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ANIMAL RIGHTS AND ANIMAL EXPERIMENTS: AN INTEREST-BASED APPROACH[★]

ABSTRACT. This paper examines whether non-human animals have a moral right not to be experimented upon. It adopts a Razian conception of rights, whereby an individual possesses a right if an interest of that individual is sufficient to impose a duty on another. To ascertain whether animals have a right not to be experimented on, three interests are examined which might found such a right: the interest in not suffering, the interest in staying alive, and the interest in being free. It is argued that while the first two of these interests are sufficient to ground animal rights against being killed and made to suffer by experiments, the interest in freedom does not ground a general animal right not to be used in experimentation.

KEY WORDS: animals, autonomy, continued life, experiments, freedom, interests, prudential value, rights, sentience, suffering, well-being

INTRODUCTION

Of all the debates concerning our moral obligations to animals, there is none more hotly contested than animal experimentation. The debate appears to be polarised into two opposing camps: one demanding a cessation to what they regard as the retrograde and barbaric use of animals in laboratories; the other claiming that animal experiments must continue in order to alleviate human suffering. However, it would be wrong to regard each of these two opposing camps as united internally. For example, those who oppose animal experimentation on philosophical grounds are split

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into at least two quite different camps.¹ Those of a utilitarian persuasion such as Peter Singer maintain that the interests of animals must be included when the costs and benefits of experimentation are weighed up. Moreover, when similar human and non-human interests are at stake, it is argued that these interests should be given *equal* consideration. However, while this approach might lead to the abolition of a good many experimental practices, it by no means rules out the *very idea* of animal experimentation. After all, from this perspective the permissibility of an act all depends on the net result of good and bad consequences. Clearly then, should the benefits of an experiment outweigh the costs, then that experiment is permissible. Many proponents of justice for animals are dissatisfied with this aggregative utilitarian approach. Thinkers such as Tom Regan have instead developed rights-based theories. These theorists take an absolutist stance on the abolition of animal experiments, arguing that animals have a *moral right* not to be used as tools in experiments. This right, such thinkers argue, cannot simply be overridden when the benefits of an experiment outweigh its costs, because rights are meant to act as moral limits on what can be done to an individual in the name of the social good.

In this paper I offer an alternative and novel approach to the debate. I accept that animals can possess rights, and I accept the deontological commitments of a rights-based theory. However, I deny that this necessitates an absolutist position on the abolition of animal experiments. For I argue that while animals have a moral right not to be killed or made to suffer in experiments, they have no right not to be *used* in experimentation. This, I claim, is because animals, unlike most humans, have no fundamental interest in liberty.

¹ I say 'at least two camps', because there are in fact various philosophical resources with which to oppose animal experimentation. I focus on Peter Singer's utilitarian and Tom Regan's rights-based accounts, because they have been the most influential and garnered the greatest response (justifiably, in my view). For a good recent review of the literature on animal ethics within a broadly analytic approach see, Robert Garner, *Animal Ethics* (Cambridge: Polity, 2005). For approaches to animal ethics within the continental tradition, see Matthew Calarco and Peter Atterton, (eds.), *Animal Philosophy: Essential Readings in Continental Thought* (New York: Continuum, 2004).

I reach this conclusion by adopting an interest-based theory of rights, and in particular a Razian conception of rights. For Joseph Raz, what it means to possess a right is as follows:

'X has a right' if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.²

Of course, not everyone accepts Raz's conception of rights. Indeed, not everyone accepts the interest-based account of rights, or indeed the very notion of animal rights. However, I will not be defending these positions here; instead, they will be the explicit assumptions of the paper.³ For this paper's focus is not the justification of these various claims; rather, it is to make use of the interest-based rights approach to evaluate animals' putative right not to be experimented upon.⁴

To this end then, and following the Razian framework, in order to ascertain whether animals have a right not to be experimented upon, we need to determine whether animals possess an interest that is sufficient to impose on us a moral duty not to experiment on them. This paper examines three potential interests of animals that might ground such a right: the interest in not suffering, the interest in continued life and the interest in being free. I claim that while the first two of these interests give strong grounds for an animal's right not to be experimented upon, the latter interest does not. I thus conclude that from an interest-based perspective, animal experiments that result in pain or death are morally illegitimate, while painless experiments in which the animal does not die are permissible.

² Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1988), p. 166.

³ Of course, adopting a rights-based account is by no means the only means of tackling these types of ethical problems. For a taxonomy and critical evaluation of different approaches to tackling interest conflicts within animal ethics see Elisa Aaltola, 'Animal Ethics and Interest Conflicts', *Ethics and the Environment* 10/1 (2005) 19–48.

⁴ For a useful debate on the merits of the interest-based approach to rights, including Raz's framework and the choice-based alternative, see Matthew H. Kramer, Nigel E. Simmonds and Hillel Steiner, *A Debate Over Rights*, (Oxford: Clarendon Press, 1998). For one view that animals cannot possess rights, see H. J. McCloskey, 'Rights', *The Philosophical Quarterly* 15/59 (1965) 115–127. For an alternative view claiming that animals can possess rights, see Joel Feinberg, 'The Rights of Animals and Unborn Generations', in William T. Blackstone (ed.), *Philosophy and Environmental Crisis*, (Athens: University of Georgia Press, 1974) 43–68.

THE POSSESSION AND STRENGTH OF INTERESTS

Before examining whether animals have any interests that ground in them a right not to be experimented upon, it is crucial to establish just what it means to have an interest, and indeed what determines the strength of that interest. This is a large and controversial topic, and there is not the space here to review all that has been said on it. Nevertheless, in spite of these restrictions, my assumptions still need to be made clear and defended.

Following Feinberg then, we can regard interests as components of an individual's well-being.⁵ So, if something is in my interests, the satisfaction of it will make my life better, while the frustration of it will make my life worse. As for well-being, it relates to what is often called a *prudential value*: that is, how something goes for the individual whose life it is.⁶ Thus, X is in Y's interests if X makes life better *for* Y. Whether X makes Y more pleasing to our eyes, or a better specimen of Y's kind, are therefore separate questions from whether X is in Y's interests. For well-being is a prudential value and concerns how life goes *for the individual whose life it is*.

With regards to the strength of an interest, I claim that there are two determining factors.⁷ First, the *value* of a good for an individual is one obvious determinant. For example, I have an interest in both gardening and in companionship. However, the value of companionship is greater for me than that of gardening. It therefore makes sense to say that my interest in companionship is *stronger* than my interest in gardening.

Now, my point here is not that interests are purely subjective. As I have outlined it, the strength of an interest must relate to the value of the good *for* the individual concerned. However, individuals can be wrong about both what is good for them, and the relative value of a good. For example, an individual may strongly

⁵ Joel Feinberg, *The Moral Limits of the Criminal Law: Vol. 1 Harm to Others*, (Oxford: Oxford University Press, 1984), p. 34.

⁶ Roger Crisp, 'Well-Being' in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer, 2003), <http://plato.stanford.edu/archives/sum2003/entries/well-being>, and L. W. Sumner, *Welfare, Happiness and Ethics*, (Oxford: Clarendon Press, 1996), p. 20.

⁷ This account of the strength of an interest is greatly influenced by Jeff McMahan's account of the strength of what he calls 'time-relative interests'. However, as I make clear later in the paper, my account differs in one important regard. See Jeff McMahan, *The Ethics of Killing* (Oxford: Oxford University Press, 2002), p. 80.

desire to injure himself, but that does not mean that he has an *interest* in injuring himself. Similarly, an individual may place great value in seeing her family eat, so much so that she herself goes without food, thereby suffering malnutrition. However, it would be wrong to say that this individual has only a weak interest in eating; her life would clearly go much better if she ate, even if she believes otherwise. So, although the strength of an interest is partly determined by the value of the good for the individual concerned, the individual is not necessarily the final arbiter of the value of that good.

The second determinant of the strength of an interest concerns the relationship between the individual at the time when we attribute the interest, and the individual when that interest will be satisfied. Jeff McMahan calls this the 'psychological continuity' of the individual between now and when the future good or goods will occur.⁸ By psychological continuity McMahan means those psychological connections that link ourselves over time. Examples of such connections include: the relation between an experience and the memory of it; a desire and the later experience of its satisfaction or frustration; and the earlier and later manifestation of a character trait, value or belief.⁹ Without doubt, not everything and everyone has equal levels of psychological continuity over time. For example, ordinarily a human toddler has negligible levels of psychological continuity with her future self at age 21, while a 21 year old has strong continuity with herself as a 25 year old. Now McMahan's claim is that an individual's interest in a future good varies with the strength of this psychological continuity. So, if the level of psychological continuity between the individual now and the time when the goods occur is strong, then the interest in that good becomes stronger. However, if the level of psychological continuity is weak, then the corresponding interest becomes weaker.

But why is psychological continuity over time important? Perhaps the total amount of good in a life should be the factor in ascertaining the strength of an interest, irrespective of psychological continuity. However, given that well-being is a prudential value, this claim is mistaken. Maximising the good in a life is important because it is of value *to* the individual whose life it is, not because

⁸ *Ibid.*, p. 233.

⁹ *Ibid.*, p. 39.

it contributes to the total amount of good in the universe. And if we are concerned with the value individuals receive from the good in their lives, psychological continuity must be important. For surely a good is of *more* value to an individual when that individual can strongly identify with the subject receiving that good. For example, *I* get more value from a good when it is *me* receiving that good. Similarly, a future good of mine will be of more value to me the more I can identify with the future self who receives that good. For these reasons, psychological continuity over time is a contributing factor to the strength of an interest.

THE INTEREST IN NOT SUFFERING

I wish to claim that sentient animals – those that can experience pain and pleasure – normally have a strong interest in not suffering. To make this claim is simply to say that life goes very badly for such animals when they suffer, just as life ordinarily goes badly for humans when they suffer. In fact, perhaps we might say that the strengths of the human and animal interest in avoiding pain are equivalent. After all, as many philosophers have said, pain is pain, no matter what or who feels it.¹⁰

However, the claim that animals and humans have an equivalent interest in avoiding suffering might be questioned. For example, it might be pointed out that human beings are usually capable of more sophisticated levels of cognitive ability, making their suffering worse. To illustrate, imagine that me and my dog break a leg which causes us both to suffer. It could be claimed that this suffering is worse for me because of my extra cognitive capacities. For instance, I might dwell on and become obsessed by the pain, thus spiralling into a depression. Also, as a human person I have certain aims and projects I wish to fulfil that may be frustrated by my broken leg, exacerbating my suffering. Both capacities are lacking in my dog, perhaps making the break less bad for him.

However, these types of arguments can also be used to support the idea that the dog suffers *more* from his leg being broken. For example, perhaps my additional capacities allow me to rationalise

¹⁰ See for example, Peter Singer, *Animal Liberation*, 2nd edn (London: Pimlico, 1995), pp. 7–17.

my pain, understanding that it will come to an end. A dog on the other hand, might be totally consumed by his suffering. Similarly, it might be that my plans and projects actually lessen the effects of my pain, helping me to enjoy a decent quality of life despite the break. It seems to me that such arguments could run and run, without ever reaching an adequate solution. For this reason, it seems best to recognise that much depends on the context, and that suffering is sometimes worse for humans and sometimes worse for animals. Nevertheless, we can also say with confidence that ordinarily, avoiding suffering is extremely valuable for both.

But what about the other factor relating to the strength of an interest, psychological continuity? First of all, it seems clear that animals possess weaker psychological continuity with their future selves when compared to most human beings. This is quite simply because animals have fewer earlier and later mental states that refer to one another.¹¹ While it would be a mistake to suggest that animals are entirely ‘trapped in the present’, it is perfectly reasonable to recognise that given their more limited cognitive abilities, animals have fewer psychological connections over time than most adult humans. Given this, does this make the animal interest in not suffering weaker than that of humans? Not necessarily, for the interest individuals have in not suffering does not always refer to some future good, to be obtained by some future self; in fact, it usually relates to an immediate good to be received by one’s present self. In light of this, we can acknowledge that the difference in psychological continuity gives adult humans a stronger interest than animals in, say, not contracting arthritis when they reach old age. However, we must also recognise that it does not give them any stronger interest in not contracting arthritis *now*.

Clearly, there are serious difficulties in measuring the relative strength of the human and animal interests in avoiding suffering. However, I propose that we accept these difficulties and simply recognise that suffering is ordinarily a serious harm for both: humans and animals have a strong interest in avoiding pain. Given that suffering is a serious harm for animals, the *prima facie* case for an animal right not to be subjected to painful experiments looks good. However, at least three different arguments have been put forward to refute assigning such a right. First, the great benefits provided by

¹¹ McMahan, *The Ethics of Killing*, p. 198.

animal experimentation have been pointed to, with the accompanying claim that such benefits trump animals' interests in avoiding pain. Second, some have argued that we have special obligations to our fellow human beings which override our obligations to individuals from different species. Finally, it is claimed that human life is worth more than animal life and thus that painful experiments on animals are permissible. I examine each of these claims in turn in the remainder of this section.

The benefits of experimentation justify its continuation

The most common argument put forward by those in favour of animal experimentation is 'the argument from benefit'. That is, the benefits of animal experimentation are simply too great to warrant any thought of its discontinuance. Of course, the factual validity of this claim is denied by many proponents of animal rights who argue that not only have the benefits of animal experiments been exaggerated, but also that their use has actually hindered medical advances.¹²

This is a large and difficult topic, which I lack the space to explore fully here. Moreover, an assessment of the scientific validity of using animal models in experiments is best conducted by those with much greater scientific expertise than myself. However, this by no means entails that there is nothing left for the moral philosopher to say. For without doubt, an empirically based cost-benefit analysis of animal experimentation will not definitively decide the *moral* question. For example, animal experiments may provide wide-ranging medical benefits *and* be morally impermissible. Indeed, it is this possibility that I now wish to explore.

Let us assume then, for the sake of argument, that painful experimentation on animals can provide some contribution to medical progress. This assumption cannot by itself justify painful experimentation on animals. For if we were concerned solely with medical progress, then we should begin wholesale programmes of experiments on *human beings*. This is because *human subjects* provide the best experimental models for researching human diseases or testing the effects of drugs on humans. An experiment on a rat

¹² For a philosophical argument calling into question the benefits of animal experiments, see Hugh LaFollette and Niall Shanks, *Brute Science: Dilemmas of Animal Experimentation* (London: Routledge, 1996).

may provide clues as to the effect of a particular drug on humans, but an experiment on a human being will provide much harder and more reliable evidence. So, if we accept that painful experiments on animals can contribute to medical progress, we must also recognise that painful experiments on humans will confer even greater benefits.

Of course, most of us believe – quite rightly – that such programmes of painful human experimentation would be impermissible, even in the face of such potentially enormous gains. Many, including myself, would consider programmes of painful human experimentation to violate important human rights; and such rights are meant to act as ‘side-constraints’ on the pursuit of social goods such as medical progress.¹³ Of course all of this begs the question: why don’t non-human animals possess such rights? Why can animals, but not humans, be painfully experimented upon for the sake of the social good?

In sum, one cannot justify painful experimentation on animals solely by appealing to its contribution to medical progress. Human experiments are normally morally unjustifiable because human beings have rights not to be subjected to painful and invasive procedures. Since animals also have a strong interest in not being made to suffer, it is unclear why this animal interest cannot also be translated into a right not to be subjected to painful experimentation.

Species membership is ethically significant

Perhaps the difference between the human and the animal interest in not being experimented upon comes down to species membership. Some argue that it is legitimate for humans to grant extra weight to the interests of fellow humans. This is because it is claimed that species membership itself is morally relevant, and that it is normally justifiable for individuals to favour the interests of the species to which they belong. Thus as humans, it is legitimate for us to give extra weight to the human interest in not suffering and translating this into a right, while denying such a right to non-humans. Of course, to make all this stand up, the theory needs to

¹³ Rights have been referred to as ‘limits’, ‘trumps’, and ‘side-constraints’ on aggregative policies. For examples, see: Jeremy Waldron, ‘Rights in Conflict’, *Ethics*, 99/3 (1989) 503–519; Robert Nozick, *Anarchy, State and Utopia*, (New York: Basic Books, 1974); and Ronald Dworkin *Taking Rights Seriously*, (London: Duckworth, 1977).

explain why it is permissible and not prejudicial to favour our own species at the expense of others.

Perhaps the most comprehensive attempt to offer such an explanation has come from Lewis Petrinovich.¹⁴ First of all, Petrinovich argues that speciesism (favouring one's own species) is a natural fact of life. Petrinovich then argues that favouring our species can be likened to favouring our kin members: both 'moral feelings' have evolved in order to protect the replication of genes. Furthermore, he argues, both are justified as ethical positions because we have stronger emotional bonds to our kin and fellow species members.¹⁵ In light of this, subordinating the interests of other species can be justified, a position directly relevant for the case of animal experimentation.

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

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

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

¹⁴ Another important advocate of this relationship-based approach is Mary Midgley; see her *Animals and Why they Matter*, (Athens: University of Georgia Press, 1984).

¹⁵ Lewis Petrinovich, *Darwinian Dominion: Animal Welfare and Human Interests*, (London: MIT Press, 1999), pp. 217–222.

also be consistent with the 'basic freedoms of human beings'.¹⁶ This would seem to get round my examples of rape and murder, in which clear violations of freedom take place. Essentially, then, Petrinovich permits a degree of ethical reasoning to supplement his biological thesis. But, once ethical reasoning is permitted, it is unclear why we must stop at basic human freedoms. After all, if rationality is allowed to supplement the basic biological argument then one could provide a reasonable defence of the ethical import of *non-human* freedoms. Or, rather, one could offer a rational defence of non-human well-being, and claim that an animal's interest in avoiding pain is similar to and is not trumped by a human being's interest in avoiding pain. Without doubt, Petrinovich owes us an argument for why some supplementary rational arguments are acceptable, and why others are not.

Finally, there remains a further problem with the claim that species membership is ethically relevant. Of all the classes and types of living organisms, why is *species* membership the relevant one? Clearly, we all belong to a wide variety of groups and classes. In light of this, it might be deemed arbitrary to choose species membership as ethically relevant instead of say biological class, biological order, race, gender or religion.¹⁷ For it is no doubt the case that many of us may have closer emotional bonds to some of these groups than to our species.

Human life is worth more than animal life

However, perhaps there is a relevant difference between humans and non-humans that allows us to subordinate the interests of the latter. Quite simply, perhaps human lives are worth more than animal lives. If this is the case, then an animal's interest in avoiding pain might be legitimately overridden in order to protect human lives. To make this claim stand up to scrutiny, it is necessary to point to the particular characteristics that humans possess that

¹⁶ *Ibid.*, p. 238.

¹⁷ See LaFollette and Shanks, *Brute Science*, p. 229.

might make their lives more valuable. This section examines one such attempt to do this.¹⁸

Bonnie Steinbock has proposed that animal experimentation is justified, and bases her argument on the claim that human lives are worth more. For Steinbock, human lives are worth more because humans are morally autonomous and so enjoy a privileged position within the moral community.¹⁹ Clearly, however, not all human beings are morally autonomous, babies and the severely mentally disabled being examples of such exceptions. Can we experiment on these humans because their lives are of less value?²⁰

To her credit, Steinbock addresses this problem directly and argues that it is not justifiable to experiment on such humans. In her view, humans that lack moral autonomy cannot survive in the world without our special care, whereas non-human animals survive very well despite having fewer capacities than ordinary humans. Because of this difference, Steinbock argues that it is justifiable to experiment on animals but not on so-called 'marginal humans'.²¹ However, even if we concede the premise that non-human animals and non-autonomous humans differ in the stated way, it does not appear to lead to the conclusion Steinbock wants

¹⁸ The idea that humans are simply worth more than animals is so entrenched in the history of Western moral thought that I do not have the space to reference all who have said it. Such claims were initially based on the fact that humans have souls and animals do not, and then on the fact that humans have reason and animals do not. Since these claims are now controversial, current arguments usually relate to something like Steinbock's notion of 'moral autonomy': something that humans possess, but animals do not. For other examples in this latter camp see, Carl Cohen, 'The Case for the Use of Animals in Biomedical Research', *The New England Journal of Medicine* 315/14 (October 2, 1986) 865–870, and Michael Fox, 'Animal Liberation: a Critique', *Ethics* 88/2 (January, 1978) 106–118.

¹⁹ Bonnie Steinbock, 'Speciesism and the Idea of Equality', *Philosophy* 53 (1978) 247–256, pp. 253–254.

²⁰ This type of claim – that we should treat non-humans how we treat humans with similar capacities – is often called, 'the argument from marginal cases'. See Daniel Dombrowski, *Babies and Beasts: The Argument from Marginal Cases* (Urbana: Illinois University Press, 1997). For an attack on this type of reasoning, see Elizabeth Anderson, 'Animal Rights and the Values of Nonhuman Life', in Cass R. Sunstein and Martha C. Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford: Oxford University Press, 2004). Anderson's argument essentially rests on the premise that species membership is morally significant, and thus is open to the same criticisms levelled in the previous section.

²¹ Steinbock, *op. cit.*, p. 255.

it to. What is needed, but not provided, is a case to be made for the moral relevance of being able to survive with or without special care. After all, and as Angus Taylor points out, Steinbock first wanted to subordinate the interests of animals because of the fact that they possess fewer capacities than humans, and yet now she wants to subordinate them because they possess greater capacities.²²

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

when we consider the severely retarded, we think, 'That could be me.' It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey.²³

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

To conclude this section, I wish to claim that from an interest-based rights approach animals have a moral right not to be subjected to painful experimentation. The interest that animals have in avoiding pain is fundamental to their well-being. If we are to take animal well-being seriously, those who claim that we can subordinate animal interests by conducting painful experimentation on them need to provide convincing arguments to support their case. However, neither the argument from benefit, nor the argument from species solidarity, nor the more valuable life argument do the work that their advocates want them to. The non-human animal

²² Angus Taylor, *Animals and Ethics* (Ontario: Broadview Press, 2003), p. 127.

²³ Steinbock, *op. cit.*, p. 255.

interest in avoiding pain is sufficient to impose a duty upon us not to subject sentient creatures to painful experimentation.

THE INTEREST IN CONTINUED LIFE

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

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

As a reminder, I have argued that interests are components of well-being. In light of this, to ascertain whether animals have an interest in continued life we must ask whether continued life is good for animals. To start with, it seems reasonable to claim that if suffering is bad for animals, then pleasant experiences are good for them. Consequently, we might say that an animal has more well-being overall in its life the more pleasurable experiences it has in that life. Clearly, when an animal dies or is killed, the amount of possible pleasure in its life is ended. We can thus conclude that ordinarily animals have an interest in continued life in order that they may have more pleasant experiences and greater overall well-being in their lives.²⁴

²⁴ I say 'ordinarily' because of course an animal might have a disease that means it will necessarily have painful experiences for the rest of its life. In such cases, there seems little reason to attribute to the animal an interest in continued life.

The strength of the interest in continued life

Many animal rights proponents share my conclusion that sentient animals have an interest in continued life. In similar arguments to my own, such philosophers tend to argue that death harms animals because it forecloses animals' opportunities for future valuable experiences.²⁵ However, most of these philosophers regard the interest in continued life as one of the strongest that animals possess. Thus, the move from interest to moral right to life would be easy for such philosophers to make. But is the animal interest in continued life as strong as such philosophers tend to assume?

Remember that the strength of an interest is determined by two factors: the value of the good in question for the individual whose life it is, and by the psychological continuity between the individual now and when the good will occur. Let us take the value of continued life first. Is this good more valuable for humans than for animals? Well, part of a human's interest in continued life has similar foundations to that of the animal's interest: continued life permits future valuable experiences. However, there are at least two other factors that make continued life valuable for humans but not for animals. First of all, continued life contributes to most humans' *immediate* well-being because they have the capacity to reflect on those future valuable experiences. For example, it makes me now happy to think of my plans for this coming weekend and the visit of some friends. I can imagine being with my friends and having a good time, and such a thought makes me happy now. Secondly, as an autonomous human being, I have certain projects and goals that I wish to fulfil. Continued life provides me with the opportunity to pursue such ambitions, change them, and hopefully eventually to realise them. While animals possess certain short-term desires and aims, these do not equate to the self-chosen life goals of an autonomous agent. Accordingly, the animal interest in continued life is not supported by life's contribution to the shaping and fulfilment of goals. From all this we can see that continued life is more valuable for most humans than it is for animals.

²⁵ This view is put forward by David DeGrazia, *Animal Rights: a Very Short Introduction* (Oxford: Oxford University Press, 2002), pp. 59–64, Bernard E. Rollin, *Animal Rights and Human Morality*, rev. edn. (New York: Prometheus Books, 1992), p. 86 and Steve F. Sapontzis, *Morals, Reason and Animals*, (Philadelphia: Temple University Press, 1987), p. 169.

However, at this point it might be objected that these arguments have a rather odd implication. For consider someone who is depressed, and does not take any immediate satisfaction from the prospect of future goods in his life, and does not have any projects that he wishes to pursue. Can we say that this individual's interest in continued life is weaker than that of an individual with an optimistic disposition? It would be very strange to say so, which seems to count against my analysis. However, the account offered here does not imply that depressed and pessimistic individuals have only a weak interest in continued life. For recall from the section on what it means to have an interest the claim that interests are not wholly subjective. I argued that part of the strength of an interest is determined by the value of the good for the individual in question, but also that the individual can be wrong about what is good for them, and the strength of the value of that good. In light of this, we can ordinarily say that the depressed individual *should* take satisfaction from the prospect of future goods, *will undoubtedly* pursue some kind of project in the future, and thus *does* have a strong interest in continued life.²⁶

The notion of psychological continuity also gives us reason to think that the interest of animals in continued life is weaker than that of most human beings. For unlike the absence of suffering, continued life necessarily relates to a future good. And since, animals have lower levels of psychological continuity with their future selves, their interest in that future good is weaker. In sum if we recognise that animals possess an interest in continued life based on the overall amount of good in their lives, we must recognise that such an interest at any particular time is weak, since the connection between the animal now and when those goods will occur is weak.

A moral right not to be killed by experimentation?

So what does all this mean for an animal's putative right not to be killed by experimentation? Remember that in order to possess a

²⁶ Again, I say 'ordinarily' because in some cases individuals will have no prospect for future valuable experiences or projects: consider individuals with debilitating illnesses that cause severe and relentless pain, for example. Under my account, such individuals will naturally have a much weaker interest in continued life. This is a conclusion I am willing to accept.

right, an animal's interest must be sufficiently important to impose a duty upon us. Perhaps then, because an animal's interest in continued life is only weak, it is insufficient to impose a duty on us not to kill them. Alternatively and more plausibly, we might claim that while the interest is sufficient to ground a general or *prima facie* animal right to life, this right is not supported in the context of *medical* experiments on animals. For while it might be acknowledged that some of our interests, like those we have with regards to cosmetics or detergents, are insufficient to trump the animal interest in continued life, the interests that are promoted by *therapeutic* experimentation, such as human health and life, are in fact sufficiently strong.

Unfortunately, there is a serious problem with this line of argument. I have proposed that an animal's interest in continued life is weak for three reasons: because they do not immediately benefit from the prospect of continued life, because they do not have goals and projects to pursue, and because they have weak psychological continuity with their future selves. But it has been mentioned previously, that there are also many humans who lack these capacities. So, human babies and the severely mentally disabled, like animals, must only have a weak interest in continued life. This is a problem for thinkers who claim that an animal's interest in continued life is too weak to ground a right not to be killed by therapeutic experimentation, for they must also acknowledge that these humans' interests are too weak to ground such a right. Put simply, if it is legitimate to thwart an animal's interest by killing it painlessly in a therapeutic experiment, it must also be legitimate to do the same to human babies and the mentally disabled.²⁷

So, effectively we are left with two choices. First, we could simply conclude that it is legitimate to conduct painless but deadly experiments on *both* animals and humans who lack these capacities. However, even utilitarians, aiming to maximise overall welfare balk

²⁷ Some philosophers claim that granting rights to animals on the basis of the capacities they share with humans is anthropocentric and speciesist. Since moral reasoning has to start somewhere, and that somewhere must be with humans and human experience, I am not persuaded by such claims. For a useful discussion of these points see, Elisa Aaltola, "Other animal ethics" and the demand for difference', *Environmental Values* 11/2 (2002) 193–209.

from embracing such conclusions.²⁸ And no doubt almost all of us would regard this option as simply too costly and horrific to embrace. Alternatively then, we might have to conclude that the interest in continued life of *both* of these humans and non-humans *is* sufficiently strong to ground in us a duty not to kill them by experimentation.

Before accepting this, however, perhaps there is a third way that has not yet been considered. Perhaps, we can make an argument for the case that these non-autonomous humans have a *greater* interest in continued life than animals do. If we establish this, it will be just a short step to arguing that this human interest is sufficient to impose on us a duty not to kill them, while that of animals is not.

One way of constructing such an argument is to return to McMahan's account of the relevant factors in determining the strength of an interest. You will recall that part of the strength of an interest depends on the level of psychological continuity between the individual now and when the goods will occur, and part depends on the value of the good for the individual in question. However, Jeff McMahan presents this latter factor in a slightly different way. He claims that the second determinant of the strength of an interest is the 'net amount of good' that will occur through satisfaction of this interest.²⁹ Now at this point many would make the not unreasonable claim that the net amount of good produced by the continued life of a non-autonomous human is greater than that produced by the continued life of a non-autonomous non-human. After all, the added richness of experience and greater capacities of human beings leads to the manifestation of greater levels of good. In this way, then, one might claim that the interest in continued life of all humans is greater than the equivalent interest of non-humans. In turn, this explains why *all* humans have a right not to be killed by therapeutic experimentation, but why non-humans do not.

²⁸ R. G. Frey has faced up to the possibility of using human (and animal) non-persons in medical experiments based on the potential benefits to human persons. See his contribution in R.G. Frey and Sir William Paton, 'Vivisection, Morals and Medicine: An Exchange', in Helga Kushe and Peter Singer (eds), *Bioethics: An Anthology*, (Oxford: Blackwell Publishers, 2002). However, he categorically rejects the use of humans in R. G. Frey, 'Animals', in Hugh LaFollette (ed.), *The Oxford Handbook of Practical Ethics*, (Oxford: Oxford University Press, 2005) 161–187.

²⁹ McMahan, *The Ethics of Killing*, p. 233.

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

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

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

To sum up this section, from an interest-based perspective non-human animals possess a moral right not to be killed by experimentation. Most animals have an interest in continued life. While this is a weaker interest than that of autonomous humans, this does not mean it can be thwarted without good reason. Of course, many regard the benefits of therapeutic experimentation to be a sufficiently good reason to override such an interest. But if we accept this, we must also accept that it would be permissible to use humans with a similarly weak interest in continued life in deadly experiments. The costs of such an argument are too great; we must accept that both sentient animals and humans have a moral right not to be killed by experimentation.

THE INTEREST IN BEING FREE

So far I have argued that animals' interests in not suffering pain and in not being killed are both sufficient to ground in us a duty not to conduct experiments on animals that cause pain or result in death. However, perhaps animals have a more general interest in not being experimented upon. Such an interest could be founded upon the interest animals might have in *being free*.

The claim that animals have an interest in being free can take one of two forms, each relative to the particular conception of freedom that is used. First, one might take a negative conception of freedom, and argue that animals have an interest in not being interfered with. Alternatively, one might take a positive conception of freedom and argue that animals have an interest in being in control of their own lives. Whichever conception of freedom is adopted, it is clear that experimenting on animals imposes on that freedom, because it both interferes with them and inhibits their ability to control their own lives. Importantly, if animals do have an interest in freedom, and if that interest is sufficient to ground a duty in us not to impose on their freedom, then we can say that *all* forms of experimentation on animals are morally illegitimate, as the absolutist animal rights philosophers claim. For even if an experiment causes an animal no pain and does not result in death, we can be almost certain that by using an animal in an experiment we are *necessarily* interfering with it and inhibiting its ability to

control its own life.³⁰ Thus, it is imperative to discover at the outset whether animals do have this interest in freedom.

Do animals have an interest in negative freedom?

When philosophers talk of negative freedom they are referring to those times when we consider individuals to be free from constraints and interference.³¹ Without doubt, there are numerous ways in which experimentation interferes with an animal. First of all, an experiment might involve removing an animal from its natural habitat in order to take it to the laboratory for experimentation. This is a clear and obvious case of interference. However, it also makes sense to say that those animals that are bred in captivity for experimentation are interfered with and constrained. Being held in cages is a fairly obvious form of constraint, while being injected or force-fed are clear cases of interference. What needs to be considered is whether this interference necessarily harms animals.

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

To help us ascertain whether interference and constraint are in themselves harmful to animals, it will be useful to look at why interference on normal adult humans is usually considered harmful,

³⁰ I say *almost* certain because it is conceivable that an ‘experiment’ could be conducted that simply involved observing the animal in its natural environment without interference. Whether such fieldwork should properly be referred to as an experiment, I do not know.

³¹ For the classic exposition of the distinction between negative and positive liberty see, Isaiah Berlin, ‘Two Concepts of Liberty’, in Anthony Quinton (ed.), *Political Philosophy*, (Oxford: Oxford University Press, 1967), pp. 141–152.

and to see if the same applies to animals. By way of an example, imagine experimenting on a normal adult human against her will. As we have discussed above, most of us consider such an experiment to be morally illegitimate. However, imagine that the individual is drugged so that she is caused no pain by the experiment and will have no memory of it (perhaps she is anaesthetised without her knowledge while asleep). Finally, suppose that we can somehow guarantee that the experiment will not affect that individual's health in any way throughout the remainder of her life. Even with these provisos, most of us will still regard this experiment as morally wrong. And I believe that such a judgement is correct. The reason why this experiment would be wrong comes down to the fact that most adult humans have an interest in leading freely chosen lives, as self-governing autonomous beings. Clearly, using individuals in non-consensual experimentation, even when it causes no suffering or distress, violates this interest.

However, the same is *not* true with regard to most non-human animals. Most animals are not autonomous agents with the capacity to reflect upon, choose and pursue their own goals.³² They thus have no interest in leading freely chosen lives. Of course, animals can make choices and act upon those choices, but that is something quite different. Without the capacity to reflect on their choices, or on the reasons for their choices, animals are 'locked into' their ends and goals in a way that most adult humans are not. In light of this, interfering with, constraining and using animals do not *in themselves* harm animals. This, of course, has important implications for using animals in experiments. If an animal born in captivity is drugged and anaesthetised so that it is caused no distress, and if that animal is not killed, then that animal's well-being is not affected. Thus such an experiment can be deemed to be harmless.

Do animals have an interest in positive freedom?

I have concluded above that animals do not have an interest in avoiding interference. This is based on the fact that they are not

³² I say 'most animals' to leave open the possibility that some animals are in fact autonomous creatures with capacities to reflect on, choose and pursue their own goals. Potential candidates for such animals are great apes and cetaceans. On this matter, I have no firm belief either way, and leave it to those more knowledgeable on animal minds than myself to determine.

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

One such argument might be based on arguments put forward by Paul W. Taylor. Taylor argues that one plausible conception of freedom is the ability to pursue one's ends. Moreover, although animals (and other living things) cannot choose their own ends, they nevertheless have their own biological ends which are valuable to them. Being free to pursue these ends, according to Taylor, is thus in the interests of animals.³³

One problem with this argument, I believe, is determining what the biological ends of animals are. For example, what are the biological ends of an individual kangaroo? This is hugely a difficult question and poses an enormous problem for Taylor's argument. However, for the sake of argument, it might be useful to concede some ground. After all, one reasonable proposal as to the biological end of the kangaroo is that he is a gene replicator; thus a kangaroo's end might be to produce as many healthy offspring as possible. However, does this explain why it would harm a kangaroo to keep him in captivity or to use him for certain purposes? Unfortunately, it does not. For it would be quite possible to allow the kangaroo to breed while in captivity or while being used for some other purpose. Indeed, keeping the animal in captivity might allow an increased opportunity for the kangaroo to fulfil his ends, by facilitating breeding programmes and engineering conditions so that his offspring have good chances of survival.³⁴

³³ Paul W. Taylor, *Respect for Nature*, (Princeton, NJ: Princeton University Press, 1986), pp. 106–109.

³⁴ Of course such policies are pursued in many zoos and wildlife parks around the world. Rare species are taken into captivity and bred, in the hope that the resulting offspring will have a better chance of survival.

The more important problem with this argument, however, is that it imposes aesthetic and perfectionist judgements on what makes animals' lives go well. For example, many of us find it distasteful to keep animals in captivity, and many of us prefer to see animals in their natural habitats, but that does not mean that living in their natural habitats necessarily contributes to the quality of life for animals themselves. It is simply a mistake to think that individuals' lives *necessarily* go better when they exercise their natural capacities or fulfil their biological ends. For example, an animal may be a better specimen of her kind if she engages in species traits like fighting with her rivals. However, if such fighting leads to painful injury, it is unclear how that fighting makes life better for the individual whose life it is. And we must remember that when determining interests, we should remain focused on how life goes for the individual whose life it is.

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

Non-autonomous humans, freedom and experimentation

Of course, if animals do not have an interest in freedom because they are not autonomous creatures, the same must also be true of human beings who lack autonomy. Thus we can conclude that humans such as babies and the severely mentally disabled have no interest in freedom and thus have no interest in not being used in experimentation that is painless and which does not result in death. In other words, such forms of experimentation on human babies and the mentally disabled must also be morally permissible.

While such a conclusion might at first sight seem odd, I do believe that it is valid. The first thing to make clear is the fact that

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

To those who remain unconvinced by this, and still feel that non-autonomous humans have an interest in freedom and thus in not being used in this way, let me make a final appeal based on some current practices that are regarded as uncontroversial. After all, we *do* regularly and consistently impinge upon the freedom of non-autonomous humans. For example, we make children go to school, provide medical care for the incapacitated and deny the severely demented freedom of movement. Of course, it can be legitimately objected that all these examples are for the individuals' own good; experimenting on babies and the severely mentally disabled, on the other hand, will not necessarily benefit those individuals.³⁵ However, not all of our uncontroversial interferences in the lives of non-autonomous humans confer benefits on them. When we dress children in outfits that we think are attractive or that have been given as gifts, there is no definite benefit to the child. Similarly, when we hold naming ceremonies for children or encourage them to take up hobbies that we ourselves are interested in, this is rarely for the benefit of the children themselves. Also, when we take charge of the wealth and assets of the permanently mentally disabled, this does not always confer any clear benefit to those disabled individuals. These examples show how we already treat human non-persons as if they have no interest in freedom. In light of them, perhaps using them in experiments that cause them absolutely no experiential harm is not quite so unappealing.

³⁵ Thanks to Cécile Fabre for pointing this out to me.

In sum, I refute the suggestion that simply by using animals in experimentation we harm them. While I concede that using animals and keeping them in captivity can be wrong, I believe that this can be assessed solely on the basis of whether they are made to suffer or are killed. As non-autonomous creatures without the ability to reflect on, choose and pursue their own ends, most animals have no fundamental interest in governing their own lives and being free from interference. For this reason, from an interest-based approach, animals cannot be said to have a general right not to be used in experiments. But to be consistent, if this is true for non-autonomous animals, then it must also be true for non-autonomous humans.

CONCLUSION

In this paper I have argued that from the interest-based approach to rights, painful experiments on non-human animals and those that end in death are morally illegitimate. According to this approach, animals possess the moral right not to be subjected to experiments that cause them pain or that end in death. Since the vast majority of animal experiments cause pain and/or end in death, the perspective concludes that most animal experimentation that takes place is morally unacceptable. However, this does not entail an absolutist stance on the issue. Animal experimentation can be justified when animal well-being and interests are respected. The interest-based approach thus demands a radical change in our current use of animals in experiments, but it does not claim that all experimental use of animals is inevitably harmful.

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