carry out these and practices like them. For example, Jonathan Quong advocates exemptions for minority groups on the basis of equal opportunity, but quite rightly mandates that for a practice to even be considered for exemption, "...(it) must not violate any basic rights..."[269] This of course, raises the question as to what these basic rights are, and when they are grounded, but the point is clear enough. Similarly, Paul Bou-Habib who makes a case for religious exemptions on the grounds of integrity, argues that such exemptions, "...cannot come at the expense of other people's equal opportunity for well-being", and that, "...religious practices that harm others severely...may not be accommodated."[270] We can agree then that the goal of permitting individuals to have equal opportunity to pursue their conception of the good has its limits. One obvious limit is infanticide, for example. And if

[268] For more on equal opportunity and the chance-choice distinction see Sue Mendus, "Choice, Chance and Multiculturalism"; and David Miller, "Liberalism, Equal Opportunities and Cultural Commitments"; both in Paul Kelly (ed.), *Multiculturalism Reconsidered,* (Cambridge: Polity Press, 2002).
[269] Jonathan Quong, "Cultural Exemptions, Expensive Tastes and Equal Opportunities", p. 58.
[270] Paul Bou-Habib, "A Theory of Religious Accommodation", p. 123.

we accept this limit, we must also accept the limit of animal sacrifice. For as you will recall, animals' and infants' interests in continued life are equivalent.

Thus, we might concede that imposing this standard of animal rights impacts upon the interests of Santeros: it constrains their religious freedom, and diminishes their opportunity to pursue their conception of the good. However, this fact does not count against recognising that animals possess a moral right not to be killed. As I have argued throughout the thesis, there are often costs to be paid for upholding rights.

8.2.4 Harming Animals and Hypocrisy

Having said all of this, I can think of one final response that followers of Santeria might make to support their claim that they should be allowed to continue with the animal sacrifices. They might argue that to disallow their religious practice on the basis of animal rights is hypocritical given all the violations of animal rights going on around them.[271] That is to say, they could point to the factory-farms, slaughter-houses, animal laboratories, and so on in and around Florida, and argue that if these practices are permitted, so too should theirs. In other words, they might claim that to outlaw their practices alone is discriminatory and inegalitarian.

One response to such arguments has come from Paula Casal, who argues in effect that two wrongs do not make a right:

> Under present circumstances, insisting that nothing be prohibited unless everything comparable is prohibited is tantamount to lifting all existing prohibitions on comparable forms of cruelty. Such reasoning would oppose most gradual reforms and incapacitate incremental political change.[272]

Here Casal makes the perfectly sensible point that in the real world, legislation conforming to a certain ethical standard will often have to be piecemeal. Accordingly, some groups will have to suffer the burdens of this legislation sooner than others. Since Santeria animal sacrifice is straightforwardly in violation of the animal welfare standard set out, Santeros have no legitimate complaint when they are targeted sooner than others.

While I agree with Casal on this point, I believe that the validity of such an argument depends on one crucial premise that she fails to mention: there must be good reason to believe that the standard *will* eventually be applied to *all* groups. For if we do not have

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[271] Undoubtedly, other religions and non-religious cultural groups might also make this claim.
[272] Paula Casal, "Is Multiculturalism Bad for Animals?", p. 17.

good reason to think that all groups will eventually come under legislation enforcing this standard, Santeros can quite justifiably ask why they are being targeted specifically. In such circumstances, singling out Santeria would not be part of overall 'incremental change', but would simply be change for them and them alone. Now if we return to the present situation in Florida, we can see that there is no significant political will to outlaw other practices that cause significant harms to animals, such as factory farms. Politicians are not drawing up plans to close down factory-farms, nor are they under huge pressure from the public to do so. To target the Santeros specifically then, does not appear to be part of a general and piecemeal application of animal welfare standards; rather, it seems inconsistent and inegalitarian. In other words, the claim that it is hypocritical to prevent the Santeros from conducting their religious practices is well-founded.

Importantly, however, none of this means that the interest of Santeros in religious freedom should be granted extra weight and take priority over the interests of animals. Just because it would be unfair to target Santeria specifically, does not give its followers a moral right to conduct animal sacrifices. On the contrary, as I have argued above, there is no reason to believe that their interest in religious freedom should trump the interests of animals. Animals still have a moral right not to be killed by Santeria animal sacrifice. What it does mean, however, is that the animal rights theory that I have outlined should be applied to *all* groups and individuals. It should not be used as a stick with which to beat cultural and religious minorities, who quite justifiably often feel persecuted as it is. So while, piecemeal application of the rights theory will inevitably land on some individuals and groups before others, we must be sure that such application is piecemeal, rather than discriminatory.

To sum up this section I wish to outline once again its key points. I have evaluated whether the human interest in freedom of religion trumps animals' interests in avoiding pain and in being killed. I have concluded that it does not. First of all, very few religions actually require their followers to harm animals. Thus, the animal rights theory of this thesis only has the potential to impinge upon religious freedom on a very rare number of occasions. When religious freedom and animal interests do clash, however, we can concede that humans have a strong interest being free to practise their religion. However, the interest in religion cannot be regarded as 'special', meriting priority over any other competing interest. Nor can the goal of equalising individuals' opportunity to

pursue their conception of the good take priority over all other claims. Just as we would not let humans suffer intolerably in the name of religion or equal opportunity, nor should we let animals. And just as we would not let human infants be killed in the name of religion or equal opportunity, nor should we let animals. While it might justifiably be objected by some groups that it is hypocritical to target their practices specifically while so many other actions that cause significant harms to animals are allowed to flourish, that does not make their practices any more permissible.

8.3 Conclusion

In conclusion, I once again want to reiterate that the human interests in culture and in freedom of religion are strong and pressing. Indeed, as far as possible these interests should be accommodated. Unfortunately, however, both of these interests sometimes clash with the interests of animals. Cultural and religious practices sometimes involve inflicting serious harms on animals. I have argued that the human interests in culture and religion cannot simply take priority in these circumstances. While these interests are pressing, they are by no means absolute. Having cultural support and living by a communal way of life are important to individuals, but not all that are important. And while the diversity of cultures in the world is to be celebrated, we should not rigidly preserve this diversity at any cost. In any case, the animal rights theory defended in this thesis is not much of a threat to such diversity. Similarly, the rights theory defended here is not much of a threat to religious freedom: few religions *demand* harming animals. However, when they do, religion cannot act as a simple trump. There are no grounds for regarding the interest in religious freedom as 'special', and, like our interest in culture, it must be weighed fairly against other competing interests. When we undertake such weighing we see that there are limits to religious and cultural practices. If we believe that torture and infanticide are such justified limits, then we must also accept that the interests of animals in avoiding pain and death are justified limits. In other words, animals have a moral right not to be killed or made to suffer by cultural and religious practices.

9. Conclusion

In this thesis I have argued that animals can and do possess moral rights. In particular, they possess *prima facie* rights not to be killed and not to be made to suffer. However, unlike most other proponents of animal rights, I have claimed that these rights do not extend to a *prima facie* right to liberty. Given that rights ground duties according to the interest-based theory that I have proposed, these animal rights have delineated some of our obligations to non-humans. Of course, I say 'some of our obligations', because this account is not exhaustive. Rather, and given the restrictions of space, I have had to be selective. Thus, I have discussed the obligations we have to animals in those contexts that involve the greatest numbers of animals and which I believe to be the most controversial. Those issues are: experimentation, agriculture, entertainment and culture. However, there remain other interesting contexts in which our behaviour towards non-humans is up for debate. For example, consider the following topics: our obligations to the environment; the preservation of endangered species; the permissibility of therapeutic hunting; pest control; the use of 'working animals' such as guide dogs and police horses; and our obligations to other non-human entities such as robots. While there is insufficient room to discuss all of these issues fully, it is worth bringing them up as future possible avenues of research, and to see what the theory I have outlined would say about them. In this conclusion then, I aim to do two things: first, I will make explicit what I have claimed our moral obligations to non-humans are; and secondly, I will introduce and discuss some other contexts in which these claims might be applied.

9.1 Our Moral Obligations to Non-Humans

This project is entitled 'Moral Obligations to Non-Humans', and yet many non-humans are left out of the bulk of the discussion. For example, this thesis does not provide an account of our obligations to trees, rainforests, endangered species and ecosystems. Quite simply, this is because I denied in Chapter 2 that we have any obligations *to* such entities. This denial was based on the fact that entities that lack the capacity for life to go well or badly for themselves - a capacity which non-sentient entities like trees and ecosystems lack – do not possess moral status. So while we may well have quite extensive obligations *regarding* these types of thing, such obligations are based on their value to other entities that do possess moral status. Thus, I am not denying that we have an obligation not to destroy ecosystems, to preserve rare species, or refrain from

building on beautiful tracts of wilderness. As we shall see in the next section, these obligations may well exist. However, the point is that these obligations are not owed *to* ecosystems, species, or tracts of wilderness; rather, they are founded on the obligations we have to entities such as sentient animals and humans who have lives that can go well or badly for themselves.

Having established that we have moral obligations to sentient animals, the purpose of Chapter 3 was to provide an account of what makes animals' lives go well or badly. In that chapter I defended hedonism as the appropriate account of animal well-being: an animal's life goes well to the extent that an animal enjoys life and does not suffer. Importantly, this account can be contrasted with what makes life go well or badly for persons. Since persons are entities for whom autonomy is valuable, pleasure and pain are not the sole factors in personal well-being: authenticity, freedom and choice are all important factors. This makes the capabilities approach the best philosophical account of personal well-being. Because sentient animals are non-persons - meaning that they are not self-governing agents who are able to frame, revise and pursue a conception of the good – it would be a mistake to account for animal well-being using the capabilities approach. For example, it does not matter for animals and other non-persons that they are *capable* of being well-fed, but simply that they *are* well-fed. This important difference between persons and non-persons forms the basis of the thesis's claim that animals have no fundamental interest in liberty.

Of course, to know who has moral status and what makes their lives go well does not then lead to a definitive list of our moral obligations to non-humans. Instead, we need some kind of ethical framework with which to determine what morally ought to be done. For this reason, Chapter 4 outlined and defended an interest-based rights approach. This Razian approach asks whether an individual has an interest that is sufficient to ground a duty in another; if it is, a right is established. In effect then, the ethical framework is one of examining and evaluating interests. Unlike a utilitarian framework, however, the rights-based approach does not simply aim at maximising aggregate interest-satisfaction. This is because the ultimate concern is not *aggregate* well-being, but *individual* well-being. In other words, rights act as constraints on purely consequentialist calculations.

Such a conclusion is important when we come to examine our actual obligations to non-human animals. Thus, in evaluating the permissibility of animal experimentation, it is not enough to point out that experiments on animals lead to more benefit than harm

overall. Other factors – such as concern for the well-being of the individual animal subjects – come into play. In Chapter 5 then, I argued that we have a moral obligation not to undertake experiments on animals that cause them pain or that kill them, irrespective of the benefits such experiments might bring. However, the chapter also claimed that if experiments could be devised that caused no suffering and did not result in death, then such experiments would be permissible.

This notion that there is nothing intrinsically wrong with *using* animals for certain purposes was also borne out in Chapter 6. In that chapter, I defended the view that animal agriculture does not need to be completely abolished – raising animals for their milk and eggs is perfectly permissible – but it does need to be radically revised in order that animals are not killed and not made to suffer. Also in that chapter, I made an important claim regarding our obligations over the modifications of non-human animals, whether by traditional breeding techniques, or genetic engineering. I argued that we have an obligation not to modify animals when such modifications lead to them having insufficient opportunities for well-being, where insufficient is defined as falling below 'species-typical normal functioning'.

This latter claim obviously has implications for the breeding of pets, and this was discussed in Chapter 7 which concerned our use of animals in entertainment. Perhaps it is in this context that my conclusions were in sharpest contrast to those of other proponents of animal rights. For once again, I suggested that there is nothing wrong in itself with using animals to entertain us, making pet-keeping, using animals in circuses, displaying them in zoos and using them in sport all permissible in themselves. However, our obligations not to kill animals, not to make them suffer and not to modify them so that they have insufficient opportunities for well-being, all impose significant restrictions on just how we use animals to entertain us. Importantly, such restrictions are tougher than any states currently legislate for and would no doubt require such things as pet licensing, a huge downscale in the numbers of sporting events involving animals, an eradication of travelling circuses, and fewer but better zoos.

Finally, in Chapter 8 I argued that animals' interests in not suffering and in not being killed are not trumped by the human interests in culture and religion. That is to say, religious believers and members of cultural groups are not exempt from the moral obligation not to make animals suffer and not to kill them. For although culture and religious freedom are important interests of human beings, they are not absolute goods that take priority over all other interests.

As I mentioned above, these contexts are not the only times in which we use non-humans, nor are they the only areas in which the question of our obligations to non-humans arise. Given this, in the following and final section of the thesis I examine six possible extensions of the thesis.

9.2 Extending the Thesis and Future Avenues for Research

I believe that there are at least six interesting possibilities for extending the research of this thesis. Although each issue is interesting and important, they have not been fleshed out into separate thesis chapters for reasons of space. However, I am hoping that the theory that I have presented in this thesis is clear enough so that its implications for these topics can be made explicit. In this section, my aim is to introduce these other avenues for research and tentatively propose how my thesis would address them.

9.2.1 The Environment

In the first place, I wish to return to those non-human entities that I have not discussed at great length in the thesis: endangered species, ecosystems, tracts of wilderness and so on. As mentioned above, in Chapter 2 I denied that we have any obligations *to* such entities, on the basis that they do not possess the capacity for phenomenal consciousness, and thus do not have lives that can go well or badly for themselves. Despite this, however, I still believe that the theory proposed in this thesis has some interesting and novel implications for our obligations concerning such entities.[273] For example, in a traditional ethical framework which denies moral status to animals, our environmental obligations are based solely on anthropocentric considerations. That is to say, when we decide what morally ought to be done in respect of this piece of land or that particular ecosystem, we simply examine how different actions will affect and impact upon human beings. Of course, this is not to say that anthropocentrism must necessarily lead to policies of development and destruction rather than protection and conservation. Human interests in biodiversity, beauty, reserves of natural resources and so on may well count in favour of protecting these non-human entities. Nevertheless, it is clear that it is *human* interests alone that possess significance in these deliberations.

[273] This is in contrast to some philosophers who believe that obligations to the environment can never be explained by appealing to the rights of animals. For examples of those who endorse this schism between animal rights and environmental ethics, see James Baird Callicott, "Animal Liberation: A Triangular Affair", *Environmental Ethics*, Vol. 2, Winter 1980: 311-328; and Mark Sagoff, "Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce", *Osgoode Hall Law Journal,* Vol. 22, No. 2, 1984: 297-307.

In contrast to this, if the thesis defended here were used to outline a scheme of environmental obligations, animals' interests would also need to be factored into our considerations. In particular, the *prima facie* animal rights not to be killed and not to be made to suffer would place important limits on the activities of humans. So, even if it were shown that the development of some piece of land would violate no human interests or rights, it might still be impermissible. For if that development were to have a deleterious impact upon the habitat of sentient animals such that it resulted in their suffering or death, then that development would ordinarily be impermissible.

9.2.2 Endangered Species

Of course, some of the ethical problems we have concerning the environment do not only relate to entities such as land and ecosystems, but also to animals themselves. For example, as a future avenue of research it would be useful to apply the claims of the thesis to the issue of endangered species. Indeed, for many this is a crucial issue within the wider question of our moral obligations to animals. While I concede that this issue is indeed of great importance, I did not feel that it merited prolonged discussion in *this* thesis. For once again, it is clear that I deny that we have any moral obligations *to* endangered species or, for that matter, to *any* species. For although it is undoubtedly true that species can flourish and be threatened, they are not entities whose lives can go well or badly for *themselves.* Quite simply, this is because a species is an entity that lacks the capacity to feel anything of the world itself. Nonetheless, it is abundantly clear that many species of animal are made up of entities with the capacity for phenomenal consciousness. Accordingly then, we may have substantial obligations *regarding* species on the basis of the obligations we have *to* individual sentient animals. For example, our obligation not to hunt rare species of animal can be quite straightforwardly explained by our obligation not to kill *any* animal. Similarly, our obligation not to destroy the habitats of rare species of animal can easily be explained by our obligation not to kill or cause suffering to *any* animal.

But at this stage it might be objected that such a conclusion fails to accommodate our intuition that it is worse to kill a member of an endangered species than it is to kill a member of an abundant species. For isn't it worse to kill a rare orang-utan than it is an abundant rat? In response to this objection, I have three points. First, comparing an orang-utan and a rat is not to compare like with like. Given that orang-utans are mentally very complex, and are near to (if not over) the threshold of personhood that I

have given in this thesis, they have greater psychological continuity with themselves over time than rats do. This means that their interest in continued life is stronger than that of rats, and that killing an orang-utan would ordinarily be worse than killing a rat. Secondly, if we were to compare two animals with equivalent mental abilities (black rats and brown rats, for example), it would surely be bizarre to claim that the rarer animal has a greater *interest* in continued life. After all, interests concern how life goes for the individual whose life it is. And surely, when we consider animals with similar mental capacities, they have an equivalent stake that their lives continue. It would seem then, that it cannot be morally worse to kill a rarer animal on the basis that that animal has a greater interest in continued life. Finally then, we must consider whether it is worse to kill a rarer animal on grounds other than the interests of the animals themselves. For example, perhaps it is worse to kill a rarer animal because of the harmful impact that such killing would have on *other* sentient creatures. As I mentioned in Chapter 6, animals are not isolated entities; instead, they depend on creatures of their own and other species to live well. Thus, when we kill an animal, the harm inflicted will not be isolated to that animal alone: the animal's dependent kin may suffer, the animal's social group may suffer, and if the numbers of that animal's species are dwindling, other species in that animal's ecosystem may suffer. To illustrate, it is widely assumed that the poisoning of prairie dogs in North America has led to the demise of their natural predators, the endangered black-footed ferret. These so-called 'cascade effects' alert us to the fact that destroying one species will often lead to harming others. Given all this, I believe that this thesis can endorse the view that it is sometimes worse to kill a rare animal than an abundant one. However, this conclusion is based on the potential harmful impacts of such killing on others, not on the strength of the interest of the rare animal.

9.2.3 Therapeutic Hunting

This discussion of our obligations regarding animal species brings up another interesting avenue of research: our obligations when a population of animal becomes so large that it threatens to wipe out other species and cause environmental degradation. Now I have claimed that this thesis can support the view that it is sometimes worse to kill a rarer animal than it is an abundant animal on the grounds of its impact on others. Given this, it might be thought that the thesis also supports the therapeutic hunting of over-abundant species. After all, such hunting might well lead to greater benefit for sentient animals

overall. However, this assumption would be quite wrong. For just because it is sometimes worse to kill a rarer animal, that does not make killing an abundant animal permissible. These abundant animals still have a definite interest in continued life that cannot simply be overridden for the sake of aggregate well-being. To assess whether abundant animals have a moral right not to be killed in therapeutic hunting, we will once again need to consider and weigh the relevant interests involved. And when we do this, we must judge those interests on their own merits, which involves giving them equal consideration to equivalent interests. Accordingly, consider the fact that one of the most abundant and harmful species on Earth is *Homo sapiens.* Consider also that few of us condone killing human infants, who have an interest in continued life that is equivalent to sentient animals. This suggests that the therapeutic hunting of over-abundant animals is not permitted under the claims of this thesis.

Nevertheless, we are still left with the problem of what to do about these over-abundant populations, and the significant harm that they cause. Interestingly, the rights theory that I have proposed may well have the resources to deal with the problem: interference with animals' freedom. For my thesis would see nothing wrong with interfering with the fertility of abundant animals. Thus, given that animals are not persons with an interest in governing their own lives, reducing these animals' fertility through a policy of sterilisation would not be problematic provided that it did not cause animals to suffer. Of course, it might be argued that such policies would be tantamount to modifying the capacities of animals such that they would have insufficient opportunities for well-being. For it will be remembered that I argued in Chapter 6 that it is impermissible to reduce animals' opportunities for well-being below the species norm. And yet, it will also be recalled that I argued in Chapter 7 during the discussion of neutering pets, that given the longer life expectancy and resistance from disease of animals who do not produce offspring, such modification may well actually increase animals' opportunities for well-being. Accordingly, we can then see how this thesis can address the question of over-abundant populations and the harms that they cause.

9.2.4 Pests

Animals targeted in therapeutic hunting are often referred to as 'pests'. This is no doubt due to the fact that a pest commonly refers to something that is a nuisance. However, when it comes to animals, a pest is also commonly considered to be a legitimate target for killing. Thus, for example, in the debate over fox-hunting in the UK, those who want

hunting to resume often claim that foxes are pests, destroying valuable crops and livestock, thus needing to be killed. In fact, few question this claim: after all, although foxes cannot be hunted with hounds, they can still of course be shot and killed quite legally. Nuisance animals do not just interfere with farms, however, but also ordinary homes: rats, mice, squirrels, wasps and so on, all frequently take up residence in our homes. Indeed, most of us are likely to have had an experience involving nuisance animals in our homes. Given this, it would be useful to examine the implications of this thesis for our dealings with these animals.

It is certainly the case that the claims of this thesis challenge the common view that because an animal is a nuisance, then we can do what we like to that animal. Foxes may well eat farmers' chickens, and mice may well take up residence in our lofts, but these facts alone do not make killing foxes and mice permissible. Foxes, mice and the like have a clear interest in continuing to live, and we cannot override that interest just for our own convenience. However, it should be pointed out that many want to kill nuisance animals not simply for their own convenience, but because they regard these animals as a threat to their own well-being. It is argued that the presence of animals such as rats in our homes threatens us because they spread disease. While this argument certainly has some force, we should be careful to avoid the trap of exaggerating the dangers from animals such as rats. For example, in England and Wales the reported cases of human diseases where rats were likely to be the source are as follows: fewer than 40 cases per year of leptospirosis; 16 cases of *Streptobacillus moniliformis* since 2000; just a handful of cases of such things as Hantaan virus and salmonella in recent years; and no cases of the plague and rabies.[274] Of course, it might be pointed out that these figures are so low because of the fact that we are quick to exterminate rats once they enter our property; if we altered this policy, perhaps these incidents of disease would go up.

At this stage then, it is worth pointing out two implications of the rights theory defended in this thesis. First of all, if animals do invade our homes threatening us with serious diseases, and if killing them is the sole means by which to avoid this, then this thesis will support such killings. For you will recall from the discussion of killing animals in the field in Chapter 6, that the human interest in survival trumps animals' interests in survival when they conflict. Secondly, however, nuisance animals cannot be killed when they do

[274] These figures are taken from Health Protection Agency statistics. See, "Zoonoses that may be acquired from rats; England and Wales", <http://www.hpa.org.uk/infections/topics_az/zoonoses/zoonoses_from_rats.htm>.

not threaten our vital interests. For this reason, if we do not want these animals in our residences, much greater steps need to be taken to prevent their spread and to protect our homes. This means taking much greater care in how we store our rubbish, how clean we keep our streets and waterways, and how we maintain our homes. For surely taking more care in these areas is preferable to the current practice of unintentionally encouraging animals to enter our property through our own carelessness, and then killing them once they are in.

9.2.5 Working Animals

While the common regard for animals such as rats and mice is usually disgust, other animals in society are held in much higher regard: police dogs, police horses and guide dogs are all apt examples. For this reason, another possible avenue for future research is the permissibility of using these working animals. I think this question is particularly pertinent for other proponents of animal rights, because it poses a particular difficulty for them. For if these thinkers believe that sentient animals have a fundamental interest in liberty, as many do, then surely they should regard using working animals for particular human functions as morally impermissible. For in effect, these animals are our slaves, trained to function for our ends, and with no control over their own lives. However, no doubt because this conclusion jars so greatly with our considered judgements, I do not know of any proponents of animal rights who explicitly defend such a position.

In contrast, the implication of my thesis for this question is in accordance with our intuitions. Using animals for particular functions, as guide dogs, police dogs and police horses are used, is not inherently wrong. This is because animals are not persons and do not have an interest in leading self-chosen lives, pursuing their own ends. Thus training animals and using animals to work for us is permissible, so long as it does not result in their suffering or death.

9.2.6 Robots

So far in this section I have concentrated on our obligations to animals and non-human entities such as species, ecosystems and the land. However, non-humans include a wide range of entities, and discussing other types of non-human provides another possible application of this thesis. In particular, I mentioned in Chapter 2 that biological life is not necessary to have a life that can go well or badly for oneself. If a robot were constructed so that it had the capacity for phenomenal consciousness, it too could be

said to have well-being. If that robot had a life that could go well or badly for itself, it would have moral status; and if it were sentient but not autonomous in the ways I have defined, then its well-being could be accounted for hedonistically. In other words then, all that I have said with regard to our obligations to sentient animals, would also apply to sentient robots. Of course, the reason I stick to sentient animals in the thesis and not sentient robots, is because the latter do not yet exist. However, unlike some philosophers I see no reason why sentient robots could not one day be produced. And if such robots were produced, this thesis could be applied to construct a scheme of robot rights.

9.3 Conclusion

The fact that this thesis can be used to outline our moral obligations to entities such as robots serves to underline one of its fundamental claims: the interests of entities should be judged on their own merits. For too long in Western moral philosophy have the interests of animals been subordinated and overridden simply because they belong to members of different species. The interests of animals should be considered on their own strengths, and equivalent interests should be treated with the same respect, irrespective of the kind of entities to which they belong. Thus far, I am in agreement with the majority of proponents of animal rights. However, it is my contention that many advocates of animal rights have misread what the interests of animals actually are. These philosophers have noted the importance of freedom to human well-being and claimed that the same holds for animals. This is a mistake: animals are not autonomous entities, and do not have a fundamental interest in liberty. For this simple reason, our moral obligations to non-humans do not ordinarily involve liberating them. Rather, they necessitate putting an end to the killing and suffering animals endure at our hands.

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