

ANIMALS AS THINGS: NEITHER USE NOR TREATMENT RAISES A MORAL ISSUE

Until the nineteenth century, the Western view was, with few exceptions, that nonhumans were completely outside the moral and legal community, and that neither our use nor our treatment of them raised any moral or legal concern. We could use them for whatever purpose we wanted, and we could inflict pain and suffering on them pursuant to those uses without violating any obligations that we owed to them. That is, nonhumans were regarded as *things* that were indistinguishable from inanimate objects and toward which we thus could have no moral or legal obligations. Although we might have a legal obligation that concerned animals—such as an obligation not to injure our neighbor's cow—this was an obligation that we owed to our neighbor not to damage her property but not an obligation that we owed to the cow. To the limited extent that the

cruel treatment of animals was thought to raise a moral issue, it was only because of a concern that humans who abused animals were more likely to ill treat other humans. Again, the obligation concerned animals but was owed to other humans and did not recognize that nonhuman animals had any moral significance.

Various reasons were offered to justify the status of animals as things. Some people, such as René Descartes (1596–1650), apparently believed that animals were, as a factual matter, indistinguishable from inanimate objects in that animals were not *sentient*—they were simply not beings who were conscious, had subjective and perceptual awareness, or were able to experience pain and suffering. As a result, they were not beings who had *interests*; that is, they did not have preferences, wants, or desires. According to Descartes, animals were “machines” that God created and therefore were no more conscious than the machines that humans created. If Descartes were correct and nonhumans are not sentient and have no interests, then it would not, of course, make sense to talk about having moral or legal obligations to animals concerning our use or treatment of them any more than it would to talk about our obligations to alarm clocks.

Some scholars dispute whether Descartes really believed that animals were not sentient, but if he did, he would have been unusual. At that time, most people did not doubt that animals were sentient and had interests. Rather, they maintained that humans were morally justified in ignoring animal interests and treating animals *as if* they were inanimate objects because animals were inferior to humans. This inferiority had two forms.

The first is what we might regard as “spiritual” inferiority. Western civilization has long entertained the notion that humans (or at least some of them) are created in the image of God and have greater value—with some people referring to souls—that justifies excluding animals from the moral community altogether. The creation story in the book of Genesis talks about God giving “dominion” to humans, a notion interpreted to mean that God authorized the *domination* of nonhumans by humans. Indeed, the English philosopher John Locke (1632–1704), who was central to the development of the modern theory of private property, based the exclusive ownership of property on the supposedly absolute control that God gave us over animals, as described in Genesis.

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The second form of inferiority is what we might consider “natural” inferiority, based on the purported lack in nonhumans of some special mental characteristic regarded as uniquely human. According to this view, although animals are similar to us in that they are sentient or consciously aware, their minds are otherwise different from ours. That is, they lack cognitive characteristics possessed by all or most humans, such as rationality, abstract thought, language ability, reflective self-awareness, or the ability to engage in reciprocal moral relations. This qualitative difference between humans and animals, it was claimed, allowed us to ignore animal interests and to treat animals as things. For example, the German philosopher Immanuel Kant (1724–1804) recognized that animals were sentient and could suffer but denied that we had any direct moral obligations to animals because they were neither rational nor self-aware. Kant maintained that our treatment of animals was morally relevant only to the extent that it made us more likely to treat other humans in the same callous way.

A hybrid version of this doctrine regarded animals as things combining natural and spiritual inferiority. For example, St. Thomas Aquinas (ca. 1225–1274) linked rationality with having a soul and saw nonhumans both as naturally and spiritually inferior. Although Locke believed that God had given animals to humans for the latter to use, he also maintained that animals were not capable of abstract thought. Indeed, it is accurate to say that during this period, many people linked natural and spiritual inferiority and maintained that animals lacked some supposed uniquely human characteristic, such as rationality or the ability to think abstractly, because they, unlike humans, were not made in the image of God.

Therefore, in this first phase, which continued through the beginning of the nineteenth century, we viewed both the use and the treatment of animals as not presenting any sort of moral or legal issue. Animals were considered indistinguishable from machines and not sentient or, alternatively, sentient but spiritually or naturally inferior to humans. In any case, humans could use nonhumans for whatever purpose they wanted and treat them as they wanted pursuant to those uses, as long as they did not damage the property of others or engage in conduct toward animals that might make them likely to act in a similarly unkind manner toward other humans. Humans may have had ob-

ligations that concerned nonhumans, but they did not have any obligations that they owed to them.

**ANIMAL WELFARE: WE CAN USE ANIMALS BUT MUST
TREAT THEM “HUMANELY”**

In the nineteenth century, as part of the progressive movements in favor of women’s rights and in opposition to human slavery, our thinking shifted to the animal welfare position, which purported to reject the notion that animals were merely things of no moral or legal consequence. Not everyone rejected the Cartesian view that animals were not sentient or the notion that nonhumans, even if sentient, were completely outside the moral community because of some natural or spiritual inferiority. Rather, these notions continued to inform thinking about our obligations to nonhumans, but the view that animals were at least partial members of the moral community emerged, enjoyed widespread social acceptance, found its way into the law, and remains the prevailing contemporary view.

The animal welfare position maintains, for the most part, that we may use animals for our purposes because they are our spiritual or natural inferiors but that there are limitations on our treatment of them. That is, animals are able to suffer whether or not they have souls or some human-like cognitive characteristic. Therefore, we may use animals because they are different from us, but we nonetheless are obligated to treat them “humanely” and not to cause them “unnecessary” suffering. We must use animals “gently.” Moreover, this is a moral obligation that we owe directly to the animals and is not one that merely concerns animals but is really owed to other humans.

Among people who were influential in the development of the animal welfare position was the British lawyer and philosopher Jeremy Bentham (1748–1832), who maintained that animals had been “degraded into the class of *things*,” with the result that humans “torment” them in various ways. Bentham made clear that nonhumans shared to some degree the characteristics regarded as unique to humans and that in any event, the absence of these characteristics did not grant people a license to treat animals in any way that they wished:

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A full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?

As long as an animal is sentient, the animal's interests and particularly interests in not suffering, must be given appropriate consideration.

Although Bentham suggested that some animals might be more rational than some humans, he certainly did not reject the position that human minds were qualitatively different from animal minds. On the contrary, Bentham believed that such differences existed and he maintained that although these differences did not permit us to "torment" animals, they did allow us to use animals as long as we took care to minimize their suffering.

Bentham discussed this in the context of why it was morally permissible to eat animals. He certainly was aware that we did not have to eat animals to survive but thought that it was morally permissible for us to eat them because they were not self-aware and had no sense of the future. Animals do not have an interest in not being killed and eaten; that is, animals do not care about *whether* we use them but only *how* we use them. According to Bentham,

[i]f the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery which we have.

He maintained that animals are "never the worse for being dead." Therefore, because Bentham believed that cognitive differences between humans and nonhumans meant that the latter did not have an interest in their lives, he did not challenge our use of animals, but only our treatment of them.

There was a religious dimension to the welfarist position that emerged in the nineteenth century, in that the "dominion" that God supposedly granted us over animals was reinterpreted by some as being a stewardship of some sort and not domination. Although our spiritual superior-

ity meant that we could continue to use them for our purposes, God did not give us an unrestricted license to their treatment, and thus we had a moral obligation to treat animals kindly.

The animal welfare view was eventually incorporated into the law. Great Britain and the United States (as well as other nations) enacted various laws, such as anticruelty statutes, which purported to require the “humane” treatment of animals. For the first time, we recognized that we had legal obligations that we owed directly to animals. This is not to say that these laws did not also reflect the concern that the cruel treatment of animals would have the effect of making humans treat one another badly. But it is also clear that for the first time, animals were seen not merely as things but as partial members of the moral community who were inherently deserving of some legal protection. Animal welfare laws therefore allow us to use animals but require that we balance human and nonhuman interests in order to ascertain whether animal suffering is justified.

Even though the animal welfare position ostensibly represented a dramatic departure from the view that animals are merely things, the laws that were enacted in Britain, the United States, and other nations have, for the most part, failed to significantly protect animals. Although the animal welfare position supposedly prohibits the infliction of “unnecessary” suffering on animals, we do not ask whether particular institutional uses are themselves necessary because we assume that these uses are acceptable and because our only concern is treatment. It is clear, however, that most of our animal uses are transparently frivolous and cannot be described as involving any “necessity.” For example, we kill billions of animals every year for food. It is certainly not necessary for us to eat animal flesh, dairy, eggs, or other animal products; indeed, the evidence is mounting that animal foods are detrimental to human health. Moreover, animal agriculture is an ecological disaster. The only justification that we have for using animals in this way is that we are accustomed to and enjoy the taste of meat and animal products. The welfare position does not challenge our use of animals for food and says only that we should not inflict more suffering than is necessary when we use animals for this unnecessary purpose. But what does “necessary” mean in this context, given that *no* suffering is necessary because we have no need to eat meat or animal products?

The central theme of my 1995 book, *Animals, Property, and the Law*, is that because animals are *property*—they are commodities with only extrinsic or conditional value—the level of “humane” treatment required under animal welfare laws will, for the most part, be limited to what is required to exploit animals in an efficient manner. We generally protect animal interests only to the extent that we also derive an economic benefit from doing so. For example, we may require that a cow be stunned so that she is unconscious during slaughter, but stunning also reduces damage to the carcass and injuries to workers from a large, moving animal. Although cows have many other interests at various stages of their life and at the time of their death, we do not protect these other interests because we do not derive an economic benefit from doing so. The “suffering” of producers who make less profit, or of consumers who have to pay more for animal products, generally outweighs the suffering of the animals, who almost always lose the supposed balance of interests. The result is that even the most “humane” nations treat animals who are used for food in ways that would be considered torture if humans were so treated. The same analysis applies to our other animal uses.

In order to determine what constitutes “humane” treatment, the law often looks to those who engage in the animal use because we assume that animal users are rational economic actors who would not impose more pain and suffering than is required for a particular use. This, however, reduces animal welfare laws to directives not to treat animals in ways that do not comply with industry or customary standards. Animal welfare laws generally require only that we act as rational property owners and prohibit only those actions that reduce the value of animal property or that have no economic benefit for humans. Just as a rational person would not smash her car with a hammer, a rational farmer would not impose more suffering than necessary on her cow, as both are valuable pieces of property. But as long as pain and suffering are regarded as providing economic benefits to humans and occur within generally recognized institutions of animal use, animal welfare laws usually are silent. Animal exploiters often offer token opposition to welfare legislation and initiatives but ultimately support such regulation because they have little or nothing to lose and everything to gain; indeed, their support is usually required for these measures to be successful. If all animal users were perfectly rational and had full information about how particular

practices affected animal productivity, we would probably not even need animal welfare laws because rational users would not impose more suffering than needed for a particular purpose.

In certain respects, the regulation of animal exploitation is similar to the regulation of human slavery in North America. Although many laws supposedly required the “humane” treatment of slaves and prohibited the infliction of “unnecessary” punishment, these laws offered almost no protection for slaves. In conflicts between slave owners and slaves, the latter almost always lost. Slave welfare laws, like animal welfare laws, generally required that slave owners merely act as rational property owners but did not recognize the inherent value of the slaves. Slave owners were, of course, free to treat their slaves, or particular slaves, better. But as far as the law was concerned, slaves were merely economic commodities with only extrinsic or conditional value, and slave owners were essentially free to value their slaves’ interests as they chose, just as we are free to value the interests of our dogs and cats and treat them as members of our families or abandon them at a shelter or have them killed because we no longer want them.

In sum, the animal welfare position, which is the common contemporary paradigm for thinking about our moral and legal obligations to animals, does not question our use per se of animals but focuses only on the treatment of animals we use. Most of us agree with Bentham and the fundamental premise of the animal welfare position that it is acceptable to use animals as long as we treat them in a “humane” manner. But because animals are property, the standard of “humane” treatment is generally limited to what can be justified in light of their property status. Although the animal welfare paradigm has prevailed for some two hundred years, we are using more animals than ever before in human history and we still “torment” them. Animal welfare separates use and treatment and claims to take treatment seriously but clearly fails on its own terms to protect animal interests in a meaningful way.

ANIMAL RIGHTS: THE PRIMARY PROBLEM IS USE, NOT TREATMENT

The animal rights position—as I have developed it in my *Introduction to Animal Rights: Your Child or the Dog?* and in my other work—is that

the principal problem is not *how* we use animals but *that* we use animals for human purposes at all. We have no moral justification for using nonhumans, however “humanely” we treat them. To the extent that we do use animals, it is, of course, always better to cause less pain than more pain. It is better that a rapist not torture the victim in addition to committing the rape. But just as it is not morally acceptable to commit rape even if you do not torture the victim, it is not morally acceptable to use nonhumans as human resources despite how we treat them.

The animal rights position rejects the notion that serves as the foundation of the welfarist distinction between use and treatment: that as an empirical matter, animals do not have an interest in whether or not they continue to exist and have an interest only in being treated well. Nonhumans may have a different sense of what it means to have a life than normal human adults do, but this does not mean that they have no interest in continuing to exist, that they are not self-aware and indifferent to whether we use them and kill them for our purposes, or that death is any less a harm to them than it is to us.

Consider a human who has transient global amnesia, in which the person has a sense of herself only in the present and no recollection of her past and no thoughts about her future. This is more or less how Bentham viewed the minds of nonhumans—as rooted in a continuing present. Can we conclude that a human with this sort of amnesia has no interest in continuing to live because her mind is different from that of normal humans, who can recall the past and anticipate the future beyond the present instance? Surely not. Although such a characteristic may justify differential treatment for some purposes, it would not justify forcing such a person to be an organ donor as long as we removed her organs with minimal pain or suffering on her part.

Similarly, even if nonhumans have a sense of themselves only in the present, we cannot assume that they do not value their lives and are concerned only with how we treat them. Sentience, or subjective awareness, is only a means to the end of continued survival for certain beings who have evolved in particular ways that have made sentience a characteristic to help them adapt to their environment and survive. A sentient being *is* a being with an interest in continuing to live, who desires, prefers, or wants to continue to live. When a nonhuman with subjective and perceptual awareness sees another nonhuman engaged in some activity, the

former is aware that it is the latter, and not she, who is engaged in the activity. A sentient being is self-aware in that she knows that it is she, and not another, who is feeling pain and suffering. There is no basis for saying that only those who possess the sort of self-awareness that we associate with normal humans have an interest in continuing to live.

Just as the purported cognitive differences between humans and nonhumans cannot justify our cruel treatment of nonhuman animals, they also cannot justify our use of animals as our resources, however “humanely” we treat them. There probably are significant differences between the minds of humans and those of nonhumans given that human cognition is linked so closely to abstract language and, with the possible exception of the nonhuman great apes, nonhumans presumably do not use symbolic communication. It may well be that nonhumans do not have intentional states that are predicative in the way that human intentional states are. But we cannot conclude from these differences that nonhumans do not have cognitive states that are at least equivalent to those of humans. Indeed, it is difficult to explain plausibly a great deal of animal behavior without attributing equivalent cognitive states to animals.

There is, however, a great deal of controversy about the nature of animal minds and there will always be those who deny that nonhumans have any cognitive ability beyond being sentient and subjectively aware. But we do not need to resolve this perhaps unresolvable debate. Sentience is necessary to have interests at all. If a being is not sentient, then it may be alive but does not have interests in that there is nothing that it prefers, desires, or wants. But if a being is sentient, this is sufficient to be self-aware and to have an interest in continued existence. Although whether a being is sentient may not be clear in all cases, such as those involving insects or mollusks, the overwhelming number of nonhuman animals we exploit are unquestionably subjectively aware and have an interest in continuing to exist, even if they do not have the same reflective self-awareness that we associate with normal humans.

The position that cognitive characteristics beyond sentience or humanlike versions of these characteristics are morally more important than other characteristics begs the question from the outset. Why is the ability to do calculus morally better than the ability to fly with your wings? Why is the ability to recognize yourself in a mirror morally better

than your ability to recognize yourself in a scent that you left on a bush? Moreover, there is no logical relationship between differences in cognitive characteristics and the issue of animal use, although these differences may be relevant for some purposes. Consider the case of a severely mentally disabled human. We may not want to give such a person a driver's license because of her inability to drive. But is her impairment relevant to whether we use her as an unwilling subject in a biomedical experiment or force her to become an organ donor? No, of course not. Indeed, many of us would argue that her particular disability means that we have a greater moral obligation to her, but it certainly does not mean that we have a lesser one. Similarly, the fact that a dog's mind is different from ours means that we do not give the dog a driver's license but it does not mean that we can use the dog for purposes for which we would not use humans.

In sum, we cannot rely on any cognitive differences between humans and nonhumans as a basis for treating animals as our property and continuing to use them for our purposes, however "humanely" we do so. We do not regard it as acceptable to treat any humans as the property of other humans. Although there is a great deal of controversy about what rights humans do or do not have, and we may argue about the moral status of human fetuses, we all agree that every person, irrespective of her particular mental characteristics, must be accorded the basic right not to be treated as the property of others. We do not question that every human, whether intelligent, gifted, ordinary, or mentally challenged, has the right not to be treated as the resource of others. This is not, of course, to deny that human slavery still exists; it does, but no one defends it. This is also not to say that we treat everyone equally. Clearly, we do not. We may, for instance, compensate a brilliant musician at a higher level than we do someone with a severe mental disability. But whether or not we agree whether we should allocate resources equally to both, we all agree that neither should be used exclusively as a means to the ends of others. If, as we claim, 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.

The answer is clear. There is no rational justification for our continuing to deny this one right to nonhumans, however "humanely" we treat them. We can, of course, 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 our domesticated nonhumans to run wild in the street. If we took animals seriously and recognized our obligation not to treat them as things, then 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 with respect to nondomesticated nonhumans, we would simply leave them alone.