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What is This?
Animal Welfare and the Moral Value of Nonhuman Animals

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Abstract
The animal welfare position, which represents the prevailing paradigm for thinking about our moral and legal obligations to nonhuman animals, maintains that animal life has a lesser value than human life and, therefore, it is morally acceptable to use animals as human resources as long as we treat them ‘humanely’ and do not inflict ‘unnecessary’ suffering on them. According to this position, animals are not self-aware and live in an eternal present; they do not have an interest in continuing to live as distinguished from an interest in not suffering. The use and killing of animals does not per se involve inflicting harm on them. The view that animal life has a lesser moral value cannot be justified in that all sentient beings are self-aware and have an interest in continuing to live. Although we do not treat all humans equally, we accord all humans the right not to be treated as property. We cannot justify not according this one right to all sentient nonhumans.

Keywords
animal cognition; animals as property; animal rights; animal welfare; rights theory; sentience; utilitarianism

There is virtually no one who would defend the notion that animals are things that have no moral value and exist completely outside the moral and legal community. Rather, just about everyone, including those directly involved in the institutionalized use of nonhuman animals, subscribes to what is called the ‘animal welfare’ position. This position maintains that animal life has a lesser value than human life and, therefore, it is morally acceptable to use animals as human resources as long as we treat them ‘humanely’ and do not inflict ‘unnecessary’ suffering on them. The animal welfare position is so ubiquitously accepted that it is embodied in laws that impose criminal sanctions for the ‘cruel’ treatment of nonhuman animals. For the most part, only those moral norms that are widely accepted and uncontroversial are considered as meriting the imposition of a criminal sanction in the event of a violation. I have argued that because animals are chattel property, the notion of what
constitutes ‘necessary’ suffering and ‘humane’ or ‘cruel’ treatment is invariably linked to what will facilitate the economically efficient exploitation of animals and, as a result, animal welfare laws provide an insignificant level of protection to nonhuman animals.\(^1\)

In the present essay, I explore the underlying premise of animal welfare that it is acceptable to use animals because their lives have lesser moral value than human lives. This notion is accepted even by prominent animal ethicists who are otherwise critical of the status quo concerning the use or treatment of nonhumans. In the first part of this essay, I discuss the view, present in welfarist theory since its emergence in the nineteenth century, that the life of nonhumans has lesser moral value than the life of humans. I then discuss why this view is arbitrary and unjustifiable and will present a brief defense of the moral equality of human and nonhuman life in the context of discussing the theory of animal rights that I have developed in earlier work.\(^2\)

Before the nineteenth century, animals were regarded as things.\(^3\) Neither our use nor our treatment of animals mattered morally or legally. There were some who, like French philosopher René Descartes, claimed that animals were nothing more than ‘machines’ created by God. Descartes denied that animals were sentient; that is, he did not believe as a factual matter that animals were perceptually aware and able to have conscious experiences, including the experience of pain. For the most part, however, it was accepted that animals were sentient and were the sorts of beings who had interests—they had preferences, wants, and desires, and, in particular, interests in avoiding pain and suffering. We could, however, ignore animal interests and treat animals as if they were Cartesian machines because they were different from humans in that they supposedly were not rational, self-aware, able to think in terms of abstract concepts or to use symbolic communication, capable of engaging in reciprocal moral relationships with humans, or in possession of a soul. But whether we regarded nonhumans as not sentient and without interests, or as sentient and with interests that could be ignored because of supposed cognitive or spiritual differences between humans and nonhumans, the bottom line remained the same: we could not have moral or legal obligations that we owed directly to animals. We could have obligations that concerned animals, such as an obligation not to damage our neighbor’s cow, but that obligation was owed to the neighbor, whose

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3. For further discussion of animals as things, see Francione, *Animals as Persons*, pp. 2-5, 28-30.
property the cow was, and not to the cow. My neighbor might have an obligation not to impose gratuitous suffering on her cow because that might make her more inclined to treat others in an unkind fashion. Again, any obligation was owed to other humans and not to the cow. The cow simply did not matter morally or legally.

In the nineteenth century, an ostensible paradigm shift occurred and the animal welfare theory was born. The primary architects of this theory were utilitarian philosophers Jeremy Bentham and John Stuart Mill. Utilitarianism is the moral theory that what is right or wrong depends on consequences; the right act or policy is that which will result in the most pleasure or happiness of all affected. In assessing consequences, we must be impartial and give equal consideration to everyone’s happiness without regard to race, sex, sexual orientation, intellectual or physical abilities, etc. Utilitarians reject the notion of moral rights because, as we will see below, rights protect the rightholder even if the balance of consequences does not weigh in favor of that protection.

Bentham and Mill maintained that the requirement of impartial consideration entailed ignoring the species of a being just as it required ignoring the race or sex of humans. They argued that even if animals were not rational, self-aware, or otherwise did not have minds that were similar to those of humans, these cognitive differences were irrelevant to the moral significance of animal suffering. For example, Bentham argued that although a full-grown horse or dog is more rational and more able to communicate than is a human infant, “the question is not, Can they reason? nor, Can they talk? but, Can they suffer?” Humans and nonhumans may be different in many respects, but they are relevantly similar in that they are sentient; they are perceptually aware and able to experience pain and pleasure.

Both Bentham and Mill were opposed to the race-based slavery that existed at the time on the ground that it violated the principle of impartiality or equal consideration by according greater weight to the pleasure or happiness of whites than to blacks. They were staunch advocates of the abolition of human slavery. They saw a similarity between slavery and the way we treated nonhumans in that both were treated as things; that is, both were excluded completely from the moral community and were “abandoned without redress to the caprice” of their respective tormentors. Just as race did not justify our ignoring the principle of impartiality and according greater weight to the happiness of whites than to blacks, species did not justify our ignoring the suffering of animals.

Did this mean that Bentham and Mill advocated the abolition of animal use just as they advocated the abolition of human slavery? No, they did not. The fact that animals were supposedly not rational and otherwise had minds that were dissimilar to those of humans did not mean that we could ignore their interests in not suffering; yet it did mean that it was morally acceptable to use and kill them for human purposes as long as we took seriously their interests in not suffering. According to Bentham, animals live in the present and are not aware of what they lose when we take their lives. If we kill and eat them, “we are the better for it, and they are never the worse. They have none of

4. For a more extended discussion of the development of animal welfare theory, see Francione, Animals as Persons, pp. 5-9, 30-36, 129-47.
those long-protracted anticipations of future misery which we have.” 7 Bentham also maintained that we actually do animals a favor by killing them, as long as we do so in a relatively painless manner: “The death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature.”8 If, as Bentham apparently maintained, animals do not as a factual matter have an interest in continuing to live and death is not a harm for them, our killing of animals would not per se raise a moral problem as long as we treated animals well and killed them in a ‘humane’ way.

Moreover, Bentham and Mill opposed slavery not only because it abrogated the liberty of humans who, unlike animals, were self-aware and had an interest in their lives, but also because they believed that the pain and suffering caused to the slaves outweighed the pleasure or happiness that slave owners derived from the practice. The same analysis did not hold for animals. It was, according to the welfarists, possible to minimize animal pain and suffering so that our pleasure would outweigh their pain. In balancing human and animal interests, it was important to keep in mind that humans had more developed mental faculties so that they had a higher quality of pleasure and happiness; human interests had a greater weight in any balancing. For example, Mill maintained that in calculating pleasure and pain as part of any weighing process, we must take into account that humans “have faculties more elevated than the animal appetites” and he expressed agreement with those ethical views that assign “to the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation.”9 According to Mill, “[a] being of higher faculties requires more to make him happy, is capable probably of more acute suffering, and is certainly accessible to it at more points, than one of an inferior type ... he can never really wish to sink into what he feels to be a lower grade of existence.”10 Animals lack a “sense of dignity, which all human beings possess in one form or other.”11 Moreover, humans have “a more developed intelligence, which gives a wider range to the whole of their sentiments, whether self-regarding or sympathetic.”12 As a result, “[i]t is better to be a human being dissatisfied than a pig satisfied.”13

So although the utilitarians responsible for the emergence of the animal welfare movement maintained that the principle of impartiality required that we consider animal interests when assessing the consequences of actions, their theory posits that animals do not have an interest in continuing to live and their interests in not suffering have lesser value than do competing human interests. Nonhumans have a lesser moral value than do humans. It is, therefore, acceptable for humans to treat animals as property and to use and to kill them for human purposes as long as we treat them ‘humanely’ and do not impose

‘unnecessary’ suffering on them. Bentham and Mill favored legislation aimed at preventing the ‘cruel’ treatment of animals and the anticruelty laws and other animal welfare laws that presently exist in Britain, the United States, and most other Western countries can be traced directly to the utilitarian philosophers of nineteenth century Britain.

The notion that nonhumans have less moral value than do humans is also represented in contemporary animal welfare theory—what I call “new welfarism”—the leading figure of which is Peter Singer. Singer is also a utilitarian and maintains that the morally right action is that which will maximize the satisfaction of preferences (as distinguished from happiness or pleasure) of those affected, including nonhuman animals. But like Bentham and Mill, Singer regards animal life as having less value than human life. For instance, like Bentham, he maintains:

While self-awareness, the capacity to think ahead and have hopes and aspirations for the future, the capacity for meaningful relations with others and so on are not relevant to the question of inflicting pain ... these capacities are relevant to the question of taking life. It is not arbitrary to hold that the life of a self-aware being, capable of abstract thought, of planning for the future, of complex acts of communication, and so on, is more valuable than the life of a being without these capacities.

According to Singer:

An animal may struggle against a threat to its life, even if it cannot grasp that it has “a life” in the sense that requires an understanding of what it is to exist over a period of time. But in the absence of some form of mental continuity it is not easy to explain why the loss to the animal killed is not, from an impartial point of view, made good by the creation of a new animal who will lead an equally pleasant life.

14. Interestingly, Bentham maintained that although some forms of slavery were more cruel than others, slavery, as an institution, would invariably become what H.L.A. Hart, in discussing Bentham’s views, called “the lot of large numbers” in that Bentham recognized that “[i]f the evil of slavery were not great its extent alone would make it considerable.” H.L.A. Hart, Essays on Bentham: Studies in Jurisprudence and Political Theory (Oxford: Clarendon Press, 1982), p. 97. Bentham did not recognize that the institution of animal property, however ‘humane’ it was intended to be, would become “the lot of large numbers” and would invariably result in animals being treated as commodities. For a further discussion of Bentham’s views on slavery and his failure to apply those views to the context of our use of nonhuman animals as property, see Francione, Introduction to Animal Rights, pp. 131-34, 146-48; Francione, Animals as Persons, pp. 145-46.


That is, Singer, like Bentham, argues that because animals do not know what it is they lose when we kill them, death is not a harm for them. They do not have any interest in continuing to live; they do not care that we use and kill them for our purposes; they care only about not suffering as a result of our using and killing them. Singer, who describes himself as a “flexible vegan” who will eat animal products when he travels, visits the home of others, or is in the company of people who would find his insistence on not eating animal products to be disconcerting,18 argues that as long as we take seriously the interests of animals in not suffering, our use of them may be ethically defensible:

If it is the infliction of suffering that we are concerned about, rather than killing, then I can also imagine a world in which people mostly eat plant foods, but occasionally treat themselves to the luxury of free range eggs, or possibly even meat from animals who live good lives under conditions natural for their species, and are then humanely killed on the farm.19

Singer maintains that similar human and nonhuman interests in not suffering ought to be treated in a similar fashion, as required by the principle of impartiality, or, as Singer refers to it, the principle of equal consideration. He claims that because humans have “superior mental powers,”20 they will in some cases suffer more than animals and in some cases suffer less, but he acknowledges that making interspecies comparisons is difficult at best and perhaps even impossible. That is, although Singer does not adopt Mill’s more categorical position that the pleasures of the human intellect are almost always to be given greater weight, his view about the effect on suffering of the supposedly “superior” human cognition comes very close and undercuts the ability to make impartial assessments of competing interests.

Moreover, as a utilitarian, Singer is committed to permitting animal use at least in some circumstances. For example, if humans derive great satisfaction from eating animal flesh and animal products and were able to produce these with a minimal amount of pain and suffering, then Singer would be committed to the position that the institution of animal use would be morally acceptable, particularly if death is not a harm for animals. Indeed, given that utilitarians regard as good happiness, pleasure, the satisfaction of interests, etc. and given that humans obviously enjoy animal use, it would seem that if we could provide a reasonably pleasant life and a relatively painless death for animals, we would be morally obligated to bring into existence as many animals as we could, kill them as quickly as we could, bring more into existence and kill them, and so forth, so that we could maximize the total amount of happiness, pleasure, or preference satisfaction in the world. In any event, like Bentham and Mill, Singer does not object to the use per se of animals; he does not advocate the abolishment of the property status of animals; and he is a strong supporter of reforming and improving animal welfare through the regulation of animal use.

Singer’s view that nonhuman animals do not have an interest in their lives because they are not self-aware leads him to distinguish among species of nonhumans and to treat as special or privileged those animals who are closer to humans because they are at least arguably self-aware in a way relevantly similar to humans. Singer co-edited *The Great Ape Project*, which proposed that the nonhuman great apes “have mental capacities and an emotional life sufficient to justify inclusion within the community of equals.”

Because these nonhuman animals are genetically and cognitively similar to human animals, Singer argues that they deserve greater legal protection than other nonhumans, whom he, along with Bentham and others, believes live in an “eternal present.”

The position that animal life is of lesser value than human life is, then, one that permeates the welfare position as it has been developed by utilitarian philosophers such as Bentham, Mill, and Singer. But this position also surfaces in Tom Regan’s theory of animal rights. Regan rejects both utilitarian moral theory and the theory of animal welfare. He maintains that we have no moral justification for treating at least adult nonhuman mammals exclusively as means to the ends of humans so he does not rely on the lesser moral value of nonhumans to justify animal use as did Bentham and Mill and as does Singer. Regan does, however, argue that in a situation in which there is a conflict, such as a situation in which we are in a lifeboat and must choose whether to save a dog or a human, we should choose to save the life of the human over the dog because death is a greater harm for the former than for the latter. According to Regan, “the harm that death is, is a function of the opportunities for satisfaction it forecloses.” Death for an animal, “though a harm, is not comparable to the harm that death would be” for humans.

In sum, although the welfarists, who are utilitarians, maintain that what is right or wrong is dependent on consequences and that in assessing consequences we should equally favor the equivalent interests of nonhuman animals, it is permissible to use animals as resources because animals do not have an interest in their lives and because their interests generally are of lesser weight than those of humans. In other words, nonhuman animals, unlike at least ‘normal’ humans, do not have an interest in not being used as resources; as long as they have a reasonably pleasant life and a relatively painless death, we may continue to own and use them. We should, however, endeavor to do so in the most ‘humane’ way possible.

The welfarists are committed to the position that animal life is of lesser moral value than human life. They talk about the “luxury” of eating meat and animal products and about the “flexible” use of nonhuman animals in situations in which we use no humans.

Given that welfarists do not talk about the “luxury” of killing humans or being “flexible” when it comes to practices that involve the intentional killing of humans, they must maintain that there are morally relevant differences between humans and nonhumans that make the use of animals by humans morally justified. If the welfarists deny that there is a moral difference between human and animal life, then their support for animal use, however ‘humane,’ is nothing more than outright discrimination based only on species.

II

The welfarist position rests on the notion that there is a qualitative distinction between the minds of humans and that of at least most nonhuman animals. As a preliminary matter, this notion ostensibly conflicts with the theory of evolution, which, at least according to Darwin, maintains that the differences between humans and other animals is a matter of degree and not of kind. And on an almost daily basis, an article shows up, sometimes in a popular magazine or newspaper and sometimes in a respected scientific journal, about how animal minds are really like human minds in important ways. We can, however, concede for purposes of argument that given that humans are, at least as far as we know, the only animals who use symbolic communication and whose conceptual structures are inextricably linked to language, it is most probably the case that there are significant differences between the minds of humans and the minds of nonhumans.26

The relevant question is “so what?”

There is simply no reason to maintain that any differences that may exist between human minds and animal minds mean that animals have no interest in continuing to exist or that the sentient experiences of nonhuman animals have a lesser weight than do those of humans.27 It is not necessary to come to any conclusion about the precise nature of animal minds to assess the welfarist claim that death itself does not harm nonhuman animals because, unlike humans, they live in what Singer describes as an “eternal present.” The only thing that is required is that nonhumans be sentient; that is, that they be perceptually aware.28 Sentience is necessary to have interests at all. If a being is not sentient, then the being may be alive, but there is nothing that the being prefers, wants, or desires. There may, of course, be uncertainty as to whether sentience exists in a particular case, or with respect to particular classes of beings, such as insects or mollusks. But the


27. Peter Carruthers maintains that because animals cannot think about their pain in a reflective sense, they are not conscious of their pain and, therefore, animal pain is not morally significant. See Peter Carruthers, The Animals Issue: Moral Theory in Practice (Cambridge: Cambridge University Press, 1992), pp. 170-93. Carruthers is unique in making such a claim.

28. For a further discussion of the role of sentience in rights/abolitionist theory, see Francione, Animals as Persons, pp. 129-47, 165-66.
animals we routinely exploit—the cows, chickens, pigs, ducks, lambs, fish, rats, etc.—are all, without question, sentient.

To say that a sentient being—any sentient being—is not harmed by death is decidedly odd. After all, sentience is not a characteristic that has evolved to serve as an end in itself. Rather, it is a trait that allows the beings who have it to identify situations that are harmful and that threaten survival. **Sentience is a means to the end of continued existence.** Sentient beings, by virtue of their being sentient, have an interest in remaining alive; that is, they prefer, want, or desire to remain alive. Therefore, to say that a sentient being is not harmed by death denies that the being has the very interest that sentience serves to perpetuate. It would be analogous to saying that a being with eyes does not have an interest in continuing to see or is not harmed by being made blind.

Singer recognizes that “[a]n animal may struggle against a threat to its life” but he concludes that this does not mean that the animal has the mental continuity required for a sense of self. This position merely begs the question, however, in that it assumes that the only way that an animal can be self-aware is to have the sort of autobiographical sense of self-awareness that we associate with normal adult humans. That is certainly one way of being self-aware but it is not the only way. As biologist Donald Griffin, one of the most important cognitive ethologists of the twentieth century, noted: if animals are conscious of anything, “the animal’s own body and its own actions must fall within the scope of its perceptual consciousness.”

We nevertheless deny animals self-awareness because we maintain that they cannot “think such thoughts as ‘It is I who am running, or climbing this tree, or chasing that moth.’” Griffin maintains that “when an animal consciously perceives the running, climbing, or moth-chasing of another animal, it must also be aware of who is doing these things. And if the animal is perceptually conscious of its own body, it is difficult to rule out similar recognition that it, itself, is doing the running, climbing, or chasing.” He concludes that “[i]f animals are capable of perceptual awareness, denying them some level of self-awareness would seem to be an arbitrary and unjustified restriction.” It would seem that any sentient being must be self-aware in that to be sentient means to be the sort of being who recognizes that it is that being, and not some other, who is experiencing pain or distress. When a sentient being is in pain, that being necessarily recognizes that it is she who is in pain; there is someone who is conscious of being in pain and has an interest in not having that experience.

We can see the arbitrary nature of the welfarist assumption if we consider humans who have a condition known as transient global amnesia, which occurs as a result of a stroke, seizure, or brain damage. Those with transient global amnesia often have no memory of the past and no ability to project themselves into the future. These humans have “a sense of self about one moment—now—and about one place—here.” Their sense of

self-awareness may be different from that of a normal adult, but it would be inaccurate to say that they are not self-aware or that they are indifferent to death. We may not want to appoint such a person as a teacher or allow her to perform surgery on others, but we would not say that it was acceptable to use such humans as resources even if we did so ‘humanely.’ Although there is a great deal of ethological evidence that nonhuman animals have considerably more sophisticated cognitive abilities than humans who have transient global amnesia, even if animals live in a similar “eternal present,” that does not mean that they are not self-aware or that they have no interest in continued existence or that death is not a harm for them. A similar analysis holds for what Singer identifies as “any other capacity that could reasonably be said to give value to life.”34 Some humans will not have the capacity at all, some will have it less than other humans, and some will have it less than other nonhumans. This deficiency or difference may be relevant for some purposes but it does not allow us to conclude that, as an empirical matter, the deficient or different human does not have an interest in continuing to live and death is not a harm for her.

Moreover, to the extent that we, like Regan, regard death as a harm for animals, but as a lesser harm because animals have fewer “opportunities for satisfaction,” we also beg the question in favor of our own species. There is much about life that I enjoy and I derive many satisfactions from life. But I cannot with any confidence say that I have more opportunities for satisfaction than does one of the rescued dogs who share our home with us any more than I could say with any confidence that I derive more satisfaction from life than does another human.

Also arbitrary is the welfarist notion that humans have “superior mental powers” so that in assessing animal pain, or in trying to determine whether human pleasure or the avoidance of human pain justifies imposing pain and suffering on animals, we keep in mind that “[i]t is better to be a human being dissatisfied than a pig satisfied.” What, apart from self-interested proclamation, makes human characteristics “superior” or allows us to conclude that we experience more intense pleasure when we are happy than a pig does when she is happily rooting in the mud or playing with other pigs? Just as in the case about the harm of death, such an analysis works only if we assume what we are setting out to prove.

If we restrict our analysis to human beings, the problem with the welfarist approach becomes clear. If we were to say that it is better to be a philosophy professor dissatisfied than an uneducated manual laborer satisfied, such an assertion would, quite rightly, be viewed as arbitrary and elitist. Although there is certainly a tradition in western thought that assigns a ‘higher’ value to intellectual pursuits than to other sorts of activities, that tradition was shaped almost exclusively by academics and others who valued intellectual pursuits and was not the result of some democratic assessments of competing pleasures.

The notion that nonhuman animals have pains and pleasures that are different from those of humans is no different from asserting that the pleasures and pains of a less intelligent or less well-educated human are inferior to those of a more intelligent or better-educated one.

To the extent that humans and nonhumans have different sorts of minds, those differences may be relevant for some purposes, just as differences between and among humans may be relevant for some purposes. Mary’s greater ability at math may justify our giving her a scholarship over Joe, who lacks ability at math. Our dogs very much like to sit with

34. Singer, Animal Liberation, p. 18.
us when we watch movies but we do not consider their likes and dislikes in movies when we go to the video store because, at least as far as we can tell, they do not have any interests in what films we choose and seem equally happy to sit with us irrespective of what we are watching. So there are relevant differences between the minds of humans and the minds of nonhumans. Any differences, however, are not logically relevant to, for instance, whether we use dogs in painful experiments or kill them for other purposes just as Joe’s inability at math is not relevant to using him in an experiment or as an organ donor. We cannot claim that humans are superior based on humans having more interests, or more intense interests, than nonhumans, without begging the question and engaging in reasoning which, if applied in the human context, would quite rightly be seen as blatantly arbitrary and elitist.

The animal rights position, as I have developed it, rejects the notion that some nonhumans, such as the nonhuman great apes, are more deserving of moral status or legal protection than are other animals because they are more ‘like us.’ The fact that an animal is cognitively more similar to humans may be relevant to determining what other sorts of interests the animal has. But with respect to the animal’s interest in her life and the harm to her of death, or her interest in not being made to experience pain and suffering, her being similar to humans is not relevant at all.

The fact that the minds of humans differ from nonhumans does not mean that the life of a human has greater moral value any more than it means that the life of a human who is ‘normal’ has greater moral value than does the life of a mentally disabled person or that the life of an intelligent person has greater moral value than does a ‘normal’ but less intelligent one. Although the differences between humans and animals may be important for some purposes, they are completely irrelevant to the morality of using and killing animals, even if we do so ‘humanely.’

As was mentioned above, the welfarist tradition does not challenge the property status of animals. Welfarists propose regulations that they maintain—mistakenly in my view—will raise the price of animal products and thereby reduce consumption, but they do not propose the abolition of the institution of animal property. The rights position advocates that animals should have the right not to be treated as the resources of humans and that animal exploitation should be abolished and not regulated.

We should be clear here about the meaning of ‘right.’ A right is merely a way of protecting an interest; the interest is protected even if the general welfare would be


36. A central point in my argument concerning the property status of animals is that welfare regulations generally increase production efficiency. Moreover, the demand for animal products generally remains stable even if prices increase. Finally, because welfare regulations make people feel better about continuing to exploit nonhuman animals, these regulations do not decrease consumption and may even increase it. See Gary L. Francione and Anna E. Charlton, “Animal Advocacy in the 21st Century: The Abolition of the Property Status of Nonhumans,” in Taimie L. Bryant, Rebecca J. Huss, and David N. Cassuto, eds., *Animal Law in the Courts: A Reader* (St. Paul, Minn.: Thomson/West, 2008), pp. 11-17.

37. For further discussion of the concept of a right, see Francione, *Introduction to Animal Rights*, pp. xxvi-xxx; 92-100; Francione, *Animals as Persons*, pp. 49-52.
increased or improved if we ignored that interest. To explain what a right is in these terms should make clear why utilitarians do not like them. As we saw above, utilitarians are consequentialists; what is right or wrong depends on consequences. To say that an interest is protected by a right means that we must protect that interest even if the consequences would weigh against that protection. For example, to say that I have a right to my life is to say that my interest in continuing to remain alive is protected even if using me in a painful biomedical experiment that resulted in my death might lead to a cure for cancer. Many utilitarians would have no problem with using humans in biomedical experiments if it were reasonably certain that beneficial consequences would ensue. Most rights theorists would have a problem with such use.

To say that a right protects an interest from being sacrificed depending on consequences is not to say that the interest is protected absolutely. For example, to say that I have a right to liberty does not mean that I cannot forfeit my interest in liberty by being found to have committed a crime. It is only to say that my interest in liberty will be protected even if others would benefit from my imprisonment.

There is a great deal of controversy about what human interests ought to be protected by rights, particularly legal rights, which involve an interest being protected through the force of the state. But there is general agreement that humans have an interest in not being treated exclusively as the resources of another and that this interest ought to be protected by a basic, pre-legal right not to be treated as a slave. We certainly do not treat everyone equally in that, for instance, we often pay more money to people who are considered to be more intelligent or to be better baseball players. But for purposes of treating humans exclusively as the resources of others—as far as human slavery is concerned—we regard all humans, irrespective of their individual characteristics, as having equal inherent value. That is, we regard all humans as having a moral value that, while not necessarily requiring that we treat them all equally for all purposes, does require that we treat them equally with respect to their interest in not being treated exclusively as the resource of others. And we protect this interest with a right in that we do not regard it as morally justifiable to enslave humans, or use them as forced organ donors, even if it would increase overall social welfare. Slavery involves letting another, the slave owner, decide the value of the fundamental interests of the slave, including her interest in her life, liberty, and in not suffering various forms of pain and deprivation. Not being a chattel slave is a prerequisite to having other rights. The laws of every nation, as well as the norms of customary international law, prohibit slavery. This is not to say that chattel slavery does not still exist; it most certainly does but no one defends it and it is universally condemned. If animals matter morally, then we must apply the principle of equal consideration—the moral rule that we treat similar cases similarly—and ask whether there is a good reason to accord the right not to be treated as property to nonhumans as well. Is there a justification for using animals in ways in which we would regard it as inappropriate to use any humans?

The answer is clear. There is no rational justification for our continuing to deny this one right to sentient nonhumans, however ‘humanely’ we treat them. As long as animals are property, they can never be members of the moral community. The interests of animals will always count for less than the interests of animal owners. We can fall back on religious superstition and claim that animal use is justified because animals do not have
souls, are not created in God’s image, or are otherwise inferior spiritually. Alternatively, we can claim that our use of animals is acceptable because we are human and they are not, which is like saying we are white and they are black; we are men and they are women; we are straight and they are gay.

The animal rights position does not mean releasing domesticated nonhumans to run wild in the street. If we took animals seriously and recognized our obligation not to treat them as things, we would stop producing and facilitating the production of domestic animals altogether. We would care for the ones whom we have here now, but we would stop breeding more for human consumption and we would leave non-domesticated animals alone. We would stop eating, wearing, or using animal products and would regard veganism as a clear and unequivocal moral baseline.

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