

Introduction

Animal Rights and Animal Welfare

During the past hundred years or so, until the late 1970s, concern about animals had been limited to assuring that they were treated “humanely” and that they were not subjected to “unnecessary” suffering. This position, known as the *animal welfare* view, assumes the legitimacy of treating animals instrumentally as means to human ends as long as certain “safeguards” are employed. For example, animal welfarists argue that the use of animals in biomedical experiments and the slaughtering of animals for human consumption are acceptable as long as these activities are conducted in a “humane” fashion.

The late 1970s and 1980s marked the emergence of the *animal rights* movement, which “retained the animal welfare tradition’s concern for animals as sentient beings that should be protected from unnecessary cruelty,” but added “a new language of ‘rights’ as the basis for demanding” the end of institutionalized animal exploitation.¹ To oversimplify the matter a bit, the welfarists seek the *regulation* of animal exploitation; the rightists seek its *abolition*. The need to distinguish animal rights from animal welfare is clear not only because of the theoretical inconsistencies between the two positions but also because the most ardent defenders of institutionalized animal exploitation themselves endorse animal welfare. Almost everyone—including those who use animals in painful experiments or who slaughter them for food—accepts as abstract propositions that animals ought to be treated “humanely” and ought not to be subjected to “unnecessary” suffering. Animal rights theory explicitly rejects this approach, holding that animals, like humans, have inherent value that must be respected. The rights view reflects a shift from a vague obligation to act “humanely” to a theory of justice that rejects the status of animals as property and the corresponding hegemony of humans over nonhumans. The rights theorist rejects

the use of animals in experiments or for human consumption, not simply because these activities cause animals to suffer but because such use violates fundamental obligations of *justice* that we owe to nonhumans.

As a general matter, rights are, as Bernard Rollin writes, “moral notions that grow out of respect for the individual. They build protective fences around the individual. They establish areas where the individual is entitled to be protected against the state and the majority *even where a price is paid by the general welfare*.”² For example, if my interest in free speech is protected by a right, my interest is generally protected *even if* the general welfare would benefit from my being deprived of that right.

The theory of animal rights maintains that at least some nonhumans possess rights that are substantially similar to human rights. Animal rights ensure that relevant animal interests are absolutely protected and may not be sacrificed simply to benefit humans, no matter how “humane” the exploitation or how stringent the safeguards from “unnecessary” suffering. Animal rights theory rejects the regulation of atrocities and calls unambiguously and unequivocally for their abolition. Rights theory precludes the treatment of animals exclusively as means to human ends, which means that animals should not be regarded as the property of people. And because rights theory rejects the treatment of animals as property, rights theory rejects completely the institutionalized exploitation of animals, which is made possible only *because* animals have property status.

Just as the theory of animal rights is fundamentally different from that of animal welfare, so, regrettably, is the theory of animal rights fundamentally different from its realization in the social phenomenon called the animal rights movement. Despite an ostensible acceptance of the rights position, the modern animal protection movement has failed to translate the theory of animal rights into a practical and theoretically consistent strategy for social change. The language of rights is, for the most part, used rhetorically to describe virtually *any* measure that is thought to lessen animal suffering. So, for example, a proposal to provide a bit more cage space to animals used in experiments is regarded as promoting animal *rights* even though such a measure represents a classic example of welfarist reform. Indeed, on a practical level, the modern animal movement still embraces the nineteenth-century theory of animal welfare, whose primary goal is to ensure that animals, who are regarded as property under the law, are treated “humanely” and not subjected to “unnecessary” suffering. For example, a leading animal “rights” advocate has promoted the use of a six-step “pain scale” for

experimenters to evaluate the invasiveness of their research. At the lower end of the scale, level 2—which represents “laboratory experiments and field studies involving mild pain / distress and no long-term harm”—includes “frequent blood sampling,” “intramuscular injection, skin scraping,” “negative reinforcement” such as “mild electric shock” and “brief cold water immersion,” “food deprivations that do not result in more than a 10% weight loss,” “water deprivation slightly exceeding particular species’ requirements (e.g., deprivation in rats of less than 18 hours),” and “procedures involving anesthetized animals with mild post-operative pain / distress and no long-term harm.”³ This same animal “rights” advocate is the editor of a journal that “publishes reports and articles on methods of experimentation, husbandry and care that demonstrably enhance the welfare of farm, laboratory, companion and wild animals.”⁴

It would be simplistic, however, to say that the modern animal movement is *no* different from its classical welfarist predecessor. In this book, I argue that the modern animal “rights” movement has explicitly rejected the philosophical doctrine of animal rights in favor of a version of animal welfare that accepts animal rights as an ideal state of affairs that can be achieved only through continued adherence to animal welfare measures. I regard this hybrid position—that the long-term goal is animal rights but the short-term goal is animal welfare—as the “new welfarism” and its advocates as the “new welfarists.” The new welfarists apparently believe, for example, in some causal connection between cleaner cages today and empty cages tomorrow. As a result, the animal “rights” movement, despite its rhetorical use of rights language and its long-term goal of abolishing institutionalized animal exploitation, continues to pursue ideological and practical agendas that are functionally indistinguishable from measures endorsed by those who accept the legitimacy of animal exploitation.

In my view, there are two simple reasons for this disparity between social theory and practice. First, many animal advocates believe that, as an empirical matter, welfarist reform has helped to ameliorate the plight of nonhumans and that these reforms can gradually lead to the abolition of all animal exploitation. Second, although many animal advocates embrace as a long-term goal the abolition of animal exploitation, they regard rights theory as “utopian” and as incapable of providing concrete normative guidance to day-to-day movement strategy and practice.

The purpose of this book is to explore these two assumptions. I argue that welfarist reform has not—and *cannot*—lead to the abolition of

animal exploitation. Animal welfarism, especially when applied in an economic system that has strong property notions, is structurally defective and conceptualizes the human / animal conflict in ways that ensure that animal interests never prevail. Moreover, the assumption that welfare and rights are connected begs a fundamental moral question: if we believe that animals have moral rights *today*, it is wrong to compromise the rights of animals *now*, by, for example, pursuing or supporting legal changes that facilitate supposedly more “humane” experimentation in the hope that these changes will lead to rights for *other* animals *sometime in the future*.

I argue that rights theory provides more concrete normative guidance for incremental change than other views relied on by animal advocates. That is, animal rights theory is not “utopian”; it contains a nascent blueprint for the incremental eradication of the property status of animals. The incremental eradication of animal suffering prescribed by classical welfarism—and accepted as the primary normative principle of new welfarism—cannot and will not, in itself, lead to the abolition of institutionalized exploitation; what is needed is the *incremental eradication of the property status of animals*.

Nevertheless, I must stress several important qualifications integral to my views and therefore to my analysis.

First, I do not deny that many people not only have a long-term goal of animal rights but also employ short-term strategies that are consistent with the rights approach. For example, some animal rights advocates have sought incremental change through the abolition of particular types of experiments that involve animals. I am also not claiming that organizations or individuals who tend to adopt welfarist means in an effort to achieve rights ends always adopt such means, or that they never use means that are consistent with their expressed goal of achieving rights for animals. My point is simple and limited: the modern animal “rights” movement—as exemplified by the large, national animal advocacy groups—has, by and large, adopted the position that it is permissible at least some of the time, under at least some circumstances, to pursue a short-term policy of animal welfare, which, they claim, will lead eventually to the recognition of animal rights. With very rare exceptions, national animal rights organizations have not explicitly adopted animal rights both as a guiding theory and as the criteria for identifying the *types* of short-term, incremental changes that are consistent with the realization of the long-term goal. Some groups and individuals promote this view more than others, but almost all national organizations accept this welfarist view on some level.

Second, and related to the preceding point, the views I criticize are, by and large, adopted by and promoted by national animal advocacy organizations. These national organizations are to be distinguished from local groups that are not affiliated with national groups and comprise mostly local volunteers. These grassroots groups usually take positions that are far more progressive than those adopted by the national organizations. As one political scientist who has studied the movement observed, "One of the key reasons for the sustainability of the animal rights challenge has been the roots it has grown at the local level. . . . The vast majority of these local groups are the products of the emergence of radicalism since one of its major characteristics is the emphasis on grassroots campaigning. By contrast, animal welfare groups tend to be far more elitist and cautious, relying on expert opinions and preferring to leave campaigning to their own paid staff."⁵ The national animal movement in the United States has largely ignored the grassroots movement, and one national leader recently went so far as to label as "grassroots elitism" any criticism of the national organizations by independent activists.⁶

Third, I emphasize from the outset that my intention is not to criticize the good faith of those who are concerned about animal suffering but who do not accept animal rights theory. Considering the staggering amount of animal suffering in our society, I fully understand the desire of animal advocates to "put aside the theory and just get something done." The problem is, in my view, that the "something" that we are presently doing—namely, promoting animal *welfare* measures that we construe as providing *rights* to animals—is counterproductive on both theoretical and practical levels. In a nutshell, things are worse for animals than they were one hundred years ago; the present strategy is simply not working.

Some animal advocates feel that *any* criticism of "the movement" is unacceptable and "divisive" with respect to movement unity. I expect that many of these same animal advocates will think this book divisive even to question or criticize the strategies and tactics of the animal rights movement. Such a response is more characteristic of cults than of intelligent, progressive social movements, and I hope that those who are interested will approach the issue of animal rights and animal welfare with an open mind. We are part of a culture that has for centuries accepted animals as *things* that, at best, deserve some minor moral consideration as long as no humans are inconvenienced in the process. The notion of animal rights represents a radical departure from this hierarchical paradigm, and it should come as no surprise that the animal

rights movement would experience certain intellectual “growing pains” that would cause reflection on fundamental issues and positions. Such examination is to be welcomed as part of the maturation of the movement and the necessary development of its ideology.

Fourth, I emphasize that in defending the need for rational discourse, I am not in any way diminishing the importance of an emotional response to the plight of animals. Indeed, I agree with feminist Marti Kheel that a “unity of reason and emotion” is important for animal rights theory, and with Tom Regan, who maintains that “‘philosophy can lead the mind to water but only emotion can make it drink.’”⁷

Fifth, it is probably clear from the foregoing that I certainly do not regard the rights / welfare debate as solely or even primarily a theoretical or academic debate. The outcome of the debate will determine whether efforts on behalf of animals will effectively chip away at the property status of animals and move in the direction of establishing their personhood, or merely continue the status quo. In many respects, at least some animal advocates have believed—naively in my view—that animal exploitation can be eradicated by making animal rights a “mainstream” issue. But that approach truly is like expecting “rain without thunder.”

Animal Rights

The Rejection of Instrumentalism

The Transition from Animal Welfare to Animal Rights

Theories of Animal Welfare

Throughout history, many people have expressed concern about the way in which we treat the other sentient beings with whom we share this planet. This concern has, in the past several hundred years, regularly given rise to efforts to protect animals through the adoption of laws. Although it is thought that laws to protect animals originated in England in the later part of the nineteenth century, the first such law can be traced to the Massachusetts Bay Colony, whose 1641 legal code protected domestic animals from cruelty.¹ In 1822, the courts of the State of New York held that wanton cruelty to an animal was a misdemeanor at common law. Efforts to improve legal protection for animals continued throughout the 1800s in the United States, and in the early part of the present century, efforts to regulate vivisection, or the use of animals in science, were many and vigorous. After World War II, “the institutional abuse of animals increased, both because of the vast increase in animal research on both sides of the Atlantic and because of the advent of factory farming.”² Concern about animals led to laws such as the federal Humane Slaughter Act in 1958, the Wild and Free-Roaming Horses and Burros Act of 1971, and the federal Animal Welfare Act of 1966.³

Nevertheless, in the United States alone, over eight billion animals are killed every year for food. An overwhelming number of these animals are raised in a system known as “intensive agriculture” or “factory farming”: “Animals are treated like machines that convert low-priced fodder into high-priced flesh, and any innovation will be used if it results in a cheaper ‘conversion ratio.’”⁴ Hundreds of millions of animals are used in experiments in which they are burned, scalded, blinded, and

otherwise mutilated, often without anesthesia during or after the procedure.⁵ Animals are also used for clothing, sport, and entertainment.

It is generally agreed, however, that the character of our concern for animals has changed dramatically in the past twenty years or so. Until the mid-1970s, the form of our concern for animals was, with few exceptions, generally restricted to standards that sought to ensure animal *welfare*. Animal welfare, although it comes in various shapes and sizes, exhibits four essential characteristics.

First, animal welfare theory, by its very name, recognizes that animals possess *some* sort of welfare. No one would be concerned about animal welfare if animals were exactly the same as stones or telephones. Animals are *sentient*, capable of feeling pain and experiencing pleasure.

Second, animal welfare holds that although animals are sentient, they do not deserve the moral respect and consideration that we accord to human beings. Human beings are viewed as “superior” to nonhumans in that the former possess certain attributes that supposedly are not shared by nonhumans. This animal “inferiority” often rests on theological superstition, scientific dogma, or cultural beliefs, all of which assume, in a very circular manner, the very animal inferiority that they set out to prove. For example, some people adduce from the “fact” that animals do not possess souls god’s intention to create them inferior to human beings. Such normative assumptions are often present in “factual” assertions about animals, even if they are not as obviously theistic. When experimental psychologists seek to determine how closely an animal’s intelligence approximates human intelligence, they employ methodologies that rely on a complex series of assumptions all of which implicitly assume that animal intelligence is qualitatively inferior to human intelligence. The data from such an experiment can only be understood through a paradigm that is unable to comprehend animal intelligence as anything *other than inferior* to human intelligence.

Third, animal welfare doctrine accepts that animals are the *property* of people and that any regulation of animal treatment must take into account (1) the property status of nonhumans and (2) the deference, greater or lesser, that must be given the rights of property owners.

Fourth, animal welfare maintains that it is acceptable to trade away *any* animal interest—including freedom from pain or death—as long as the human interest involved is regarded as significant and as long as any animal pain, suffering, or death is not “unnecessary.” It is primarily in this respect that versions of animal welfare differ. The range of opinion regarding what constitutes “humane” treatment or “unnecessary” suffering or a “significant” human interest is considerable.

At one end of this range, animal suffering is considered “necessary” as long as it is a part of a generally accepted social practice, and “benefits” of animal exploitation may consist of nothing more than the enjoyment of those who, say, attend a rodeo or circus. Practices that are regarded as “cruel” are those—and only those—that “waste” animal resources through the imposition of “gratuitous” pain or suffering. For example, we permit farmers to castrate and brand animals without any sort of pain relief even though it is acknowledged without exception that these practices are very painful. These practices are part of our treatment of “food” animals. We do not, however, allow the farmer, without reason, to neglect the animals so that they starve to death. The suffering and death from such neglect is regarded as unnecessary because the treatment does not facilitate the institutional use of animals for food or other human benefit, that is, because the treatment serves no economic purpose and represents an overall diminution in social wealth.

On the other end of the spectrum, animals are still viewed as the property of people, but the interpretation of “necessity” is more restricted. For example, many animal welfare advocates are opposed to raising veal calves in confinement units so small they are unable to stand, turn around, or groom themselves. These advocates do not necessarily argue that people should not eat meat as a general matter, or that they ought not to eat veal in particular. What they object to is the way in which veal is currently produced, and they urge that alternative husbandry systems, such as group housing, should be used instead. Such a change in veal production would arguably involve higher prices for veal, and many veal producers believe that these higher costs could not be passed along totally to consumers and would have detrimental effects on the market for veal overall. Nevertheless, these animal advocates argue that this change in veal production is mandated by moral concerns that override the economic considerations.

These different understandings of what constitutes “necessary” suffering or “cruel” treatment serve to illustrate the essential differences between these versions of welfarism. Some welfare advocates maintain that animal exploitation is permissible as long as it can be cost-justified; that is, the conduct is acceptable as long as it facilitates the economic exploitation of the animals or maximizes the value of animal “property” for animal owners. If the conduct does not facilitate the exploitation of the animal within the context of a generally accepted social practice (e.g., the use of animals for food), then the use diminishes overall social wealth and constitutes “cruelty.” Other animal welfare advocates seek

changes that are not cost-justified, at least in the view of those who own animals and exploit them for financial reasons. These changes in animal treatment go beyond what is necessary to facilitate efficient animal exploitation and impose additional costs on animal owners.

In the United States (and in many other countries), there are various laws and regulations that ostensibly regulate many uses of animals. As I have argued elsewhere, these laws—especially in the United States, where there are very strong views about respect for private property—rarely go beyond the minimal animal welfare position.⁶ They seek only to ensure that animals are used efficiently and are not wasted through the infliction of gratuitous suffering or death (defined as that which does not serve any economic interest and which does not constitute an integral part of a socially accepted institution). The law requires that animal interests be balanced against human interests, but in light of the status of animals as property, this is a balance performed on a rigged scale: virtually every human use of animals is regarded as “significant” (i.e., more significant than the animals’ interest in not being so used) because the desires of human property owners always trump the interests of the property. And this is precisely why, despite general moral agreement that animals ought not to suffer “unnecessary” pain, animals are subjected not only to barbaric practices customary in the meat industry but also to trivial (and not necessarily any less barbaric) use in circuses, rodeos, and captive pigeon shoots. I refer to the version of animal welfare contained in the law as *legal welfarism*, which comprehends animal welfare as that level of animal care that will efficiently facilitate the exploitation of nonhuman property.⁷ Legal welfarism reflects the view that animals are only means to human ends because they are the property of people, and to be property means precisely to be a means to an end exclusively.

Until the 1970s—at least in the United States—the discourse about animals was expressed almost entirely in terms of animal welfare. The only real question was whether the particular reform sought was one that could be characterized as promoting efficient animal exploitation (and should be endorsed by any rational property owner who wanted to maximize the value of her animal property), or whether the reform sought changes that transcended that level and represented a further cost imposed only to accommodate moral concerns about animal pain, suffering, and death. Indeed, there were some welfarists who focused effort on getting animal exploiters to accept regulations that would enhance the value of their animal property. For example, legis-

lation promoted by welfarists concerning the “humane” slaughter of animals for food was often supported by claims that adoption of the legislation would benefit exploiters, who had not realized the negative economic impact, consisting of carcass damage and worker injuries, of an essentially unregulated slaughtering process. So, these welfarists were not arguing that exploiters ought to recognize that animals deserve greater protection than their property status merits, but only that the owners of animal property ought to behave more rationally toward their property in order to obtain even greater economic benefits from that exploitation.

There were, of course, some exceptions, and there were some animal advocates who early on grasped the difference between welfare and rights. For example, Helen Jones, of the International Society for Animal Rights (ISAR), and Alice Herrington, of Friends of Animals (FoA), argued that particular practices—most notably the use of animals in experiments—should be abolished and not merely regulated. Apart from arguments of these modern antivivisectionists, however, there was little discussion about anything other than refining the concepts of “unnecessary” suffering and “humane” treatment, though there was much disagreement about the meanings of these terms in different contexts. For example, in 1958, the federal Humane Slaughter Act became law. The law provided that animals whose meat was sold to the federal government had to be “rendered insensible to pain . . . before being shackled, hoisted, thrown, cast, or cut.”⁸ At no point in the legislative process did anyone express concern that the use of animals as food might itself be morally objectionable. On the contrary, everyone concerned—including the animal welfare groups that sought and supported the legislation—assumed that the purpose of the legislation was merely to ensure that animals were slaughtered as “humanely” as possible.

Although animal welfare theory takes many forms (depending on what criteria are used to determine necessity), no form of animal welfare has ever challenged the basic assumption that animals are somehow “inferior” to humans and that humans are justified in exploiting animals. More generous versions of animal welfare may accord to animals a higher moral status than the bare property status of legal welfarism, but all versions of the theory regard animals as means to human ends and without any rights to insulate them altogether from particular forms of exploitation.

In the mid-1970s, discourse about the human / animal relationship began to shift dramatically away from the welfarist position. This shift

occurred in response to important changes in our thinking about the nature of our moral responsibilities to other animals, as well as the highly publicized actions of progressive animal advocates.

The Influence of Philosophers

Moral philosophy has played a major role in the development of the modern animal movement. Political theorist Robert Garner notes, "For the first time, those concerned about the treatment of animals have had the benefit of a sustained attempt by academic philosophers to change radically the status afforded to animals in moral thinking. The result has been the development of a 'new' ideology (or, to be precise, ideologies) which has had profound implications both for the movement which seeks to protect animals and for the way in which the debate about their treatment has been conducted."⁹ Lawrence Finsen and Susan Finsen argue that "a major difference between the older humane and the animal rights movement" is that concern about animal rights "has earned a place both in the scholarship of moral philosophers and in the university ethics curriculum itself."¹⁰ Every major scholarly work—without exception—that discusses the animal rights movement contains a discussion of the philosophical ideas that animate the movement.

A number of philosophical theories concern our treatment of non-humans, but the two that have emerged as dominant in virtually all studies and discussions of the movement are those articulated by Australian philosopher Peter Singer in his book *Animal Liberation* and by American philosopher Tom Regan in his book *The Case for Animal Rights*.¹¹

Singer's Nonrights Theory

Peter Singer's *Animal Liberation*, first published in 1975, is important for two reasons. First, Singer presents a detailed description of the salient forms of the institutionalized exploitation of animals, together with photographs. For many people, this was their first exposure to the industries that produced the meat for their dinner or that subjected non-humans to shocking, scalding, burning, and mutilation in the name of science. Second, Singer presents a *theory* that would provide greater protection for animals than has classical animal welfare.

In order to understand Singer's theory and the role that it has played in the modern animal protection movement, it is necessary to introduce some elementary notions used by philosophers to discuss ethical issues. In moral theory, a broad division separates those who do from those who do not believe the consequences of conduct determine whether the conduct is right or wrong. *Consequentialist* theories, as they are known,

take different forms.¹² For example, an *ethical egoist* maintains that the moral quality of an act is determined by the consequences for the individual moral agent. A *utilitarian*, on the other hand, is more collective-minded and maintains that the right act is that which maximizes the best total consequences for everyone who is affected—positively or adversely—by the action. There are two primary types of utilitarianism: “Act-utilitarianism is the view that the rightness or wrongness of an action is to be judged by the consequences, good or bad, of the action itself. Rule-utilitarianism is the view that the rightness or wrongness of an action is to be judged by the goodness and badness of the consequences of a rule that everyone should perform the action in like circumstances.”¹³ So, for example, an act-utilitarian faced with a situation in which one option is to tell a lie will judge whether, on balance, the consequences of lying *in that particular case* weigh in favor of the lie. A rule-utilitarian, on the other hand, is not concerned about the consequences of lying in the particular situation, but looks to the consequences were everyone to lie in the same or similar circumstances.

Singer is an act-utilitarian; he believes that it is the consequences of the contemplated act that matter, not the consequences of following a more generalized rule. Of course, views differ over what consequences are relevant. For classical utilitarians, such as Jeremy Bentham and John Stuart Mill, pleasure alone was intrinsically valuable, and pain alone was intrinsically not valuable. Singer, however, claims to subscribe to a modified form of utilitarianism known as “preference” or “interest” utilitarianism, which provides that what is intrinsically valuable is what “furthers the interests of those affected.”¹⁴ These interests include the desires and preferences of those who are affected. Pleasure and pain matter because they are part of what humans and nonhumans desire or prefer or seek to avoid. In *Animal Liberation*, Singer argues that in assessing the consequences of our actions affecting animals, it is necessary to take the interests of the animals seriously and to weigh any adverse affect on those interests from human actions as part of the consequences of those actions. Humans fail to do this, Singer argues, because of a species bias, or *speciesism*, that results in a systematic devaluation of animal interests.¹⁵

Singer claims that speciesism is no more morally defensible than racism, sexism, or other forms of discrimination that arbitrarily exclude some humans from the scope of moral concern. When people seek to justify the horrific way in which animals are treated, they invariably point to supposed animal “defects,” such as the inability of animals to use human language or to reason as intricately as do humans. But a

number of severely retarded humans cannot speak or reason (or, at least, can do so no better than many nonhumans), and most of us would be appalled were such humans used in experiments or for food or clothing. Singer maintains that the only way to justify our present level of animal exploitation is to maintain that species differences *alone* justify that exploitation. But that is no different, Singer argues, from saying that differences in race alone or sex alone justify differential treatment.

Singer's approach is clearly more favorable toward animals than is classical animal welfare, which accorded little weight to animal interests. Singer's theory, however, is not a theory of animal *rights*. For Singer, the rightness or wrongness of conduct is determined by consequences, not by any appeal to right. If violating a rightholder's right in a particular case will produce more desirable consequences than respecting that right, then Singer is committed to violating the right. For example, although Singer opposes *most* animal experimentation, he does so because he thinks that most animal experiments do not produce benefits that are sufficient to justify the animal suffering that results. But he does not—and cannot—oppose *all* animal experimentation; if a particular animal use would, for example, really lead directly to a cure for a disease that affected many humans, Singer would approve that animal use. Indeed, Singer has acknowledged that under some circumstances it would be permissible to use nonconsenting *humans* in experiments if the benefits for all affected outweighed the detriment to the humans used in the experiments.¹⁶

Regan's Rights Theory

Although Peter Singer's *Animal Liberation* had an unquestionable impact on traditional animal welfarists, it was American philosopher Tom Regan who, in his book *The Case for Animal Rights*,¹⁷ presented an argument in favor of animal rights.¹⁸ For Regan, if a person or animal has a *right*, then that right may not be sacrificed or violated simply because the consequences of doing so are thought to be more desirable than the consequences of respecting the right. Regan's theory is *deontological*, which means simply that the morality of conduct is not dependent on consequences but, instead, is dependent on something else—in this case, an appeal to a moral right.¹⁹

Indeed, Regan's rights theory may be understood as a rejection of utilitarianism, all versions of which share the common notion that questions of right and wrong can be determined by aggregating the conse-

quences of acts (act-utilitarianism) or the consequences of following general rules (rule-utilitarianism), and pursuing the course that maximizes whatever it is that counts as intrinsic value—pleasure, happiness, preference satisfaction, and so forth. Regan rejects utilitarianism in all of its forms for many reasons, but the most salient of these is his view that it is morally wrong to regard individuals as nothing more than receptacles for that which is of intrinsic value but as lacking any intrinsic value of their own. The utilitarian regards as intrinsically valuable, not the individual, but only some quality, such as pleasure or preference satisfaction or knowledge. The value of the individual is gauged by the extent to which the intrinsically valuable quality is possessed by the individual and provided to others by the individual. Regan rejects the notion that individuals do not have value in and of themselves and that human value is dependent on possession or generation of some quality thought to be intrinsically valuable by the utilitarian. Rather, he argues that individuals do have inherent value and that it is inappropriate to treat individuals solely as means to the end of maximizing that which is regarded as intrinsically valuable.²⁰

Regan maintains that theoretical and empirical considerations indicate that at least some animals (normal mammals of at least one-year of age) possess beliefs, desires, memory, perception, intention, self-consciousness, and a sense of the future. The attribution of these mental states to animals also suggests that it is sensible to regard certain non-humans as psychophysical individuals who have an individual welfare in that “[t]hey fare well or ill during the course of their life, and the life of some animals is, on balance, experientially better than the life of others.”²¹ Because animals have desires, beliefs, and the ability to act in pursuit of their goals, they may also be said to have preference autonomy.

Animals may be benefited or harmed; they have a “welfare.”²² Animals are not only interested in particular things, certain things are also in their interests in that these things contribute to the good, or welfare, of the animals. Benefits and harms are, of course, relevant to any discussion of animal (or human) welfare. Animals have interests in satisfying basic needs, but satisfaction of basic needs alone is not sufficient for well-being according to animal (or human) capacities. Rather, it is necessary to achieve a harmonious satisfaction of desires and accomplishment of purposes in light of different biological, social, and psychological interests. Harms can be either inflictions or deprivations.

Deprivations imposed on animals (e.g., restraining them from behaving in ways that are natural for the species) may harm even though

there is no pain or suffering involved. Such treatment deprives animals of benefits necessary for their welfare. The death of a healthy animal (or human) is a deprivation because it represents an ultimate and irreversible closure to the satisfaction of further preferences. This is the case whether the death is painful or not. The "euthanasia" of healthy animals frustrates animal welfare because it is not in the interests of healthy animals to be killed.

The central part of Regan's rights argument begins with his postulate of *equal inherent value*. In a sense, this notion is an alternative to both the utilitarian theory of intrinsic value and the perfectionist view of value. According to the former, the value of individuals can be determined by totaling the intrinsic values of their experiences; according to the latter, individuals have value, but the level of value differs from person to person depending on certain favored characteristics possessed by the particular person. Inherent value theory holds that the individual has a distinct moral value separate from any intrinsic values and that inherent value is held equally, in part because of the difficulty of formulating criteria for differentiating amounts of value.²³

The attribution of equal inherent value to both moral agents and relevantly similar moral patients is required because both agents and patients are *subjects-of-a-life*: that is, agents and patients are conscious, possess a complex awareness and a psychophysical identity over time. Agents and patients may be harmed or benefited and have a welfare in that their experiential life fares well or ill for them independently of any utility that they have for others or the interest that others have in them. Being a subject-of-a-life not only is a sufficient condition for having inherent value but is also a criterion that allows for the intelligible and nonarbitrary attribution of equal inherent value, whether the subject-of-a-life is an agent or a patient, human or nonhuman. Regan stresses that any separation of moral agents from moral patients must be arbitrary and that any differentiation of human moral patients from nonhuman moral patients must rely on some form of species bias or speciesism.

Regan introduces a moral principle that takes equal inherent value into account: the respect principle requires that we treat those individuals who have inherent value in ways that respect their inherent value. The respect principle states simply that no individual with equal inherent value may be treated solely as a means to an end in order to maximize the aggregate of desirable consequences. Regan's respect principle is both similar to and different from Kant's notion that we treat other persons as ends in themselves and never merely as means to ends. Rational agents, Kant argues, have value in themselves independent of

their value to others—a notion very similar to that of equal inherent value. What is different is Regan's use of the subject-of-a-life criterion to identify in a nonarbitrary and intelligible way a similarity between moral agents and patients that gives rise to a direct duty owed by the former to the latter.²⁴

Regan next distinguishes between basic and acquired moral rights, and between these rights and legal rights. Basic moral rights do not depend on voluntary acts or social institutions for their existence, as do, for example, rights created under a contract. In addition, basic rights are universal: "if any individual (A) has such a right, then any other individual like A in the relevant respects also has this right."²⁵ Finally, basic rights are equal in that those who have such a right have it equally. Acquired rights are subject to social conventions, institutions, and voluntary acts, and legal rights need not be (and are usually not) universal or equal. Relying on John Stuart Mill,²⁶ Regan argues that moral rights (whether basic or acquired) are valid claims. Relying on Joel Feinberg,²⁷ Regan analyzes claims as assertions that the rightholder is entitled to certain treatment and that the treatment is owed directly to the rightholder. Thus, the rightholder has a claim against particular individuals or against many individuals and a claim to what the rightholder asserts is owed.

Moral agents and patients possess equal inherent value, and this status entitles them to be treated with respect. Moral agents and patients have a right to respectful treatment because their claims to justice are valid claims in light of the respect principle. The basic moral right to respectful treatment is universal: all relevantly similar individuals have it, and they have it equally. Further, the right to respectful treatment is no stronger in the case of moral agents than in the case of moral patients. Both agents and patients have inherent value (based on the subject-of-a-life criterion), and both possess it equally. The right to respectful treatment prohibits treating subjects-of-a-life as mere "receptacles" of intrinsic values, as advocated by the utilitarians.

From the right to respectful treatment derives the harm principle: the *prima facie* right of the moral agent or patient not to be harmed. All those who satisfy the subject-of-a-life criterion have an experiential welfare that can be harmed or benefited and are regarded as having equal inherent value. As a *prima facie* matter, harming the interests of a subject-of-a-life is to show disrespect for the inherent value of the moral agent or patient. Regan argues that this is a *prima facie* right because the right of the innocent may be overridden in two situations that are derivable from the respect principle. First, when faced with a choice of harm-

ing the few or the many, Regan argues that it is better, special considerations aside, to harm the few.²⁸ Second, when faced with a choice to harm the many or the few, and when harming the few would make them worse off than any of the many, it is, special considerations aside, appropriate to override the rights of the many.²⁹ Regan is careful to note that these principles do not reflect the utilitarian notion that we ought to minimize aggregate harm. That theory simply reduces people to mere receptacles of value. For example, it is not morally permissible under rights theory, on the rationale that harming the few will (supposedly) benefit the many, to use animals in experiments, because the use of the animals *presupposes* that animals can be treated instrumentally, and the rejection of that notion is a fundamental part of Regan's theory.³⁰

Finally, Regan discusses the implications of the rights view for a range of activities in which nonhumans are exploited by humans. As a prelude, Regan discusses the liberty principle, according to which innocent individuals have the right to pursue their interests and to avoid being made worse off as long as all those involved are treated in accordance with the respect principle, even though other innocent individuals may be harmed in the process. This principle underlies the counterargument to assertions that animal exploiters have some liberty to exploit animals.

The position Regan takes is uncompromising: he unambiguously condemns the use of animals for food, hunting, trapping, education, testing, and research. According to Regan, the rights view requires the abolition of all of these activities. Since humans and nonhumans are subjects-of-a-life that have equal inherent value, the respect principle requires that they not be harmed unless that harm can be justified *without* assuming that the fundamental interests of human or nonhuman rightholders can be treated instrumentally. The use of animals for food, sport, entertainment, or research involves treating animals merely as means to ends, and this constitutes a violation of the respect principle. Moreover, animal exploiters have no liberty to use animals, because the liberty principle allows for harming innocent individuals only when their equal inherent value has been respected, which is, by definition, not the case when animals are treated solely as means to ends.

It is important to understand that Regan's theory does not provide for the resolution of conflicts between human and animal rights *once we assume that animals have rights*. In this respect, Regan is like the nineteenth-century abolitionist who argues that slavery should be ended because, as an institution, it represents a systematic violation of the most fundamental interests that a human being has in liberty and dig-

nity. Regan does not go on to tell us what specific rights animals should have in a world in which institutionalized exploitation has been abolished (other than the right not to be regarded solely as a means to human ends), or how to resolve conflicts between competing rights held by humans and nonhumans. That is, Regan does not argue against exploitation as such. For example, he talks about how we “use” other humans for skills and talents that they have and that benefit us. What Regan opposes is not exploitation per se, but *institutionalized* exploitation of animals exclusively as means to human ends.³¹ Animal agriculture, vivisection, the use of animals for clothing or entertainment—all rest on the notion that the most fundamental animal interests in physical security and liberty may be sacrificed simply because an aggregation of consequences that is thought to represent human “benefit” justifies the sacrifice. It is this institutionalized exploitation, which represents the systematic and structural violation of a variety of animal interests, including, but not limited to, the interest in avoiding suffering, that causes the suffering in the first instance. Indeed, these institutions of exploitation explicitly maintain that the violation of these interests is *always* justified as long as there is sufficient benefit.

Though I cannot here examine the various criticisms that have been made of Regan’s theory, I offer one general comment about Regan’s identification of a key concept in moral philosophy. Some of Regan’s critics claim that his theory is defective because it relies on “intuitions,” and such things are somewhat mysterious and, in general, not taken seriously. Although Regan does argue that one criterion of the acceptability of moral principles as a general matter is conformity of those principles with our moral intuitions, he makes it clear that he is using “intuition” not as “self-evident truth” but, rather, as *considered moral judgment*. Moral principles should accord with our intuitions, but only after we have subjected those intuitions to a number of “tests” to ensure that those intuitions reflect considered, reflective moral judgments, not just our “hunches” or “feelings.”³² One such test requires that any moral judgment be impartial and treat similar cases similarly.

If there is any intuition, or “considered moral judgment,” that each of us shares, it is that we each have a life that matters to us, however miserable it is and whether anyone else values it or us. Those who disagree have committed suicide and are not reading this anyway. Most of us would not volunteer for painful medical experiments, especially those that result in our death, irrespective of the benefit that we would bestow on others. That sentiment does not make us selfish. The root of the moral intuition is simply that we have value as beings and cannot

measure that value by how much general happiness would result were we to sacrifice ourselves. The Marxist may eschew the notion of rights, but the Marxist needs some conception of the individual to make sense of collective notions. The feminist properly criticizes the patriarchal *use* of rights, but cannot deny that without some notion of nontradable interests there is no standard by which to judge rape or other forms of violence as wrong. Without some limits on what can be done to people, there can be no social organization. Every society must recognize *some* interests that are not tradable, irrespective of social cost. In our society, most people would regard as nontradable our interest in not being incarcerated without the state's first proving beyond a reasonable doubt that we have committed a crime, and they would regard this interest nontradable irrespective of the potential benefit from (intentionally) imprisoning innocent people. If every interest is to be treated instrumentally and sacrificed when some person or persons decides that the sacrifice produces "benefit" for some other person or group, then we had better have a great deal of confidence in whoever is entrusted to make decisions about what level of benefit will suffice.

Although we may be willing to make many personal sacrifices for the sake of the common good, it is simply counterintuitive to view our life or liberty as something that can be traded away for consequential reasons alone. Indeed, the only time that our society tolerates the sacrifice of an individual's interest in life or liberty for the "common good" is in time of war, when conscription is used. But conscription is highly unpopular, has been known to cause massive social protest, and is avoided precisely because it offends many people's moral intuition that basic rights in life and liberty should not be sacrificed for the common good. Taxing people for the common good (the unpopularity of which is generally tied directly to prevailing norms about property ownership) is different from forcing them to fight against their will.

The Role of Animal Advocates

Until the emergence of the animal "rights" movement in the late 1970s, animal welfare was espoused for the most part by well-financed but highly conservative charities, such as the American Humane Association (AHA), the Humane Society of the United States (HSUS), and the Animal Welfare Institute (AWI). Although some of these groups were more aggressive than traditional humane societies and sometimes mounted political and legal campaigns to change certain practices that adversely affected animals, they advocated the *reform*, not the *abolition*, of