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ANIMAL RIGHTS

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ABSTRACT

This dissertation examines the moral status of animals and the idea of "animal rights" as a moral theory and efficient action-guide with regard to the treatment of animals. Appeal to moral rights is usually made in order to safeguard the interests of morally considerable individuals and to protect the weak and powerless from being exploited. Animals have interests, as do human beings: they are conscious creatures with a conative and cognitive life. They are subjects of a life which can be better or worse for them, and how they are treated raises important moral questions.

Animals matter, and the morality of deciding conflicts between human and animal interests (and these conflicts include the practices of rearing and slaughtering animals for food, scientific research involving animals, some practices governing the clothing and pet industries, as well as hunting and using animals in sport and for entertainment purposes) invariably in favour of human beings is dubious and labelled "speciesist", the analogy being with sexism and racism. Humans and animals, like men and women, and white and black, have equal standing.

A study of various views and theories which deal with animals reveals that indirect-duty views, duty- and goal-based theories, appeals to kindness, an ethic of sympathy, reverence for life, etc., fail either as comprehensive moral theories or as efficient action-guides, or both. A view of rights, however, provided that the implications of appeals to justice and equality are taken seriously, offers both. The common objectives of morality are more readily attained if moral rights are ascribed to animals.

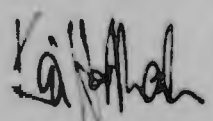
A distinction between basic and nonbasic moral rights demonstrates that all morally considerable individuals have equal moral rights at the basic level but do not necessarily share the same rights at a nonbasic level. Although moral rights involve reference to right and wrong action, this does not mean that rights can never be overridden on moral grounds. Justifiable violation of rights may include self-defence, protection of the weak and defenceless, acting in the interest of the very individual whose right is overridden, etc.

Nonetheless rights do not constitute the whole of morality: they only have their place in morality as a necessary framework and system of efficient

guidance. The extension of rights to animals may not suffice to "emancipate" animals, to liberate them in our awareness: this is arguably attained only when talk of rights is coupled with genuine fellow-feeling, with active and conative sympathy. Yet ascribing to animals rights which they cannot claim for themselves and respecting these rights is not only essential for protecting them from further exploitation and treatment as mere resources but also of vital importance in the matter of attaining common moral raisons d'etre.

DECLARATION

I declare that this dissertation is my own, unaided work.
It is being submitted for the degree of Master of Arts in the University of the Witwatersrand, Johannesburg.
It has not been submitted before for any degree or examination in any other University.



Kai Horsthemke

December 1985

To my Parents, Karl-Heinz and Susanne,
and in Memory of
Tao, Felix, Mikesch, and Spuk

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"Difference is not Equal to
nequality.
Inequality is not even a
Reality - only a Power Ploy !"

(Annette Peacock - " Survival ";
on: "The Perfect Release";
Tomato Records 7044).

PREFACE

My project is to disc ;s the philosophical, moral foundation of vegetarianism, of the cessation of using animals in re.earch, and of treating them as mere means to human ends, generally speaking (and such an investigation would also concern circuses, zoos, the clothing and pet industries, and even certain areas of wildlife management). This illustrates the wider meaning of the ;logan "Animal Rights" and the (largely practical) concerns of the animal rights movement, viz. those of freeing animals from mere instrumental status and of establishing their standing in their own right, without exploring or defending the notion of "rights" as such.

My concurrent intention is to defend a view or theoretical framework which accords with this foundation and which serves as a consistent and efficient action-guide. This is where the notion of animal "rights" is vindicated and shown to serve to explain the basis of our responsibilities for, and non-rights against, nonhuman animals. (In what follows I will, for the sake of brevity of verbal discrimination, speak of "human beings" and "animals" and only occasionally distinguish between "human" and nonhuman animals".)

My own reservations with respect to animal "rights" are not about the legitimacy or adequacy of the notion but about the circumstances and motivating factors for the arising of the notion of rights as such. "Rights" is expressive and exemplary of human (and, more particularly, Western) suspicion, distrust, and dichotomic ("subject <u>versus</u> object", rather than "subject <u>and</u>, or <u>with</u> object") thinking.

The concept of rights is, like the concepts of mind and of God, perhaps unfortunately, here to stay: one thought or conceived they can no longer be "unthought" or rendered inconceivable. The have their respective functions, are more or less useful, and it would be pointless, if not impossible, to divorce the bearer of function from the need of the function. A possibility might be to say that there no longer exists such a need - but then we would have to investigate what particular developmen' 'man evolution, and in the evolution of human understanding and th articular, could have prompted the evanescence of such a need. is extremely doubtful whether such evidence is available at all, and t is - whether we could assess it.

A final technical point: throughout the course of my argument I am concerned

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with "moral" rights when I speak of "rights", unless I explicitly refer to "legal" or similarly institutional rights. I do not think that any purpose is served by shifting the emphasis from "moral" to "prudential" with respect to rights, owing to allegedly "inherent difficulties" in the notion of moral rights. The concept of moral rights is basic in rights-language, and my reason for distinguishing between moral and legal rights (as if this needed elucidation) is that moral rights often have a kind of precursory function. If all moral rights were legal (or legally recognized) rights, and vice versa, then the sole bearers of rights today would be wealthy and more or less intelligent Caucasian men (if, indeed, there would be any possessors or ascribees of rights at all). The concept of moral rights is basic in the language of rights in that it reflects the sense in which appeal to rights was originally made. All other kinds of rights (i.e., other than moral and legal, e.g., "aesthetic", "economic", or "ecological") are rights by analogy and modelled on "moral rights".

I wish to express my gratitude to my supervisor, Professor Jonathan Suzman, for his guidance and criticism. His reservations concerning animals "rights" proved provocative and made me scrutinize this notion with that much greater care. My sincere thanks also to James Grieve, who acted as my informal consultant and whose suspicions of "rights" as such proved similarly incentive, as did his recommendations regarding relevant literature. I am grateful further to Mark Leon for his valuable suggestions and comments in the matter of Philosophy of Mind and animal psychology. My dissertation was written during my tenure as a recipient of a Human Sciences Research Council Bursary and two University Senior Bursaries (Category B award in 1984, and a Category A award in 1985) from the University of the Witwatersrand. My gratitude to the Council and to the University is very great.

Last, but certainly not least, my warmest thanks to my mother Susanne, who took (and withstood) great pains in typing the draft of the present work, and to Johanne Lafleur for her efficiency and accuracy in typing the final version of this dissertation.

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Ch. 1

The Place of Rights in Morality

Concern with rights seems to be a fairly recent philosophical phenomenon. There is no equivalent of the concept of a right in Classical Greek thought, nor in the Chinese and Indian traditions, for that matter. The ancient Greeks and Chinese were concerned not with rights and duties but with balance and harmony that transcended the individual, that made society part of a great cosmic scheme, and that rested on a network of obligations, not just to individuals, but to forces and institutions, both human and divine, that shaped and transcended such individuals. (Indeed, it is not only possible but plausible to postulate a link between the origin of rights and the growth of individualism.) Even in Classical Roman usage, the term "ius" covers the notion of "law" and the idea of "privile ther than that of "right". The Romans, too, did not concern themsel th the analysis of rights and duties. Their classification of rig as crude in comparison with their expert treatment of individual rules and institutions (i.e., of privileges, powers, and immunities). These were viewed as "assets" and equated with physical objects - "interest" and "right", on the other hand, were thought "too abstract" and - owing to their intangibility - did not play a prominent role in the concerns of the practical Romans.[1]

The idea of "natural r s" first appeared in the seventeenth century, and thereafter was reiterated in the American Declaration of Independence, the French Declaration of the Rights of Man, the Universal Declaration of Human Rights, etc., the central tenet being that a man (sic !) could have a right which, as natural, inalienable, and indefeasible, had some kind of sanctity and validity transcending that of ordinary positive law. Jeremy Bentham has called the idea of natural rights "nonsense upon stilts", rhetorical and mischievous nonsense, and even equated it with "terrorist language", an attack which seems to be justified if he is making a logical point, i.e., denying that "rights" are - as "natural" might be taken to imply - "things", refer to anything as substantive as atom or mass. Rights are merely proposals, verbal announcements, but it should not be concluded - as Eugene Kamenka does - that their existence cannot be empirically or "scientifically" established. We can inquire into their existence empirically, viz. by asking whether there exists in a given society the concept of rights, and we can investigate the function of rights and the extent to which they are respected.[2]

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1.1 What Kinds of Things are Rights ?

Of course, to ask: what kinds of things are rights ? is to ask a potentially misleading question, for this way of posing it seems to imply that rights are quasi-physical entities in the world. "Things" stands in need of qualification, perhaps by way of appeal to the conceptual and functional aspects involved. The nature of rights is probably best elucidated by reflecting on the inadequacies of synonyms usually given. Although none of these illustrate fully the concept of rights, they serve to explain the various facets of rights-talk, and they share reference to certain attributes and traits of the individual which are protected and defended against attack by others.

A right is sometimes held to be a "power" - i.e., the power of acting for one's good, secured to an individual by the moral community. Yet a person may have rights she is powerless to enforce; and to speak of "hypothetical powers" (viz. that what she would be able to achieve if she were able) is the same as to say that her rights are the powers she would enjoy if she had her rights. Rights may explain why individuals have the powers they do, but they are not identical with these powers. Neither is "might" right: having the power to enforce compliance does not necessarily imply that one has the right to do so. Powers may be said to oblige, but not to confer a right: power may make people feel (prudentially) obliged to obey, but it does not confer a right to obedience, and therefore, does not confer authority. It is neither necessary nor sufficient for substantiating the claim to authority.[3]

Rights have also been defined as "interests". Now, there are several senses in which "interests" is used: in the conative, or "objective" sense (e.g., "being interested in", "taking an interest" - here, interests appear to be linked with desires, preferences, will), and in the welfare, and subjective senses (e.g., "having an interest" - where interests are linked with needs, and a point of view). It is obvious, however, that I may have a right to what I do not desire, prefer, or will, and similarly, that I may have rights that are not to my advantage or that do not bear on my experience at the time. But although rights are not to be identified with interests, the notion of interests does have an important role in the analysis of "rights" (see below, esp. chs. 2 and 3).

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When rights are referred to as "liberties", the objection will be much the same as that to "rights as powers": I can conceivably have a right to what I am not free to do. Rights called liberties in the sense of "privileges" capture at best "derived" and institutional rights, but cannot account for "underived" (so-called "basic") rights, at least not prima facie. The notion of privilege seems to imply conferral or acquisition because of something that a person has done: privileges appear to be special, exceptional, and "artificial". (The difference between rights and privileges is alluded to in a question posed in cartoonist-writer Sandra Boynton's amusing book "Chocolate: The Consuming Passion": "Is the pursuit of chocolate a right or a privilege ?")

Neither can rights be rendered in terms of "entitlements", for similar reasons: entitlements seem to presuppose some kind of acquired status and to refer only to "nonbasic" rights, i.e., rights derived from other - basic - rights (on this distinction, see ch. 6). Moreover, "entitlements" appear to capture only "rights - to" but not "rights - against": could I have an entitlement "against" someone ? Perhaps all entitlements are rights but it would be incorrect to say that all rights are entitlements.[4] - The common equation of rights with "claims" serves to avoid both of these objections, yet it meets other difficulties. The objection immediately arises that infants, children, and perhaps mentally handicapped human beings, cannot make claims, the implication being that they surely do have rights, however. This argument could be countered by saying, that infants, e.g., are capable of making claims, albeit at a rather unsonhisticated level, that the very crying of a hungry baby constitutes a claim on its mother. It could be argued further that claims can be made by others on behalf of those who cannot make (more sophisticated) claims themselves. A more serious objection to the identification of rights with claims[5] states that persons may have rights that aren't ever claimed (more on this later - see ch. 6). Yet a right certainly constitutes a ground of claim.

Another widely held view concerns the correlativity of rights and duties (an analysis of duties, and whether every duty has a correlative right, will be given in ch. 4): "right and duty are different names for the same normative relation, according to the point of view from which it is regarded". The view that rights are "correlates of duties" implies that

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every right has a correlative duty, e.g., a child's right to moral education implies a correlative duty so to educate the child. But if some rights are "immunities" (meaning that the bearer is unliable, unanswerable), it might be argued, they do not imply correlative duties. Yet even if the antecedent is true (suppose we render "immunities" in terms of "negative rights", i.e., "rights-not-to"), immunities are necessarily privileges of avoiding (in the sense of exemptions), and hence - like all privileges - derived, nonbasic, and an account of correlative negative duties could nonetheless be produced (i.e.,"duties-not-to). H.L.A. Hart objects to strict and invariable correlativity, however, that there is at least one sense in which a right has no correlative duty, viz. in cases of competition. Indeed, although there is no correlative duty manifest here, there exists nonetheless a "non-right" in this case, viz. to resort to measures more drastic than required in the course of pursuing one's goal and which would unwarrantedly violate similar rights of other individuals.[6]

Moreover, some philosophers are very concerned about the "is-ought" controversy they see to be inherent in the correlation of rights and duties. Now, this analysis of rights does appear to have the advantage that no synonym is given in the elucidation, and therefore the notion of rights is not restricted unnecessarily: the explanatory force is provided by the correlation. But does the "is-ought" controversy constitute a real threat ? Is it a violation of logic and an illegitimate procedure to move from the "is" of rights (which are taken to involve facts about the standing of persons) to the "ought" of duties ? Assuming for the moment that it is, there seem to be two ways out of the predicament. The first is to view the notion of rights as being charged with an evaluative, prescriptive element, however subtly, and as containing "oughts" and "ought nots": one might wish to speak of rights as "qualities of value", or even as "values" per se, or perhaps "normative resources". (On the other hand, to call anything of value a right is to argue for a particular moral view by clandestine verbal legislation.) Or one might argue like A.I. Melden. "If there are facts about human beings such that they do justify the ascription to them of human rights, then it would appear to follow from these matters of human fact that there are such human rights", and go on to replace talk of duties with

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talk of responsibilities (that for which one must answer) and of non-rights.[7]
I cannot see that any such arbitration would make a fundamental difference to the basic force of my argument: I am only saying here that the controversy can be side-stepped. (If it poses an important threat at all: for "is" and "ought" appear irreconcilable only in language and logic. But with respect to moral (and not only moral !) issues (which may involve linguistic utterances) facts are often - if not invariably - value-laden, and "is" and "ought" may be inextricable aspects of the same relation. We are not bodiless minds that can afford to treat moral matters as purely linguistic or logical issues.)

Even if the correlation of rights with nonrights and responsibilities appears to be preferable, it would nonetheless be against principled reason to deny an intimate connection between rights and duties. Now, whereas duties are prescriptive (i.e., they concern what a person ought to do), rights involve, or refer to, facts about the standing of persons (without actually being reducible to facts) - they imply neither what a person must do nor what she ought to do but what she may do (if she is so inclined or disposed). Yet "right to do" describes only one context in which "having a right" may be used, viz. in the sense of rights of action. "Right - to" may be an abstract right (right to life, liberty, or the pursuit of happiness), or a concrete right (right to property, or financial assistance), or it may describe rights of recipience, i.e., implying someone else's doing something (right to told or protected), or correlative duties. It might be argued that the correlativity of rights and duties does not follow from the meaning of the expressions "right - to" or "right - against", unless these expressions are defined by the incorporation of "right" and "wrong" action, etc. Conversely, discussions of right and wrong action which neglect rights may arguably tend to err in other respects, i.e., tend to ignore some of the complex features of moral justification, and to offer a distorted representation of common moral understanding. The concept of rights constitutes the moral ground for right action, as Hart points out. In short, there seems to be good reason for regarding the notion of rights as linked with that of right and wrong act in order to make it intelligible and to account for the idea of "standing".[8]

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We obtain two sets of relations: (1) between (moral) status and having rights by virtue of that status, and (2) between the rights of an individual and the rightness of action. It seems to be (logically as well as morally) safe to postulate an intimate connection between matter-of-fact status and the rightness and wrongness of actions (and whether an individual can be "righted" or "wronged"). (It is tenable that basic rights give rise to nonrights - which imply reference to "harm" - as well as to responsibilities - which concern "help" - ; nonbasic rights can be held to flow from both. More on this in ch. 6.) Determining the function of rights is central to the attempt of elucidating their place in morality and moral discourse.

1.2 What is the Function of Rights ?

What rights are depends on the particular context in which appeal is made to them: they may be entitlements, (valid) claims, privileges, liberties or powers. A right is something an individual "has" (in the sense of "is ascribed") by virtue of her status as a (morally) considerable being. Queries as to what exactly a right is often rest on a misconception: a right is not a proprietary article but rather a "moral commodity", a function of one's status.[9]
This is not to say that in recognizing a person's status one necessarily recognizes his rights. A philosopher might claim that human imbeciles or the irreversibly comatose do count morally but deny that they can have rights. Fundamentally, this attitude characterizes all those who have doubts about the existence of moral rights, Yet I will argue that "taking moral standing seriously" implies recognition of rights, and compliance with, and respect for, these rights.

Reformers commonly point out that an underprivileged group has moral rights so far unrecognized. This view implies that rights are things that exist in the world prior to conferral or ascription, waiting to be discovered by theorists with sufficiently enlightened consciences, and this might involve seeing rights as "things". Yet rights do not enjoy a quasi-embodied existence prior to their "recognition" but flow from agreement between rational human beings and are extended to those who cannot participate in such an agreement, e.g., children, and the mentally enfeebled. It is important to realize that their ascription often

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precedes social and political changes, and changes in public opinion in general, and that appeal to moral rights often makes these changes possible. Moral rights are invoked in order to enable individuals to exercise their powers of moral choice [10], and also to safeguard their interests, and generally to protect individuals. A right is something to be taken into account; and to recognize a person as being morally considerable is to acknowledge that she has interests and does not merely function mechanically, and ultimately to concede at least basic moral rights to her.

These rights are traditionally held to be possessed by right-bearers and regarded as, in some sense, "inalienable" and "indefeasible" (which is not to say they are "absolute": Melden and others consider this notion to be absurd, since it would imply that rights are claimed and exercised under any and all circumstances, without [illegible] to rational constraints)[11]. If a right is overridden, it [illegible]eighed as a moral consideration by a more urgent concern: it [illegible]ired, contra Melden, but it does not disappear. If one does have a right, its status as a right is not compromised by the fact that in special circumstances it must yield in the face of other competing considerations.[12]
To have a right is to stand in a moral relation with respect to one or more persons, and this relation does not simply vanish when the right is overridden for good reasons. (On justifiable and unjustifiable violation of rights, see ch. 7.)

Rights differ from appeals to kindness and sympathy in that they invoke ideals like justice and equality. Appeal to rights is made as a matter of justice. A person with a right has no reason to be grateful to those who respect it: she is "injured", she is being treated unjustly, when this right is denied. (Cf. Lt. "ius" and "iura".)
"Equality of rights" does not strictly imply any kind of "natural" equality of talents, goods, or treatment due/or owed, but that everyone capable of respecting rights is equally accountable to the one who has (a) right(s). ("Equality" of talents, goods, etc., similarly does not imply that these are "identical": they vary according to the natures of the particular individuals concerned. But since these cannot be placed on the same scale, they cannot be "unequal" with respect to each other (cf. sect. 3.5).)

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Still, we make provisions for those who are naturally disadvantaged, or who we deem "disadvantaged", e.g., blind people: we mitigate their "inferiority": we attempt to "correct" the natural arrangement by making special provisions for them, thereby according to them treatment not conceded to others.

It may be argued as Robert Nozick does, that "there is only one form of wrong-doing" and that is "the violation of rights", and that "rights reflect the facts of our separate existences." The nonviolation of rights is placed as a constraint on action, rather than, or in addition to, building it into the "end state" to be realized. Nozick writes that here is no "social entity" with a good that undergoes some sacrifice for its own good - there are only different individuals, with their own individual lives. No moral balancing can take place between them, no moral outweighing of one of their lives by others so as to lead to a greater overall "social good." In a similar vein, Ronald Dworkin writes that rights concern individuals and individual actions (unlike "goals" which concern social entities or communities, and consequences of actions.)[13] The model of "balancing" collective interests against personal right-claims is mistaken, in that it involves a confusion of a group's goals with the rights of members of the group - this model poses the threat of destroying the concept of individual rights, and the usefulness of this concept, if they can be overridden in any given new situation. The model of securing individual rights which can only be abridged for compelling reasons is certainly more satisfactory.

Ascription of moral rights is crucial in that it represents the implicit or explicit promise of those who confer them to those on whom they are conferred that their dignity and equality will be respected. This requires the understanding of the former of what rights are, as well as their honesty with respect to the full implications of the rights view.[14] Appeal to rights is arguably made primarily for self-interested reasons, or self-protection or self-defence, but the extension of rights to, e.g., human infants or imbeciles is not only a matter of sentimentality or expediency but of genuine moral concern. Indeed, as Stephen Clark argues: "The capacity to feel respect and awe for our fellows has been built into us because creatures with those motives have

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left more descendants than those that did not. It has been profitable not to interfere with the doings of others, not to snatch what is 'theirs', not to regard them as merely material for our own purposes, ... not to disregard their discomfort and annoyance. These complex motives, some of which govern our behaviour to other animals than the human, lie at the base of our recognition of 'rights'."[15]
To recognize a being as having moral standing is to recognize that she has purposes and interests and is not a mechanism that merely functions.[16] Rights are invoked in order to ensure that she is left to her purposes and that these interests are safeguarded, and that morally considerable beings can pursue them freely (or at least within reasonable limits) and equally, i.e., in accordance with their needs and capacities, who do of course, vary.[17] Whether invocation of rights is the only and/or the best way of protecting individuals and safeguarding their interests, will be discussed later. The aim of this chapter is to delineate the moral context out of which the language of rights arises.

The definition of rights itself does not settle the issue of who is capable of having rights beyond requiring that right-holders are creatures who have interests (which include, as a particular aspect, a creature's welfare). Given that rights have a moral function, are expressive of moral standing, and are invoked as a matter of expediency and moral concern, the question whether animals can be ascribed rights depends on whether animals matter in the sense outlined above. The terms "interests" and "rights" suffer from a certain abstractness or vagueness, and some degree of verbal legislation is required in determining who can intelligibly be ascribed them. This is not to say that any demarcation will be arbitrary - the charge of arbitrariness could be met, I think, by showing that one such case of "drawing the line" (if, indeed, it is a matter of so limiting the sphere of moral concern) occurs for better reasons than another: such a demonstration may at least purge the term "arbitrary" of its negative connotations.

Questions concerning conditions for the ascription of rights, what kinds of beings can have rights, are dealt with in ch. 5, questions concerning particular rights which these beings have, the distinction between basic and non-basic moral rights, and whether possession is "equal", or a

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matter of degree or even kind, are treated in ch. 6. Ch. 1 has highlighted the intimate link between rights and moral status, or moral considerability, and interests. Therefore, before turning to the issue of animal rights, I will investigate the motivation behind viewing animals as morally considerable beings, as having interests, and address the question whether this motivation is justified. This investigation necessitates an examination - however cursory - of animal behaviour and - non-question - beggingly - of animal psychology.

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Ch. 2

Minds, Interests and Moral Standing

The first real animal protection movement was launched in the nineteenth century; without an actual precedent, pressure groups were formed and systematic agitation conducted. Only a hundred years earlier, the general assumption had been that animals were only means to human ends and benefits. Human dominion was absolute, animals lacked immortal souls, reason, language, they lacked consciousness, and to talk of their possessing "rights" or even to consider the possibility was absurd. Transformation of public opinion, growing condemnation of maltreatment of animals, and enforcement of, if not the rights of animals, at least the duties of humans to them, were probably influenced by three main factors, moral, scientific and material, or economic.

(1) Moral influence: in the Judeo-Christian tradition, stress was laid on man's stewardship and on his duty to God's creation. (An interesting parallel is constituted by the Afrikaner's emphasizing the role of the white man, the upper group, on developing the country, in training and guiding the uneducated, unmotivated blacks, by whatever means necessary. Stuart Cloete writes: "It can now be taken as axiomatic that the progress of any country is dependent on the white-black ratio. The more white men, the greater the progress. It is frequently and quite correctly stated that all the work has been performed by black hands. But until these hands were directed by white brains they built nothing more complex than mud and pole huts roofed with grass. White brains, skill and capital are the key to African progress.")[1] Theologians urged not to inflict unnecessary suffering on animals or exert unnecessary cruelty, an appeal which left much room for debate over which forms of cruelty were or were not unnecessary. The eighteenth and nineteenth centuries saw the rise of the more secular utilitarian doctrine which concerned maximization of happiness and pleasure, and minimization of pain of all sentient beings, and which did not place special emphasis on man's dominion over nonhuman nature.

(2) Scientific influence: The Darwinian revelation of significant similarities in anatomy, physiology and intelligence between human beings and larger apes showed that the "difference" between humans and animals could no longer

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be viewed as one in kind but one in degree: we are not <u>like</u> animals, we <u>are</u> animals, as Mary Midgley forcefully points out. It was this disclosure of the genealogical relationship of animals to man which arguably lessened exploitation, or at least caused some to reconsider their motives and beliefs. (Again, an illumination parallel is constituted by the gradual abandonment by some Afrikaners of the belief that race is associated with inferior or superior physical and mental and even moral qualities, one reason for this changing outlook being the recent controversy surrounding the genetic composition of the South African coloured people and, even more, the Afrikaans speaking whites whose genealogical records contain reference to coloured ancestry.)[2]

(3) Material or economic influence. The Industrial Revolution freed humans from economic dependence on animal labour: as animals became marginal to the process of production it may have become possible to take a more indulgent attitude towards their welfare. - My major concern in this chapter lies with the scientific factor; the other kinds of influence will be reviewed in chs. 3 and 4.[3]

2.1 Consciousness in Animals

The radical view that animals do not matter morally at all is due to Rene Descartes' description of animals as "natural automata"[4]: animals are "machines", they lack minds, inner life, sensation and consciousness. Their behaviour can be explained without inferring, or reference to, conscious states, and since they are not thought of as conscious, there is nothing to be taken into account, morally speaking and we are free to treat them as we like. It has been suggested [5] that behaviourism and (reductive) physicalism, i.e., monist accounts, have largely been responsible for our generally indifferent and often callous attitude towards, and treatment of, animals, yet these views could be/have been responsible for much the same kind of treatment of human beings, since they concern all bodies and all minds. It seems that dualism, with its insistence on man's exclusive possession of an immortal soul, has wreaked greater havoc.[6] (Of course, one can be a dualist and nonetheless acknowledge minds or souls in animals; cf. the Buddhist idea of transmigration of souls, and the Greek notion of metempsychosis.) By

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equating animals (and bodies) with machines or automata which operate in accordance with physiological laws and whose notions originate in the "corporeal and mechanical principle"[7] and by positing the separate substantial existence of minds, i.e., the centres of (self-) consciousness, thought and language, dualism is ultimately committed to denying animals consciousness, cognitive and conative states (thoughts, beliefs, preferences, intentions, desires, emotions, and wills), and - more radically - even sensations. Now, "to be able to believe that a dog with a broken paw is not really in pain when it whimpers is a quite extraordinary achievement even for a philosopher", but anyone who manages to deny animals consciousness is committed to denying them feeling, too.[8]

Well, do animals have consciousness ? Are they capable of having sensations, feelings, conscious experience ? To say that it is contrary to common sense to deny this and to cite behavioural evidence in favour of animal consciousness is not sufficient [9].
A hardcore dualist is not denying facts about animal behaviour: an automaton (Gr.: "self-moving thing"; Webster's dictionary: "machine that is relatively self-operating"/"creature who acts in a mechanical fashion") can behave "as if" it were in pain. What is denied is that is that these facts are best understood or explained by reference to consciousness. Neither will it do to point to a contradiction in Descartes' own writings, e.g., when he says in a letter in June, 1633: "I have dissected the heads of various animals in order to ascertain in what memory, imagination, etc., consist". [10] What is required in making a case for animal consciousness is a combination of factors.

First, it is necessary to defuse the Cartesian contention that possession of language is essential to possession of consciousness. Ludwig Wittgenstein writes that it is helpful "to remember that it is a primitive reaction to tend. to treat, the part that hurts when someone else is in pain; and not merely when oneself is", and that the word "primitive" means here "presumably that this sort of behaviour is pre-linguistic: ... that it is the prototype of a way of thinking and not the result of thought." [11] Wittgenstein's is the commonsense view which ackrowledges the existence of prelinguistic consciousness. Indeed, it

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is not clear how language could develop in the absence of prelinguistic consciousness: suppose babies and very young children were not, prior to their grasp of language, conscious of anything - how, then, could they be taught a language ? Such instruction is possible only if the learners are conscious recipients who can hear, see, touch, and/or feel and if children need to possess such consciousness in order to be able to learn a language at all, then why should animals be denied consciousness ? Certainly not on the grounds of the lack of ability to learn (a human) language: some humans, like animals, [12] lack the potential for language acquisition, owing to internal or external incapacitation, but are they therefore not "conscious" ? (Did Tarzan only acquire consciousness when he was "discovered" ?) Moreover, language constitutes only one aspect of communication even among human beings; it is not the exclusive and solely relevant criterion of mind.

2.2 Conative and Cognitive Life

Charles Darwin's findings and the scientific data furnished by evolutionary theory after Darwin can be used effectively to weaken Cartesian claims concerning consciousness in animals. Darwin argues with remarkable consistency that the difference between us and animals is one in degree, not in kind.[13]

There exist important similarities in anatomy, physiology, and psychology, and therefore it is neither unscientific nor anthropomorphic to say that animals are conscious organisms. Moreover, it is important to consider the survival value of consciousness in general, and of pain-perception in particular, - if it had none, conscious creatures would not have evolved and survived. [14] And, of course, animals' behaviour is consistent with regarding them as conscious; i.e., behavioural evidence can be used, at this point in the argument, to corroborate other scientific data or enquiries, e.g., of comparative neurology and neurophysiology: human beings share with animals bio-chemical substances associated with pain-transmission as well as perceptual faculties, findings which Richard Ryder sees as heralding the decline of dualism and greater acceptance of monism. [15] But does possession of consciousness by itself suffice for placing animals in the sphere of moral concern and, indeed, on a par with human beings ? Kathleen Wilkes' stance is characterized

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by an emphatic refusal to do so: "We can attribute consciousness to animals without becoming vegetarians - for they may have little consciousness, and little capacity for pain." Even if Wilkes' implication that possession of consciousness is a matter of degree were true, her case against vegetarianism would not be very strong: we eat, almost exclusively, the flesh of animals with complex nervous systems. The truth is, however, that possession of consciousness is not a matter of degree but an "all-or-nothing" matter: either a creature definitely is conscious or it is not. The concept of consciousness does not permit us to conceive of genuine borderline cases of sentience, cases in which it is inherently indeterminate whether a creature is conscious.[16]

Consciousness, unlike consciousness-of, is not a matter of relative quantity. Other philosophers proceed more subtly than Wilkes. Their contention now becomes the following: though we cannot deny animals consciousness and feeling, we do not need to posit mental states or processes to account for, and explain, their behaviour. Behaviourism, while inadequate for humans, is held to constitute a reliable psychology for animals: exhaustive explanation of their behaviour is possible in terms of stimulus-response mechanisms, without reference to thought, intelligence, or underlying processes.[17] It appears here that the behaviourists are the true heirs of the (dualist) view of animal mechanism. Mortimer Adler, e.g., espouses the principle of parsimony or simplicity in much the same way, as Descartes seems to have applied Occam's razor: animals are held to "function"; their behaviour (unlike human behaviour) can be explained exhaustively in terms of stimulus-response mechanisms, i.e., without "multiplying entities beyond necessity." (E.g., sensation is explained in terms of affection of bodily organs by an external object, without reference to underlying psychological and subjective processes., Now, such over-zealous reliance on, and application of, the principle of parsimony is suspect. As Midgley explains: the principle of parsimony "does <u>not</u> dictate that we should choose an explanation which does not explain rather than one which does .... the simplicity which we need is that of a conceptual scheme which <u>works</u> - which draws together the facts of experience so that we can interpret them consistently as a whole, and which is fertile in further relevant predictions "[18]

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Is is hardly surprising to find Adler arguing for man's radical difference in kind from all other living, conscious organisms, [19] which he takes to constitute the basis for moral apartheid, for treating animals unequally to (note: not "differently from" - as I will argue later, there exists an important difference between these expressions) human beings. Adler's implication is that if it were to be established by some future investigations that animals differ from humans only in degree and not radically in kind, we would then no longer have any moral basis for treating them unequally to humans, and conversely, this knowledge would destroy our moral basis for holding that all humans have basic rights and an individual dignity. Apart from the fact that the refusal to consider such findings as leading to the extension, rather than the destruction, of this moral basis is rather questionable (see below, sect. 5.2), and apart from the fact that, followed logically to its conclusion, "this argument implies that the comparative investigation of communication behaviour has more dangerous potential consequences than nuclear physics had in the 1930s", [20] Adler's position is characterized by a kind of morbid fear of truth, for scientific evidence shows that evolution demands continuity, and making demarcations by invoking slogans like "radical difference in kind" is not only unscientific but exemplary of anthropocentric prejudice. I am not saying here that <u>any</u> drawing of moral lines is indefensible or unjustifiable - my point is that such demarcations cannot be indicated by appealing to a "radical difference in kind."

Now, the point is not, as it may be tempting to argue against Adler, that human superiority [21] in certain respects can be accounted for without positing any subjective factors or processes, and that our superiority and difference (in degree) simply consists in the fact that there are more numerous and more complicated mediating processes or factors at work.[22] The point is rather that explanation of animal behaviour, like of human behaviour, often requires reference to such subjective, psychological states, like desires, intentions, preferences, beliefs, emotions, thoughts, etc. It simply won't do to try and analyze animal desires and beliefs (unlike conscious human desires and beliefs) in terms of behaviour-cycles and series of reflex movements which are stimulated by - internal - drives, instincts, and impulses, and which

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are individuated by reference to animal needs. According to Frey, needs do not make essential reference to possession of a mind and do not even presuppose consciousness, but rather refer to those conditions which define survival and/or normal functioning: when something is "needed", it is required through being deficient in respect of it (and these needs Frey takes to be shared by plants and even by artifacts, e.g., cars, and not to be confused with "interests").

Frey proceeds by way of a chain argument: animals have no rights, because they have no interests; they lack interests because they have no desires, no desires because they lack beliefs; and they have no beliefs because they lack the language required for expressing them. Notwithstanding Frey's admission that animals can feel pain, the parallel with Descartes is striking. Jan Narveson argues along similar lines when he says that animals lack language and that there is therefore no evidence that they are "subjective": "Animals don't really <u>have</u> points of view." [23] (Cf. Franz Kafka's short story "Report to an Academy", where the "erstwhile" ape has no prelinguistic recollections: his conative and cognitive life commences only when he comes into contact with human language - which, however, signals the gradual abandonment of apehood. See also Jay Rosenberg who writes that when we have come to understand a lion "he will no longer be that anomaly, a speaking lion. Then, of course, he will be one of us." [24])

Frey's argument can be faulted on at least two points: (1) that conative and cognitive life presuppose language capacity, and (2) that animal behaviour can be interpreted without reference to underlying psychological processes and factors. The language-requirement is not plausible at all: young children lack language, yet it is impossible adequately to account for their behaviour without recourse to desires, emotions, or beliefs. Indeed, the acquisition of language depends largely on the power to grasp that words link up with objects in the world, and it is difficult to imagine how learning could occur at all in the absence of prelinguistic beliefs. The very capacity to adapt or modify one's behaviour with regard to adverse or favourable circumstances presupposes the presence of some kind of cognitive life, however rudimentary. [25] Only where there is no or insufficient modification are we reluctant to

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ascribe desires, preferences, beliefs. Certainly, the acquisition and presence of language makes a difference to the kind of beliefs, intentions, etc., one can have, i.e., it modifies them, but it does not make a difference to the fact of their existence. If the most plausible explanations of baby and child behaviour and of animal behaviour includes reference to beliefs, desires, and emotions, why adopt a theory which renders this impossible ? That it may be convenient to do so (for whatever reason) does not mean that the theory will be adequate.

The case for a very strong similarity between human and animal subjectivity can be made to rest also on evolutionary probability and examination of the prelinguistic abilities of animals, their capacity to analogize, to innovate, and to uncover causal connections. If a certain kind of animal behaviour (e.g., a dog wagging his tail) is the same in completely different circumstances, as Frey thinks (we should rather say: "seems to be" the same), this does not mean that there are no underlying beliefs, intentions, expectations, or desires, involved; on the contrary, it is rather the limits of the human observer's nature which may deny him an understanding of motives, habits, and experiences of animals. Subtle differences in, e.g., a dog's wagging his tail on hearing a familiar voice, and - on another occasion - on smelling his food, can be understood only, and need to be explained, by reference to expectations, beliefs, etc.[26] Behaviour needs to be explained not atomistically (i.e., in abstraction from its context), but holistically, must be understood in context, if it is to be understood at all. "Understanding a habit is seeing what company it keeps. The meaning is the use", as Midgley writes. Understanding a reason or a motive is seeing whether individuals are moved by fear, curiosity, or anger, or other emotions. Animals do not only possess and exhibit these feelings, but they are able to detect them in others, spot the difference between them, and act accordingly. Human beings and animals respond to feelings and intentions they read in an action, not only to the action itself. and they can therefore be said to act for a reason, and to have motives. (Actions, in Donald Davidson's words, are "pieces of behaviour intentional under some description".) Understanding a particular habit or motive involves seeing what set of habits or motives it belongs to, and what importance that set has in the life of a species. Norman Malcolm considers it "remarkable that philosophers seeking an understanding of

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the mental concepts have lost sight of the bearer of mental predicates." And: "our application of those terms is not guided by the examination of neural processes but by our knowledge or belief about the situations and conditions in which people and other animals are placed."[27]

To argue that animal behaviour is best understood and explained by reference to "subjective states" is, of course, not sufficient for showing that an animal actually is in a particular state and certainly not for determining exactly what that state consists in, what the content of that state is. Frey and Davidson deny the possibility of showing that an animal is in a particular state at a particular time, that animals have such states at all, while Stephen Stich and Thomas Nagel (though in a manner very different from Stich's approach) deny the former possibility, i.e., of knowing what the content of animals' subjective state is, or what their subjective experience characteristically consists in.

Frey's verdict is that "if guesses about the subjective states of members of our own species are risky, guesses about the subjective states of members of different species, and about how close such states in them resemble such states in us, are positively hazardous; certainly, they inject a totally alien element into the objective study of animal behaviour." [28]

Now, studying the experiences of a thinking subject is not "becoming subjective"; they can be studied objectively, by considering their surroundings and the circumstances in which they occur. The rejoinder now becomes the following: animals are not "thinking subjects". Davidson's argument against attributing thought to animals resembles part of Frey's chain argument which runs: animals have no desires because they lack beliefs, and they have no beliefs because they lack the language with which to express them. According to Davidson, "desire, knowledge, belief, fear, interest", etc., "are all kinds of thought", and "belief is central to all" of them: it is the most basic mode of thinking. Belief, again, presupposes the capacity to interpret the speech of others, and the link between having beliefs and being so linguistically proficient is having "the concept of belief".[29] Davidson's "chain argument", then is the following: animals have no thoughts

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(e.g., desires, fears, interests, etc.) because they lack beliefs; they have no beliefs because they do not have the concept of belief; and they lack the concept of belief because they lack language (because they are not members of a speech community, cannot interpret the speech of others) [30].

It is possible to argue against Davidson, as against Frey, that some desires, emotions, and interests are noncognitive, i.e., not cognitively informed in the sense of being connected with beliefs, etc.: e.g., unconscious or preconscious desires, interests, and emotions. Of course, Davidson could argue that these desires, etc., are "mental events doxastic under some other description", and this argument will well be adequate with respect to human beings to whom one has previously ascribed, and can still ascribe, such conscious cognitive states. But what about infants, children, and those adult human beings who lack linguistic competence ? Don't they, can't they think ? Can they have desires only if they can frar them linguistically, can they have interests only if they can recognize and express them in language ? I leave this bizarre implication to discredit itself.

Davidson's argument is also vulnerable at a deeper level. Not only is it unclear whether there is a single concept of belief - "the concept of belief" seems to me to be a myth ! - but what requires further argument is that the possession of beliefs depends on the possession of the concept of belief, or a concept of belief. Can't a zebra be afraid of a lion, because zebras lack the concept of fear ? Can't a rogue elephant be angry because he lacks the concept of anger ? The Davidsonian argument implies negative answers to these questions.[31]
(Is the Zen Buddhist notion of "nonconceptual awareness" nonsensical ? Surely these sorts of questions demand emphatic inquiry and empirical investigation rather than conceptual legislation.) But what is it to have "the" concept of belief ? According to Davidson, "someone cannot have a belief unless he understands the possibility of being mistaken, and this requires grasping the contrast between truth and error - true belief and false belief". But a dog, e.g., certainly can so grasp the contrast judging from his expectation- and disappointment- behaviour, and relating these pieces of behaviour to the circumstances that surround

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them. (And repeated disappointments may ever cause him to "doubt" the occurrence of the formerly eagerly anticipated event !)[32]

Frey and Davidson must suppose that speech could have originated among creatures who had no beliefs or thoughts, no concepts or understanding, but this is highly implausible. The development of linguistic competence seems to depend on the belief that certain words, phrases, or utterances stand in a particular relation to things in the world.

Thought, and thinking, are modified by linguistic competence but not dependent on it. Davidson claim that attributions of thoughts, "intentions and beliefs to dogs smack of anthropomorphism".[33] I submit that, rather, failure to do so smacks of prejudiced refusal to take seriously ethological findings and is to present an unwarrantly impoverished account of the nature not only of many animals but also of human infants and young children. If language were really the only source of conceptual order, e.g., as Wittgenstein seems to believe, then all animals except the human (and not even all humans would be exempted) would live in a total chaos. They could have no use for anything that could be called "intelligence" at all ! The truth is, however, that they do vary in intelligence and that for each species (even for our own) a great deal of the natural order is prelinguistically determined.

Malcolm does not deny that animals "think" but he rejects the idea that they can "have thoughts", claiming that "it would sound funny to say of a dog, monkey, or dolphin that the thought that 'p' occurred to him, or struck him, or went through his mind".[34] Now, that something "sounds funny" does not constitute a satisfactory or conclusive argument against anything. (Too many philosophers rely on ordinary - language - analysis and trust linguistic conventions rather than seriously attempt to understand modes and subtleties of interaction, how pieces of behaviour, motives and habits, interact holistically, and what role, or roles, they have in the life of a particular individual or species. What is the case does not depend essentially on how it is framed in language.) When something "sounds funny", it might be time to reconsider certain linguistic conventions and modify them where necessary, or at least use them sufficiently often and expediently to fit the new situation so that the novelty of the way they sound may wear off. - More tellingly, however,

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instances of "insight" (which would fit Malcolm's understanding of "thought") can be cited with respect to animals, cases of problem-solving which seems to follow genuine mental preoccupation: Gareth Matthews, e.g., cites the example of a chimpanzee, Sultan, who after apparent deliberation, and without the usual trial-and-error routine, combined two sticks in order to reach a banana. Other examples, involving apes, dogs, and horses, although rare, are nevertheless available,[35] showing the required foreknowledge and preconviction and constituting a sufficiently large gap between the particular solution and any solution the animal would previously have found to the problem. Owing to the necessity of this gap, the available evidence is essentially anecdotal. It is safe to say that "insight", while not exactly "natural" to other than the human species (and here, too, it does not seem to be the norm: most scientific progress, e.g., takes place by trial and error), nonetheless is evident in some animals: in fact, successful imitation can be held to involve insight.

Although he expresses some scepticism regarding the mental lives of animals, Stich does not explicitly deny that animals have beliefs. He points out that we cannot determine the content of their beliefs because we cannot be sure whether they have and understand the same concepts of things as we do. Indeed, we cannot know whether they have any concepts at all. It won't do to say that they have their own concepts - it must be shown that they have our concepts, and Stich claims that this is impossible [36].

Stich's argument, like Davidson's and Malcolm's, is vulnerable to anti-verificationist objections, viz. that it is invalid to argue from considerations governing our knowledge of animals' concepts to a conclusion about the conditions for the possibility of their having concepts. But not only the form, the content of Stich's reasoning, too, can be criticized, as Tom Regan does convincingly.[37] He objects that having or understanding a concept is not a matter of "all-or-nothing" but rather of "more-or-less": a dog may share our concept of a particular type of food, viz. that it is edible and tasty, that it satisfies hunger, etc., without sharing our knowledge of its chemical composition and nutritive value, of the circumstances of its production, etc. - Moreover, we can determine the content of a dog's beliefs in many instances by relating

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his behaviour to, e.g., preference-beliefs, i.e., beliefs concerning how things correspond with desires and their satisfaction, on the basis of what he chooses, what choices he makes (e.g., between types of food, types of action [38]). Without such beliefs, mammals, birds, reptiles, even invertebrates like the octopus, could not have survived and evolved as the kinds of beings they are. Given their expectation-behaviour, and its surroundings, we can even speak of their capacity to distinguish between true and false beliefs, i.e., we can meaningfully specify their disappointment as recognition that their beliefs have been false. Expectation- and hesitant behaviour even permit the ascription to them of the capacity to doubt, and to "change their minds".[39]

Despite the apparent resemblance of his view that human beings cannot know the particular subjective character of experience of other animals, i.e., of members of other species, to Stich's view, Nagel is concerned with casting doubt on both a reductive physicalism that seeks to eliminate or reduce states of consciousness and an anthropocentric account of consciousness that fails to admit the possibility of conative and cognitive states in other species. Reduction of subjective experience to particular physical operations of a particular organism can succeed only if the species-specific viewpoint is eliminated from what is to be reduced, but what then would be left of what it is like to be that organism ? Such a reduction would simply be "changing the subject", i.e., distorting what is supposed to be explained. What is required is a psychology for human and nonhuman individuals, not for brains and genes.

Tne point of Nagel's question "What is it like to be a bat ?" is to draw our attention to the fact of the existence of a particular subjective point of view which necessarily always remains beyond the scope of our inquiry (which - being objective - necessarily abandons the subjective point of view). Now, anthropomorphic inquiry is not a species of "subjective" study, since it involves extrapolation from a human point of view or imagination.[41] (Gregor Samsa's experience in Kafka's "Metamorphosis", constitutes such an example: he does not experience "what it is like to be a beetle" but is a human being trapped inside a beetle's body, with typically human subjectivity.) It won't do to argue against

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Nagel that we can know by analogy (i.e., likeness due to function), as well as by homology (i.e., likeness due to kinship), given facts about our biological constitution and kinship with animals in general and mammals in particular, and how their needs, habits and motives interact holistically, what it is "like" for a bat to be hungry, thirsty, to be afraid, to be in pain, to experience sexual desire, etc. The point is that, although we can know what it is like for a bat to be afraid (even though our fears might be modified by our possession of language, we cannot know what it is for a bat to be afraid.[42] "What is it like to be ...." necessarily implies that there is a particular (set of) factor(s) beyond the grasp of the one who asks this question; the essential aspect always remains beyond, as it does when I ask: "What is it like to be a woman ?", or more specifically, "What is it like to be pregnant?", or when a Caucasian asks: "What is it like to be black ?". The difference is that whereas the latter kinds of questions could be answered by women and by blacks (though I doubt that their answers could be understood by men and whites) the question "What is it like to be a bat ?" could only be "answered" by humans. It is not only a question of linguistic competence, as Joseph Margolis seems to believe,[43] but also a question of the capacity to detect the motivation behind, and the relevance of, such questions. It is doubtful, e.g., whether chimpanzees and gorillas who have been taught sign-language have this capacity. If a lion could speak he would probably not see the point of describing the subjective character of his experiences.

Nagel does not commit the same fallacy as Davidson, Frey, et al., i.e., infer from our insufficient acquaintance with animal subjectivity that animals do not have subjective points of view. He writes[44] that "the fact that we cannot expect ever to accommodate in our language a detailed description of ..... bat phenomenology should not lead us to dismiss as meaningless the claim that bats ..... have experiences fully comparable in richness of detail to our own. It would be fine if someone were to develop concepts and a theory that enabled us to think about those things; but such an understanding may be permanently denied to us by the limits of our nature. And to deny the reality or logical significance of what we can never describe or understand is the crudest form of cognitive dissonance ... My realism about the subjective domain

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in all its forms implies a belief in the existence of facts beyond the reach of human concepts .... We can be compelled to recognize the existence of such facts without being able to state or comprehend them." "Fully comparable" implies, however, that at least some degree of understanding is possible: interspecific comparisons are possible precisely because "homo sapiens is an animal" (Midgley), and they are necessarily carried out objectively. Reference to a conscious subject slips into the language of motivation, feeling, and intention, simply because language has been so framed to carry it. Without such references, descriptions would become unintelligible or misleading. (Midgley gives as an example descriptions of laughter in humans, hyenas, and kookaburra birds.) [45] For many species, a reductive model of psychological explanation is simply not adequate: many animals, indeed, so far from responding only to present stimuli, operate largely in terms of a learned map [46] of the area, which is why bats sometimes bump into things and laboratory mice can be induced to leap into empty space with the conviction that they will be landing safely.

Of course, one way of denying that bats and other animals have experiences is to link the possession of experiences with an introspective awareness of perceptions, sensations, and other mental states, and to say that it is not clear that animals have introspective awareness, or that if they do, it must be of a very primitive sort. [47] This approach signifies a further attempt to drive a wedge between humans and animals by shifting the emphasis from consciousness to self-consciousness, in order to vindicate unequal treatment and consideration (such as alluded to by Nozick - cf. n. 44 above). The intuition here seems to be that expressed by Jonathan Glover: "in destroying life or mere consciousness, we are not destroying anything intrinsically valuable. These states only matter because they are necessary for other things that matter in themselves". Among the things that make up a "life worth living", according to Glover, are "autonomy", experiences and activities of the mind, and "self-creation". [48] Now, if mental experiences and activities are given the high-brow reading of "introspective awareness", and the list of things that make up a worthwhile life is extended to include rationality, the powers of conceptual thought and abstract reasoning, self- determination, and perhaps value-giving capacity, the case against

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animals (for which reason such lists are usually drawn up) seems to be very strong, even more so when all these various excellences are defined as necessarily involving linguistic competence.

Perhaps it is granted that chimpanzees and gorillas who have been taught sign language are linguistically competent and so can be ushered into the realm of "honorary human beings". But this would still leave the rest of the animal world and, indeed, some human beings "out in the cold". Two - somewhat related - approaches are possible if we want to avoid the conclusion or implication that only linguistically proficient beings matter morally. The one is to show that verbal language only constitutes a relatively small part of communication (human and general), and that self-consciousness, rationality, autonomy, conceptual thought, etc., are only modified [49] but not constituted by the possession of language, and are possessed in degrees by human and nonhuman animals. The other approach is to show that there are other capacities and considerations, too, which matter morally, like "life or mere consciousness".

"Language" does not solely consist in the communication of verbal signals, but also in changes in the tone of voice, facial and bodily expression, and gestural communication, and all these have counterparts in the nonhuman animal world. It is, in its manifestation in the human realm, one aspect of a greater system of communication, which includes a multitude of sensory modalities, visual, acoustic, tactile, chemical, and ultra-sonic signals. [50] Not only is interspecies communication possible but animals' (like human) communication patterns consist in expressive and gestural movements, in more or less spontaneous, conscious activities which are meant to be understood by other conscious individuals. Animals, like human beings, respond to feelings and proclivities they read in actions, not only to the actions themselves. It is not implausible to say that an animal which perceives anger in an action and responds accordingly (perhaps by fleeing, or by displaying submission, or even by attempting to calm its angry opponent) has the concept of anger and therefore possesses the power of conceptual thought. Adler might complain that we are guilty of anthropomorphizing animals [51] when ascribing to them conceptual thought, and that animal behaviour can

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be explained satisfactorily by reference to perceptual thought. It could be countered that percepts and concepts bear certain functional resemblances and that percepts are rudimentary concepts. But more is required: we need to establish that it is sometimes not only plausible but parsimonious to speak of conceptual thought in animals, e.g., when we want to distinguish between a frog's and a dog's anticipation-behaviours, the discriminations they make, etc. - Certain cases of problem-solving activity, too, could be said to involve the power and presence of conceptual thought. The important thing to remember is that, as Regan has put it, this capacity is not a matter of "all-or-nothing", but "more-or-less." Unlike consciousness, it is possessed in degrees.

Self-consciousness and rationality, too, seem to be matters of degree. Malcolm suggests, e.g., that people may vary greatly in their degree of self-consciousness, and Clark proposes that self-consciousness arises with the capacity to locate oneself in physical space, to know where one is and whom one is dealing with and what is expected of one. [52] According to Clark, there is good reason to think that animals may be self-conscious in differing degrees; the ability to identify others as individuals and to recognize oneself as distinct from others and as an object in public space, is perhaps connected with the sort of upbringing an animal receives; and less likely to be present in species who produce a lot of young. And in species who produce relatively few offspring, the survival value of self-consciousness would be that much greater. - Rationality, too, seems to be a matter of degree. (It may be tempting to argue, like Margolis does, in favour of the notion of "species-specific rationality", but this notion is hopelessly obscure and not very useful.) [53]

Anyone bent on denying that animals possess the power of conceptual thought, self-consciousness, and/or rationality, needs to supply compelling answers to the questions: what are the lower limits of conceptual thought? of self-consciousness? of rationality ? It appears that there is, rather, a gradual transition from perception to conceptual thought, from "consciousness-of" to self-consciousness, [54] from simple problem-solving activity to rationality.

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2.3 Interests and Moral Standing

Given the conclusions reached so far, that all multicellular animals are conscious organisms; that many animals possess "consciousness-of", or transitive consciousness, i.e., which has an object; that mammals, birds, and perhaps even some reptiles, and invertebrates like the octopus, have not only a conative life but also cognitive states; that some (like dogs, cetacea, horses, apes and monkeys) are aware of their attitudes; that it is both meaningful and parsimonious to view certain species as possessing some sense of self, conceptual thought, and even rationality; does it follow that animals have interests ? Or they have moral standing ? Though these two notions are distinct, they seem nonetheless to be connected. To have moral standing involves the idea of having a life that can be better or worse for one and presupposes organic life. (Though one speaks of "growth" in crystals and of the "dead rocks" of the Namib desert, rocks and minerals are outside the sphere of moral concern. The issue concerning the wrongness or unjustifiability of blowing up the Matterhorn raises ecological and aesthetic questions rather than moral ones. We take a dim view of those who attempt to destroy Rembrandt's "Night Watch", but is their action "immoral" ? It demonstrates a lack of appreciation of property, culture, tradition, and beauty, but it is difficult to see where morality could gain a foothold in this regard, i.e., in abstraction from the individuals who own the painting, who obtain pleasure from looking at it, etc.) This means that in order to matter morally, someone or something must be the "subject of a life", [55] i.e., an entity of which organic life can be predicated and which "it is like to be", which has a perspective with respect to the world, can flourish or languish, can be the "subject of good and evil". [56]

What is the connection between moral standing and interests ? I think Colin McGinn is basically correct in saying: "The interests of a creature relate to its biological nature, capacities for enjoyment, and distinctive way of life. They define the conditions under which it flourishes or languishes". [57] The term "interest", if we consider the etymology of the word [58] (Lt.: "inter" - between; "esse" - to be; hence, "to be/lie between"), is relational, connective between subject

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and object. There is inadequate reason to subscribe to the narrow legal usage of "interests" and to take this usage as a model for the whole use of the word, to allude to the "prescriptive-evaluative overtone" of "interests" and to deny that animals have interests, but to speak rather of their welfare, as H.J. McCloskey does. [59] (But if this denial does not mean that we can maltreat them, what does it mean "to decline to speak of the interests of animals", and what is the point of saying it ?) We speak of (a subject) "taking an interest in"/"having an interest in" (an object), something "being in the interest of" (a subject) and (a subject) "being interested in" something. Not only do we fail to detect a "prescriptive-evaluative overtone" in these different uses (though such an element can doubtlessly be built into the concept), but nothing in them precludes the extension of the term to cover animals.

"Taking an interest in x" and "being interested in x" seem to contain reference to conative life and capacities, in that they involve preferences, wishes, desires, and corresponding cognitive states like preference - beliefs, desire - fulfilment - beliefs, etc. Some animals have these conative and cognitive capacities, while others - though lacking perhaps corresponding beliefs, thoughts, and purposes - can be ascribed simple desires. The second sense of "interests" is contained in "having an interest in x" and "x being in one's interest": here, "interests" refer to needs and advantages and concern the welfare of the subject. Now, animals have needs (and so do plants); they have a life that can be better or worse for them, something can be to their advantage or to their disadvantage; they have a welfare - i.e., they can be helped, and harmed, by being made to suffer - either through infliction or through deprivation.

A third sense of "interests", also exhibited in "having an interest", reflects the possession of a subjective point of view, a perspective from which the world is experienced in one way or another. To have interests in this sense is to be an entity that it is "like" to be, with a point of view that is to be taken into account. Whether simpler organisms like sponges, corals, and plants, have such a perspective is doubtful, but cars, buildings, works of art certainly do not. Neither do they have "needs" (contra Frey and Regan [60]): speaking of their

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"needs" is just an elliptical way of speaking of our needs and interests when actually we mean improvement of their functioning, or their maintenance - with artifacts, there are no moral factors to be taken into account, only aesthetic or economic factors: they are truly means to human ends and benefits.

To human beings, as well as to animals, and even to the simpler organisms where we are not sure of the presence of consciousness or mental states but whom we might wish to give the benefit of the doubt [61], it not only makes a difference whether they suffer (through infliction or deprivation) or whether they have a life free from suffering, but also whether they are dead or alive. Sure enough, death is a misfortune not for the corpse but for the living individual; and there is no reason to assume that post-humous non-existence should be worse than prenatal non-existence. [62] But dying prematurely, suffering an untimely death, is a misfortune because it concerns a living being. It may be fortunate for individuals to be born, and it is not a misfortune not to be born, but dying is, and viewed in this way death, no matter how painless and inevitable it is, still constitutes a loss.

Peter Singer writes: [63] "There is greater moral significance in taking the life of a normal being than there is in taking the life of, for example, a fish ..... (A) normal human has hopes and plans for the future: to take the life of a normal human is therefore to cut off these plans and to prevent them from ever being fulfilled. Fish .... do not have as clear a conception of themselves as beings with a past and a future". But it does not follow that fish are not beings with a past and a future. And, indeed, Singer says: "This does not .... mean that it is all right, or morally trivial, to kill fish. If fish are capable of enjoying their lives ...., we do better when we let them continue to live than when we needlessly end their lives ....".

Animals, like human beings, have interests. They are centres of experiences, subjects of a life: they have an interest, and many indeed take an interest, in living. Their lives can be better or worse for them; they are capable of enjoying their lives, and also of being made to suffer, of being helped as well as being harmed. Therefore, it is plausible to say that they "matter" morally, and to regard them as morally considerable individuals.

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Ch. 3

Conflicts between Human and Animal Interests

Conflicts of interest occur usually, though not invariably, in instances where animals are utilized for human ends and benefits, e.g.,in the clothing, pet and food industries, in scientific research, in sport and entertainment, etc. When conflicts occur in such cases one can meaningfully speak of "exploitation" of animals by human beings. Despite its trendiness and tendentiousness, this term is nevertheless apt because it refers to situations where animals are "abused", where the individual animal stands not only not to gain from the distress it is made to undergo and from the suffering that is inflicted on it but in effect stands to lose.

The immediate objection may be: how can we know that conflicts of interests occur at all ? Isn't it rather unwarranted extrapolation from a human standpoint that promotes slogans like "exploitation", "abuse", etc. ? Do animals "suffer" at all in the above-mentioned instances ? And how could we possibly assess animal suffering ? Marian Stamp Dawkins has made some remarkable contributions to the "science of animal welfare", and her findings and suggestions are endorsed even by outspoken animal experimenters such as William Paton.[1] Dawkins proposes six main methods of assessing suffering in animals, none of which is decisive in itself, but because each is potentially informative, in conjunction they constitute a strong scientific basis: (1) One might consider the normal pattern of the life of a species and how far the particular animal's life has diverged from its natural course, and what the implications are. (2) One might ask whether and in how far the animal's general health is impaired, judging from its eating and drinking habits, growth, physical appearance, and reproductive performance. (3) Physiological signs, like "stress-symptoms" are valuable indices, (4) as are changes in behaviour patters, as well as (5) the expression of an animal's own preferences, which might be determinable by the choices it makes. And (6): extrapolation from human experience, too, might be informative. A synthetic approach, i.e., one that takes into account all these measures, is probably the safest and the most likely to furnish a stable basis for an objective assessment of pain, without denying or diminishing the importance of the subjective character of pain (which issues in the ability to identify and locate pains, move away from sources of pain and learn to avoid them, etc., - which is not

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to say that it consists in these abilities !).The question is how good the arguments are which are produced in favour of overriding animals' interests, and whether they have any real moral weight, especially when and where alternatives to these abusive practices are available.

3.1 Clothing and Hunting Customs, and the Pet Industry

Strictly "moral" arguments in support of hunting, and using animals in sport and of the clothing and pet industries have, to my knowledge, not been furnished; and it is doubtful whether such arguments can be provided at all. The "hunting ethic" is a myth: what is purportedly "ethical" about hunting customs refers precisely to their being "customs" - tradition and more or less rigid sets of rules which are usually stubbornly adhered to. The common argument which is used by game-hunters and anglers that they are involved in a "fair man-against-animal struggle is deficient on at least two counts: human beings require the use of "unnatural" equipment in such a "combat", designed to take full advantage of the animal's reactions and vulnerabilities and to do so with - usually deadly - efficiency: it is usually not a case of "pitting one's strength against that of the animal" (if by "strength" we understand one's natural physical endowment). Even if it were "fair" in one sense (i.e., in being carried out without recourse to artificial weapons or equipment), this argument presupposes that the animal involves in the struggle considers it "fair" as well and is participating voluntarily, i.e., that it has been given a choice. The fact is that the animal has a life to lose, and is often maimed, or wounded in a way which does not involve a sudden death, while the hunter or angler usually stands to lose only in personal satisfaction and professional pride. The obvious alternative to hunting is to conduct the "hunt" with binoculars, photographic equipment, or video cameras.

Similarities to customs alluded to in the hunting "ethic" appear in sets of rules and regulations governing sport and related forms of entertainment. (Bull-fights and rodeos are two of the most prominent forms of such entertainment which have in recent times come under severe attack.) Show-jumping, to cite only one example, is offensive not only in that

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the horse is forced to complete a certain parcours in as fast a time as possible (similar arguments could be directed against horse-racing, greyhound-racing, etc.) but also - and importantly - in that the horse (who is not a natural jumper, contrary to general belief) is made to clear obstacles of commonly narrowly manageable height, having to carry extra weight in the process.

The clothing industry has no recourse to even a spurious ethic: what is at stake here are purely human benefits, comforts, and luxuries, and the practices it involves are not mitigated by claims that captive animals live longer and are healthier on fur farms than those in the wild. The truth is that, apart from the loss of life they incur ultimately, ranched wild animals are kept in cages totally unsuitable for their active and highly strung natures. Half the ranch-bred minks are mutations, inbred in order to develop colour variations. Moreover, these animals are strongly disposed to serious illnesses or are deformed. Aleutian disease (or mucous membrane bleeding) and anaemia are common as are deformed sex organs and deafness. [2] The farming of wild animals for furs can hardly be regarded as humane, even without considering the purposes for which they are actually bred. The case against these practices is strengthened further by the existence of natural or synthetic alternatives to leather, fur, wool, feathers, etc.

My objections to the pet industry concern three major factors: (1) The "industry" as such, the commercial machinery governing institutions such as puppy- and kitten-mills and the breeding of chronic disabilities; (2) the idea of "possession" of pets, which allows owners more or less to treat animals as things, mere commodities; and (3) the general treatment of pets as "renewable resources". Defences of the practices of pet-production, pet- keeping, etc., usually involve some kind of view of pets as mere means to human ends (be it for psychological comfort, as deterrents of burglars, as toys, or as "pest"-controlling devices [3]). Of course, this attitude as such makes no difference to the individual animal - it presumably has little, if any, grasp of the Kantian means-end distinction: what is of concern to it is whether or not it can go about its life in accordance with its natural needs, instincts, and capacities. And tail-docking and ear-cropping of dogs, having bitches breed every six months, keeping pet monkeys locked up or indoors,

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clipping parrots' wings, and abandoning or putting down cats because they constitute an obstacle to the family holiday are just a few examples of cases where pets' interests are disregarded and which are characterized by an unjustifiable meddling in the animals' lives. My arguments may seem off the mark, in that I discuss some (admittedly extreme) practices which I apparently take to cover all practices. But even if the examples cited above are exceptions rather than the norm (and this is dubious), and even if most pets lead generally happy lives, an institution under which these practices could become the harm, where every human being has the "right to own a pet", can be opposed on moral grounds. A benevolent dictatorship is still a dictatorship: the mere possibility that the attitude of those in power may change makes such a system morally repugnant. - Opposing the practices of the pet and clothing industries does not require me to set my dogs and budgies free or to throw out all my leather shoes, but it does require me to stop breeding puppies and "replacing' pets (perhaps until there is adequate legislation, resembling, e.g., that governing adoption), and to stop acquiring leather goods, etc.

Extramoral arguments in support of the practices discussed in this section, such as economic or hedonistic considerations, are weakened considerably by the onus of vindication placed on defenders of these abuses by proponents of the animals' cause who emphasize the availability or existence of economically more viable alternatives, and the fact that the distress and loss suffered by the individual animal cannot be outweighed by the pleasures and gains of human individuals or, indeed, that no such pitting of pains against pleasures is possible.

3.2 Circuses and Zoos

The purpose underlying the circus tradition is entertainment, pure and simple, if circuses are entertainment at all. What is objectionable about them is not only the treatment of animals as objects of amusement and/or relaxation [4] but the distress suffered by animals by being made to endure rigorous and occasionally cruel training regimes. To be sure, sometimes animals can justifiably be held to enjoy these training sessions and performing their tricks, but where there is no certainty

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that they do (and it would be bizarre to hold that this is an enrichment of their lives, that their lives would be impoverished in the absence of such practices), animals should be given the benefit of the (considerable) doubt. Whether or not some animals enjoy certain aspects of the training, and performing tricks, it could hardly be called "natural" that elephants are made to stand on their heads, or that bears are made to ride bicycles. Training usually frustrates an animal's natural drives, instincts, needs, and preferences and often lets animals appear like poorly coordinated humans.

The frustration and inhibition of instincts, proclivities, and desires natural to an animal resulting from keeping it in crammed conditions and from long periods of transportation is undeniable. The common rejoinder is that where animals are captive-born (and this is often the case) they cannot be said to have been forced into a new situation. The defence concerning the use of animals born in captivity is viable in one respect, viz. in that it can be used to counter the claim that "limited stocks of wild animals" are being plundered [5], but not in its assertion that captive-born animals "know no better", that their natural instincts, etc., cannot be frustrated because they have never had the chance to exercise them. (A more radical assertion might involve the denial of such instincts to these animals.) As observations of neurotic and pathological behaviour and misery of circus animals, and findings concerning illnesses or deformations, show (if we are mindful of Dawkins' suggestions), such defences are usually ill-founded. [6] Even in the absence of imagination and self-consciousness, a life needs time and space to unfold.

The argument emphasizing the use of captive-born animals is also common with respect to zoos. Thus Roy Wilkenson, curator of the Johannesburg zoo: "We only have animals here that were born and bred in captivity, and we have extended the boundaries as much as possible so that animals may more around. Most animals in the wild need large territorial areas in their constant search for food. That problem is not relevant in a zoo environment". Now, that animals are supplied with sufficient food in zoos [7] and do not need to defend a particular territory does not mean that their territorial and survival instincts are non-existent. In

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fact, the possibility that they might still be frustrated is alluded to in Wilkenson's emphasizing the extension of boundaries. Furthermore, it is misleading to reduce many complex motives and habits to a few basic ones, e.g., to survival and territorial instincts. Any such reduction produces a necessarily impoverished picture of animal nature.

A third objection concerns captive breeding directly. it is responsible for inbreeding, which weakens livestock and heightens susceptibility to infection and incidence of infant mortality, and also for cross-species breeding, which is wholly unnatural.

Justifications for the existence of zoos involve reference to four major kinds of benefit (not counting economic considerations, i.e. of profit): (1) entertainment or relaxation; (2) educational value; (3) opportunities for scientific research; (4) conservation of wild and endangered species.[8] - As far as the argument for reasons of amusement or relaxation is concerned, not only is it doubtful whether animals who are inactive or behaving in stereotyped fashion (e.g., pacing) are scurces of entertainment, but even where they are sufficiently young or are engaged in interesting activities, this is not itself a good enough reason for keeping them captive. The educational value, too, is doubtful in that captive animals commonly exhibit stereotyped behaviour or develop certain neurotic habits and pathological traits which have never been observed in the wild. (Though there may be some educational value in the development of such behaviours, the point of such findings remains obscure: do they issue in the introduction of psychiatric treatment of zoo animals ? This would be a case of fighting the symptoms instead of curing the disease.)[9] Similar difficulties face the argument emphasizing scientific research: field ethology is preferable to observation of captive animals on scientific (as well as on moral) grounds, becaure the latter may lead to quite mistaken conclusions and because data obtained in the latter fashion cannot usually be extrapolated to animals in the wild. - The argument concerning species-preservation might seem to be persuasive, but it is questionable whether the possibility that a species be preserved from extinction can hold its ground against considerations concerning lack of genetic diversity, high mortality rate of inbred animals, life in an artificial environment (for

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it is unlikely that these animals will ever be set free): at what cost to the individual animal is extinction being delayed ? A different kind of approach is to suggest, as Regan does, that concern about endangered species - if it is real concern - reflects the fact of their being individual animals rather than the fact of their being rare or endangered. [10] The various reasons given in favour of the existence of zoos stress the benefits of (human) amusement, knowledge, and gratification, but these are in themselves, or: for their own sake, not important enough to overcome the moral presumption against keeping, breeding, and rearing captive animals. The argument for the abolition of zoos requires not that all zoos be closed down immediately and that all zoo animals be returned to their natural habitat (this would, in all likelihood, not be in their interests, owing to difficulties in adaption), but that existing zoos be allowed to run down, that no new zoos be established, and that the acquisition and breeding of animals cease. More problematic are the cases of using animals for food and in scientific research, since more numerous and more complex factors and considerations are involved. In both cases again, the onus of justification is placed on practitioners and defenders of these forms of exploitation [11] - hence, their arguments will be reviewed and used as a springboard for my objections or/and considerations regarding these practices. That animals are harmed when reared and killed for food and when used in scientific research and experiments is beyond reasonable doubt. (Cf. Ruth Harrison, Richard Ryder, and Peter Singer, who furnish deeply disturbing but soberly written accounts of the conditions on factory farms and in laboratories [12].)

3.3 Animals for Food

It is with respect to our eating habits that the most commonly known conflict between human and animal interests occurs. Because it is a conflict which concerns most people directly, they - people in general and philosophers in particular, who would otherwise strongly oppose maltreatment and the mass killing of animals - offer all kinds of (occasionally ingenious) justification for their gastronomic and culinary habits and pleasure: if they feel the need to justify their preferences, that is. Few are willing to admit, like Glover, that their

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reasons for their nonvegetarianism, "when written down have a disconcerting air of intellectual dishonesty". [13]

Strictly moral re. ·s are scarce. Tibor Machan pays heed to the motto that attack is the best defence and claims that the advocation of vegetarianism, which is made "at the expense of human welfare and liberties", betrays a disregard for man and for "the supreme value of human life"[14]. The ·on of "supreme value of human life" set aside for the moment (i.e., until section 5.1), is the concern with animal suffering and life really a disregard for man ? There is good reason to believe that vegetarianism will promote greater welfare (physically and economically; I will return to these points), and the losses we incur with respect to the liberties of eating what we want resemble those which flow from the imposition of countless other expedient strictures: we do not assert our freedom by eating whatever we desire - surely there are other, more important freedoms !

A favourite argument is the following: if animals were not reared for food they would not exist; and since it is better to live and die prematurely, rearing animals for food, and - when killing them - replacing them with more life is justified. Here, we might wish to recall Nagel's poignant observation: "If we learned that we were being raised to provide food for other creatures fond of human flesh, who planned to turn us into cutlets before we got too stringy - even if we learned that the human race had been developed by animal breeders precisely for this purpose - that would still not give our lives meaning for two reasons. First, we would still be in the dark as to the significance of the lives of those other beings; second, although we might acknowledge that this culinary role would make our lives meaningful to them it is not clear how it would make them meaningful to us." Similarly, we might ask what the significance of our lives is as compared or contrasted with that of animal lives. It cannot be that we have conative and cognitive states concerning our lives, surroundings, etc., which animals lack. In the case of intensive farming, we are dealing with, mostly, mammals and birds (poultry), conscious beings, who have preferences, beliefs, and desires, and not with animals where we are not sure whether they have mental or conscious states, in addition to their natural needs. (Here, our knowledge, or lack of it, constitutes the "borderline" aspect, not

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the animal itself.) To treat these individuals as mere means, as things, or replaceable stocks, is morally repugnant. Nozick [15] states that "once they exist, animals have certain claims to certain treatment" (though the nature of these claims and of this treatment is not elucidated), and he goes to say that the fact that some animals were brought into existence only because someone wanted to do something that would violate one of these claims does not show that the claim does not exist at all. The most repugnant implication of the "human slaughter option", e.g., is that it involves the view that killing is not a problem at all, that only the method of killing is an important issue. The reasoning behind all food animal farming, whether traditional or intensive, is the same, viz. that we can use animals for whatever purpose we wish. While it is true that post-humous nonexistence is as little "harmful" as is prenatal nonexistence, and generally, that life is a "fortune", whereas nonexistence is not a "misfortune", it is nonetheless doubtful whether the "life" animals are forced to endure in intensive farm units is a "fortune". If there is a life which can be better or worse even for beings who presumably lack imagination, expectations, and self-consciousness, then this is all that is needed for saying that their continued life is of value. To deny this would be to sanction, e.g., infanticide. Even in the absence of imagination, expectations, and self-consciousness, a life needs time as well as space to evolve and unfold, and a premature death breaks the cycle of such natural unfoldment. Absence of imagination, expectations, even of preferences, etc., (if there is such lack) e.g., in reptiles, fish, or amphibians, does not mean that there is nothing to imagine, expect, or prefer ! - Moreover, it is absurd to invoke prenatal preferences or wishes (as implied by the line of defence examined here); once alive, creatures (especially those with limited intellectual capacities) obviously cling to their life: they are incapable of preferring let alone imagining a state of nonexistence.

Another argument in support of carnivorism invokes the "law of the jungle": animals eat one another, so why should we not eat them ? Here, however, a distinction needs to be made between killing for reasons of survival and killing for palatal pleasure - human beings (Eskimos and other special cases set aside) essentially indulge in the latter. It is strange that we, as responsible, moral agents should turn to the "dumb"

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and "lower" animals for moral guidance. In fact, as McGinn explains, [16] "morality is essentially such as to incline us in a direction contrary to that designed by the laws of natural selection" - morality is a necessary corollary of advanced intelligence and cannot easily be selected against.

Nozick asks [17]: if eating animals is not necessary for our health and less expensive than alternate equally healthy diets, then how can our gustatory pleasures outweigh the moral weight to be given to animals' lives and sentience ? But is the antecedent of this conditional question true ? The objection that might be made at this stage (and here the emphasis on moral justification is broadened to involve biological and economic considerations) runs that humans require animal protein, are naturally carnivorous, and rearing and killing animals for food is economically functional and counteracts famine. The rejoinder, however, is this: human "need" for animal flesh has long been shown to be exaggerated. Animal flesh, to be sure, is a rich source of proteins, vitamins, and amino acids, but it is also held to be one of the main contributory causes of heart disease, arthritis, and cancer of the colon. [18] And since equivalent proteins, vitamins, and amino acids are obtainable from other (non-animal) food sources (e.g., soya beans, or the combination of pulses and brown rice, etc.), this defence loses much of its intended strength. Humans are omnivorous, true, but physiologically and anatomically they bear far greater resemblance to fruit- and nut-eaters, and even to leaf- and grass-eaters than to carnivores. [19]

The "economic" argument is simply false: the amount of protein fed to food animals is eight to ten times the amount obtained after slaughtering these animals. Even on the conservative estimate of meat industrialists the ratio is 1:4 (and to set the balance right: the estimate of some active campaigners for the abolition of factory farming sets the ratio at 1:20). Whatever the ratio, the protein fed to food animals could conceivably be channelled into undernourished countries and regions, and so would be far more functional in the struggle against famine than animal flesh. [20]

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The final argument considered here is "ecological" and, interestingly, involves reasoning contrary to the "if all the world were Jews, there would be no pigs in existence" - type of argument: if animals were not slaughtered, they would breed and multiply indefinitely, and die even more horrible deaths, of starvation, exposure, etc. But - contrary to the implication in this argument - there is such a thing as "natural balance" (such as manifested in the radical, quasi-suicidal "mass emigration" of lemmings, or the annual "beaching" phenomenon involving sardines), and even if there were an initial "boom" (which is unlikely, because it is precisely the intensive farming methods which are responsible for the counter-naturally high stocks of "domestic" animals), the number of animals would soon adjust to what natural resources and living conditions were available. (But: assuming that natural balance were "off" - as with instances of ecological threats posed by elephants - the question would be: could we reasonably draw a line between culling them, and culling Ethiopians ? "Culling" usually constitutes a case of fighting the symptoms instead of the disease, i.e., instead of penetrating to the roots of the problem. What seems to be more desirable in instances such as these is a stance of paternalism (which is justifiable in that the good of the individual is of concern), i.e., the introduction of preventive measures.) (On paternalism, see below, ch. 7.)

My counterarguments in this section are just that: "counterarguments". They are not directly aimed at securing animals' moral standing - this I have sought to do in ch. 2. (Suppose rearing and killing animals for food were a biological and economic necessity: it would still be morally repugnant to do so.) Their moral status can be establisned independently of whether or not their rearing and slaughter corresponds with dietary, economic or ecological needs.

3.4 Animals in Research

In reviewing the case for the use of animals in research, I will concentrate largely on arguments forwarded by two "insiders", neurologist and brain transplant specialist Robert White, M.D., and William Paton, Professor of Pharmacology. [21]

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White, defending vivisection in particular, writes that animals are indispensable for scientific research, "particularly a species whose central nervous system is similar to that of man", and that "the inclusion of lower animals in our ethical system is philosophically meaningless and operationally impossible and that, consequently, antivivisection theory and practice have no moral or ethical basis". [22] Not only does White's "defence" presuppose, however, that vivisection does raise important moral issues and is not "philosophically meaningless" (and what is, or could possibly be, "operationally impossible" about the inclusion of animals in our sphere of concern, does not receive further argument), but he - like any defender of experimental research on animals - faces a dilemma: his work is defended scientifically on the basis of similarities between humans and animals, but morally on the basis of differences. Paton writes that "(it) seems illogical to claim simultaneously that man is so like animals that to distinguish between the two is like sexism or racism, and that man is so unlike animals that research on them is irrelevant to human biology". [23] Indeed, there <u>are</u> differences between species (and these differences often render "necessary" experimentation unconvincing: accurate extrapolation from animals to humans is often impossible, as the differential effects on animals and humans of thalidomide, eraldine, penicillin, morphine, aspirin, and benzene have shown), but it is far from clear that these differences are morally relevant, and relevant to unequal treatment. There seems to be no good reason who differences between species should affect moral matters differently than do differences within a species. [24] Among what <u>does</u> matter morally are consciousness and sentience. Indeed, the belief in other animals' consciousness and sentience is essential for exploiting them successfully (as it is for sympathy - see sect. 4.4).

The most common defence of the practice of using animals in research, i.e., the most common defence involving moral considerations, states that their "sacrifice" occurs for the sake of saving lives, both human and nonhuman. This is by far the strongest argument, since it appeals to that which the spokesman for animals considers to be fundamental importance: liberation from suffering, and promotion and amelioration of life and the quality of life. [25] E.g., Paton argues that the choice between avoidance of suffering now, and the avoidance of suffering and

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remediable ignorance in the future is to be made in favour of the latter. [26] The problem is that Paton implies here that the only moral approach to these issues is a utilitarian one: "If something is wrong it is not made any better if something else is worse: that only means we should assign more priority to dealing with what we regard as worse". What we regard as "worse" is presumably, i.e., in Paton's view, everything that is or might be vaguely harmful to human beings - hence Paton's latent approval of cosmetics testing (on rabbits' eyes, rats' skin, etc.). A utilitarian would have to accept the consequences of this reasoning, but not someone concerned with individual well-being, and not some "balance" of well-being. (How could such a balance reasonably be struck anyway ?: Paton does not think that there is a simple utilitarian calculus by which we can "minimize" pain, but he does believe that we can "simply balance all the considerations as best we can" - which is neither very good nor simple, I might add !)

As far as the argument for the "liberation from suffering, and promotion and amelioration of life and the quality of life" is concerned, we see that it can be couched in two different kinds of approach, with the result that we have two arguments which do not have the same basis. The defender of the use of living animals appeals to consequences, invokes maximization of well-being of an aggregate of creatures, living and not yet living, human and nonhuman, whereas his opponent is concerned fundamentally with the individual, and with his individual well-being, needs, preferences, etc. As Ryder points out: "To impose suffering, allegedly in order to reduce it, and to take life, allegedly in order to save it, are self-contradictory claims. They are made even more dubious when one bears in mind that at the time of the experiment any benefits that might be accrued from it are merely hypothetical and uncertain. To attempt to justify the certain suffering of animals against some future, as yet uncertain benefit, seems to be an unwarranted gamble". [27]
To weigh or trade off the individual's present interests and real benefits against the future interests and hypothetical benefits of an indefinite number of humans and animals, as is implied by questions like: "Would you not sacrifice a rat if a hundred/thousand lives could be saved ?", is not only to falsify the facts (since for each experiment hundreds, and sometimes literally thousands, of animals, and some even

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repeatedly, are used in order to verify the findings but also to treat the individuals directly involved as mere instruments, things, as useful stepping stones. However, the benefits of others have moral weight only if no individual is harmed. (As I will argue with respect to the problem of numbers: the sum of all like suffering remains constant). Research animals are given no "option", so to speak; human research subjects can at least decide whether they want to undergo a particular test or not. If animals could give their opinion (recall Dawkins' suggestions), it is very doubtful whether they would voluntarily undergo painful tests to safeguard the future well-being of (some) members of their species (with the possible exception of rhesus monkeys [28] display genuine altruism even at the expense of their own well-being . life; and word has it that in the US some monkeys have been taught sign-language in order to enable them to express their wish to "opt out" of a given experiment or to state that they would want to continue. As if (sign-) language were the only reliable means of determining preferences !).

Arguments against the use of animals in medical and nonmedical research might include reference to the availability of alternatives. [29] Nevertheless, citing the existence and viability of these alternatives is not directly relevant to the moral issue, and curbing the abuses does not depend morally on the availability of other valid means of furthering research. Yet the argument from alternatives is instrumental in facing the charge concerning scientific progress ("which would be delayed, if not disrupted altogether, if animals were not used"). But, as Tom Regan points out, scientific progress also involves the discovery and invention of other or better alternatives, and it is this challenge which should be accepted unconditionally by research scientists. Paton displays a strong scientific conservatism when he rules out a priori the usefulness of future alternatives, and when he says that "instead of funding research into alternatives, rather fund research into methods of relief of pain and suffering of animals, especially in the context of experimental work". Yet difficulties in extrapolation from animals (which Paton himself acknowledges) and false results surely lend support to the scientific (never mind the moral) desirability of alternatives. And economic considerations and investigation render fallacious the

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claim that it is economically more viable to use animals in tried-and-tested procedures than it is to invest in new methods or models: recent evidence points to the contrary, i.e., that the amount of money spent on buying, feeding, rearing, and generally accommodating lab animals far outweighs the amount needed to establish and entrench other viable sci ntific means. [30]

A further argument against the use of living animals involves the consideration that the suffering imposed on lab animals is quite deliberate and unnatural and that the suffering this is hoped to prevent is caused either al illness or by self-inflicted risks (e.g., through the u cosmetic, drug, or through smoking). In other words, the su flicted on animals deliberately, and bearing no relevance to the nature or condition of the test animal is sought to be justified by claims that the knowledge and information so obtained might lead to the relief of natural suffering, and if not natural then self-inflicted pains or discomforts, of human beings. This way of arguing is not only logically unsound (in that it is paradoxical to impose suffering purportedly in order to minimize it and to take life purportedly in order to preserve it) but it involves an appeal to a kind of moral apartheid, where differences between the human and nonhuman species are taken as constituting a moral inequality, and this seems to be both prejudiced and selfish.

3.5 The Argument from Speciesism, and Equal Standing

"Difference is not equal to inequality. Inequality is not even a reality - only a power ploy !" So the lyric goes in jazz singer-song-writer Annette Peacock's song "Survival". Animals have moral standing, li e humans. They are equally centres of consciousness, of experience, "foci of subjectivity." My dog is the subject of a life as I am the subject of a life; and if I treat my dog differently to the way I treat my sister, this does not mean that I am g'ving them unequal consideration as individuals. The confusion of "difference" and "inequality" underlies the writings and ideas of many theorists. [31] Differential treatment and consideration are not the same as unequal treatment and consideration: if I am treating my sister and my dog differently, I

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might still be giving them equal consideration as individuals, treating each according to her capacities, circumstances, and mental and behavioural idiosyncrasies.

Now evolution is not a ladder, but a copiously branching network, and it is not clear how we, "the titular spokesmen for a few thousand mammalian species, can claim superiority over three quarters of a million species of insects who will surely outlive us not to mention the bacteria, who have shown remarkable staying power for more than three billion years", as Stephen Jay Gould contends. This may sound like too strong a judgment but it accords with Darwin's aphorism: "Never say higher or lower." Talk of "higher" and "lower" seems to imply that evolution has a plan or purpose, but scientific evidence favours the view that it proceeds blindly. [32] Gould's evolutionary ladder which reduces all standards to the basic one of survival (and here, amoebae would occupy the highest rank, since they "divide", and the "first" of them can in a sense still be said to exist) is as arbitrary as those which involve the standards of rationality, self-consciousness, etc. On the ladder of social evolution, coral polyps and jelly-fish conceivably rank highest. It is simply impossible to establish an order of rank on one, and only one, single scale of evolutionary development.

In a two-part lecture he gave at the University of the Witwatersrand in August 1984, Gould said that dwelling on the hierarchical order of, and differences between, individuals is essentially a mischievous exercise, designed to perpetuate inequalities and entrench prejudices. The "equality" I have been referring to (and possibly Gould would agree with me) is compatible with such differences, interpersonal as well as interspecific, and concerns the equal consideration and equal opportunities of each individual according to her needs, interests, and environment.

Stanley Benn considers it a "monstrous sentimentality" to attribute to animals interests (do we "attribute" these interests, or do we "have" them ? "Interests", it should be remembered, are not values which are ascribed or bestowed by value-giving agents !) that could be weighed in an equal balance with those of humans. He says that there exists a "fundamental inequality of claims" even between, e.g., a human imbecile

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and a dog: the imbecile belongs to a species where rationality is the norm, and to take advantage of an isolated defect, and to, e.g., use the imbecile in research, would be "unfair". [33] But why, then, should it not be unfair to take advantage of a more general "limitation" (if it is that) ? It is precisely this stubborn advocation of a moral wedge that smacks of "sentimentality". This argument constitutes a defence of giving preference to members of our own species simply because they are members of our own species. But if there exists a biological basis for human equality, as Gould argued in the above-mentioned lecture, why should this basis be retracted when other species are concerned ? The truth is that there is no single relevant criterion which isolates all human from nonhuman life. Gould writes that "the deepest cultural prejudice of all is our almost desperate desire to make human beings special and superior among the animals of our earth .... We are not <u>better</u> but we are <u>different</u> because change in the basic fabrics of our social systems occurs, as it does in no other animal, by the non-genetic transmission of information across generations - in short, by culture". [34] (Yet some animals maintain rudimentary expressions of what we would call "culture". E.g., chimpanzees adept in sign-language have been observed teaching their conspecifics signs, and in other instances, training of the "new" sheep-dog has been conducted by the dog currently "in charge".)

Homo sapiens and other species are physiologically, anatomically, and psychologically continuous; and though it is important to try to order species according to stages of evolutionary development, various such orderings are possible. It is unhelpful and, indeed, unscientific to continue to speak of "higher" and "lower" life-forms, and to suppose (as Gareth Matthews does) that "independent lines of development can be melded together sufficiently well to yield a good general placement of species on a single scale from lower to higher". [35] I call this "unscientific" because talk of "higher" and "lower" presupposes a vantage-point and necessarily involves value-judgments, and it is plausible to assume that any species capable of grasping the issue would find a criterion which would place it on the highest rank. The best we can do is to point out the relativity of "higher" and "lower" - but: "more or less like us", when we refer to other species, captures the gist of "difference in degree", and of "biological continuity" more accurately.

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It might now be contended that there is a relevart criterion which marks off all human beings from all other species, viz. membership of the species "homo sapiens", and that this criterion is not only biologically but morally relevant. This rationale has been labelled "speciesist" by Ryder, an accusation which has Singer as its strongest enforcer, besides Ryder himself, and which has received sympathetic consideration from a host of philosophers. The main points of the arguments from speciesism are that "speciesism" can be likened to racism and sexism, in that similar forms of discrimination (as contrasted with differentiation, which is neutral; hence, "discrimination" in the sense of "evaluative discrimination") and prejudice underlie these attitudes and practices, and that species membership, like race membership or sex membership, is morally irrelevant and does not sanction unequal treatment and consideration. [36] "Speciesism" has become something of a slogan among animal liberators and other eulogists of the animal cause, but has also been condemned outright as being not only a hopelessly inadequate attempt at defending animals but just another trendy and simple-minded term which is best scrapped from the vocabulary of those who seek to promote a better treatment of our fellow creatures. Because rather a lot hinges on the adequacy and appropriateness of the assimilation, the argument and the most important objections made to it must be given serious consideration.

Richard Wasserstrom launches the following attack on racism [37]: "(Proponents of racial discrimination) need to produce a relevant criterion or principle of differentiation - yet none which are usually given are relevant to (indeed, all neglect) the capacities to enjoy those things which are constitutive of well-being and freedom. Even if some generalizations are correct, they are correct only insofar as the distinguishing characteristics are possessed by some (members). Yet, before any reason for differentiating among persons as to the possession of human rights can be a relevant reason, that reason must be relevant in respect to each person so affected or distinguished."
.... Negroes are not conceptualized by white Southerners, usually "as the possible possessors of rights of any kind .... and this has certain especially obnoxious consequences. In the first place, the white Southerner's moral universe illustrates both the fact that it is possi-

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ble to conceive of duties without conceiving of their correlative rights and the fact that the mistakes thereby committed are not chiefly mistakes of logic and definition. The mistakes matter morally. If the white Southerner fails to do his duty, that is simply a matter between him and his conscience. In the second place, it requires of any Negro that he make out his case for the equipment of any goods, reduces all his claims to the level of requests, privileges, and favours. But there are certain things no one else ought to have the power to decide or refuse or to grant. Third, in a real sense, a society that simply lacks any conception of human rights is less offensive than one which has such a conception but denies that some individuals have those rights. Not only because of the inequality and unfairness involved, but because it implicitly, if not explicitly, entails there are some persons who do not and would not desire, or need, or enjoy those minimal goods which all men do need and desire and enjoy. It is to read certain persons, all of whom are most certainly human beings, out of the human race".

If we substitute in the argument above "species" and "specific" for "race" and racial", "individuals" for "persons", "moral rights" for "human rights", "animals" for "Negroes", "humans" for "white Southerners", "other species" for "some individuals", "some persons", for "certain persons", and in the last sentence, "morally considerable beings" for "human beings" and "sphere of moral concern" for "human race" (which does not seem unwarranted, given the conclusions reached in ch. 2 and Wasserstrom's own conviction that we have duties to animals [38]), we obtain a strong argument both for the notion of "speciesism" and against the practice of speciesism. Wasserstrom, in order to deny the validity of this argument, would have to reject demonstratively the idea that animals could need and desire and enjoy these "minimal goods", freedom and well-being, and it is not clear how this could be achieved without relying on an impoverished view of animal nature [39].

Now that a model of the argument against speciesism, explicitly, and of the argument from "speciesism", implicitly, has been furnished, the question is not only whether the notion of speciesism is intelligible but whether the analogy to sexism and racism is a viable one. The main objections to the argument from speciesism share a rejection of the adequacy, and appropriateness of the notion and of the analogy as a whole. They stress (1) the capacity to engage fully in the whole range of human activity, and certain morally relevant distinguishing factors

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between humans and animals, (2) the importance of natural reference and feeling, made reasonable by (human) values and bonding, and (3) the scientific, biological importance of differentiating between species and the moral implications which such differentiation has.

The first kind of objection focuses on distinctly human capacities and characteristics in order to render sexism and racism indefensible practices and prejudices and to unmask "speciesism" as a myth since it does not involve reference to these capacities and characteristics. This seems to be implied in Paton's argument contra Singer: "Surely we do not believe that men and women, and black and white, should be treated equally, just because they are all sentient, but because they can participate fully in the whole range of human activity".[40] The implication is that the difference between humans and animals is considerably greater than between sexes and races, and that therefore the analogy with sexism and racism is misleading. Now, in order to avoid the charge of triviality (that what is being said here amounts to: "Humans are different from animals because they are equally human") and, indeed, the charge of speciesism (which, after all, states that singling out membership to the human species as solely relevant to giving preference to our interests, is an arbitrary move), certain particular characteristics constituting exclusively human capacity must be furnished.

Bonnie Steinbock names three such excellences: responsibility, or moral autonomy; altruistic motivation, i.e., "in the sense of motivation due to the recognition that the needs and interests of others provide one with certain reasons for acting"; and "the desire for self-respect".[41] It is simply false, to assume, however, that these are capacities of a <u>kind</u> not present in animals - they do possess them to a degree. E.g., animals might not be "responsible" in one sense (in that they cannot "answer" for their actions, or be made to answer for them), but surely in the sense of being responsible for their young, for the well-being of their conspecifics, for obeying their species-specific ethos (consider the etymological origin of "ethology"), hierarchy, etc. They might not be morally self-determining in the sense of being able to construct and defend systems of value, but they are certainly moved by affection,

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tenderness, deference, prudence, aggression, dominance, and, indeed, altruism: consider not only the behaviour of rhesus monkeys but of baboons, dogs, most mammalian and avarian mothers, and the circumstances in which they so behave. "Desire for self-respect" is somewhat opaque - animals certainly have desires, a rudimentary sense of self, and purposes. Steinbock concedes that "(s)ome animals may have some form of this desire, and to the extent that they do, we ought to consider their interest in freedom and self-determination. (Such considerations might affect our attitudes towards zoos and circuses)". [42] Some animals have these capacities, whereas some humans do not have them - and this surely must cast doubt on their exclusive moral significance. Paton's argument can be extended in the following manner: sexism and racism are wrong because men and women, and white and black, are equal in that they can participate in most human activities (note: not "fully in the whole range of human activity", e.g., men cannot give birth to children), and speciesism is wrong because humans and animals are equal in that they can participate in certain activities, in that they share certain capacities which matter morally. To discredit the argument from speciesism as Paton attempts to do is to miss its point.

The second kind of objection emphasizes the importance of our natural preferences, the special interests we feel in our fellow human beings; the reason for our sentimental preference for our own species and the special value we place on the lives of humans being that we are "bond-forming creatures". [43] This objection attempts to counteract the claim that because some humans have capacities inferior to those of some animals, discrimination against animals simply because they are not human is unjustifiable: it is because we feel a certain obligation to those members of our species, and because animals "manage very well .... and do not require special care from us", that animals do not matter as much as these human beings, and humans in general. [44] Now, if feeling and sentiment is so prominent and indeed important in moral thinking, I surely do not stand to be condemned if I feel a greater obligation to my cat than to my neighbour's baby. The point is, however, that although feeling is significant in that a capacity for a certain feeling (e.g., of sympathy, protectiveness, etc.) might be a necessary condition for the apprehension of moral values, of who and what matters morally, the

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moral status of those affected by our actions does not depend on our feelings towards them. Preference for, and the desire to extend special care to, members of our own species, motivated by feelings of sympathy, protectiveness, etc., does not invalidate the argument against speciesism (just as the existence of preference for members of our race does not render inapplicable arguments against "racism"); it may, rather, prejudice us against the interests of others.

It might be argued now that human preference for one's own race is a product of culture, is not natural, and is equal to race "prejudice", unlike the preference for one's own species which is natural, and neither a prejudice nor unfair or unreasonable.[45] Midgley points out that it is found in all human cultures, and that in cases of real competition it tends to operate very strongly, that "it is empirical rather than a priori and rests its case not on the articulateness or rationality of man as an abstract feature but on sheer physical kinship and its emotional effect". But it is far from clear that it would morally be unjustifiable for me to rescue my dog rather than someone else's child in case of genuine conflict. Here physical kinship and emotion would be wholly unconnected. Consider also cases of wolf-children or ape-children, and the bonds and sense of kinship they form with their foster parents and other members of the particular species, or the case of Lucy Temerlin, the chimpanzee who "grew up human" and who identified herself - by means of sign language - as human, in contrast to other chimpanzees.[46] The argument that our "natural" preference for members of our species exists and does not involve prejudice (even if it concedes that this is usually, but not invariably, the case) does not serve to establish that "speciesism is not just an irrational prejudice".[47] It <u>is</u> speciesist to fall below one's moral responsibility to other animals simply because they are not human. The third kind of objection stresses the biological, scientific importance of differentiating between species: "(r)ace in humans is not a significant grouping at all, but species in animals certainly is. It is never true that, in order to know how to treat a human being, you must first find out what race he belongs to ... But with an animal, to know the species is absolutely essential".[48] According to David Hull, the argument from speciesism serves to ignore "important differences that exist between

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various units of evolution. Biologists do not group organisms into species or order species on grounds of similarity. Two forms can be extremely similar and yet be classed as two separate species (sibling species). Conversely, a single species can be made up of extremely dissimilar organisms - for example, polytypic species like dogs and dimorphic species like the birds of paradise. And species are grouped into higher taxa because of descent, not degrees of similarity. From the biological point of view, the relations that exist between races and between sexes of the same species are different in kind from those that exist between species. If the principles of evolutionary theory are to be taken seriously, there are excellent reasons for us to exhibit a greater moral commitment to a child than to a porpoise, even if that porpoise has a greater capacity for suffering or experiencing enjoyment. If this be speciesism, then make the most of it". Similarly, Midgley argues that "(t)o liken a trivial human grouping such as race to this enormous, inconceivably varied range of possibilities is to indulge in what revolutionaries call 'patronizing' thinking - a failure to recognize the scale of difference between theirs and oneself ..... A belief is not a prejudice simply because it indicates a difference". [49]

The argument from speciesism does <u>not</u>, as Midgley understands it, hold that all interspecific differences are morally irrelevant: it says, rather, that where we are talking about "like" capacities, shared by humans and animals, ignoring the moral weight of those of animals, simply because they are not members of the species "homo sapiens", is wrong and morally unjustifiable. (Singer, e.g., is fully aware of the importance of existing differences between species - he merely denies that the bare fact of belonging to different species has any moral weight on the absence of qualifying criteria.) If race in humans is not a "significant grouping", but species in animals is, the question is in what way it is significant: biologically ? or also morally ? Its biological import cannot be denied - it is the sudden move from "biological" to "moral" which is doubtful, and we are left in the dark as to what can count as "excellent reasons" (Hull) for the unequal consideration and treatment of animals. If two species (by definition) exhibit different lines of descent this does not mean they are unequal.

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Evidence of conscious, conative, and cognitive life in other species, and which can reasonably be said to be shared by human and nonhuman species, is all that is required for showing that there is something to be taken into account morally. And even if there are reasons for exhibiting dissimilar moral commitment to human beings than to animals, these do not connote exclusiveness: humans do not exist naturally in isolation from other species. The character of a creature's interests depends on the (biological) kind of creature it is; but the view that mere difference of species counts for anything is morally unacceptable.[50]

The imminent question is how animals are to be accommodated in our moral considerations and systems of justifications, how they are to be protected, how their interests can be safeguarded. Accommodating them in a theory of rights is not the only way. Before turning to a discussion of this possibility and confronting the issue of animal rights, I will consider other accounts and theories which offer a moral niche for animals.

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Ch. 4

Duty, Utility, and Sympathy

The theories reviewed in this chapter invariably involve reference to duty, at some stage of the argument, with the possible exception of Schopenhauer's which eschews mention of duty as an important, let alone essential component. Paradigmatically, Kant's is a "duty-based" theory (the basis being furnished by the categorical imperative). Stated simply, in a duty-based theory duties are fundamental and generate rights (if they do), whereas in a "right-based" theory, rights are fundamental and generate duties and responsibilities, and are correlates of nonrights. In slightly more technical terms, duty-based theories are characterized by a concern with the conformity of individual actions: the individual complies with a code of conduct; unlike right-based theories where the individual benefits from the compliance of others, i.e., compliance enforced or demanded for her rights, and where the independence rather than a certain degree of conformity of individual actions is emphasized. [1]

There seems to be a distinction between duty and obligation (that to which one is bound), on the one hand, and duty and responsibility (that for which one must answer) on the other, in that responsibility prima facie lacks the prescriptive element which characterizes both duty and obligation. If rights and duties are, at least very often, different names for the same normative relation, depending on the point of view from which it is considered, then perhaps duties, obligations, and responsibilities are different names for the same point of view. Yet between duty and obligation, too, a subtle distinction can conceivably be drawn: duty (that which is due) could be held to arise from the nature of things (e.g., parents' duties), obligation (that which is owed) from certain circumstances (e.g., a debtor's or promisor's obligations): but in both there is a certain coercive element involved. Not all duties are duties "to" anyone, as Joel Feinberg points out, e.g., "duties of status", but most are: duties in indebtedness, of commitment, of reparation (where a claim is pressed for the debtor's positive services), of reciprocation, (all these are obligations in the sense outlined above, unlike:) duties of need-fulfilment, and duties of respect. Duty in the sense of "moral duty", attaches only to "moral agents", i.e., individuals capable of formulating principles of action, of examining their motives,

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etc., and animals are presumably exempt from moral agency or full-fledged responsibility. (They do have duties to their young, their posterity, their conspecifics, and perhaps also to humans, but these are "ethical" rather than "moral" duties, as I will argue in sects. 5.2 and 7.1) Normal adult human beings can paradigmatically be held morally accountable, and the "duties-to" which a moral agent has comprise duties she has to herself, to other individuals as individuals, and to the world at large.[2] It would appear that all duties are "direct", i.e., "to" individuals, yet some philosophers invoke the notion of "indirect duties", i.e., duties "about" or "in respect of", when dealing with animals. These views are considered first.

4.1 Accounts of Indirect Duty

> Both Aristotle and Aquinas think that a being must be rational if we are to have any duties to her; animals lack this capacity - so we do not have duties to them, at least not directly. Yet Aquinas explains that cruelty to animals is nonetheless to be condemned, since it usually leads to cruelty to rational (human) beings. Duties arise out of friendship or fellowship which again is based on reason, and to which animals by definition (as nonrational creatures) cannot attain. Therefore, talking of our duties to animals is an elliptical way of speaking of our duties to our fellow humans.[3]

Now, treated in this fashion, "rationality" (and similarly, "self-consciousness") is not an empirical characteristic but a "mark of status", often with the tag (as in Aristotle): "what distinguishes humans from animals". Since empirical observations concerning the varieties of intelligence (and this is what Margolis presumably is referring to when he speaks of "species-specific rationality") are not permitted to affect this account of rationality, the expedient and indeed necessary question concerning the lower limits of rationality[4] is not, and cannot be, taken into account. Other important questions must be answered. Do we, on this view, have no direct duties to human babies and the mentally enfeebled, or the irrational ? Why should rationality, or the lack of it, be relevant to considerations of direct duties, i.e., to being a beneficiary of these duties ? Why should friendship or fellowship be based necessarily on reason, and why should not friendship or fellowship

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of rational creatures with nonrational creatures be possible ? And how good is the evidence to support the belief that cruelty to animals usually, if not invariabl , leads to cruelty to human beings ? But it is hard to understand why failing in a nonduty (i.e., being cruel to animals) should have any relevance to the performance of a duty (i.e., being kind to human beings). Indeed, to say that cruelty to animals is likely to affect treatment of humans is implicitly to point to some capacity, or capacities, relevantly similar in, and shared by, humans and animals.

Immanuel Kant's approacn is similar to the Thomist view. The "relevant" capacity he cites is man's existence as n "end in himself", and not merely as a means. (This follows from the second formulation of the categorical imperative.) Animals lack rationality, self-consciousness, free will, and the capacity of judgment, and therefore they lack value in themselves, "inherent value" - they have only "instrumental value", exist merely as means to an end, the end being man. Therefore, our "duties" to animals are actually duties to humanity and hence indirect. D.G. Ritchie makes much the same point when he states: "Cruelty to animals is rightly supposed to be an offence against humanitarian feeling. Our duty to the animals is a duty to human society". [5] Kant, between two inversions of the Thomist argument, "Tender feelings towards dumb animals develop humane feelings towards mankind", and "If (a man) is not to stifle his human eelings, he must practice kindness towards animals, for he who is cruel to animals becomes hard also in his dealing with men", presents the telling remark: "The more we come in contact with animals and observe their behaviour, the more we love them, for we see how great is their care for their young". Had K t heeded his own implicit advice, striven towards closer contact with animals and observed their behaviour, it is far from obvious that he would have insisted that (all) animals lack self-consciousness, free will, and the capacity of judgment. If self-consciousness arises with "seeing oneself as something" or with the ability to locate oneself in physical space, to know where one is and with whom one is dealing, then surely some animals are self-conscious, in differing degrees: it is important to remember that there is a gradual transition from consciousness-of to self-consciousness.

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A similar transition might be held to exist from the capacity to choose, and to adapt (in) one's choices, to free will. And even judgment, verbal judgment (although it is not at all clear that judgment is necessarily informed by language), is a capacity possessed by some animals, e.g., chimpanzees and gorillas. (With dolphins, and cetacea, generally we are still somewhat in the dark as to their intellectual powers.) It is probably more accurate to say that linguistic judgment is only one form of judgment, and that an animal capable of spotting the difference between fear, anger, and other emotions in other animals, and of acting accordingly, possesses the capacity of judgment, in some degree.

The point is, however, as Midgley explains, that only an unworkably narrow conception of duty would focus on self-consciousness, free will, and the capacity to judge: [6] "unworkably narrow", because it would exclude some human beings. The view that duties and obligations have meaning only where there is a social convention expressible in language, i.e., where the other party can judge, is objectionable. Judgment does not even suffice to establish whether we actually have a duty to those who have this capacity nor can it be the basis of that duty. It would be quite incorrect to regard the institutional form of duty as its basis. - A further objection may be made concerning the notion of "end-in-itself". Arthur Schopenhauer points out in his critique of Kant that it is not a meaningful notion [7]: existing as an "end" requires both relation and comparison (an "end" in relation to/compared with what ?), and "end-in-itself" has severed all relations and possibilities of comparison - it has shrunk to a point without extension.

There is also a problem with the notion of "inherent", or "intrinsic", value (there is conceivably a difference between the two, which I will discuss in the next chapter): to employ this notion in an argument, let alone as a crucial factor in the argu to argue for a point by means of mere verbal legislation. of inherent value may be useful in providing a contrast to instrumental value, but ultimately one has to elucidate what constitutes this value. Kant's view, like the Thomist view, has the undesirable effect of excluding some human beings, viz. those who are not (yet) rational, self-con-

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scious, and who do not (yet) possess the capacity of judgment and of free will. But they are surely individuals, beings that it is like to be, and who cannot justifiably be held merely to exist for the purposes of (more) rational, self-conscious, judging, and freely willing beings.

Benn claims that one can be not only irrational in one's treatment of animals but also morally delinquent or cruel, but that one cannot be unjust: animals can be harmed but they cannot be wronged or injured. The duty not to torture an animal is a duty "in respect of", rather than "to" the animal.[8] Presumably in order to avoid the charge of speciesism, Benn explains that it is not their humanity, "a simple biological characteristic having no necessary moral implications, but their personality that makes the crucial difference between right-bearers (read: individuals who can be wronged or injured) and other things" (sic!). "Personality" consists in the possession of a certain kind of self-awareness, self-conceptualization, and autonomy, and only "persons" can be owed equal consideration and fair treatment. Benn is willing to admit some chimpanzees, intelligent dogs, and dolphins in the realm of beings "with a conception of themselves, as initiators of actions that make a difference to the course of events", so the charge of speciesism could not be made to stick. Glover writes that speciesism is "objectionable partly because of its moral arbitrariness: unless some relevant empirical characteristics can be cited, there can be no argument for such discrimination".[9] Benn furnished empirical characteristics constitutive of personality but that they are relevant to our discussion of duty (and to the possession of rights) is not obvious at all. His position commits him to denying that infants, children, and mentally ill humans can be wronged, suffer injustice, or treated unfairly. He does say that the absence of rights-talk (read: considerations of justice and equality), even of consciousness of rights, e.g., between father and child, should not be taken to show that rights are irrelevant or unimportant to such relations or that they are not acknowledged or respected.[10] So why should not the same apply in the case of animals other than chimpanzees, clever dogs, and dolphins ? Benn's claim that only "natural persons" can be respected follows from the view that respect requires, or consists in, consideration from the individual's own stand-

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point: but human beings, even in the absence of self-awareness and autonomy, as well as animals like mammals, birds, reptiles, fish, amphibians, have a standpoint from which it is "like" to experience the world. To exclude them from (the possibility of) equal consideration and fair treatment is to adhere to an unfeasibly narrow view of justice and equality.

John Rawls' account of justice [11] must fall prey to similar objections. He argues that the limited scope of justice, fairness, and equality can be explicated by the notion of a hypothetical contract struck by rational (human) beings. He acknowledges the existence of, but decides to shelve, the problem of our conduct towards human beings deficient in allegedly relevant capacities, i , who have no conception of their good, no rational plan of life ense of justice, i.e., "a normally effective desire to apply and ct on the principles of justice, at least to a certain minimum degree". According to Rawls, our duties to animals (and presumably to some human beings) are not duties of justice but "duties of compassion and humanity" (which are generated by their capacity to feel pleasure and pain). Since Rawls concedes that it is possible to have the desire to apply and act on the principles of justice "to a tain minimum degree", it is entirely plausible to hold that some ani possess this capacity: consider, e.g., some mammalian and avarian species who "hold court" (like crows) or who attempt to mitigate naturally or accidentally incurred inferiorities or deficiencies (like pelicans feeding their blind conspecifics). But, at a deeper level, Rawls' account gives rise to the question why relations governed by justice and equality should b eciprocal, why there should exist a mutual acknowledgement of, and adherence to, the principles involved: is it not sufficient that one be a "moral person" ? How can Rawls meaningfully drive a wedge bet "rightness as fairness" and the "wrongness" of cruelty to animals the destruction of a whole species as a "great evil" ? ("A gr vil" for whom ? For the individual endangered animals ? Or fo n beings ?) It is not so much that it is not "possible" to ext nd the scope of the theory of justice as that Rawls is unwilling to do so. Midgley objects to this account that outsid this theory, every "moral concern", etc., seems to be slight, optional, a mere matter of taste, desirable in times of leisure, but not important. [12] This implication discredits the Rawlsian view.

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4.2 Utilitarianism

Considerations of "justice" and "equality" also occur in utilitarianism. Utilitarianism is not a "duty-based" but a "goal-based" theory, i.e., characterized by a concern with consequences (of action), goals generating duties and even rights (although a utilitarian need not appeal to rights in making his case for the maximization of happiness and pleasure, and the minimization of pain). The obvious virtue of utilitarianism is not only that it was instrumental in secularizing morality but also that it proposed that the happiness and suffering of all sentient beings count. The utilitarian includes animals in the sphere of moral concern and emphasizes our (direct) duties to them: it is as much a moral duty to give consideration to the pleasures and pains of animals as it is to consider those of human beings. The utilitarian criterion for (direct) duty is "sentience", which can be rendered here as the capacity to experience pleasure and pain. As Bentham put it, [13] in a passage containing probably the most-cited remarks in the philosophical literature on the treatment of animals: "The day may come, when the rest of the animal creation may acquire these rights which never could have been withheld from them but by the hand of tyranny .... It may come one day to be recognized, that the number of legs, the villosity of skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to (the caprice of a tormentor). What else is it that should trace the insuperable line ? Is it the faculty of reason, or, perhaps, the faculty of discourse ? But a full-grown horse or dog is beyond comparison a more rational, as well as 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 ?"

At first sight, the view that sentience is what matters appears entirely plausible. After all, sentience is the lowest common denominator governing all humans and, indeed, most animals. But there are problems: some human beings suffer from dysautonomia, a rare congenital disease rendering them insensitive to pain - does this mean that they fall outside the scope of concern ? And is it permissible to kill indivi-

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duals painlessly, e.g., after anaesthetizing them ? These are considerations signalling the demise of the unqualified sentience criterion of classical utilitarianism. Bentham holds the view that killing the more rational (read: most human) beings in this manner is wrong in that we have "long-protracted anticipations of future misery" which animals lack. "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. If the being killed were all, there is a very good reason why we should be suffered to kill such as molest us: we should be the worse for their living, and they are never the worse for being dead". And: "(i)f the being eater 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". This talk of "better" and "worse", the pitting of harms against benefits, etc., are characteristic of the classical utilitarian concern with consequences, and subsequent disregard of individual suffering and loss: causing suffering and taking life are wrong only if more pain or greater losses are suffered in the process by all those involved than the amount of pleasure, or total gains secured. Hence, severe inequalities and injustices could be sanctioned by the principle of utility, promoting "the greatest happiness of the greatest number".

At a deeper level, this doctrine is suspect in that it constitutes the attempt to weigh and measure suffering and happiness against each other, a task which seems to be impossible to accomplish.[14] How can an individual's suffering be weighed against the suffering of many individuals ? (Granted, some pains may be modified by human beings' superior mental powers, may be more intense owing to psychological stress factors; but in some cases limited mental capacities signal more or increased suffering, owing to the inability to understand, and the corresponding impossibility to explain the reasons for the predicament: e.g., how do we convince small children or simple-minded adults, or animals, or humans sufficiently culturally remote from us, that the pain they are made to undergo is for their own good, e.g., in the curing of an illness ? These appear to be instances of justifiable paternalism, in that the welfare of the individual is of primary concern.) How can even an

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individual's suffering be weighed against the like suffering of many individuals ? They do not suffer in the aggregate. The distress of the former is to that individual as the distress of each of the latter is to the particular individual of that group. The point is that the sum of all like suffering remains constant. There is no quantity of suffering in creatures that changes in accordance with the number of creatures suffering in the same way (supposing it were possible to determine this.) It might not even make sense to speak in terms of quantity of suffering with respect to one and the same creature; or do two or more pains (headache, backache, etc.) constitute a quantity ? Any other measuring necessarily involves reference to intensity or degree.

In order to overcome the difficulties encountered by classical utilitarianism, Singer introduces the "principle of equality", or the principle of equal consideration of interests", which states that all capacities shared by conscious beings be given equal weight, i.e., all "like" suffering is due equal consideration. [15] Singer argues that the idea expressed in the Golden Rule, the Categorical Imperative, and universal prescriptivism seems to be the right approach to moral problems, and that it implies there are other existences I can imagine myself as living. Sentience, or consciousness, is relevant in that application of the Golden Rule, etc., implies this capacity: according to Singer, possession not of self-consciousness but of consciousness is crucial here, not only to accommodate human beings with limited mental powers, but its sufficiency is indicated by the test of universalizability. [16] There is, therefore, a conceptual link between acknowledging consciousness and accepting some (direct) duties. A conscious being is one who can mind what happens to it, who prefers some things to others, who can experience pleasure and pain, can suffer or enjoy. This range of capacities is summed up by Singer as having "interests", and - bearing in mind the analysis of interests given above - this seems natural enough. (And, as Midgley suggests [17] - "if the word is thought unsuitable, others can be substituted".) This kind of consideration is held by Singer to be not only possible but necessary, first from the point of view of the conscious creature - since it is conscious, injury and extinction (for it has a preference to go on living) will be detrimental to it: second, more abstractly, because consciousness bestows value,

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intrinsic value, on it: if it is injured or extinguished, the world will be the poorer.

Singer's account seems quite acceptable up to, and including, the reason that suffering and death are evils for the individual: acceptable, that is, until he attempts to embed his arguments and considerations in a utilitarian framework. Whatever one's intuitions concerning duty-based theories, the idea expressed in the Golden Rule, while certainly not the sole basis of morality, is decidedly a strong one, and Singer could consistently defend his views without recourse to utilitarian justification and calculation: in fact, the latter serve to weaken his case against the exploitation of animals. By relating his arguments concerning equal consideration of interests to the principle of utility, Singer is in effect saying that the best consequences are those that further the interests of everyone involved. Hence, a shift has taken place from "individuals" to "interests". And because "self-conscious" individuals have preferences which may not be reasonably ascribable to "merely conscious" beings and simpler organisms, or preferences which are more complex, involving long-term anticipations, plans, and desires, their interests count more than those of merely sentient beings: killing them or causing them to suffer would have undesirable side-effects, (e.g., causing fear in others), would frustrate the victim's desires and future plans, would violate their right to life (though it should be noted that Singer is not an advocate of rights - at least his primary concern is not with appealing to rights), and would constitute a failure to respect their autonomy. What is of value in merely conscious creatures is their sentience. but the world will be the poorer only if there is no other being to take the place of the one which is killed. So, provided they are not caused suffering or distress, their death does not have any negative side-effects (e.g., "troubling" self-conscious individuals), they have led pleasant lives until the time of their death, and new life will flourish in their place, the killing of non-self-conscious animals is not wrong: they are "replaceable entities".[18] It is quite uncharacteristic of Singer to allow such a crass contraposition of self-consciousness and mere consciousness to determine the course of his argument: this (inaccurate) distinction serves to include all animals except some bright mammals as well some human beings in the realm of repla-

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ceable entities. Would it be permissible painlessly to kill a retarded orphan for food ? Since she is not made to suffer, there is nothing else to be taken into account, no future plans, no side-effects: but this is plainly morally repugnant, even when she is "replaced" in some way.

Glover, whose views pretty strongly resemble Singer's in "Practical Ethics", similarly argues in favour of some sense of replaceability. In the case of foetuses and newborn babies, killing is not directly wrong for their life cannot yet reasonably be called "worthwhile" - we do not override their autonomy by taking their lives, and "it would be absurd to suppose that (they have) any desire not to die, or even the concepts of being alive or dead on which such a desire depends", Glover tells us. "In other words, foetuses and babies are, in terms of these principles, replaceable", [19] and: "it is wrong to destroy a worthwhile life. But this is an 'impersonal' objection, having to do with potential. In terms of this objection, newborn babies, like foetuses, are replaceable. It is wrong to kill a baby who has a good change of having a worthwhile life, but <u>in terms of this objection</u>, it would not be wrong to kill him if the alternative to his existence was the existence of someone else with an equally good chance of a life at least as worthwhile". The morality of this view is questionable. Side-effects can never weigh so strongly as to justify considering healthy, normal infants to be replaceable. What does the individual baby gain from (the possibility) of being replaced ? This is to treat babies on a par with material objects, mere things. Consciousness, which Glover refuses to give much weight, is of vital importance here, and in driving the wedge (<u>if</u> this needs to be done), between younger, pre-sentient foetuses, and older foetuses and babies. If the interests of the mentally handicapped have equal weight with our own [20] when they are adults, why not the interests of normal babies ? Simply because mentally handicapped adults are not (any longer) "replaceable" ? (Are they not, really ?) At what age do children cease to be replaceable ?

In "What Sort of People should there be ?" Glover claims "(i)t is a strength of utilitarianism that the value of states of affairs is not thought to derive from some mysterious source external to ourselves.

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For utilitarians, the value of anything depends on its relation to the experiences or desires of conscious beings. Unhappiness and the frustration of desires are to be accepted only where there is sufficiently compensating benefit to someone". [21] This last argument is quite acceptable if, and only if, we are dealing here with the unhappiness, the frustration of desires, and the benefits of one and the same individual. The kind of "value" Glover mentions here strongly resembles the notion of "intrinsic value" invoked by Singer: for Glover, this value derives from the experiences and desires of conscious beings; for Singer, from their interests. In attaching value to their experiences, desires, and preferences, and not to the individuals themselves (this is where Regan differentiates between "intrinsic" and "inherent value" [22]), Glover and Singer - in a bizarre way - render even "self-conscious" individuals subject to replacement. Since the utilitarian must evaluate experiences, desires, and preferences [illegible] reference to numbers and intensity, and autonomy and self-consci[illegible]w reference to degrees, it is conceivable that these individual[illegible]e replaceable, provided that others are brought into existence [illegible]natever fashion: possibly also by means of genetic engineering), who stand a good chance of having a life at least equally worthwhile. (These considerations bring out both the absurdity and the repugnancy of the replaceability condition.)

Singer can avoid this charge only by appealing to the principle of equality and by abandoning the principle of utility at the same time. If he insists on relying on the principle of utility as well, the rejoinder would be that, in connection with utility, all that "equal consideration" implies is that individuals are not to be ignored: they might still be substituted, painlessly and without forewarning, by a relevantly superior species. If the principle of equal consideration is linked with respect for the individual, implications such as the above can be avoided. The point is that the utilitarian, if she is to be consistent, cannot afford to emphasize the importance of equal consideration of individuals. Moreover, a utilitarian must take side-effects into account: she must consider the inconveniences vegetarians incur when they are troubled by, e.g., requests for explaining their dietary preferences on dinner invitations, finding suitable restaurants, soya or

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vegetable protein products in shops, questions as to the reason for their vegetarianism (as I pointed out earlier, the onus of justification is still seen to lie on the vegetarian). She would have to consider the frustrations and psychological "withdrawal symptoms" in people who were suddenly asked to give up eating flesh: a gourmet might argue that her own pleasure in eating flesh outweighs any disutility suffered by the animal in whose remains she has chosen to indulge. [23] A utilitarian must consider the difficulties in coming by products which are both free of animal ingredients and which have not been tested on animals. The disutility incurred through the boycott of animal products would also concern all those (people) occupied in the meat, cosmetics industries, in the research animal industry, and in scientific research. It would imply the loss of jobs, perhaps certain familial hardships, etc., and it is not at all obvious that the consequences of abolishing these institutions or totally banning the use of animals, are better than the consequences if these methods are continued.

Singer could argue that this abolition needs to be gradual (and that a gradual abandonment is also in the animals' interests), and that even if sudden one-time-losses (e.g., of jobs) are weighed against the continuous suffering caused to animals, then the suffering caused in the latter case would surely exceed the disutility experienced in the former. He might also argue that the gain in pleasure for free-roaming animals, the gain in utility for malnourished countries if they received the high-protein grain supplies usually fed to food animals, and the gain in physical health and well-being through vegetarianism would constitute a solid utilitarian case for refraining from eating flesh. (Similar observations might be made with respect to the cosmetics industry and scientific research, coupled with economic considerations, etc.) The fact is, however (and this is a point that Regan brings across forcefully [24]), that Singer is not so much concerned with the "consequences" of practices involving abuse as with the "purpose" of these practices, and as a consistent utilitarian he cannot be. He rejects these practices on grounds other than utilitarian, namely by demonstrating the moral indefensibility of the purpose only. Singer's arguments, at least those in "Animal Liberation", do not have utilitarian basis, but this does not mean that they are not forceful and convincing in their own

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right, when unencumbered by utilitarian ballast.

A rejection of utilitarianism might give rise to the question whether degree, or intensity, and numbers do not count at all. I will attempt to address the question of degree in sect. 7.2, and only offer a brief answer to the question of numbers. Glover, in "Causing Death and Saving Lives", [25] defends the policy "that, other things being equal, we ought always to prefer to save a larger to a smaller number of people", which he calls the "maximizing policy". At first sight, this seems acceptable; it is only when inserting the phrase "we ought always to prefer to take the lives of a smaller to a larger number of people" that moral doubts arise. Glover's defence appears to rest on the mistaken utilitarian assumption that people's lives can be added up to produce a greater whole or aggregate. But surely this is impossible: an individual's life is to that individual as other particular individual lives are to these particular individuals. There is no sum of lives that is to a sum of individuals. "Things" may be different, but tney are equal. Only where "other things" are unequal, e.g., where the term "individual" cannot meaningfully be applied, or where there is the contraposition: normal adult human being/nonviable human foetus, does the possibility of weighing or trading off lives arise.

Losses of life cannot be added to arrive at some total of losses or harms. There is only the loss suffered by a particular individual. Therefore, numbers do not count in cases where the possibility of saving a score of lives is pitted against the possibility of saving one life. (Neither is suffering additive in this way: the sum of all like suffering remains constant.) Regan, arguing against John Taurek, claims, however, that it is possible to aggregate, e.g., financial losses, and that our reflective intuition or belief would favour saving the lives of the majority. [26]
However, economic considerations cannot be compared, let alone likened to moral considerations. If not six million Jews had been killed during World War II, but "only" 100 000 - "only" ? ! - surely this discrepancy in numbers would not make, or have made, a moral difference. And to consider an opposite case: why would most people find it easier to shoot at an anonymous mass of people rather than at a single individual, even assuming that the latter could be identified or recognized as little of the former ?

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Regan's contention is that harms can be unequal not only when the same individual is harmed in different ways (through infliction or deprivation) - they may also be unequal when different individuals are harmed in the same way (and he asks us to compare the death of a woman in the prime of her life with that of her senile mother: the magnitude of the loss suffered in the former case are prima facie greater). (I will deal with this question below, sect. 7.2) Regan appeals to the "minimize overriding (miniride) principle" which states that when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many, and which is derivable from the "respect principle" (we are to treat those individuals who have inherent value in ways that respect their inherent value"). I find it hard to accept the miniride principle as a "moral" principle - unlike the respect principle, it seems to be an economic rather than a moral principle: overriding the rights of the few in favour of the rights of the many has statistical but not moral eligibility. Regan's conclusion has a strongly consequentialist flavour. He would reply to me that I am confusing considerations about the foreseeable consequences of acting in compliance with the miniride principle with the "rights-view's" grounds for accepting this principle, viz. respect for the equality of the involved individuals. But if this is the consideration that matters, and given that there can be no "aggregate individual" who has "inherent-value-aggregate", then there is no moral difference between the two.

Utilitarianism is not the only theory concerned with (direct) duties, though it is arguably the most widely espoused or, at least, flirted-with of these accounts. My reasons for reviewing the following theses in one and the same section will become more apparent with the objections made to them: none of these accounts can satisfactorily explain our (negative and positive) duties to, and responsibilities concerning, animals and indeed human beings.

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4.3 Other Direct Duty Views

The "cruelty/kindness view" is not a unified theory as such. It covers, rather, appeals which characterize much of the content of brochures, pamphlets, and journals dealing with humanitarian vegetarianism, experimental research, and statements issued by organisations such as SAAAPEA ("South African Association Against Painful Experiments on Animals"), "Beauty without Cruelty", SPCA, etc. However well-meaning and sincere these appeals may be, they do not and cannot establish a basis for their respective causes. As Regan puts it: "being against cruelty" cannot account for our negative duties to animals, and "being for kindness" cannot explain our positive duties. He goes on to say that cruelty and kindness necessarily involve reference to an agent's mental states, feelings, and motives; i.e., we fulfi. our duties to others as long as we are not cruel or as long as we are kind to them. But this is inadequate, for how one feels about what one does, e.g., about the suffering one causes or the enjoyment one brings about in an animal, is logically distinct from the moral assessment of what one does, i.e., from the morality, the rightness or wrongness of one's actions.[27]

The rejoinder to Regan's argument might be that it is not obvious that one's attitude towards one's actions is logically distinct from the moral assessment of what one does, and that this is a purely consequentialist claim, in that it implies that only the consequences of actions matter morally. It is difficult to see how this charge can be averted, but on the other hand it is a criticism a nonutilitarian can live with. She might say that from the point of view of the individual animal it is immaterial whether "cruelty" and "kindness" characterize an agent's mental state or her action: what matters to the creature itself, and what matters morally, is whether it can flourish or whether it must languish, whether it can enjoy a life in accordance with its natural needs, instincts, and capacities, or whether it must suffer an existence where it is deprived of, or prevented from exercising, its natural drives and powers. Rejection of utilitarianism as an adequate moral theory with respect to matters of help, harm, life, and death does not imply the conviction that all consequentialist considerations are wrong,

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bad, and ought to be avoided or discredited. A nonutilitarian can, without serious inconsistency, hold that to say that an action is cruel or kind is not to say that it is wrong or right. In fact, there is no guarantee that a kind act (motivated, e.g., by sympathy, which is certainly a virtue) is a right act; similarly, absence of cruelty (both in one's motives or intentions, and in one's actions) does not insure that one avoids doing what is wrong. Hence, questions concerning (moral) rightness and wrongness cannot be answered conclusively by considerations of motivation. This last proposition, especially the word "conclusively", is important: for, although kindness is not the same as right action, it may nonetheless be a precondition for it. To say that the way one feels about what one is doing is logically distinct from the morality of the act is not to say that considerations of kindness (and cruelty) have no place in morality: indeed, it would be quite incorrect to say this. Although feelings, and the operation of emotion, do not constitute the basis of morality, they nonetheless play an important role in morality when linked with reason. Regan, in defending the claim that kindness cannot serve to explain our duties, points out that although kindness is "owed" to animals, it is not due them. [28] It seems as strange, however, to invoke "obligations of kindness" as it is to speak of "duties of kindness". But, it might be argued, so much the worse for duty, rather than for kindness and sympathy. (Further argument is suspended until the following section, 4.4)

In developing his "ethic of reverence for life", Albert Schweitzer claims that the fundamental principle of morality be reverence for life. Morality, he tells us, consists in the necessity of practising the same reverence for life towards all that lives, and that "wills to live", in the sense of striving towards more life, pleasure, and seeking to avoid pain. A man is really moral only when all life is sacred for him. "He does not ask how far this or that life deserves sympathy as valuable in itself, nor how far it is capable of feeling. To him life as such is sacred. He shatters no ice crystal that sparkles in the sun, tears no leaf from its tree, breaks off no flower, and is careful not to crush any insect as he walks". [29] Now, since Schweitzer includes things like ice crystals in the scope of moral concern, the concept of reverence of "life" stands in need of elucidation: here, the scope of moral "duty"

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would be infinite. Ice crystals certainly may matter aesthetically; they can be conceived as having aesthetic value. But it is not clear how it can be morally wrong to destroy them: they have no life, let alone are subjects of a life, for whom life "is" in one way or another. (Are we not, in Schweitzer's view, morally justified in freezing water for ice cubes, and once the deed has been effected, allowing them to melt in our drinks and imbibing them ?)

More fundamentally, still, this account is unsatisfactory insofar as it links morality essentially with reverence, rendering it dependent on the agent's psychology. Because human psychological capacities and proclivities vary greatly, we would obtain a relativistic, if not atomistic, picture of morality. And since Schweitzer makes it quite clear that he is in principle not opposed to harming animals if necessity demands it ("Whenever I injure life of any kind I must be quite clear as to whether this is necessary or not" [30]), "feeling" that whatever one is doing is "necessary" could lead to the justification of the most atrocious abuses and maltreatment.

Clark's minimal moral principle, his "dogma" as he calls it (although he concedes the possible existence of other moral principles), is that it is not "proper to be the cause of avoidable ill". [31] Formulated in this manner, the principle is not convincing; for causing a lesser evil to an individual in order to prevent a greater evil concerning the same individual seems to be both expedient and justifiable: e.g., taking a dog to a vet for a shot is an avoidable ill but it serves to avoid the greater ill of the dog contracting distemper. (And of course, to be the "cause" of harm or suffering does not mean that one is "responsible" for it. This distinction will be discussed in sect. 7.2) But Clark rests his case for "zoophily" not only on the duty to avoid gratuitous har and suffering but holds that kinship between humans and animals constitute the basis for moral concern for animals, "kinship" being not only a reference to evolutionary relations but consisting in varied family resemblances and (the possibili' of) shared lives. He speaks of our feelings of kinship (thinking "of our cousins as cousins and not as trash") for the young, the defenceless, and animals sometimes as "gene-

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tically programmed sympathies" which are "readily extended in us to other species", sometimes as a "personal hierarchy of friendship and attraction", or "personal ties" which can cut across the species-divide.

But not only is it false to view every moral agent as a zoophile at heart or, conversely, to view morality or moral agency as requiring zoophily; merely to be fond of someone or something does not provide a basis for consistent moral concern. If personal affections were the whole basis of moral standing, we would be left with a fragmented, local morality. Even moral concern for animals as such does not necessarily presuppose zoophily. One can respect, and sympathize with, other beings without being fond of them. Indeed, Clark fails to explore the implications of basing moral standing on personal affections; he thinks that human affections can become sufficiently inclusive to extend to all living beings and perhaps even the inanimate constituents of our biosphere, but does not explain his own conception of interspecific kinship and the way in which this kinship is the basis for moral standing. Unlike Descartes or Kant, or even utilitarian tradition, Clark seeks to deal with morality without recourse to metaphysics, and therefore his appeal to duties to animals can only reach those who share his conception of kinship. If he were to explain or justify it, kinship might turn out to be inadequate as a basis of morality.

4.4 Sympathy and Morality

Sympathy does not rest on any conscious calculation of the greater good or concern with consequence, nor can it always be expected to serve such a good or consequences. It concerns a capacity to share or adopt another creature's view-point, not the spurious vantage of an aggregate of individuals. (For the sake of uniformity I will not refer to "compassion": I think it is safe to say that "sympathy" and "compassion" are conceptually and etymologically identical.)

Schopenhauer's ethic of sympathy betrays a profound influence by Eastern thinking, an influence both well-known and well-documented. In "On the Basis of Morality", he approvingly cites a prayer ending old Indian dramas: "May all living beings remain free from pain". [32] Before discussing Schopenhauer's views, I will therefore briefly review possible

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possible Buddhist, Jain, and Vedic influences. In the Indian tradition, the concept of "ahimsa" ("nonviolence") signifies a duty to abstain from violence, and concerns nonkilling, noninjury, nonaggression, tenderness, innocence, love, etc. Through sympathy, violence (which includes even harm done to an attacking predatory animal, e.g., in self-defence) is prevented. Sympathy embraces all forms of distress (uneasiness, fear, pain, guilt, hostility, grief, etc.). (Similarly, Wittgenstein's dictum: "Sympathy, one may say, is a form of conviction that someone else is in pain", might be given a broader reading by replacing "pain" with "distress".) Whereas the Jain rationale is that all souls are equal and whereas Jains propound the inviolability of separate individuals, Vedic thought and Buddhism stress the idea that all life is interrelated, and that to harm another creature is to harm all creatures, including the one committing the act of violence. Cruelty is considered essentially a lack of its positive counterpart, sympathy. Sympathy concerns the life force, the vital drive, shared by all animals, human and nonhuman, and plants, a basic motive or motivating factor which Zen teacher and author Daisetz Taitaro Suzuki has called "trisna", or "thirst", and which strongly resembles Schopenhauer's (and, following him, Schweitzer's) "will to live". [33]

Schopenhauer's view is that sympathy involves the recognition of the will-to-live in others: it rests on the identification of self with others, so that their interests, affairs, needs, distress, and suffering become in a way mine, which is possible only through the kind of knowledge that I have of these others - therefore that knowledge mediates between the interests of others and what is, according to Schopenhauer, the fundamental motivation that governs me, and in fact all animals, namely egoism. [34] Schopenhauer in fact distinguishes between three fundamental motivations for human actions, viz. egoism, malice, and sympathy, and claims that only sympathy be a genuine moral motivation: because we have sympathy, we see the things which are derived from it as of genuine moral worth. [35] Sympathy, he tells us, constitutes the foundation of morality: "Boundless (sympathy) for all living beings is the firmest and surest guarantee of pure moral conduct .... Whoever is inspired with it will assuredly injure no one, will wrong no one, will encroach on no one's rights". [36]

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Set aside considerations concerning the difficulties involved in reducing a variety of complex motives to a basic one (viz. the will-to-live), as it stands, this argument encounters much the same criticism as the argument from kindness: viz. that it is far from obvious that a person's capacity to identify herself with another, to feel the other's need, distress, and suffering as her own, and to share it <u>in</u> the other, is identical with "pure moral conduct", i.e., right action. In fact, there <u>is</u> no guarantee, contra Schopenhauer, that a sympathetic act is a right act. It is conceivable not only that a sympathetic agent <u>causes</u> but <u>is responsible for</u> unnecessary harm to another being, e.g., when she believes harming an animal is necessary when in fact it is not: a diagnosis may be false. The mere presence of sympathy in motivation and action does not provide an infallible guide or access to what is right, or genuinely moral, conduct. How one is disposed towards what one does, does not augment or diminish the pleasure or pain caused to the creature affected by one's action, and this is also true in the case of sympathy: a sympathetic act may be a wrong one, morally.

The other criticism directed against the argument from kindness, that we cannot "owe" animals kindness (sympathy), that kindness (sympathy) is not their due, that we have no duties or obligations of sympathy to them, however, does not obtain: Schopenhauer states explicitly that the ethic of sympathy does not involve the imperative form exhibited when morality is linked with a doctrine of duties. He is tilting at the idea of moral "principles", and the notion of an "ought" in general as well as that of an "unconditional ought" in particular.[37] He is concerned rather with investigating what sorts of motives function as motives of human actions. This, however, renders him vulnerable to what was implied by the first criticism: viz. that a person's motives and intentions are logically distinct from the morality of her actions, the rightness and wrongness of what she does. (E.g., that Eskimos consider animals' lives and souls of equal value to their own, and that they are also able to accommodate infanticide and active euthanasia in their cycle-of-existence world view, does not make their killing animals for food, killing first-born baby girls, or abandoning their toothless-and-clumsy-but-otherwise-healthy elders to die either through exposure or through polar bear attacks, less wrong morally, let alone morally

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justify their actions, in our eyes.) Furthermore, and importantly, as D.W. Hamlyn points out, there is no attempt in Schopenhauer to explain or justify the claim that it is a concern for others that is fundamental to morality as we understand it; that this is a fact is simply assumed.[38]

Can the notion of sympathy as the basis of morality, and of our moral concern for animals in particular, be salvaged ? Philip Mercer realizes that all morally valuable conduct cannot be derived from sympathy, yet considers sympathy as such to be "unconditionally morally valuable".[39] He writes that "it might be possible to lead a genuinely moral life with sympathy at its focus and with only the minimum of recourse to any notion of duty", and that it can be claimed that the very capacity for moral discrimination logically presupposes a capacity for some kind of sympathetic feeling - and that it is doubtful whether a being unable to sympathize with others, can be said to possess true moral insight into her own and other's situations.[40]

Mercer's concept of sympathy is both "interpersonal" (i.e., it extends over all sentient beings who can be helped and harmed, without regard to differences like sex, nationality, race, species, etc.) and "intensional", (i.e., one sympathizes not only <u>with</u> another but also <u>about</u> something or <u>in</u> something) and usually involves reference to some kind of distress (cf. the etymology of "sympathy" - Gk. - and "compassion" - Lt. - : "suffer with"). Mere awareness of what someone feels is not sympathy unless we are ready to do something about it, still less are states of involuntary infection, etc. Sympathy, Mercer tells us, is an "inescapably practical concept" (hence, the objection made to the "cruelty/kindness view" and to Schopenhauer's view which identified "cruelty", "kindness", and "sympathy" with feelings or states of mind, does not obtain here): when we sympathize with someone, we seek - by action or omission - to bring about an end to his predicament. Mercer wants to be understood as claiming merely that sympathy is relevant to morality by virtue of being <u>a</u> motive for action. Insofar as we can cultivate a capacity for sympathy it makes sense to say that we "ought" to sympathize, which is not to say that the "duty of sympathy" is the supreme moral principle. When I assert I sympathize with someone, thus Mercer, I tacitly acknowledge that I could have an obligation to him; if

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I can be obliged to him, then he has the capacity to have a claim on me. Mercer says that it is no coincidence that we recognize the possibility of having obligations only to those with whom we recognize the possibility of sympathizing.

Now, if sympathy is simply a motive for action, if practical sympathy - although a precondition for genuine moral conduct - is not identical with it, and if it is difficult to change anything by arguments which appeal to sympathy, humanity, decency, or fairness, when powerful interests are involved, [41] what else is required ? "People have to be ready to listen", as Nagel puts it: but how is that determined ? In the opinion of one theorist, "questions of morals are far too much thought of as questions of rights, and not nearly enough as questions of duty, or better still, of sensitivity "; in that of another, the point and function of the concept of a right "can be explained and exhaustively elucidated by the language of duty". [42] Not only is it inconceivable, however, how duty or "sensitivity" could fulfil the function served by rights, but the bracketing of duty and sympathy as coordinate elements in morality strikes me as less satisfactory than the linking of sympathy with rights. There appears to be a discrepancy between an ethic of sympathy and a duty-based theory: the latter usually involves an appeal to (not) treating others in a manner I would (not) like to be treated, etc., and therefore exhibits self-interested motivation rather than a genuine concern for others, a concern which does mark sympathy, on the other hand. (And the extension of rights to the hitherto underprivileged is informed much by the same kind of concern.)

Schopenhauer seems to have the right idea not only in divorcing his ethic of sympathy from the language of duty, but in saying that the just man respects rights irrespective of whether there are any sanctions imposed on him, because he recognizes his own will in that of other beings. Sympathy, we recall, involves recognizing the will-to-live in others. Respect for rights and sympathy are not identical but they may well be coextensive.

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Ch. 5

The Rights of Animals

Sympathy is an important moral motive and practical concept, but it constitutes neither the sole basis for morally good conduct nor is it a consistent action-guide; nor is sympathetic action the same as right action. An account of rights, however (i.e., one which "takes rights seriously"), seems to furnish a logically and morally compelling basis for right conduct, and for our duties and responsibilities to, and nonrights against, others. (This is not to say that every right has a correlative duty, etc., or that every duty, etc., is based on an existing right. Only rights which are claimed, explicitly or implicitly, give rise to duties, strictly speaking. And "duties of status" seem to be exemplary of duties not based on existing rights. By "existing rights" I mean not rights which have been conferred by some "cosmic moral legislature", but rights whose existence is based on reason(s) and "discovered" by enlightened, reason-seeing and reason-seeking, consciences[1].)

To me, a right-based theory is intuitively more acceptable than a duty-based theory because "duty" expresses no immediate concern with the being who is the recipient or beneficiary of duties. Duty-based accounts initially have not much to say about these beings in their own "right" - their immediate concern is with the agent who has a duty. I think Timothy Sprigge is essentially right in saying, more specifically, that "duty" sees the moral issue as turning primarily on the nature of human reality, while "right" implies that there is something about animal reality that matters morally. And, again intuitively, the correlation of rights and nonrights appears to be more fundamental than the correlation of rights and duties, [2] because "nonrights", unlike "duty", expresses a more immediate concern with that "something about animal reality".

5.1 Value, and the Idea of Equality revisited

Animals resemble human beings in morally relevant ways: they are conscious, sentient creatures who can be helped and harmed, and who can mind what happens to them. They have interests in the sense of having a welfare, and needs, and many (including most of those who are caused

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distress and who suffer losses in intensive farming units, in research labs, in zoos and circuses, and most of our pets and prey) have interests in the sense of having desires, beliefs, preferences. They have a subjectivity; they are subjects of a life which can be better or worse for them, of which it is meaningful to speak as "(not) worthwhile living". They are individuals (problems of identity and individuation set aside: I agree with Regan that morality must assume that individuals retain their existence in space and over time), and as "distinct individuals", creatures with "separate existences", they have rights, or as Nozick says, place "moral side constraints" on what we (and they) may do which "reflect the fact of our (and their) separate existences". [3]

McCloskey, Feinberg, and Regan in part rest their respective cases for rights on the assumption that creatures who have "inherent value" have rights, "inherent" as opposed to "intrinsic value", which attaches not to individuals but in the utilitarian sense to their experiences, e.g., their pleasures and preference-satisfactions, and as opposed to "instrumental value" which attaches to their usefulness. The concept of "value" requires both relation and comparison, and this requirement necessarily excludes all reference to "inherent". - Rights are ascribed to a creature because it has inherent value; but how can one see that it has inherent value until one is prepared to ascribe to it rights ? It seems that in combination with "inherent" not only is "value" itself opaque but it threatens to render "rights" obscure as well.

Another problem with "value" is that it is necessarily connected with a human perspective. Value-judgments can only reflect what matters in human life or be extrapolated to what we think matters in other life. (This may be what Nozick has in mind when he says that homo sapiens is characterized by his value-seeking and value-giving tendency.) But in fact no species has more or less value than another - "inherent value", that is.

As Margaret MacDonald asserts forcefully: natural events themselves have no value, and humans as "natural existences" have no value either. What conditions rights constitute is not determined by the nature, essence, or "value" of human beings but by human decisions [4] or "rational disco-

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veries" (in the sense outlined at the beg.nning of th.is chapter). MacDonald's attack is certainly applicable to "inherent value". If there is such value at all, it is possessed equally, as is "intrinsic value": whatever experiences a creature has, they are "to" that creature as other beings' experiences are "to" these beings in one way or another - they, too, are experiential subjects. A hierarchy of values, both "intrinsic" and "instrumental", is acceptable only if the possibility of different orderings, according to different standards or criteria, is acknowledged. And here the emphasis is on "difference" not on "inequality".

5.2 Conditions for the Ascription of Rights, and Moral Agency

Despite his view of "natural" rights as "nonsense upon stilts", the idea of "animal rights" probably originated in the eighteenth century with Benham, and after him, was perpetuated by Thomas Young and John Lawrence: "Life, intelligence, and sentience necessarily imply rights" was a principle they took to apply to humans and animals alike. [5] "Life", "intelligence", and "sentience", then, are seen by Young and Lawrence (and not only by them) as conditions for the ascription of (moral) rights. (By "rights" I mean "individual (moral) rights": this emphasis is significant in distinguishing our moral concern for more complex organisms from that for the simpler ones, and for plants - cf. sect. 7.3) (I follow Jonathan Bennett's implication that computers or artificial-"intelligence"- models are not "intelligent" [6], at least not in a morally relevant way.)

What is meant by "intelligence" needs to be clarified. If it is defined in terms of a certain IQ level, then not only would most - if not all - animals be excluded (even if they possessed the means to participate in a test which involved uniform testing procedures, for humans as well, they presumably could not be brought to see the point of such exercises) but some human beings, too, would be disqualified, and vicious inequalities and prejudice could be entrenched. IQ tests are questionable in that they constitute single-scale-measurings: but intelligence cannot be so measured, since it involves different sensory modalities. Once these are taken into account, the ramifications of intelligence and its multi-

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tudinous manifestations become evident. There is a growing view that evolution has not produced a gradual increase in a one dimensional level of intelligence, but rather that species have evolved specific intelligences relevant to their survival in particular ecological niches. The underlying process may, or may not, be the same across species.

Suppose we do opt for a definition allowing for the various manifestations of intelligence, e.g., along Bennett's lines: "When we speak of (a creature) as intelligent, ... we credit it with patterns of behaviour which (a) involve the organisation or control of complex data, and (b) are suitably modified when they no longer prove appropriate in the light of the (creature's) needs". [7] The question is how far, if at all, the possession of intelligence in this sense is relevant to the possession of rights. Intelligence is certainly important morally but it is not clear at all how it can furnish a necessary condition for the attribution of rights. If we opt for a single-scale view of intelligence, we must be able to determine precisely at which point nonintelligence ceases and intelligence begins, if we want to render ascription of rights (and, in a broader sense, moral standing) conditional on the possession of intelligence, and it is doubtful whether this can be done in a manner which does not involve (clandestine) verbal ruling.

What about sentience (where "sentience" can be taken to mean "the capacity to experience pleasure and pain) ? Sentience is surely, like intelligence, a sufficient condition for being considerable: to be able to enjoy or suffer means that there is something to be taken into account, morally, but is it necessary for having moral standing and, more particularly, for having rights ? The concept of consciousness, intransitive consciousness, it has been established, does not permit us to conceive of genuine borderline cases of sentience, case in which it is inherently indeterminate whether a creature feels pain. (Either a creature is sentient or it is not. Obviously, once sentience is manifest, there <u>are</u> degrees: but these are degrees of intensity, not of possession. The capacities of pain-perception vary with the complexity of the respective nervous systems. But here we obtain a shift from intransitive to transitive consciousness, e.g., sensory perception,

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awareness of stimuli, the capacity to locate sources of pain, etc.)[8] Hence, the objection that sentience is a matter of degree, unlike possession of rights, cannot obtain. There are, however, at least two serious objections to the sentience criterion: the first is that it would serve tc exclude all those who have slipped into a temporary coma, who have been anaesthetised, or who have otherwise fallen unconscious, and indeed those who suffer from dysautonomia. Defenders of the sentience-condition might seek to modify their criterion, by mentioning the importance of other kinds of perception (all of which can involve enjoyment or distress) or the creature's "normal" condition or capacities, which do include sentience: but any such defence will, at some stage of the argument, implicitly or explicitly, abandon talk of "sentience" in favour of "interests".

The second line of criticism is advanced by philosophers like John Rodman and R.G. Frey. Rodman writes that reliance on "sentience" leaves the rest of nature "in a state of thinghood, having no intrinsic worth, acquiring instrumental value only as resources for the well-being of an elite of sentient beings", and that anthropocentric rationalism has expanded into a kind of zoocentric sentientism, using Singer's own words (characterizing the Brambell report) against Singer et al.: "an enlightened and humane form of speciesism, but .... speciesism nonetheless". Frey follows Rodman in saying that it is ironic that the sentience-criterion (which should combat speciesism) is itself speciesist in character, since it discriminates against nonsentient creation and broadens the category of those who can practise speciesism, or - in the case of sentient animals - who can have it practised on their behalf. [9]
- This criticism is serious and forceful in that it confronts antispeciesists on their home ground: the obvious way out of the dilemma is to shift the emphasis from sentience to the broader notion of "interests", which extends over sentience as well as the needs of welfare of nonsentient life. But if all that lives has needs of some sort, the fulfilment of which is necessary for the survival or continued existence of the organism, does this imply that "life" is the relevant criterion for having standing and - more particularly - for having rights ?

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"Life" is certainly a necessary condition. Morality is, if not essentially then at least importantly, concerned with matters of life and death. [10] (I do not believe we can meaningfully speak of soil, mountains, underground minerals, rivers, and lakes - in abstraction from the fauna and flora they contain - as "being aliv ", except in a metaphorical sense, let alone as having "moral" standing or rights.) But does this require us to live like Jains, cover our faces with gauz so as to prevent us from breathing in and destroying countless m'cro- nisms, sweep the paths before us so as to prevent us from step[illegible] ants, avoid treading on grass, and eat only fruits, vegetables, and nuts which have fallen off trees and bushes by themselves? Though not implausible, it is difficult to accept this: mainly because we do not know what exactly is to be taken into account - "life", certainly, but life as it is to whom, or to what ? Is there a centre of subjective experience at all, an individual point of view, in plants, protozoa, corals, even in ants ? [11] This is precisely where consciousness is relevant, viz. in rendering possible sympathy, empathy, or imaginative projection. The human model of consciousness allows us to say that there is something that it is like to be another creature, something that is not possible in the case of nonconscious life. It is not so much our ignorance which prevents us from viewing grass, bacilli, starfish, etc., as conscious individuals, beings who can mind what happens to them, as empirical evidence to the contrary. So, while certainly a necessary condition, "life" is not sufficient for having moral standing as an individual, or for being ascribable individual moral rights. In analyzing the notion of rights, and of right-possession, or ascription, we have to "look at the company they keep", investigate the context and circumstances in which mention is made of them. Rights are invoked in order to protect and defend individuals, and to safeguard their interests, to insure that individuals can live their lives in accordance with their needs, capacities, and optimal circumstantial possibilities. Individual moral rights are ascribed and ascribable only to subjects of a life, <u>not</u> to <u>all</u> living organisms, the former including all (human and nonhuman) mammals, birds, reptiles, amphibians, fish, even certain invertebrates like octopi. Where epistemic borderline cases are concerned, e.g., crustaceans, insects, molluscs, etc., [12] we might wish to give them the benefit of the doubt in deciding whether they have rights as individuals or species. (See below, sect. 7.3)

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A common objection to the idea of animal rights is that rights arise only as a matter of contract, i.e., as a matter of agreement between rational agents. Yet the notion of rational agents as equal standard units within a contractual circle which constitutes the whole sphere of moral concern is not only limited in its anthropocentrism and, indeed, in its egocentrism ("you have such-and-such rights provided you do not encroach on my rights which are such-and-such") but mistaken: contract has its place in morality, not vice versa. As Glover points out, in theories like contractarianism which tie the moral rights of individuals to their bargaining power and their power of retaliation there will be many losers, and these losers will include foetuses, babies, children, minorities, animals, the poor, the handicapped, and perhaps women. It is easy to flatly exclude animals from "human rights", often just by definition of the term "human", or (realizing this is arbitrary) by replacing the term by apparently more intelligible ones like reason or self-consciousness, [13] and by changing the definition of these terms whenever new findings have been made with respect to animals which would (briefly) include them in the realm of rational or self-conscious beings and therefore bearers of rights. Other favourite terms include "autonomy", "free will", "moral agency", the capacity to guide one's behaviour by "moral principle" and to engage in "mutual limitation of conduct", etc. These criteria need to be shown to be morally relevant to the possession of rights, i.e., to be necessary and sufficient for forging the required connection between individuating characteristic and moral rights.

Again, the prima facie easy way to solve this problem is to seek recourse to the language-criterion: "If animals were able to talk to us, it would make a striking difference in most of our opinions about them .... Certainly if animals could employ moral language, <u>as well as</u> act as if they experienced pain or pleasure, that would put them into the category of 'moral persons' .... Since animals are unable to talk we can only suppose that they are unable to 'have moral concepts' - if indeed this amounts to anything other than being able to use moral language anyway. Therefore, we suppose that the reason we have no obligation to respect the animal's point of view is that animals do not really <u>have</u> points of

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view"; and in a roughly similar vein, Jonathan Suzman insists [14] that it is "animals' deficiencies, not ours, that deny them rights", "for were we able to communicate with creatures with sufficient intelligence to manifest rationality, the position could be very different". Suzman, it should be noted, not only argues along verificationist lines, i.e., infers from considerations governing our knowledge of rationality to conditions for the possibility of there being rationality in animals, but his view betrays a rather narrow view of "rationality". Rationality is not merely manifested in "knowing-that" (i.e., framed linguistically) but in "knowing-how". Furthermore, the language-criterion is questionable: nonverbal cues give language an essential context, and there do exist cues which manifest not only intelligence but rationality in some, in only a few, species, e.g., problem-solving activities which do not proceed by way of trial and error, successful imitation, etc.

Philosophers who defend the exclusive moral relevance of, say, rationality, autonomy, self-consciousness, free will, etc. - or: more specifically, who hold them to be exclusively relevant to the question of rights - need to establish (1) the lower limits of rationality, self-consciousness, etc., and (2) that animals, all animals, fall below these limits, in order to be able to deny that they have rights. It is very doubtful whether this can be accomplished by means of producing empirical information about the nature of animals and not in ways which involve a substitution of intellectual customs for arguments. Neurological, psychological, and ethological evidence favours the view that possession of what can be called self-consciousness, etc., is a matter of degree. (Of course, owing to the inherent vagueness and occasional opacity of these terms, some degree of verbal legislation is necessary to render them subsumable under what can be studied objectively: but then again, so do terms like "instinct", "aggression", "altruism", and the like, require definition.)
Possession of rights, on the other hand, is not a matter of degree: either a creature has or is ascribable a right, or it has no such right, is not ascribable a right. [15] Possession of self-consciousness, etc., may explain our motivation behind giving preference to the well-being of a human mother of five over that of a hen with five chicks in a case of conflict (assuming that the hen possesses a far lesser degree of self-

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consciousness), but it does not make a 'ifference to being morally considerable or to having rights in the first place. Even the absence of self-consciousness only "rules out certain sorts of value and disvalue as pertaining to what goes on in the consciousness of a creature, and makes certain rights irrelevant". [16] A creature who is not self-conscious in the sense of having a concept of itself as a persisting being with a past and with purposes for the future cannot worry as to whether its plans and purposes are going to be frustrated, and cannot look back with (dis-)satisfaction on its achievements. Therefore the question of benefiting or harming it in respect of these matters does not arise. But this does not mean that this creature is not a persisting being, that it has no past and no future, or that it has no rights at all: it only lacks the rights relevant to this sort of self-consciousness, but it does have the basic rights to life, well-being, etc. Similar rejoinders are conceivable with respect to arguments from intentionality, free will, autonomy, conceptual thought or abstract reasoning, and moral agency.

"Moral agency" is often defined in terms of "moral self-determination", the capacity to reconsider one's motives, to guide one's behaviour by moral principles, etc., definitions which effectively exclude animals from the realm of moral agents. Animals, including primates (though an instance has been recorded [17] where Koko, a gorilla using sign language, apparently expressed regret for having bitten her teacher three days previously, saying that she was angry at the time but did not remember why), cetacea, or intelligent - gs, horses, or pigs, lack the capacities of moral self-determination in the sense of living and acting according to rational life-plans, to reconsider their motives, to guide their behaviour by moral principles, and to claim or waive rights. But many normal adult human beings are not "moral agents" in this sense either: consider relatively simple-minded villagers in more remote regions, or primitive foreign tribes who adhere to a more or less rigid code of conduct which has been transmitted over centuries, who are "culturally programmed" to follow moral traditions without ever questioning and often also without modifying them. The moral principles they follow are not conscious principles in that they are not brought "before their minds", and one could not really speak of these people as being "morally

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self-determining" or as "reconsidering their motives", yet they do engage in, e.g., mutual limitation of conduct.

Here as well, it seems that moral agency is a matter of degree: animals, like virtuous humans, are motivated by tenderness, affection, prudence, deference, altruism, aggression, and dominance, and they can reasonably be called "ethical agents", [18] in that they certainly possess the rudiments of moral agency. Suppose the condition for moral considerability and for moral rights is located at a rather sophisticated level, namely the possession of a morally good character: it is on the basis of an individual's virtues that the "basic rights to a fulfilling life and dignity" are extended, and in animals these virtues include loyalty, affection, altruism, etc. The obvious problem with this account is that it reads many human beings out of the realm of morally considerable beings, e.g., infants, children, lunatics, imbeciles, etc., not to mention other species of whom it is not incorrect but simply impossible to postulate a "morally good character". (Possible interjections concerning "potential" or "hypothetical moral agency" will be discussed shortly.) Similarly, the high-brow readings of rationality, self-consciousness, etc., would serve to exclude many human beings from the realm of right-bearers as well, in addition to countless other species (<u>if</u> these capacities can justifiably be held to constitute not only sufficient but necessary conditions for admission, and this is extremely doubtful), viz. the young, the senile, the mentally enfeebled, conceivably even whole tribes who had renounced all self-consciousness, who had perhaps taken "akimcanna", "self-naughting", to its extreme, transcending individuation. [19] (This transcendence constitutes "self-denial" in a metaphysical, not in an ethical sense as implied by ethical doctrines of unselfishness or altruism. Indeed, as A.K. Coomaraswamy points out, such "abandonment of the self and of all ties is not literally "unselfish" but it is also <u>better</u> and <u>kinder</u> to point out the way to happiness by following it than to be 'sympathetic' ... with those who will 'seek peace and ensure it'.") Presumably, indeed: most probably, to these "self-naughting" beings the possession of rights would have ceased to be functional and important altogether, but from <u>our</u> point of view it would be monstrous to actually <u>deny</u> them rights.

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Contra Wasserstrom, a system in which there are no rights would not necessarily "be a morally impoverished one". (Think of Eastern or island societies primarily concerned with balance and harmony.) To be sure, Western society would be morally impoverished if the notion of rights were forcibly rendered nonexistent, as in George Orwell's novel "1984". (But in how far are certain Eastern and primitive societies like Orwell's Oceanian society ?) As Wasserstrom has explained, "a society that simply lacks any conception of human rights is less offensive than one which has such a conception but denies that some individuals have these rights". [20] Yet how could the former be "offensive" at all ? It would only be offensive of <u>us</u> to deny these foreigners rights.

My intention is not to rest my case for animal rights solely on the comparison of animals with human babies and on the "argument from marginal cases". [21] This argument states that all conditions for the ascription of rights which are designed to exclude animals from the realm of beings who are possible possessors of rights necessarily also exclude some humans (who are the "marginal cases", since senility, mental deficiency, lunacy, etc., are not the human norm). But since such an exclusion would be unacceptable, and since we do want to speak of these "marginal" humans (a rather reprehensible way of putting this!) as having rights, we must include animals in our considerations and concede that they, too, have rights.

There have been numerous attempts to diffuse these arguments, either by flatly denying that human infants, imbeciles, etc., have rights, or by appeals to "sentimental interests" or partial affections. Other attempts include reference to potential or hypothetical moral agency, and the emphasis of the degree of likeness to normal adult human beings. Frey seems willing to deny, despite his attempts to prize them apart animals, that human infants, lunatics, imbeciles, etc., have ghts. [22] I do not have to point out that such a view might ultimately sanction the vilest crimes: individuals could perhaps even be rendered "mentally deficient" by definition and subsequently be used in scientific research. And this is unacceptable for moral reasons, and

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not only because it is "in general scientifically unsatisfactory to experiment not on a normal organism but on the infantile, defective, senile, or diseased". [23]

H.J. McCloskey, Alan Donagan, and Alan Gewirth implicitly or explicitly state that human infants are "potential moral agents" (i.e., potentially rational, potentially self-conscious, free-willing or autonomous beings) and that imbeciles are "hypothetical moral agents", and therefore, unlike animals, have rights, although they do not (yet) "exercise" them. In Suzman's words: children and idiots do have rights but exercise of these rights is denied to them, because of the inadequacy of their capacity to choose what is in their own interest. Now, to speak of "potential" moral agency is not satisfactory: how can this potentiality, present as it may be, confer present (and no more potential or future) rights on the infant ? The problem with talk about "present potentiality" is that is leaves us at a loss to understand the difference (the presence of) potentiality makes to the actual condition of the infant. Moreover, as John Kleinig has made explicit, being a "chooser" (in Suzman's sense of being capable of - actually - "choosing in one's interest") is a condition for the possession of certain rights (e.g., the right to vote), but not for the possession of rights as such. McCloskey suggests [24] that "it is meaningful to ascribe rights here on the basis of what would/will be the moral will of the being who is not an infant". Suppose the child died before realizing its potential: would the assignation of rights then - posthumously - have made "sense" in this view ? "Yes", McCloskey might say, "if the child had lived, etc.", shifting the emphasis from potential to hypothetical moral agency, from a contingent matter of fact to a matter of supposition or assumption. But the idea of "hypothetical" moral agency is even less adequate: how can this hypotheticality confer actual or present (and not mere hypothetical) rights on the imbecile ? To say that their moral agency is the type of agency they would enjoy or exercise if they were able, i.e., if they were moral agents. Element of circularity set aside, animals could be viewed as "hypothetical moral agents" in much the same way.

The point is, however, that "moral agency" (bearing in mind that this

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term is primarily a verbal vehicle designed to steer clear of animals) does not constitute a necessary condition for right-possession. [25] It is not directly or exclusively morally relevant to having or being ascribable rights that an individual can deliberate between alternative courses of action, examine her motives, develop and act according to long-term plans and prospects, or write articles and books on "animal rights": all this serves to explain why she can claim and respects - or is to respect - rights but not why she <u>has</u> them. Animals are "ethical" agents, and, like infants and imbeciles, they are - by definition - not "moral agents" but "moral recipients". [26] Yet they are relevantly like moral agents in that they are subjects of a life, living beings with interests, centres of subjective experience, creatures who can flourish or languish, and as such, they require protection, and the explicit or implicit assurance that their standing will be acknowledged, their interests safeguarded, and that they will be given consideration equal to other individuals. The fact that they are in the receiving end of morality only renders their rights against us, and our duties and responsibilities with regard to them, matters of that much greater urgency.

Other arguments designed to exclude animals include appeals to sentimental interests and partial affections we have regarding infants and human imbeciles, and the emphasis of the degree of likeness these humans bear to normal adults, a resemblance not borne by other animals. (These arguments essentially reflect the second and third of the three objections to the argument from speciesism, discussed in sect. 3.5. Hence, my concern with them here will be somewhat laconic.)
The underlying rationale governing both arguments is that we have a "sentimental interest" in the well-being of our young and of the enfeebled of our species which we do not have, and cannot have, at least not of a similar kind, in the well-being of other species. Owing to biological barriers, the bonds between humans and animals cannot in strength approach the "emotional attachments" people develop in respect of their own young and retarded. Although human "parents" may be extremely "fond" of their "adopted" nonhuman "children", animals fail to develop intellectually and emotionally beyond a certain point: it is, therefore, their deficiencies which deny them equal consideration and

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rights. (Again, we find a remarkable parallel to this kind of reasoning in the justification of Christian Afrikaner Nationalism: "Separate development has its foundation in the Christian national philosophy of life of the Afrikaner". Special value is placed "on the ties with one's people and on the continued existence of the nation to which one belongs", and accelerating and insuring separate development is possible by transferring the Bantu in the cities to the homelands - "unless we do this we shall be forced to grant political rights to them in the white country". [27])

Or is it <u>our</u> deficiencies which deny them rights ? Melden repeatedly states that <u>we cannot</u> "join our lives" with those of animals. Like Leslie Pickering Francis and Richard Norman, he emphasizes not only the "shared moral understanding" existing between human beings (this understanding obviously cannot be shared by all humans) but also the combined effect of the relations in which human beings stand to one another and which binds all humans together into a single overall community of a morally significant kind. That this communal feeling is real and important cannot be doubted: what is doubtful, however, is the insinuation that such a union and coexistence is impossible between humans and animals. [28] To deny the possibility of interspecific relations is mistaken and blind: since they do obtain, philosophers must be wrong. Suppose they did not obtain, however: why should only human relations matter in our moral considerations ? Animals, too, are capable of forming complex and unique relationships, bonds (think of, e.g., wolves or swans), of communicating with one another in a variety of intricate ways. They "join their lives" with one another on the basis of what could be described as a "shared ethical understanding": why should matters like breaking up these relationships not be important morally ? The "veal calf" has a right to remain with its mother, and the cow has a right (and an "ethical duty") to tend and care for her young as long as is required.

At a deeper level, arguments such as those presented above fall prey to the objection that sentimental interests and emotional attachments may change over time. Suppose our interests in the well-being of incapacitated human beings were waning rapidly (perhaps as a result of major

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economic, sociological and political upheaval): would we be justified in subjecting our mentally deranged and our infant orphans to scientific research experiments ? (We might be able to "rationalize" such practices: it is one of the traits of rational beings to be able to do that.) And although we do ascribe rights to beings with whom we can sympathize, with respect to whom we can meaningfully ask the "what is it like ...?" question, with whom we recognize some kind of emotional fellowship, surely the rights of individuals are logically independent of the affection (or hatred, or indifference) others may feel or have for them. To exclude animals from the realm of beings who have rights simply because they are not human (and the arguments advanced by Narveson, Francis and Norman, Kleinig, and Melden come to just that) is unwarrantedly to advocate moral apartheid. The objection that it is not speciesist to ascribe rights on the basis of those properties which are common to members of an individual's kind, rather than incorrectly to assign rights on the basis of that individual's properties, does not come to much: what has to be shown is (1) that these properties constitute necessary and sufficient conditions for right-ascription, i.e., are directly and exclusively morally relevant, and (2) that only homo sapiens, and no other animal - not even rudimentarily - possesses them. And this task is difficult, if not impossible, to accomplish.

The analogies between human infants and nonhuman animals and the argument from marginal cases are useful in that they cause us to reconsider our motives and to examine the logic and consistency of our inclinations, but they have implications which lead (1) to a false view of animal nature, and (2) to a slight - probably unintentional - weakening of the case for animal rights. First, these arguments imply that animals are to normal adult humans as human "moral recipients" are to normal adult humans. But though animals may lack the degree of rationality, autonomy, sense of moral responsibility, etc., which humans normally have, and which human babies and morons lack, the character of this lack is markedly different in the two cases. Human moral recipients are devoid of something which members of their species normally possess, but animals are not "devoid" of something because it is only rudimentarily present in their species: they are not "handicapped" by this lack.

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Animals have different functions in their species-specific circumstances, they are "autonomous" in a different sense - unlike human moral recipients who require a lot of care, patience, special treatment, and help not only in a human environment but in any other environment (for they are simply not self-subsistent), most animals do not require this care, etc., in extrahuman environments (and perhaps many do not even require such special treatment in a human environment, provided they are left to their own purposes): they are self-sufficient and perfectly capable of living in accordance with their natural impulses and instincts and preferences, as well as needs. Hence, in an important respect, animals are like normal humans, and animal foetuses, neonates, and mentally deficient animals are like human foetuses, neonates, and ment. ly deficient humens.

Second, the problem with these analogies is that they render the existence, or plausibility, of animals' rights conditional on the existence, or plausibility, of the rights of human moral recipients: if human neonates, morons, etc., have rights, then (and only then) animals have rights. If the case for animal rights were made to rest on this defence it could not be very strong, and doubts about whether the language of rights were adequate for the protection of animals and for the promotion of what is in their interest, might (justifiably) arise. The point is, and it can be made without placing too much emphasis on the analogy with human infants and the argument from marginal cases, that animals have moral rights. So do human infants, and so do human lunatics and imbeciles. We are not "changing", "misusing, misapplying, or revising the concept of a moral right" when we accord rights to animals (as McCloskey thinks we do [29]): we are extending the concept.

The argument that animals have no rights because they have no interests is quickly dispensed with. (This argument is prominent in Frey's and McCloskey's writings.) As Midgley has pointed out, it is not obvious why the special, narrow legal usage of the terms "interests" and "rights" should have any bearing at all on our thought and action in other contexts. There is excellent reason to say that animals do have interests (see sect. 2.3 above), and a denial of this would require empirical investigation, not a conceptual ruling. But this is precisely what

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McCloskey seems to be engaged in when he argues that animals cannot "have" interests, or rights, for that matter, because they cannot "possess" anything. [30]

Obviously, this notion of possession serves to misrepresent what rights are: as pieces of property, they appear to be empirical facts, entities in the world, waiting to be discovered by moral and legal theorists, and indeed by the moral and legal community as a whole. In a way, of course, rights are "discovered", in the sense outlined at the beginning of this chapter: rights refer and correspond to facts about individual creatures, they relate to capacities possessed and exercised by these individuals, whether physical or mental capacities, yet the existence of rights depends on the moral consciousness of human communities at a particular stage of their historical development. In the absence of such a consciousness, rights would not exist. Undue reliance on the notion of possession merely clouds the issue and detracts from the importance of ascription in this regard. Moreover, to deny that animals can "have" or "possess" anything is to argue from an unwarrantedly intellectual definition of "possession". I cannot see anything wrong - logically, conceptually - with regarding the weaver-bird's nest or the squirrel's nuts as their property. What could be the point of denying this ? Cannot animals "have" a life, instincts, needs, or a welfare ? Do they only "live", "strive or tend towards", "need", "flourish" and "languish" ? This suggestion is simply absurd.

A common and favourite objection is that in ascribing rights to animals we anthropomorphize them. [31] In the absence of qualifying conditions, the question immediately arises why "rights" should pertain exclusively to human beings. (Think of the rights of ships and banks in legal discourse.) We can anthropomorphize only when we attribute something that belongs essentially and exclusively to human nature to, say, animals, plants, rivers, or angels. With respect to rights, why draw the line between humans and animals, and not already within the human realm ? It might then be contended that we "andromorphize" women when we speak of "women's rights" or that we "caucasiomorphize" blacks when we ascribe rights to them. All this is as silly as it sounds. (Do we

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"zoomorphize" humans when we speak of their instincts, or when we say someone is "of good breed" ?) Again, in the absence of qualifying conditions, and because rights have the role and function they do, it would be speciesist to withhold them from animals for fear of anthropomorphizing the latter. It would be anthropomorphic to grant animals rights which have no function or bearing in their life, e.g., the right to vote. [32] (Similarly, we would "gynomorphize" men if we assigned to them the right to abortion on demand.) The charge of anthropomorphism can be countered by the charge of unwarranted moral anthropocentrism.

Hart is somewhat more cautious in his contention that "we should not extend rights to animals and babies, for the moral situation can be simply and adequately described here by saying that it is wrong or that we ought not to ill-treat them or .... that we have a duty not to ill-treat them. To ascribe to them rights is to make idle use of the term 'a right'". In Suzman's view, "talk of animal rights is merely a dramatic way of trying to get us to think again about our behaviour towards animals", and he insists that the language of rights is neither necessary nor appropriate for such reconsideration, that claiming for animals rights they could never claim for themselves is neither the only nor the best way of protecting them. "Not the only way" - true: utilitarianism and considerations of kindness, even indirect-duty-views, may provide some protection but not consistently so. "Not the best way" - but we are left in the dark as to what a better, let alone the best, way of protecting animals might be. Suzman seems to imply that "moral constraints on our behaviour with respect to harming and killing of animals" should be "informed not by a conception of rights but by what is right and wrong". But when is it "right" to kill an animal and when is it "wrong" to do so ? It appears that an account of what is right and wrong which leaves out considerations of moral rights is deficient in that it will render moral justification contingent on current (moral) standards of right and wrong (which may, and do, change) and so present an erroneous picture of what morality involves. In a significant passage, Hart states that "rights constitute moral rules which not only prescribe conduct but form a kind of moral property of individuals to which they as individuals are entitled: only when rules are conceived

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in this way can we speak of 'rights' and 'wrongs', as well as of 'right' and 'wrong' actions." [33] This rema k is significant in that it emphasizes the essential connection between "rights", "right and wrong", such that his previous comment is rendered unintelligible: how can it be "idle" to use the term "a right" and with respect to babies and animals ? How can we speak of our duty not to ill-treat them, and of the wrongs of ill-treating them in the absence of rights ? It is evident that there exists a basic discrepancy between his two remarks.

Morality requires consistency, and a theory of rights (provided that we "take rights seriously" and are mindful of the full implications of the rights-view) can offer this consistency. [34] Suzman writes that "respect for rights is a precondition for good action, but not identical with it". Respect for rights is certainly "identical with" "good omission": we respect the rights of animals when we refrain from killing them for food, clothing, in the name of science, and from causing them distress by testing cosmetics on their eyes and skin, force-feeding them with food-colouring agents or hair-dyes, keeping them confined in zoos, and exploiting them in sport and for the sake of entertainment. Certainly, more is required for a morally good attitude or righteous disposition, but in Western morality respect for rights <u>is</u> "good action". The question regarding conditions for the ascription of rights is not (to borrow from Bentham): are animals rational, self-conscious, autonomous, etc. ? or: are they moral agents ? but: can they be protected ? can their interests be safeguarded ?

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Ch. 6

What Rights do Animals have ?

We should not merely be concerned with establishing the existence of rights in the abstract, i.e., showing what sorts of creatures can be said to have rights, but also with the extent to which these rights govern what actually happens, and with what particular rights animals have. This is necessitated by the consideration that the meaning of rights, primarily, is their use.

A distinction is customarily drawn between basic and nonbasic moral rights. [1] There are several reasons for making such a distinction: first, and most important, it is instrumental in indicating what rights are shared by all right-holders and what rights may be held by some but not by others: all morally considerable individuals, in the present view, have the same basic rights, yet their nonbasic rights may differ. Second, basic rights are "basic", in the sense of being "underived", i.e., not being based on duties, obligations, responsibilities, etc., as they would be in duty-based theories (provided that these theories permit talk of rights); basic rights generate duties, nonrights, responsibilities, and indeed other rights. These rights, then, will be "nonbasic", in the sense of being "derived", or dependent on basic rights: they are instances of "core rights". Nonbasic or derivative rights, it should be noted, are not generated by, or derived from, duties, obligations, responsibilities, or nonrights: there exists an intimate relation between nonbasic rights and all of these, but it is not one of direct derivation. Third, the relation between basic and nonbasic rights is not necessarily one of entailment but one of order of justification: i.e., a nonbasic right may derive not from one, but from different independent basic rights, depending on the circumstances: a nonbasic right may be a mere generalization from the existence of several independent basic rights and may be justified by separate considerations, according to the context in which it occurs or is appealed to. The relation between a nonbasic right and the basic right from which it derives, then, is a justificatory one.

Rights, even basic rights, are of course dependent on interests, in that interests render the invocation of rights, the appeal to rights, and hence their existence, intelligible and cogent. In the absence of interests, talk

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of moral rights would make little, if any, sense. Interests, as I have tried to show in sect. 1.1, are not identical with rights but they represent something that is to be taken into account in and about an individual: an animal's point of view needs, feelings, desires, preferences, and beliefs, all to be respected, and it is in this sense that basic "rights are asserted by the very nature of (individuals') being". [2] Of course, interests may vary; either in degree (think of differences in needs between members of different species, e.g., of monkey species, or between members of the same species, e.g., between normal infants and adults) or in kind (think of differences in subjectivity, e.g., between bats and humans, and between women and men), and although we might ascribe different kinds of rights to animals and to humans at a nonbasic level, the ascription of rights in degrees is not possible, provided that appeal to rights is made or occurs as a matter of justice and equality, i.e., provided that we "take rights seriously" (i.e., "not possible" at a basic nor at a nonbasic level). Nonbasic rights are not necessarily shared by animals and human nature of morally considerable individuals, i.e., they depend on particular interests, circumstances, prospects, etc.

It would be false to refer to basic rights as "natural" in order to mark them off against nonbasic rights [3]: many of the latter, too, are "natural". To regard them as "artificial" merely because they are derivative or derived is not satisfactory. Nor it is useful; within the realm of nonbasic rights, however, a distinction could be made between natural and "artificial", or "conventional", or "special" rights. Institutional moral rights seem to belong to the latter category (e.g., the right that promises made to me be kept, or the right to be told the truth, etc.). A problem with the notion of "natural" rights is that it conjures up the idea of "natural endowment": but, strictly speaking, there is only "conventional endowment" of rights, i.e., conception and ascription by moral agents. But insofar as rights reflect facts about the nature of an individual (both the nature of the species and the particular nature of the creature), preservation of the term "natural" appears to be justified and even helpful.

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6.1 Basic Moral Rights

What basic moral rights there are, and the bearing they have on matters, can conceivably be established through a process of reverse derivation, i.e., by setting aside those rights which seem to depend on other rights, are justified by other rights, which appear to be mediated by duties, nonrights, etc., and which seem to be generalizations from the existence of other rights. An alternative might be to isolate intuitively "basic" rights and attempt counter-intuitively to reduce or derive them. To produce an exhaustive list of basic and nonbasic moral rights, is beyond the scope of my inquiry (and, indeed, perhaps beyond the scope of any inquiry or investigation). All I can hope to do is list and comment on some of the suggestions made by theorists. Any candidate must, I repeat, not only be nonderivative but must also be ascribable to all those who have individual moral standing. If there were differences between human rights and animal rights, between men's rights and women's rights, or between the rights of whites and the rights of blacks, at this basic moral level, then the notion of rights would either cease to be functional (for how could it issue in a viable moral theory if it admitted of such internal fragmentation ?) or - worse - sanction vicious inequalities and prejudices. Similarly, discrimination would be perpetuated and partiality entrenched if basic rights are ascribed to animals, or to women, or to blacks, in an attenuated form. [4] Honesty in the matter of the full implications of the rights view entails the acknowledgement that basic moral rights be the same in kind and in degree in respect of all individuals.

What are these rights ? In the "Declaration of Independence" of the USA it was proposed that among the "unalienable rights" "all men .... are endowed with .... are life, liberty, and the pursuit of happiness". The "Virginia Declaration of Rights", made one month previously, also referred to the rights to "safety", apart from the other three rights considered "inherent" in "all men". Thirteen years later, the (French) "Declaration of the Rights of Man" emphasized as "natural, imprescriptible, and inalienable rights" not only "liberty" and safety ("security") but also "property" and "resistance of oppression", to which the "Universal Declaration of Human Rights" only added the "right to education". [5]

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Do these candidates constitute basic moral rights ? In order to be "basic", in the present view, they have to be nonderivative, irreducible, and they have to be applicable equally to all morally considerable beings, apart from fulfilling a justificatory function with respect to other rights (but this is a contingent fact rather than a prerequisite).

The "right to life" appears to be the most plausible candidate for a basic moral right, not only because life has been shown to be a necessary condition for moral standing and for the possession of rights. In fact, it might be held to be the only basic right in that it is possible to approach it as an aspect of, as being involved in, all other rights, or - more radically - to reduce all other rights to the basic right of life. The intuition here is that if an individual does not have a basic right to exist, any other rights become meaningless. While this is not implausible, it is more helpful to refrain from making such reductions and to attempt to understand particular rights and their function by seeing in what context they are invoked. Life and related aspects like survival, self-preservation, certainly have an important role in other basic rights. Thus Robert Goldwin: "What makes the rights to life, liberty, pursuit of happiness, and property basic is that they all stem from the desire for self-preservation", which constitutes "the not-very-lofty source of ..... rights" but nonetheless a "solid platform". [6] If these rights, then, are not further reducible, do not themselves derive from other rights, then they "pass the first test" of being basic. But are they ascribable to all those who have standing ?

Although the above-mentioned declarations invariably refer to "all men" or "all human beings", it is certainly meaningful to invoke the right to life with respect to animals as well: like humans, they not only are alive but are subjects of a life, can enjoy their life, and they meet the "criterion" of having or being motivated by a desire or drive for "self-preservation". It is with regard to the other rights that the issue becomes slightly more problematic; i.e., in that many might be led to believe that animals have no concept of, therefore no interest in, and hence no right to, liberty, the pursuit of happiness, and property So I want to state at the outset of the discussion of these rights that

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the complexity of organisms (who have been established to be morally considerable beings) makes a difference not to the possession of rights at the basic level but only to the complexity of rights at a nonbasic level. I.e., at the basic level, the rights to liberty, [7] the pursuit of happiness, and property (if they are basic moral rights) are possessed or ascribed equally; only at a nonbasic level may they have different manifestations. This will become clearer in the following discussion.

Since animals, like humans, are active, self-moving, and self-controlling organisms, it follows that they are better off unconstrained. In other words, they are better off free, and if they can enjoy liberty, they are ascribable the "right to liberty", at the basic level. [8] With the variations and differences in complexity of the particular organisms, the ramifications of the basic rights to liberty will vary, but only at a nonbasic level. There, goldfish may be quite content in a little aquarium, provided they have enough room to swim around, and hens may feel unrestricted in an enclosure big enough to allow them to stretch their wings, scratch, and dustbathe, while it would be unjustifiable to keep wild animals like tigers cooped up in an enclosure of equal relative proportion. At a nonbasic level, too, it would make little sense to claim certain rights to liberty for creatures in whose lives they would have no function at all: hence, we claim the right to freedom of expression or the right to freedom of speech for human beings but not for other animals, at least not yet. (Perhaps chimpanzees, gorillas, or cetacea will one day urge us to do so.)

I have briefly alluded to the right to property before, saying that it makes sense to speak of the nest a weaver-bird has built as "his" and of the nuts a squirrel has gathered as "his". Similarly, animals "have" a life, points of view, experiences, and interests. It might now be contended that here "possession" is used in a slightly different sense to that implied when we ask whether the cat has a right to the mat. For one thing, "having" a life, etc., does not seem to involve a concept of self in possession. My rejoinder is that some animals seem to meet this criterion, e.g., chimpanzees, intelligent dogs, even horses and pigs, [9] and that most animals have territorial instincts: animal territoriality

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is no doubt the progenitor of the human concept of property. - Animals may have a more casual sense of property, may not bear a grudge when deprived of it, but again these considerations are relevant only at a nonbasic level. What matters at the basic level is whether animals can have property, can be said to "possess" things. If they do - and there is good reason to assume that this is the case - then that is all that is required for saying that they have the basic moral "right to property".

What about the "right to the pursuit of happiness" ? Some may feel that "happiness" merely reflects a certain aspect of an individual's well-being, and that - consequently - this right is reducible to the mere basic "right to well-being". [10] Alternatively, it might be argued that the "pursuit" of happiness presupposes that one be free to do so, and that the right to the pursuit of happiness seems to be ascribable to human beings and to animals. If "pursuit of happiness" involves a concept of happiness, then this is a consideration relevant only at a nonbasic level. And if animals have the (nonbasic) right to the pursuit of happiness they might lack it at another nonbasic level, viz. where the concept of happiness seems to be a prerequisite. (There is, of course, not a single nonbasic level of moral rights, but a multitude.)

Animals are individuals whose life can be better or worse for them - and they can mind what happens to them: e.g., they are endowed with the capacity to avoid sources of pain, not only by anticipation but by physically shunning or moving away from them. They have a welfare, and they can enjoy well-being, not only in the sentient but also in the sapient sense. Our nonrights to cause animals gratuitous harm and our responsibilities in the matter of helping them and of safeguarding their interests in these respects do not arise "ex nihilo" - they are based on the right of all individuals to well-being.

The "right to security" and the "right to education", both mentioned in one or more of the declarations considered above seem to be special instances of the right to well-being. "Security", or "safety", is a particular aspect of well-being: it implies the guarantee that a being can live and flourish in accordance with its natural needs, capacities,

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drives, and desires. (Here, the right to security might even be said to derive from the right to liberty, insofar as safety and security presuppose freedom from constraint, that is.) Again, I do not intend to take a stand on this issue: it may be more helpful to treat the right to security as a basic moral right and not to reduce it, since it has its own particular function in the lives and treatment of all individuals. The rights to financial, "personal", or professional security, to security in old age, etc., are instances of nonbasic moral rights, and at a nonbasic level ascribable only to human beings or "persons".

The right to education is more problematic: do individuals with educable characteristics have a right to education ? [11] If this right is founded on the possession of certain capacities of educability, does it follow that chimpanzees and dolphins have that right ? What is required here is to look at the context in which this particular right is used and has meaning. Human beings, children, have a right to education because education constitutes part of their (present and future) well-being: our moral responsibility to insure their best possible and proper education is based not only on their right to well-being but on their right to life as such: it is required for their life, and for their living well, that they be educated in whatever way necessary. Now, chimpanzees, e.g., - though educable - have a realistic chance of living well without being educated (other than by their next-of-kin, of course - but I am referring to "intellectual" education); they do not require a certain level of educational achievement (e.g., the mastery of tool-use and tool-making) to "be" or "do well", so to speak. Most importantly, though curious, they do not show a great interest in using their capacities to the full - merely coming to possess more of them, i.e., through education, would not necessarily result in increased use of them. On the other hand, chimpanzees' eager acceptance of sign-language constitutes an interesting example of an inner drive towards communicating more freely. [12] They certainly do have the right to education, but it may not be a right which needs to be claimed. (Compare: the moral "necessity" to claim for animals the "right not to be eaten" in a vegetarian society, to claim for Robinson Crusoe the "right to freedom of speech", or to claim for human beings the "right to migrate South/North for the winter months".) Either way, the right to education is not a basic moral right.

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Two further candidates for basic moral rights which I want to consider are the "right to justice" and the "right to equality". Both are implicitly invoked by Rawls in a number of places, and at least once explicitly so: "moral persons ... are entitled to equal justice". [13] In the present view, both rights appear to involve a tautology; for rights are invoked as a matter of justice and equality. "Justice" informs the very notion of rights: cf. "ius" (Lt.), referring to a system of law, and "iura", referring to the protection of rights (in the Classical Roman sense of privileges, powers, or immunities). So <u>if</u> there <u>is</u> such a thing as a right to justice, it is necessarily basic, and it pertains to both human beings and to animals. Similarly, given our conscientiousness with respect to the full implications of the rights , "equality" informs the very appeal to rights and renders meaningful . functional the ascription of rights. "Equality", at the basic level, concerns the individual herself, and at a nonbasic level, consideration of her interests, how she is to be treated, etc. - I now turn to nonbasic rights, without pretending to have given an exhaustive account of basic rights.

6.2 <u>Nonbasic Moral Rights</u>

It is necessary to remember that at the levels of nonbasic moral rights, these rights may, but need not, be shared by all individuals. Some may have nonbasic rights which others lack, not because of differences in value, dignity, or worthiness of respect, but because of simple biological differences. Hence, rights derived from the (basic) right to life may reflect facts about the particular ecological niches in which individuals dwell, their particular needs and what is to their advantage, their individual and species-specific capaciti interests, and proclivities, and there may, but there need not, be interspecific overlap. Many derived rights, in the matter of life, are shared by all individuals, e.g., the right to be helped to live (e.g., by means of medical intervention), the right not to be killed, the right not to be left to die, etc., [14] and those rights in turn constitute the basis of our duties, responsibilities, nonrights, and arguably even of our "rights over" animals (which might be seen as an elliptical way of speaking of our responsibility to defend them). [15] (Similarly, the

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nonbasic "right to be spared unnecessary distress" is shared by all individuals.)The "right to do anything which does not coerce, restrain, or injure another individual", and the "right that everyone else forbear towards oneself in these respects except to prevent one's coercing, restraining, or injuring others" are examples of nonbasic rights, derived from the right to liberty (and perhaps the latter derives also from the right to well-being), as is the "right to pursue one's interest". [16] All three are presumably ascribable to all morally considerable beings. (Though only moral agents can be responsible for, and not merely be the cause of, coercing, restraining, or injuring others. See below, sect. 7.1) Other rights derivative of the right to liberty, like the right to fr worship, the right to freedom of speech, or the right to freed sion, on the other hand, pertain only to human beings, and to . his is not to betray a speciest bias; it would simply be meaningless to accord this right to animals; either because they lack the necessary vocal equipment - e.g., chimpanzees, gorillas - or because there is no concept of what "freedom of speech" involves - e.g., in parrots. It is important to recall that nonbasic rights depend not only on other rights but also on particular circumstances, prospects, capacities, and interests, and they may, and do, vary accordingly. (Think of the ramifications of the right to liberty at nonbasic levels.) If "freedom from constraint" has different connotations with respect to tigers and goldfish, this does not mean that goldfish possess the right to such freedom in an attenuated form; in fact, it is possessed and ascribable equally, but the interest of goldfish in freedom is comparatively less than that of tigers.

Similarly, the right to education is possessed equally by human children and chimpanzees, but the interest of the latter may be comparatively less than that of the former. On the other hand, the "right to moral education", [17] pertains only to those beings in whose life "moral education" and "moral agency" have a use and, therefore, a meaning. (The "actual" right to moral education is ascribed to children not because they are "potential" moral agents - this reasoning would constitute a violation of my argument in sect. 5.2 - but because they are "actually" morally educable.)

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The "right to equal consideration of interests" and the "right to equal concern and respect", though held to be basic,[18] are in fact derivative moral rights in that they are generalizations from the existence of several basic rights, e.g., the right to life, property, well-being, and (if it exists - and these derived rights might serve to explain the intuition that it does exist) the right to equality. Similarly, Dworkin's "right to equal treatment" and "right to treatment as an equal" (where he calls the first basic and the second derivative)[19] are, both, derivative. (Both are compatible with the "right to be treated differently", which is nonbasic, too. All three are characterized by a commitment to the "equality of difference", and based on, e.g., the rights of equality and well-being.)

Women's "right to abortion by request", too, can be seen as a generalization from the existence of several basic rights, e.g., the rights to freedom and well-being, and perhaps also the right to property (if a woman's unborn baby is held to be her property). It is a nonbasic right and pertains only to women, and to withhold it from men and nonhuman females is not discriminatory (in the evaluative sense of "discrimination"); for simple biological reasons in the case of men and for biological reasons, too, in the case of nonhuman females: they may be said to lack not only the vocal equipment necessary for making such a request - but also the concept of, and the wish to have, an abortion.

The list of nonbasic moral rights is, of course, very large, and - as I have already stated - I do not pretend to have given a near-conclusive account of basic moral rights either. What is important to note is that there are certain basic moral rights, and that these rights are shared equally by human and nonhuman animals. These rights may reasonably be held to include the right to life, the right to liberty, the right to well-being, the right to property, perhaps the right to the pursuit of happiness and the right to security, and - if they exist, i.e., if it makes sense so to speak of them - the rights to justice and equality. These rights constitute the basis not only of other rights, but of the duties, responsibilities, and nonrights of morally responsible individuals.

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If these basic rights are "natural, imprescriptible and inalienable", does this mean that they are absolute, and that they cannot be overridden ?

This implication is absurd since that would mean that rights are claimed and exercised under any and all circumstances, without reference to rational constraints. Rights <u>can</u> justifiably be overridden, can be outweighed as moral considerations, without their status as rights being compromised, i.e., without the "wrongs" involved in - justifiable - violation being diminished in any way.

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Ch 7.

Some Remaining Puzzles and Problems

The violation of rights raises some important questions: who can be held accountable for, and who is exempt from, violation of rights ? When is interference justifiable and when is it unjustifiable ? Is such interference possible with respect to simpler organisms, i.e., non-conscious animals and plants ?

7.1 Moral Agency Reconsidered

Some writers [1] imply that according to animals rights, let alone rights equal to those of human beings, which animals could never themselves claim, would lead to absurd consequences: must we not, as moral agents, protect the weaker animals from the stronger, i.e., their natural predators ? If yes, we will be responsible for the violation of the rights of the stronger; if not, we allow the rights of the weaker to be violated. This "option" is absurd. And why do we commend cats when they kill rats but punish them when they attack our budgies ? (While this last argument correctly reveals a schism in our thinking, it does not, and cannot, point to an absurd consequence of ascribing rights to animals: such commendation/condemnation - cum - "punishing" is inconsistent with the present rights view.) [2]

To be sure, to prevent a cat from harming my budgies is to violate the rights of the cat, as it is to prevent a fox from killing a goose, or a lion from slaying an impala. But we need to look at the circumstances of interference and at the particular interests (in the sense of desires and needs) with which we would interfere. We also need to consider the extent to which violation of rights is justifiable. - Now, budgies and cats are domesticated animals - they are not directly involved in the natural struggle for survival. Saving the budgie is saving an animal whose survival instincts have - through domestication - been weakened somewhat, and overriding the rights of the cat presumably does not entail depriving her of an essential food source, but means considering the budgie's rights to life and well-being, and the cat's right to

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freedom from restraint, and giving reflect e preference to the former. (Which is not to say that, therefore, the wrong involved in my meddling has diminished. The fact that the cat's right must, in this case, yield in the face of other competing considerations, does not render such hindering a lesser wrong. I cannot be held morally responsible for not saving the budgie - my "arbitration" is not justifiable morally, only emotionally: it <u>is</u> arbitrary.) In the lion-impala case, the situation is slightly different: both are used and adapted to living according to the "law of the jungle", and interfering with the lion would be a violation of his rights to well-being and freedom from restraint, as well as preventing him from pursuing his needs. (Both the lion and the impala are directly caught up in the struggle for survival where the impala has a realistic chance to "survive" as well.) Such meddling would not be justifiable. As Feinberg correctly observes: "Animals have no general claim against humans to the protection of their lives in the state of nature where they must hunt, kill, and eat one another Human intervention to save animal lives in the wild, in fact, would itself be a kind of cruelty to the animals whose instincts require them to kill." [3] The same applies to the fox-goose case: as protector of the goose's interests and rights, and as "proprietor" of the goose (his right to property, too, might be held to be at stake here ! of course, I question morally the whole notion of ownership of animals), the farmer is justified in taking all the "harmless" precautions necessary for protecting the goose (i.e., other than directly harming the fox, e.g., by blowing up his hole, or by laying out traps before the goose-shack) but he is not morally permitted to meddle if the fox has somehow managed to "sneak in", by shooting to kill or main him. To the fox, facing preventive measures other than his own death or physical injury is certainly the lesser evil, albeit still an evil.

More importantly still, Ritchie - in speaking in terms of "trial", "guilty", "innocent" and "punishment" - tends to neglect the distinction between, indeed confuses, "being the <u>cause</u> of the violation of rights" and "being <u>responsible</u> for the violation", in the sense of "moral responsibility". When a fox attacks a goose, he is the cause of violating the goose's rights and of interfering with her interests, but he . ot morally responsible or accountable for this violation.

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Only moral agents can so be held responsible or accountable, are unexempt from matters of (non-)violation of rights. Moral agency and moral responsibility, or answerability, are logically and necessarily connected. The fox cannot be morally responsible for, or have any moral responsibility to, the goose: he may not even be ethically responsible [4] in respect of her (though there may be exceptions) - he usually only has ethical responsibilities, if he has them, concerning members of his own species. We sometimes speak of animals' "territorial rights" against one another, or of the rights of the young against their mothers, and if these are "moral" rights, [5] they are those reasonable finds whose existence is acknowledged only by morally responsible agents. It is we who claim these rights for animals and who speak of these rights as being violable, both by moral agents and by moral recipients. Animals can be "wronged" both by human beings and by other animals, but other animals cannot be held morally responsible for such violation.

Similarly, animals can only be held to be the cause of, but not (morally) responsible for, violation of our rights, because they cannot take our interests into account, cannot acknowledge the existence of our rights. Or can they ? Watch-dogs, guide-dogs, etc., have "duties". But these are not "moral duties": in fact, it may be argued, they are not "duties" at all. They are tasks imposed by means of training or conditioning, for strictly human purposes and benefits. (A dog may have a right to education, but if this right can be secured only through interference with the dog's interests and violation of other rights, e.g., his rights to freedom from coercion and well-being, i.e., where the individual, the dog, stands to lose more than he stands to gain, it is a right which is better not claimed. This is the only kind of paternalism I consider morally defensible - i.e., where the benefits and losses of one and the same individual are contraposed; assuming - of course - that such contraposition is possible.) Yet there are cases in which animals seem to be able to sense interests (needs, fears, etc.) of humans - instances of dogs saving infants from a fire without having been taught to do this. Yet one could not speak of a dog's "failure to heed the call of duty", or of his failure to fulfil his task", by not saving a baby. - What do we make of animals' "madness" (e.g., elephants, dogs, lions turning against their "masters" with or without prior

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warning) ? But this does not constitute a case of (moral) responsibility for violating the "protectors'" rights. A swarm of wasps invading my garage is the cause of interfering with my interests, but a group of normal adult human beings moving into my garage without my consent are responsible, can be held answerable, for violating my rights (to privacy, etc.).

We can make sense of animals' having "ethical duties" or responsibilities to one another, we can speak of their "rights" against one another, but McCloskey is probably right in assuming that they cannot "enjoy", "yield up" or "forgo", "accept" or "reject" rights. [6] But they can "have" them, in the sense of "being ascribed" rights. The former relations (considered by McCloskey) are linked with the notion of contract and presuppose having the concept of rights, which whales, lemmings, sardines et al. presumably lack. They do not "waive" their right to life by bringing about their own death; neither does a baboon who "sacrifices" himself for the sake of the group, nor do ants venturing into a fire "so that" others can use their bodies as a kind of "bridge". But the animal rights view I defend here does not depend on this capacity. Being defendable by, being the beneficiary of, appeal to rights does not presuppose having the concept of rights.

7.2 Justifiable and Unjustifiable Violation of Rights

When is overriding an individual's rights morally justifiable, and when is it not justifiable ? It is important to remember that individuals' rights are "asserted by the very nature of their being", and that the question is not what the life of an individual is worth to another but what it is worth to the individual herself whose life it is and who is the only one to lead it. Hence, the question when it is morally to justifiable violate a being's rights and when it is not, does not involve considerations of the consequences, the best possible outcome for everyone involved: the lives, pleasures, and experiences of a few cannot be traded off against those of many. The rights of the individual, of individuals, trump those of the group. [7] It has been established further that to call basic moral rights "inalienable" and "undefeasible" cannot mean that they are absolute (these terms merely serve to

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indicate the importance of the individual with respect to rights and that individual rights cannot be overridden in any given new situation). Rights are not claimed and exercised under any and all circumstances, without reference to rational constraints. Rights remain in existence when they are outweighed as moral considerations by a more urgent concern - all rights, that is, except the right to life: once overridden, it is not only "impaired" but it disappears. This, however, does not mean, that the right to life is "absolute", that overriding it cannot ever be justified morally - it can be, e.g., when respect for the right to well-being demands that the life of an individual be terminated, in order to spare her the distress incurred from, say, a painful, disabling, incurable, chronic, or protracted disease, and if the individual has not explicitly or implicitly made known her desire to go on living. Animals cannot be so explicit, and usually "cling to their lives", yet there seem to be clear-cut instances (given our advances both in the ethological and biomedical realms) where we are morally justified, as "guardians of their rights" (perhaps: in that we have rights "over" them), to sanction violation; if the case is not "clear-cut", as it were, we are not justified in doing so. [8]

What about cases of conflict between our rights and the rights of animals ? This issue is, admittedly, thorny. There are cases which seem to be less problematic, e.g., instances of self-defence against attacking animals, or of exterminating certain insects or rodents where these are disease-bearers and pose a threat to the health of humans, cattle, etc., or (painlessly) killing rabid dogs, foxes or badgers. Midgley writes that, although competition is limited, "(t)here are cases where competition between people and other species is unavoidable and drastic. Crop pests of all kinds - not just insects, but rodents, birds, even deer, baboons, and elephants - must be killed, if only by starvation, by people who mean to survive, and this would be true even in a world of Jains. The same is true, still more obviously, of disease bacilli and parasites - a feature of life not noticed when the Jain philosophy was developed". [9] If we could rely on natural balance to lay down the law, there would conceivably be no moral puzzle for us to disentangle, but the problem is that we cannot, and often are not

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willing to, wait for natural balance to assert itself. I propose taking up a different perspective: could we kill human crop pests, e.g., industrialists responsible for pollution ? Is not the threat they pose also morally reprehensible in that they are moral agents who are aware of the havoc they are wreaking ? This consideration might lead us to realize that killing "crop pests" is merely fighting the symptoms instead of the causes. Preventive measures seem to be more desirable: to "crop pests", facing preventive measures other than their own death or injury may still be an evil, although a comparatively lesser one. Similarly, it might be morally justifiable painlessly to take the lives of rabid animals and so to prevent their painful and protracted dying, and it simply seems expedient to do so. But where my own life, and survival, is at stake, and where my rights to life is being threatened, I do not even attempt to weigh my interests against those of the attacker or to justify my action: I just act. We share with animals the "desire for self-preservation", the "will to live"; as Suzuki points out, "the human trisna (thirst) we feel within us is the trisna of the cat, the dog, the crow, or the snake". [10] Perhaps it is at this, the most basic, level of conflict between individuals and their interests that neither the need for justification nor, indeed, the possibility of justification obtain. Perhaps it is at this level that we, too, are mere "natural existents" and - like the rest of nature - "beyond good and evil".

Now consider a "lifeboat case" where there are five survivors, four normal adult humans and one normal adult gorilla, but only enough space for four survivors in the boat. Midgley writes that "(t)he lifeboat model .... is objectionable because it excuses us from dealing with (questions about the sphere of concern, how arbitration between individuals is to be handled, etc.). It draws a sharp line at which efforts at further detailed negotiation are simply going to stop". [11] Owing to their uncompromising either-or/all-or-nothing character, lifeboat situations might have the effect of callousing to a point of distortion our moral assessment of real situations, circumstances, and alternatives. (And there are, almost invariably, alternatives.) Yet lifeboat situations constitute logical possibilities which serve to test

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our intuitions and are therefore to be taken seriously. My own reflective intuition concerning the above case is that the gorilla should be "sacrificed", not because the gorilla is not a member of our species, or because we have a natural preference for our fellow human beings, or because there are side-effects to be taken into account (such as the feelings of the survivor's family members and friends), or because the gorilla is bound to be less helpful, co-operative, and adept in rowing than a human, or because he lacks the capacity of moral self-determination, the concepts of a remote past and a distant future, and individual life-plants, or because the life of the gorilla is of lesser worth and of lesser importance to the world; [12] intuitively, the gorilla should be "sacrificed" because his own sense of loss is presumably not as acute as the sense of loss would be in the human survivors. But this does not mean that therefore the loss of the gorilla's life is of lesser moral import: the gorilla stands to gain nothing and to lose as much as each of the human survivors would stand to lose. The wrong attaching to this loss of life is not diminished, the evil not a lessened one, because the gorilla's sense of loss is less acute and because a human being would feel more keenly h a loss: morality, at least in the present view, does not allow for such compromises, does not make such concessions. Even if our reflective intuitions favour taking the life of the gorilla, this does not mean that it is morally justifiable to do so. To say that it is, is to imply that the moral status of individuals fluctuates. I leave this implication to discredit itself.

It is important to remember that conflicts need to be resolved, that is, should be attempted to be resolved, by taking the individual's point of view into account; i.e., the perspective from which the world is experienced in some way or other. Respect for an individual's rights requires nothing less. This of course implies that there is something that can be taken into account. Where there is no reason to believe, and more importantly, evidence contrary to the assumption that there is some such centre of subjective consciousness (that there is something that it is like to be that organism), it is very difficult to speak of the interests of an "individual" and to ascribe moral rights to an

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"individual". It is not our ignorance or our moral inertia that prevents us from putting ourselves into another entity's shoes, in this case, but simply the nonpresence of such shoes. Inanimate objects like rocks and minerals as well as artifacts like cars and sculptures constitute clear-cut instances of nonconscious matter, where as human and nonhuman mammals, birds, reptiles, fish, amphibians, even some invertebrates like octopi, can reasonably be held to be conscious individuals, subjects of experience. What about those animals who are currently still occupying a place in the grey area of our decisions about individuality, e.g., crustaceans, insects, and molluscs ? What about "nonindividuals", "asubjective" animals, e.g., corals, sponges, protozoa ? And - of course - what about plants ? Do these organisms have moral standing ? Do they have rights ? Of what concern should they be ?

7.3 The Rights and Wrongs of Simpler Organisms

If the question of individuality could be reduced to the question of consciousness, of the presence of a more or less complex nervous system, making a decision about moral standing and, more specifically, about the ascription of rights, would be a lot easier than it is. All multicellular animals could justifiably be included in the sphere of moral concern, while all acellular animals (protozoa, disease bacilli, et al.) and plants could be flatly excluded. One thing is probably beyond reasonable doubt: these organisms are incapable of experiencing pain or distress, i.e., of physical and mental suffering. [13] There is neither behavioural nor neurophysiological evidence that they are sentient. (As there is, on the other hand, in the case of most multicellular animals, lending support to the Aristotelian dictum that nature does nothing in vain.)

Wittgenstein writes: "The concept of pain is characterized by its particular function in our life". Pain itself is of evolutionary importance not only in our (human) life but in the life of all multicellular animals in that it has a survival function - it serves as an indication of danger and threats to the survival of the organism. It

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alerts us (in an all-embracing sense of "us") to the fact that something is harming us: it is the body's alarm system, compelling us to seek or cry out for help when we feel we need it, immobilizing us when we are hurt (and "injured") so that healing can occur, or compelling us to move away from the source of the pain. Kathleen Wilkes remarks that "animals can learn to adopt, adapt, or reject an action-routine on the basis of one (painful) false move. This presupposes not only sophisticated sensory and motor abilities, but also that we can attribute to the organism a drive or instinct of survival, for pain would have no rationale, qua signal of danger, unless the animal had such a drive".[14]

Now, plants and even some multicellular animal organisms, like corals and sponges, (though we do credit them with a basic drive: they do have basic biological needs, and these needs must be satisfied in some way) lack sophisticated sensory and motor abilities. They are not able to withdraw from the source of pain, let alone avoid it in future, hence pain's essential function of indicating danger or threats to the survival of the organism would be wasted. In fact, it would be difficult to see how, if plants and simpler animal organisms were sentient, these organisms could have survived and so evolved at all, i.e., as organisms capable of pain-experience.

It might now be argued, that not only is not physical pain wholly "physical" (though most of the bodily path of the pain-message can be traced and measured, the final stretch of its pathway is still unknown territory in pain research, i.e., we cannot put an electrode into an organism's consciousness), and that the borderline between the psychology and the physiology of pain is a blurry one, but that plants, e.g., possess powers of primary perception, are capable not only of mental suffering, distress, but have emotions and "are even sentient to orientation and to the future", "sensitive to all forms of electrical and magnetic influences", means for predicting "natural disasters", and "know when spring is coming", and even "remember", and respond to human thoughts and intentions.[15] Not only is it impossible, however, to locate a centre of consciousness, a "psyche", in plants, but meticulously conducted experiments designed to reproduce the alleged results on which these arguments were based, showed no evidence of

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primary perception, and scientists argue that the "findings" were a complete artifact and the result of faulty equipment. [16] Even if the validity of these data were acknowledged, it would still not be certain that there could be only one possible interpretation of the physical evidence. As McGinn's implication with respect to primary perception in plants would be: if plants had mental properties, and if these properties had causal powers, then predictions concerning plants would not be derivable from their physical properties alone: but predictions <u>are</u> so derivable. [17] Hence, the idea of primary perception in plants remains at best an intriguing hypothesis.

Rachels claims that "without consciousness, with all it involves, being alive does one no good". This may apply to the irreversibly comatose, but it does not apply to plants (or the simpler animal organisms): they have an interest in being and remaining alive in the sense of having basic biological needs; their roots, foliage, etc., have distinct functions to secure both their survival and their evolution. Life, and growth, <u>is</u> manifest in them.[18] They share with us the basic pattern of structural and functional organization, i.e., the molecular code to store information, and the molecular machinery to translate this information into the patterns that make up our living processes. They lack a centre of sensory perception, the capacity of learning, adaptive behaviour, and conative and cognitive life. They lack a subjectivity, a point of view from which the world is "experienced" - they cannot be "injured" because there is no subject present. (This last point was suggested to me, but not explicitly endorsed, by James Grieve.) But they can be "harmed", and this is sufficient for including them is our scope of moral concern. As living organisms that can be "harmed" in the sense of their growth being curbed and their life being terminated, and more importantly: because of their essential functions of the bio- and eco-spheres, they deserve our moral concern. Because there is no subject, no individual nature manifest in these organisms, it is not speciesist to speak primarily of their "instrumental value" (which they have even as "aesthetic" objects): harming them means, ultimately, harming ourselves. Our responsibility to them is not only to them but to the bio-sphere (and this includes us) as a whole. [19] They have moral

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rights, not as individuals, but as species. ("They" would include not only plants, protozoa, but also coral, sponges, starfish, etc. - Those whose"individuality" has so far neither been asserted nor denied, e.g., insects, crustaceans, and molluscs, might be given the benefit of the doubt and accorded moral rights as individuals.)

The implications, at least some of the most important ones are the following: as Christopher Stone puts it, "(t)o say that the natural environment should have rights (Stone speaks of legal rights) is not to say .... that no one should be allowed to cut down a tree". Despite the harm done to the tree, this action may be morally justifiable, provided that the tree is not the last of its kind. In that case, because of considerations concerning moral rights as members of a species, no moral justification could be given. (We might even appeal to "replaceability" conditions and say that felled trees should have seedlings planted in their stead. But because I have given these matters insufficient thought, I present this argument merely as a potentially interesting speculation.) It is in this way that talk of rights seems perfectly compatible with the wider ecological and environmental concern: [20] talk of rights is both atomistic, or individualistic (in that it concerns conscious individual beings), and holistic (in its concern for species), and if its moral usage is coupled with talk of ecological rights (e.g., concerning rocks, soil, rivers, whole co-systems), a comprehensive environmental ethic may well be imminent.

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Ch. 8

Rights and Beyond

Distrust of the notion of moral rights characterizes not only the reasoning of those who believe it to be at odds with genuine environmental and ecological concern. Others question its necessity and adequacy for expressing matters of genuine moral concern, a tradition of condemnation extending back to Bentham's equation of talk of rights with "terrorist language". Interestingly, some theorists acknowledge the appropriateness of the idea of rights on one level, while denying it on another; viz. where appeal to rights concerns not a loose equation of rights with moral standing but is made on the basis of a particular moral theory. Thus, Frey and Midgley, add their names to the "declaration of belief in and protection of the rights of all sentient creatures to life, liberty, and the quest for happiness", following an "Animal Rights Symposium", (where this appeal to rights presumably means that animals matter morally) while denying or expressing their doubts about the existence of their moral rights elsewhere (where they analyze the notion of rights as such before deciding it should be discarded - at least with respect to animals, but preferably altogether). [1]

Frey, in his book "Interests and Rights: The Case against Animals", as well as in a paper given at the very symposium, expresses his doubts about the existence of rights, and wants to withhold them from animals as well as from humans ("no one has moral rights, and animals have them least of all"), stating that the history of morality shows that it is not an easy task to demonstrate that human beings possess moral rights. Similarly, Midgley calls "rights" "the really desperate word. As any bibliography of political theory will show, it was in deep trouble long before animals were added to its worries .... It can be used in a wide sense to drow attention to problems, but not to solve them .... it seems very important to stop relying on it". But tellingly, she admits several pages later that the concepts of "equality and natural rights .... exist to break down prejudice ...., they work to dissolve the screens of callous habit and reveal hidden injustice .... (and) vague though they are, they are very powerful". Alasdair MacIntyre argues, like Frey, that there are no (moral) rights, "and belief in them is one with belief in witches and in unicorns. The best reason for asserting so bluntly

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that there a no such rights is indeed of precisely the same type as the best reason which we suppose for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there <u>are</u> such rights has failed". He cites Dworkin as conceding that the existence of such rights car..ot be demonstrated but as remarking on this point simply that it does not follow from the fact that a statement car ıot be demonstrated that it is not true. "Which is true", MacIntyre says, "but could equally be used to defend claims about unicorns and witches". [2]

MacIntyre's argument involves two errors, one conceptual, the other factual. His conceptual mistake is to equate "rights" with "witches" and "unicorns". Rights are not "fictions", not even "moral fictions", as MacIntyre claims, u-like witches and unicorns which ; :tions: rights are characterized by their very real functions in ives which include breaking down prejudices, callous habits, and ' .ing injustice. And insofar as they are instrumental in doing this, their meaning is established (and is not a "purported" meaning, as MacIntyre would have us believe). Rights, unlike witches and unicorns, do not purport to be substantive objects in the world, they do not even purport to have a hypothetical corporeality or physicality. - MacIntyre's factual mistake, like Dworkin's, is to assume that the existence of righ cannot be demonstated. In fact, they can be shown to exist, simply by , ceeding empirically, i.e., by inquiring whether in a given social community there is an intellectual or conceptual acknowledgment of the possession of rights (whether the concept of a right has a meaning and use at all), and by investigating to what extent, in such a community, there exists general respect for, or noninterferen with, the exercise of those rights. [3] And in another sense, of course e "existence" of rights is based on moral reasons and considerations is "discovered" by "reason-seeking", rationalizing agents, by "philosop ng an.nals". [4]

Moral rights exist, <u>and</u> they matter: both f and usage suggest they do. If they were "sheer nonsense", how could th e the psychological, social, and political effects they do ? We might accept that, in that their existence depends on their discovery by phil ophizing animals, rights are not contingent "facts" of history, but "fictions", in agreement with MacInty-

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re. Where we need not, and indeed cannot agree is that there is a "gap between their purported meaning and the uses to which they are actually put". The meaning is the use: they are useful "fictions", for changing the ways how human beings relate to each other (and they can certainly be helpful in protecting animals from abuse by human beings). [5] The doctrine of the rights of man justified the American and French revolutions which produced many important changes. - Yet it is with respect to the kinds of changes which are to be brought about with respect to the motivating circumstances of rights that my own reservations concerning rights-talk arise, however insignificant.

8.1 Changes

"Rights" seems to draw its strength from the existence of adverse conditions. It is significant that the rights invoked in the Declaration of Independence and the Declaration of the Rights of Man (the use of the word "man" and "men" is of additional significance !) were demanded at a time when the moral value of an individual's life, let alone his liberty or his interest in happiness, were yet far from established, or officially recognized. Moral rights almost invariably precede institutional rights, and - once instituted - rights function as indirectly protective measures in order to prevent previously dominant predicaments from becoming the norm again. Changes do take place, be it prior to or following the institution of (particular) rights. Yet these changes seem to be of a quantitative rather than of a qualitative kind. The very institution and enforcement of rights presuppose the continuing, "low profile" existence of combatworthy conditions: the "basis" as such has not (been) changed, only the "superstructure". Changes are in degree, not in kind. [6]

But are qualitative changes, changes in kind ("re-forms"), possible at all ? It might be argued that to posit and to advocate such changes is to betray a kind of naive optimism and to offer a distorted concept of human nature (in that mankind is not a single entity that can be brought to see even basic issues from one all-encompassing perspective), and that before attempting to combat speciesism we should rather fight

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sexism and racism with increased vigour: in other words, "get our priorities straight". [7] It may certainly be expedient for practical social as well as for psychological reasons to proceed in this fashion. It may be wise to do so but it need not be: Adolf Hitler, e.g., was a vegetarian. It may not have been genuine concern for the well-being of other creatures that prompted him to become one, [8] but it is clear from this example that the road to better treatment of animals need not be one which has led to better treatment of human beings previously, or, indeed, will lead to such improvements. The moral point I am trying to make, however, is that the struggle against speciesism is of the same moral fabric as the struggle against sexism and racism, and that it is at least possible to conceptive a state of affairs after qualitative changes, i.e., "re-forms", have taken place. Recall the picture of animals living in a society of moral (or humanitarian) vegetarians: would it be meaningful still to claim for them the right not to be eaten ? I doubt that it would. It would be a right that one would not <u>need</u> to claim anymore.

Stone writes that "each time there is a movement to confer rights onto some new 'entity', the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a <u>thing</u> for the use of 'us' - those who are holding rights at the time". [9] The conferral and enforcement of rights, however, does not necessarily imply qualitative changes, e.g., in our treatment of animals: our behaviour towards them changes but our attitude towards them may not change. This is probably due to the fact that their appeals to rights, law and morality have an inescapably coercive aspect. [10] As Karl Marx has pointed out, rights imply the separation of man from man, of moral atomism, while his own conception of revolutionary emancipation envisages the union of man with man, a union which is social (moral?) rather than legal or political.[11]

Appeals to equal rights of all humans have - more or less gradually - led to the abolition of slavery. Yet racial prejudices and incidents of unequal treatment and consideration have not ceased - they still occur frequently. Many whites feel threatened by the existence of the rights

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of blacks, rights which are held "against" them. These rights represent claims which blacks have on them and for which compliance can be demanded and enforced. Whites may feel threatened despite their knowledge of the fact that there is no biological basis for human inequality. Some few whites may be moved, as a result of the invocation and institution of the rights of blacks, to reconsider their motives and to change their attitudes and outlook, and to develop a genuine kind of fellow-feeling, but many respect those rights as a matter of necessity and expediency, while harbouring much the same racial prejudices as before and without having "liberated" blacks in their own moral consciousness. Similarly, though "the concept of organic evolution has become one of the most important ideas bearing on modern man's intellectual view of himself and the universe", [12] most of us have not accepted its implications morally. And while the institution and enforcement of the rights of animals would certainly entail that maltreatment and abuse of animals became the exception rather than the rule, it is not at all obvious that animals would thereby be "liberated" in our moral awareness, that they would be emancipated.

8.2 The Emancipation of Animals

Is "animal liberation" possible ? I share the doubts about this possibility with the critics of Singer's concept but I do not necessarily endorse the reasons given for the rejection of the idea of "liberation" in the matter of animals. As Christine Pierce has correctly explained, "liberation" should not be confused with the "right to their liberty", [13] a mistake made by many critics, when they argue that Singer's position is implausible because it would be detrimental even to the animals themselves if they were set free: pets, lab animals, intensive farm animals, etc., stand to lose more than they stand to gain on suddenly being set free. This criticism misses the point. "Liberation", in Pierce' words, consists in resisting and restructuring a whole system of psychological and physical oppression: it does not mean "setting animals free" in compliance with rights claimed within that system. But bringing about changes in the social structure is not all that "libera-

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tion" requires: it requires also that individuals liberate themselves, and this in turn implies that they have not only a sense of their own self, needs and purposes and of the existence of similar interests in others, but also the capacity to act in accordance with this knowledge. The farm animals in Orwell's novel had this capacity, some apes and monkeys, cetacea, and intelligent dogs seem to have it, but the overwhelming majority of animals seem to lack it. (And how could they bring about qualitative changes in the structure of human social systems?) [14]

So the case for animal "liberation" must fail. It might be argued that we can liberate animals, not only because of our growing body of knowledge through biological, neurophysiological, psychological, and ethological inquiry, but because of our capacity of fellow-feeling, imaginative representation, and of "active" and "conative" sympathy, where we are concerned with and for the welfare of animals, where we help them and actively seek to bring about an end to their predicament. If based on respect for their rights (and sympathy requires such a basis, if moral concern is to be more than a capricious disposition), sympathy may lead us to restructure our social system which is responsible for the physical (and psychological) oppression of animals, and so "liberate" them in our awareness. This seems fair enough. But the point is that we cannot develop a sense of self and of their interests for them. So liberating them in our awareness cannot be the same as liberating them in their awareness. Animal "liberation", therefore, is romantic.

Animal "emancipation", on the other hand, is not a romantic concept. When we liberate animals in our consciousness, when changes occur not only in our behaviour towards them but in our attitude towards them, generally speaking, i.e., when respect for rights and sympathy interact in moral motivation and action, we "emancipate" animals. [15] The emancipation of animals, unlike liberation of animals, is possible - it is at least a practical possibility. But while it may constitute a distant goal for those who are concerned about the lives and well-being of animals, it may make little - if any - difference to the animals themselves whether they live in a society or world of liberated humans,

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i.e., whether they have been emancipated, or whether "only" their rights are respected. And this latter aspect is all that a case for animal rights, such as I have attempted to furnish, needs to be concerned with.

Closed season is not the end envisaged by sincere defenders of the animal cause and is not as satisfactory as the evanescence of hunting would be, but while they wait for the day that the concept of hunting is no longer applicable to activities physical and mental of human beings, closed season may well be the next best thing.

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Annotations

Ch. 1

1 See S.I. Benn - "Rights" (in: Encyclopaedia of Philosophy: New York/London: Collier & MacMillan, 1967); D.D. Raphael - "Problems of Political Philosophy" (London: MacMillan, 1976); E. Kamenka - "The Anatomy of an Idea" (in: E. Kamenka & A. Erh - Soon Tay - eds. - "Human Rights"; London: Edward Arnold, 1978; p. 6); U. Taehtinen - "Ahimsa: Non-Violence in the Indian Tradition" (London: Rider & Co., 1976); A.M. Prichard (ed.) - League's Roman Private Law" (London: MacMillan, 1967; pp. 56, 64, 66, 152, 154). On the link between rights and individualism, see also A. Gewirth - "Reason and Morality" (Chicago/London· University of Chicago Press, 1978), esp. sect. 2.15. Gewirth argues forcefully, that "the concept of a right is not .... restricted to modern Western societies" (p. 101), but arrives at this conclusion solely by considering standards of what seem to approach our ideals of justice and equality, not via the discovery of concept ent to our concept of rights.

2 The particular Declarations are reprinted partially in: A.I. Melden - ed. - "Human Rights" (Belmont/CA: Wadsworth Publishing Co., 1970). See also J. Bentham - "Anarchical Fallacies" (ibid.), R. Wasserstrom - "Rights, Human Rights, and Racial Discrimination" (ibid., also in: Journal of Philosophy 61, 1964), S.I. Benn - op. cit., and E. Kamenka - op. cit.

3 cf. D.D. Raphael - op. cit., ch. IV: on the link between "rights" and "claims", see below.

4 As H.J. McCloskey does; see his "Rights" (Philosophical Quarterly 15, 1965); "The Right to Life" (Mind 84, 1975); "Rights - Some Conceptual Issues" (Australasian Journal of Philosophy 54, 1976).

5 D.G. Ritchie - "Why Animals do not have Rights" (in: T. Regan and P. Singer - eds. - Animals and Human Obligations"; Englewood/Cliffs/N.J.: Prentice-Hall, 1976), J. Feinberg, and T. Regan (in their contributions to the same collection of essays and passim in their other writings) are among the many philosophers who endorse this identification.

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6 The quotation at the beginning of the paragraph is from S.I. Benn and S. Peters - "Social Principles and the Democratic State" (London: Geroge Alien & Unwin Ltd., 1959, p. 89). See H.L.A. Hart - "Are there any Natural Rights ?" (Philosophical Review 64; 1955; reprinted in: A.I. Melden - ed. - "Human Rights" - op. cit.).

7 T.L.S. Sprigge speaks of rights as values, "Nonhuman Rights: An Idealist Perspective" (Inquiry 27, 1984; p 440); and R. Nozick ("Philosophical Explanations'; Oxford: Clarendon Press, 1981; passion) and J. Degenaar ("Normative Dimensions of Discrimination, Differentiation and Affirmative Action"; in: H.W. van der Merwe and R.A. Schrire - eds. - "Race and Ethnicity: South African and International Perspectives"; Cape Town: David Philip, 1980) use the term "qualities of value". See also A.I. Melden - Introduction; in: A.I. Melden - ed. - "Human Rights" (op. cit.). Melden ("Rights and Right Conduct"; Oxford: Basil Blackwell, 1959; and: "Rights and Persons"; Oxford: Basil Blackwell, 1977) and A. Gewirth ("Reason and Morality" - op. cit.; and "Human Rights" - Chicago/London: University of Chicago Press, 1982) discuss the "is-ought" issue, as does J. Margolis ("Value and Conduct"; Oxford: Clarendon Press, 1971; ch. 4). On "nonrights", see K.R. Minogue - "Natural Rights, Ideology and the Game of Life"; in: E. Kamenka and A. Erh-Soon Tay - "Human Rights", op. cit.

8 On "rights of action" and "rights of recipience", see D.D. Raphael - op. cit., ch. III, where he also mentions the distinction in French between "droit de" and "droit a". On rights and wrong action, see A.I. Melden - "Rights and Right Conduct", op. cit., Preface. H.L.A. Hart - op. cit., too, discusses the connection between "right action" and "rights". This connection, while it does not seem to obtain in Eastern and certainly not in primitive societies, is pertinent to, and prominent in, Western thinking, - Cf. J. Raz - "On the Nature of Rights" (Mind 93, 1984; p. 196) - on the various senses of "right-to"; and K. Goodpaster - "On being Morally Considerable" (Journal of Philosophy 75, 1978); where the notion of rights - correctly, I think - is construed as more specific than that of considerability.

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9 H.J. McCloskey - "Rights", op. cit. - seems to view rights as possessions in the former sense. The term "moral commodity" is borrowed from R. Wasserstrom - op. cit., p. 98 in the Melden edition.

10 Cf. L.J. Suzman - "The Moral Rights of the Unborn" (in: E. Kahn - ed. - "The Sanctity of Human Life"; Johannesburg: University of the Witwatersrand Press, 1983). On recognition of rights and standing, see S.I. Benn - "Rights" (op. cit., passim).

11 A.I. Melden - "Rights and Persons" (op. cit., pp. 1-2, 12/3). And again, S.I. Benn - "Rights" (op. cit.). (A. Gewirth - "Human Rights", op. cit. - attempts to defend the notion of absolute rights). - Perhaps rights <u>are</u> absolute insofar as no justification - no matter how good - can diminish the "wrong" inherent in violation.

12 Cf. A.I. Melden in his introduction to "Rights and Persons" (op. cit.). These issues are also well-marshalled by J. Feinberg - "Social Philosophy" (Englewood Cliffs/N.J.: Prentice-Hall, 1973).

13 R. Nozick - "Anarchy, State and Utopia" (New York - Basic Books, 1974; pp. 33 ff.); R. Dworkin - "Taking Rights Seriously" (London: Duckworth, 1977; ch. 7 passim): "Individual rights are .... trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for imposing some loss or injury on them" (p. XI). - On utilitarianism, see below, ch. 4.

14 Cf. R. Dworkin (ibid.: p. 205).

15 S.R.L. Clark - "Slaves and Citizens" (Philosophy 60, 1985; p. 30)

16 See also J. Raz - op. cit., pp. 195, 200, 208, 213. On p. 213 he writes: "All rights are based on interests. Some rights may be based on an interest in having those same rights". On the link between rights and purposes, see L.J. Suzman - op. cit.

17 This is underlying rationale of views that conferral of rights involves respecting an individual's "domain of autonomy" (R. Nozick - "Philoso-

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phical Explanations", op. cit., p. 501), her rationality or rational agency (A. Donagan - "The Theory of Morality"; Chicago/London: University of Chicago Press, 1977; chs. 3, 5 and 7 passim; A. Gewirth - "Reason and Morality", op. cit.; passim), showing individuals "equal concern and respect" (R. Dworkin - op. cit.; ch. 12), giving equal consideration to their interests (S.I. Benn - "Egalitarianism and Equal Consideration of Interests", passim; in: H.A. Bedau - ed. - "Justice and Equality"; Englewood Cliffs/N.J.: Prentice-Hall, 1971), insuring their freedom and well-being (A. Gewirth - "Reason and Morality", "Human Rights"; both op. cit.), or showing concern for their individual good (A.I. Melden - "Rights and Persons", op. cit.).

Ch. 2

1 S. Cloete - "South Africa: The Land, its Peoples and Achievements" (Johannesburg: Da Gama Publishers, 1969; p. 71). See also: H.W. van der Merwe - "Perceptions of Racial Inequality in South Africa" (in: H.W. van der Merwe and R.A. Schrire - "Race and Ethnicity", op. cit.). G. Eaton furnishes an illuminating account of stewardship in his "King of the Castle: Choice and Responsibility in the Modern World" (London, Sydney, Toronto: The Bodley Head, 1975; esp. ch. 5).

2 Cf. H.W. van der Merwe - "Perceptions of Racial Inequality in South Africa " (in: H.W. van der Merwe and R.A. Schrire - eds. - "Race and Ethnicity", op. cit.; pp. 91 - 94 ff.). M. Midgley's remark opens the introduction to her "Beast and Man: The Roots of Human Nature" (London: Methuen, 1980; p. xiii).

3 Here, R.D. Ryder provides useful surveys of the animal welfare movement in his "Victims of Science" (London: Davis-Poynter, 1975; esp. ch. 14) and "The Struggle against Speciesism" (in: R.D. Ryder and D. Paterson - ed. - "Animals' Rights: A Symposium"; London: Centaur Press 1979). See also K. Thomas - "The Beast in Man" ("The New York Review"; April 30, 1981).

4 See A. Kenny - "Descartes" Philosophical Letters" (Oxford: Clarendon Press, 1970, p. 244. In considering Descartes' views, I have relied on

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the use of Kenny's book as well as of excerpts reprinted in: T. Regan and P. Singer - "Animals Rights and Human Obligations", op. cit.). See also J. Cottingham - "A Brute to Brutes ? Descartes' Treatment of Animals" (Philosophy 53; 1978; p. 553).

5 E.g., by T.L.S. Sprigge - "Metaphysics, Physicalism, and Animal Rights" (Inquiry 22, 1979; pp. 114-7, 142).

6 Anglo-Indian thinker A.K. Coomaraswamy points out an inherent contradiction in denying animals souls: "How can we think of animals as 'soulless' notwithstanding that 'animal' literally means 'ensouled' ?" (in: "Metaphysics", Princeton/N.J.: Princeton University Press, 1977; p. 5). Aristotle speaks of plant and animal soul in "De Anima" (reprinted as "Psychology" in: "The Philosophy of Aristotle", ed. R. Bambrough; New York: Mentor, 1963). The shortcomings of the Aristotelian view are discussed in sect. 4.1.
Of course, the idea of an immaterial soul as immaterial entity gives rise to almost insurmountable problems. C. McGinn, e.g., discusses these difficulties by asking in what it consists, where and how it could be located, and how it could have evolved in the first place, given the findings of evolutionary theory that everything has developed from matter under the pressure of natural selection ("The Character of Mind"; Oxford: Oxford University Press, 1982; pp. 23 ff.). Another well-known problem of dualism concerns the interaction between the immaterial and the material, i.e., between mind ard body.

7 R. Descartes - in: A. Kenny - ed. - "Descartes' Philosophical Letters" (op. cit., p. 243).

8 J. Cottingham - "A Brute to Brutes ?" (op. cit., p. 551). Cottingham attempts to illustrate that dualism only denies that animals are conscious - p. 557 -, for they have no minds, but not that they do not feel. He fails to clarify how "feeling" could possibly be accounted for without reference to consciousness.

9 E.g., L. Wittgenstein: "Only of a living human being and what resembles (behaves like) one can one say: it has sensations; it sees, is blind;

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hears; is deaf, is conscious or unconscious" ("Philosophische Untersuchungen"; Frankfurt/Main: Suhrkamp, 1971, 281; see also: ibid., 282, 283, 284, p. 358 xi).

10 This is paradoxical not only in respect of his dualism, but also in that he seems to acknowledge at least some degree of biological similarity while denying animals any moral significance whatsoever.

11 L. Wittgenstein - "Zettel" (Berkeley/Los Angeles: University of California Press, 1967; 540, 541).

12 It might be pointed out here that chimpanzees and gorillas, however, have astounded the world when they proved capable of being taught sign-language. These apes have proved capable of organizing and controlling complex data by, e.g., assessing the evidence, and of creatively manipulating and modifying these data - to a certain degree, that is: the degrees of spontaneity - e.g., initiating a conversation - and of originality - e.g., creating new words - are still rather low compared with those in growing, learning human children. And the question whether dolphins and other cetacea have their own syntactic language is at this point merely an interesting scientific hypothesis.

13 Portions of his "The Descent of Man" have been reprinted in: T. Regan and P. Singer - "Animal Rights and Human Obligations" (op. cit.) as "Comparison of the Mental Powers of Man and the Lower Animals". (As I will argue, the incorporation of "lower" is quite inapplicable with respect to Darwin; see below, sect. 3.5)

14 See J. Margolis - "Culture and Cultural Entities" (Dordrecht/Boston/-Lancaster: D. Reidel Publishing Co., 1984; p. 31): "Ascription of mental states and of consciousness conforms with the viability of the species". Also cf. L. Wittgenstein - "Zettel", op. cit., 532: "The concept of pain is characterized by its particular function in our life".

15 "Speciesism in the Laboratory" (in: P. Singer - ed. - "In Defence of

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Animals";Oxford: Basil Blackwell, 1985). See also M. Midgley - "Animals and why they Matter" (Harmondsworth/Middlesex: Penguin Books, 1983; p.140) who agrees with D.R. Griffin ("The Question of Animal Awareness"; New York: Rockefeller University Press, revised and enlarged edn., 1981; first published, 1976) that, given the direct connection of mental experiences with neurophysiological processes, comparative neurology offers evidence that whatever indescribable thing consciousness is, it is present in all multicellular animals. - We should, however, be mindful of T.L.S. Sprigge's warning that "to equate consciousness with processes of the brain, or alternatively with functional features or computer-type programmes currently guiding behaviour .... is necessarily to forget what consciousness is" and that "there is more (to other individuals) than their behaviour and the brain processes which underlie it - something we can never hope to observe, but which one can bring home to oneself by way of the emphatic imagination. Only when we do so, do we really know the kind of truth about the other .... which evokes the sense of moral obligations towards him" ("Metaphysics, Physicalism, and Animal Rights"; op. cit., p. 115).

16 K.V. Wilkes - "Physicalism" (London: Routledge & Kegan Paul, 1978; p. 105). On possession of consciousness, or mind, see also C. McGinn - "The Character of Mind", op. cit., pp. 12-14, where he compares the emergence of consciousness to a sudden switching on of a light.

17 This point is endorsed explicitly by M.J. Adler ("The Difference of Man and the Difference it makes"; Chicago: Holt, Rinehart & Winston, 1967) and R.G. Frey ("Interests and Rights: The Case against Animals"; Oxford: Clarendon Press, 1980).

18 M. Midgley - "Animals and why they Matter" (op. cit.; p. 135).

19 A less extreme view is expressed by D.D. Raphael (op. cit., pp. 185/6: "human beings .... are all equally endowed with certain basic capacities and needs, and .... in some of these shared qualities, they differ radically from other animals". What remains to be seen is whether, and in how far, these qualities (under which Raphael includes "rational

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choice") are morally relevant. What is more immediately wrong with Raphael's argument is that "radical difference" and "other animals" seem to constitute a contradiction in terms.

20 D.R. Griffin - op. cit.; pp. 97/8.

21 The term "superiority" is rather questionable. Are man's "excellences" virtues or vices ? It has been suggested that man is the sole primate capable of torturing and killing his conspecifics and other animals for other than biological or economic reasons (cf. T. Loebsack - "Versuch und Irrtum: Der Mensch - ein Fehlschlag der Natur", Munich: Bertelsmann, 1974; A. Koestler - "Der Mensch - ein Irrlaeufer der Evolution"; in: "Spiegel", 5, 1978; E. Fromm - "The Anatomy of Human Destructiveness", Harmondsworth/Middlesex: Penguin, 1977), that man is the only animal to adapt his environment, rather than adapt <u>to</u> it, that his language has not only definite advantages but is at the same time a threat to his survival (owing to its link with "explosive emotional" potential, the possibility of manipulation, deception, etc.): it is an "instrument of demagogy" (A. Koestler, op. cit.) and constitutes a barrier between races and people. C. McGinn calls man's rationality and cognitive capacity "powerful aids to survival", which "is presumably why the human species has developed the sort of brain it has" ("Evolution, Animals, and the Basis of Morality" - "Inquiry" 22, 1979; p. 93), but on the other hand it might seem that these capacities, while responsible for technological prowess, the setting of and acting according to goals, do not seem to suffice to master our social problems (A. Koestler - op. cit.). I will not pursue these suggestions or use them to develop a bleak view of morality. They are introduced here only to redress the balance slightly and to promote some kind of reconsideration regarding terms like "superiority", "excellences", etc.

22 What immediately springs to mind here is J.O. LaMettrie's "homme-machine", developed in response to Descartes, and also the contemporary, functionalist model of psychological explanation, which holds that mental states are identifiable by their causal role. Even if this is true (and there are some legitimate doubts - see C. McGinn - "The Character of Mind" - op. cit.; pp. 33-6), it does not follow from

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the fact that mental states .re so identifiable, that they consist in their causal role. Such identification serves to capture only the active but not the experiential aspect of mental states.

23 J. Narveson - "M.·rality and Utility" (Baltimore: John Hopkins Press, 1967; p. 87).

24 J. Rosenberg - "Speaking Lions" ("Canadian Journal of Philosophy" 7, 1977; p. 160), on L. Wittgenstein:s remark: "If a lion could speak, we could not understand him". ("Philosophische Untersuchungen", op. cit. 11 xi, p. 358).
Suppose we could teach a lion sign language - surely we could then understand him. Or is he then no longer a lion ? Are chimpanzees and gorillas who have been taught sign-language no longer chimpanzees and gorillas ? Certainly, the chimpanzee Lucy who "grew up human" is deprived in many ways, but she has surely not ceased to be a chimpanzee, despite her own - signed - averments to the contrary. (She called herself "human" and referred to other chimpanzees as "black bugs", when presented with photographs; M.K. Temerlin - "Lucy: Growing up Human" - Palo Alto: Science and Behaviour Books, 1975.) (Are not autistic children "human beings" for that matter ?)

25 Frey's own ascription to animals of "learned behaviour responses" ("Interests and Rights"; op. cit., pp. 83/4) seems to imply that animals have some sort of beliefs: if they did not, it would be unclear how "learning" could take place.

26 See J. Bennett ("Ratio·.lity"; London: Routledge & Kegan Paul, 1964): a dog's expectations (e ..., "walk-anticipations") occur in a variety of circumstances, unlike a fly's expectations (e.g., "danger-anticipations", which occur only when something big and visible approaches it rapidly, not when the fly "approaches a well-used fly-paper, or a chameleon or a Venus's fly trap"). Dogs, unlike flies, can interpret and discriminate between kinds of behaviour, and their expectations are not only fairly comprehensive but also fairly economical, as a result of this ability (pp. 36/7). - We should, however, not deduce, as N. Malcolm

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does, that flies therefore are among the kinds of beings in respect of whom it is difficult for us to ascribe pain-perception, and perception and consciousness in general ("Consciousness and Causality"; Oxford: Basil Blackwell, 1984; pp. 31-3). Cf., e.g., L. Wittgenstein ("Philosophische Untersuchungen"; op. cit.; 284): ".... look at a wriggling fly and at once these difficulties (of imagining a stone having sensations) disappear and pain seems to get a foothold here ....". If our attribution of the term "consciousness" to a fly only "refers to a tiny bit of behaviour", this concerns the state of our knowledge, not what it is to be conscious. Consider C.M. Ginn's question: "Suppose we know all the facts about a creature: could all the facts leave it indeterminate whether the creature is conscious ?" ("The Character of Mind", op. cit.; p. 13). Either a being definitely is conscious or it is not. (See above, ch. 2 n. 16.)

27 T. Regan - "The Case for Animal Rights" (London: Routledge & Kegan Paul, 1984; p. 80) discusses atomistic and holistic interpretation; see also M. Midgley - "Beast and Man" (op. cit.; p. 58, and chs. 1, 7, 3 passim), and "Animals and why they Matter" (op. cit.; p. 59); D. Davidson - "Agency" (in: "Actions and Events"; Oxford: Clarendon Press, 1980); N. Malcolm - "Consciousness and Causality" (op. cit.; pp. 100/1).

28 "Interests and Rights" (op. cit.; p. 84)

29 "Thought and Talk" (in: S. Guttenplan - "Mind and Language"; Oxford: Clarendon Press, 1975; pp. 8, 9, 22)

30 Here, cf. also L. Wittgenstein ("Philosophische Untersuchungen"; op. cit., 25): "It is sometimes said that animals do not talk because they lack the mental capacity. And this means: 'they do not think, and therefore they do not talk'. But - they simply do not talk. Or better: they do not use a language - if we except the most primitive forms of language". Also: "Zettel" (op. cit., 129): we do not say of a fish, and hardly of a dog, that "now it is thinking", or "now it is not thinking", according to Wittgenstein.

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31 L. Wittgenstein seems perfectly willing to ascribe intentions to animals ("Philosophische Untersuchungen"; op. cit., 647), and - provided they are not "verbal" - also memories, wishes, fears (ibid., 649), but not hopefulness (ibid., II i, p. 277) or remorse: "Why can a dog feel fear but not remorse ? Would it be right to say 'Because he cannot talk ?" ("Zettel"; op. cit., 518). "Only someone who can reflect on the past can feel remorse" (ibid., 519). We can certainly say of a dog that he is hopeful, that he feels remorse, judging from his expectation- and guilt- behaviour, in relation to the context in which they occur. It is strange to find Wittgenstein singling out pieces of behaviour, quite happy to consider them atomistically.

32 "Thought and Talk"; op. cit., p. 22. - I will deal with the issue of "having a concept" in more detail when considering S. Stich's argument. - G. Matthews, in his paper "Animals and the Unity of Psychology" ("Philosophy" 53, 1978), claims that the only possibility of vindicating Descartes' refusal to ascribe animals minds is by equating the possession of a mind with the capacity to doubt. But even this is doubtful. - Cf. J Margolis - "Culture and Cultural Entities"; op. cit., p. 55: "It is not in the least certain that a dog does <u>not</u> (in some sense) have the concept of fear in perceiving another dog's fear."

33 ibid., p. 7. - R. Routley ("Alleged Problems in Attributing Beliefs, and Intentions to Animals"; "Inquiry" 24, 1981) counters this claim by saying it is an "appeal to a chauvinistic version of the verification principle that if we, humans, do not know how to verify, or settle, an assertion then it makes no sense" (p. 414 n. 16). Contra Davidson, Routley argues that "problem-solving situations afford good evidence of intentional behaviour" (p. 415, n. 18). - Routley's suspicions concerning verificationist arguments with respect to the thoughts and beliefs of speechless creatures are shared by C. McGinn - "The Character of Mind" (op. cit.), where he claims that the way of arguing "from considerations governing our <u>knowledge</u> of thoughts to a conclusion about the conditions for the possibility of there <u>being</u> thoughts .... is not valid generally" (pp. 73/4; cf. also pp. 69, 71, 79, 80).

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34 "Thoughtless Brutes" (in: "Thought and Knowledge"; New York: Cornell, 1977; pp. 49/50). - R. Routley (op. cit.; p. 414, n. 16) reiterates his condemnation of the verification principle in pointing out that one of Malcolm's main arguments to the conclusion that it is "really senseless to conjecture that animals may have thoughts" (Malcolm - "Thoughtless Brutes", pp. 54/5) relies on "just such a defective principle: the argument is by a verification principle from the (quite false) premiss that the only way we humans can test or verify that a creature has thought is by recourse to language". - J. Bennett shifts the emphasis from "thought" to "insight", employing similar arguments (op. cit.; ch. 12 passim.). And in ch. 1 he writes that philosophers who claim that animals cannot have beliefs, or "think that ...." must either produce empirical information about the nature of animals or show that the expression "think that" cannot meaningfully be applied to beings who lack a language: but this most likely involves "substituting intellectual fashions for arguments" (p. 2).

35 See M. Midgley - "Beast and Man" (op. cit., passim); S.R.L. Clark - "The Nature of the Beast: Are Animals Moral ?" (Oxford: Oxford University Press, 1984; passim). See G. Matthews (op. cit., pp. 447/8).

36 "Do Animals have Beliefs ?" ("Australasian Journal of Philosophy" 57; 1979)

37 "The Case for Animal Rights" (op. cit., pp. 49-61). See also C. McGinn ("The Character of Mind"; op. cit.; pp 75/8) who argues in favour of the logical priority of concepts to language: "words can only be given meanings if they are taken to express certain concepts, and a word can be understood by someone only if he has the conceptual resources to grasp the meaning" (pp. 77/8).

38 Cf. K. Wilkes (op. cit., p. 104): a dog is conscious of a cat, because - instead of chasing the cat - he could have ignored it, pretended to ignore it, growled, barked, or gone to speep. 'Moreover, other things discriminated by his senses at the time could complicate, and cause him to modify, his initial reaction" (pp. 104/5).

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39 Contra G. Matthews (op. cit.; p. 454) who links the capacity to doubt with linguistic competence. - But see also R. Routley (op. cit.; p. 400) on hesitation, indecision, and rapid changing of minds in birds. Contra a popular view, there is insufficient reason to assume that these capacities require those of generalization and negation.

40 T. Nagel - "What is it like to be a Bat ?" (in; "Mortal Questions"; Cambridge: Cambridge University Press, 1979).
See also: "Panpsychism", and "Subjective and Objective", ibid.) - Cf. also M. Midgley - "Beast and Man" (op. cit., ch. 5 passim).

41 L. Wittgenstein who is fully aware that "the human body .... is part of the world among others, among animals, plants, stones, etc." and that "whoever realizes this will not want to procure a preeminent place in the world for his own body or for the human" ("Notebooks 1914 - 1916"; Oxford: Basil Blackwell, 1969; 2.9.16), seems to imply that anthropomorphic inquiry is not the only possible means of investigation regarding nonhuman life: "Only remember that the mind of the snake, of the lion, is your mind. For it is only from yourself that you are acquainted with mind at all. Now of course the question is why I have given a snake just this mind. And the answer to this can only lie in psycho-physical parallelism: If I were to look like the snake and do what it does then I should be such and such. The same with the elephant, with the fly, with the wasp. But the question arises whether even here, my body is not on the same level with that of the wasp and of the snake (and surely it is so), so that I have neither inferred from that of the wasp to mine nor from mine to that of the wasp. Is this the solution to the puzzle why men have always believed that there was <u>one</u> mind common to the whole world ?" (ibid., 15.10.16). - But we do not have to subscribe to panpsychism (cf. T. Nagel - "Panpsychism", op. cit.; esp. pp. 189-192) in order to be able to speak meaningfully of fear, anger, joy, etc., in animals and even say what (at least some of) their beliefs, thoughts, desires, consist in.

42 We can know what it is like to be Dracula the man but not what it is like to be Dracula the bat.

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43 J. Margolis - "Culture and Cultural Entities" (op. cit., p. 22)

44 "What is it like to be a Bat ?" (in: "Mortal Questions"; op. cit.; pp. 170/1). - Cf. R. Nozick who acknowledges the existence of substantial puzzles about the experiences of others "feel from the inside", and says that what matters, however, is not only a being's experiences and what a being is <u>like</u> but the actual activities connected with these aspects, to actually "live" one's life, "in contact with reality". Until one finds a satisfactory, comprehensive answer to what matters to people other than their experiences, and until one determines that this answer does not also apply to animals, "one cannot reasonably claim that only the felt experiences of animals limit what we may do to them" ("Anarchy, State, and Utopia"; op. cit.; pp. 45-7).

45 M. Midgley - "Beast and Man" (op. cit.; pp. 106/7)

46 S.R.L. Clark speaks of "cognitive maps" (see his "The Nature of the Beast"; op. cit.; pp. 28, 48, 60; "Good Dogs and other Animals" - in: P. Singer - ed. - "In Defence of Animals"; Oxford: Basil Blackwell, 1985).

47 This kind of argument is advanced by D.M. Armstrong in "Consciousness and Causality"; (in: N. Malcolm and D.M. Armstrong - "Consciousness and Causality"; op. cit.; p. 186).

48 "Causing Death and Saving Lives" (Harmondworth/Middlesex: Penguin Books, 1977; pp. 51/ 74); "What Sort of People should there be ?" (Harmondsworth/Middlesex: Penguin Books, 1984; pp. 111, 154). - I will not consider the question of value (whether intrinsic or instrumental) in this chapter.

49 A. Kenny concedes "nonmechanical consciousness" to animals (p. 5), pointing out that their agency results from desires, intelligence, needs, and certain capacities and cognitive states (pp. 46 ff), which - unlike their human counterparts - are not linguistically modified (p.52; "Will, Freedom and Power"; Oxford: Basil Blackwell, 1975).

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50 It may reasonably be doubted, as J. Bennett does (op. cit.: chs. 2, 3 and 4), that honey bees have a genuine language: their behaviour is regular rather than rule-guided, lacking in spontaneity and innovation, and is not modified or modifiable as circumstances change. (But then one may also deny that honey bees can, or do, "dance", for that matter.)

51 The charge of anthropomorphism is serious but often unfortunately also rather simple-minded and indicative of an unwillingness to consider ethological evidence. The charge is not "countered" by asserting that all ascriptions of psychological states to animals are necessarily anthropomorphic but nonetheless scientifically valid (cf. J. Margolis - "Culture and Cultural Entities"; op. cit.; pp. 7, 8, 21, 43). Margolis implies that such ascriptions make sense only from the vantage of linguistically competent beings. But this is quite bizarre: animals would have the power of conceptual thought even if there were nc human beings present to "ascribe" this power to them. D.R. Griffin counters the charge of anthropomorphism be calling the belief that our mental experience is the standard of all mental life "truly anthropomorphic conceit" (op. cit.; pp. 124/5). - To be sure, the accusation is often justified. We might object to a princess kissing frogs for reasons of hygiene, not because we would have a lot of confused or heart-broken frogs on our hands. If we believed the latter, the charge could probably be made to stick.

52 N. Malcolm - "Consciousness and Causality" (op. cit., p. 45); S.R.L. Clark - "Good Dogs and other Animals" (in: P. Singer - ed. - "In Defence of Animals"; op. cit.; pp. 46/7). An animal is unable to use the pronoun "I" (ASL apes excluded), but it surely does not mistake itself for someone else.

53 "Culture and Cultural Entities" (op. cit.; pp. 30/1); "species-specific intelligence" would be more appropriate. C. McGinn suggests that rationality seems to involve self-consciousness ("The Character of Mind"; op. cit., p. 20), awareness of one's attitudes (desires, beliefs, preferences), in that rationality implies "rational adjustment" of these attitudes. "Rationality", owing to its incorporating "reason", is more specific than "intelligence".

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54 Again (see above, ch. 2 n. 16), I want to differentiate between intransitive consciousness ("consciousness" as such) and transitive consciousness ("consciousness-of"); the former, unlike the latter, is not possessed in degrees. I follow N. Malcolm in making this distinction ("Consciousness and Causality"; op. cit.; p. 3), though he does not address the issue of possession (in degrees).

55 T. Nagel uses this phrase, though not in quite the same context ("Death"; in: "Mortal Questions"; op. cit.; p. 10)

56 T. Nagel, ibid., p. 6. - Cf. P. Singer ("The Concept of Moral Standing"; in: A.L. Caplan & D. Callahan - eds. - "Ethics in Hard Times"; New York/London: Plenum Press 1981) who takes the idea of "moral standing" to imply that there are "other existences which I can imagine myself as living". Owing to divergences in our powers of imagination, however, this view would entail a kind of relativism with respect to the concept of moral standing.

57 C. McGinn - "Evolution, Animal and the Basis of Morality" (op. cit.; p. 95)

58 As J. Grieve has put it, in a comment on one of my earlier papers: "The etymology of a word and the history of its uses are often instructive, especially in the case of trendy words, and words which express notions critical to an argument. Etymology is not philosophy - but it is philosophically relevant".

59 "Rights" (op. cit.; p. 126); Frey's argument against animal interests closely resembles McCloskey's denial but is more complex in that it involves the denial of desires and beliefs, as we have seen.

60 R.G. Frey - "Interests and Rights" (op. cit.; pp. 79-81); T. Regan - "What Sorts of Beings can have Rights ?" (in: "All that Dwell therein"; Berkeley/Los Angeles: University of California Press, 1982; p. 178).

61 T. Regan - "The Case for Animal Rights" (op. cit.; ch. 9 passim).

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62 T. Nagel - "Death" (in: "Mortal Questions"; op. cit.; pp. 3-4). Cf. also L. Wittgenstein: "Death is not an event in life". ("Notebooks 1914-16", op. cit.; 8 - 7 - 16). But dying is an event in life ! See also J. Glover: "Death is not itself a misfortune, but this does not show that killing someone does him no harm" ("Causing Death and Saving Lives"; op. cit.; p. 36).

63 "Prologue: Ethics and the New Animal Liberation Movement" (in: P. Singer - ed. - "In Defence of Animals"; op. cit.; pp. 8 - 9).

Ch. 3

1 M. Stamp Dawkins - "Animal Suffering: The Science of Animal Welfare" (London/New York: Chapman & Hall, 1980) and "The Scientific Basis for Assessing Suffering in Animals" (in: P. Singer - ed. - "In Defence of Animals", op. cit.). W. Paton - "Man and Mouse: Animals in Medical Research" (Oxford: Oxford University Press, 1984; ch. 7). Among the most extraordinary of her findings are the preferences of battery hens, where Dawkins establishes that hens actually prefer fine mesh to the coarser one thought more comfortable for the hens' feet.

2 These findings, like some of those concerning the treatment of animals in intensive farm units and in research laboratories, are the result of what was probably the most distressing part of my research.

3 "Pest", by the way, is also only a matter of perspective. Mickey Mouse, a lovable pet and source of inspiration to some, may be a threat to the health, hygiene, and privacy of others; while others again see him as a valuable bearer of scientific information.

4 As far as alternatives are concerned, relief of human boredom or mental stress is in no way dependent essentially on the utilization of animals. Many circuses now eschew their use, without having incurred financial losses: on the contrary - the maintenance of circus animals is rather costly and extravagant.

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5 Note the utilitarian overtone of this contention. The problem of whether numbers count is discussed below, sect. 4.2.

6 It might even be suggested, that this line of defence could be employed with respect to human beings, and indeed that, since human instincts are weaker, there is even less to be taken into account than in the case of wild animals. And even though some evidence could conceivably be cited in favour of this suggestion (think of the children who, on th - liberation, did not want to leave Buchenwald because in a weird way was their "home", and who showed signs of psychological distress at the prospect of being made to leave the camp, and even bit their liberators), the practice of keeping individuals in captivity is morally reprehensible in that it constitutes a prevention of lives to unfold naturally, whatever one's potential or capacities.

7 The feeding of animals in zoos entails several problems, however: due to the economic strictures and perhaps geographical factors, animals are forced to consume an insufficient variety of foodstuffs or foodstuffs alien to their natural feeding habits. Some are also forced into unnatural feeding patters; i.e., animals used to feeding constantly during waking hours (like hoofed animals and primates) may only be fed once or twice daily. Thirdly, social and environmental aspects of feeding natural to an animal may be denied them in captivity. (See S. Watson and R. Kidd - "Closing Day at the Zoo"; in:"Outcry", Winter 1984; p. 16.)

8 Here I follow S. Watson and R. Kidd (ibid.) and Dale Jamieson ("Against Zoos"; in: P. Singer - ed. - "In Defence of Animals"; op. cit.), whose lists of reasons commonly cited are identical.

9 D. Jamieson asks (ibid.) whether most of the important educational objectives could not better be achieved by exhibiting empty cages with explanations of why they are empty (p. 112).

10 T. Regan - "The Case for Animal Rights" (op. cit.; p. 395)

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11 It is remarkable, however, that our social customs still imply the opposite (which explain latent feelings of guilt of many vegetarians). The reason for this phenomenon is not that people are ignorant of facts about animal consciousness and their capacity to suffer or to enjoy their life (they are ignorant, or prefer to remain ignorant, of facts regarding the circumstances of production of meat, cosmetics, and medicinal articles of use), but because practices like vegetarianism, homeopathy, etc., are not the norm.

12 See R. Harrison - "Animal Machines" (London: Stuart, 1964); R.D. Ryder - "Victims of Science"(London: Davis - Poynter, 1975, chs. 2-8); P. Singer - "Animal Liberation" (Wellingborough/Northamptonshire: Thorsons Publishers, 1983, first published 1975, chs. 2 and 3). - An argument common to defences of factory farming and animal experimentation is that farm and lab animals are reared for those purposes, that they have no knowledge and interest in freedom. The question to bear in mind is whether it would be justifiable to breed human slaves contented with their lot, e.g., by means of genetic engineering. (See J. Glover: "What sort of People should there be ?"; op. cit.; pp. 39, 92, 157, 159, who writes that contentment does not warrant diminished contact with reality or a diminution of quality; also S.R.L. Clark - "Slaves and Citizens"; op. cit.) In asking this question, we are allowing for more than might be thought necessary: for there is no reason to believe that farm and lab animals are actually "contented" with their lot (and this is <u>not</u> because they cannot be contented or discontented). A more appropriate question to ask might be whether it would be justifiable to brainwash people into unquestioning acceptance of a totalitarian regime, like Winston Smith in G. Orwell's "1984".

13 J. Glover - "Causing Death and Saving Lives" (op. cit.; p. 16)

14 T.R. Machan - "Some Doubts about Animal Rights" (Journal of Value Inquiry 19, 1985; p. 75).

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15 R. Nozick - "Anarchy, State and Utopia" (op. cit.; pp. 45/7). The argument from replaceability at the beginning of the paragraph is rehearsed by D.G. Ritchie (op. cit.) and J. Margolis ("Value and Conduct"; op. cit.; pp. 201-4). T. Nagel makes the observation quoted in this paragraph in "The Absurd" (in: "Mortal Questions"; op. cit.; p.16).

16 "Evolution, Animals, and the Basis of Morality" (op. cit.; p. 98)

17 "Anarchy, State, and Utopia" (op. cit.; pp. 45/7)

18 The animal body consumed once had a blood circulation, nervous and lymphatic system undergoing the same assimilative and excretory process as our own. Waste products were being manufactured at the time the animal was killed, and the fear and the pain accompanying slaughter were responsible for an increase in adrenalin production, and - owing to this sharp and drastic escalation - for the creation of poisonous substances which have detrimental effects on all body cells.

19 Their intestinal tract is twelve times their body length as contrasted with carnivores' tract which is only three times their body length, in order to rapidly eliminate decaying flesh; their stomach acid is twenty times stronger than that of carnivores; they have fingers instead of claws, molars instead of sharp, pointed, elongated teeth, well-developed salivary glands needed to predigest grains and fruit rather than small glands, and they have alkaline instead of acis saliva. - See also E. Fromm (op. cit.) on human omnivorism (pp. 178/80).

20 Cf. F. Moore-Lappe - "Diet for a Small Planet" (New York: Ballentine Books, 1975). See also S.R.L. Clark ("Slaves and Citizens"; op. cit.; pp. 29-30) who argues that "Hindu respect for sacred cows preserves peasant farmers from the danger of erroneous calculation of future profit. It is almost always better <u>not</u> to kill the cow who will provide milk, and fuel, and traction, even though she seems an expensive luxury to ignorant Westerners, and may be a temptation to a peasant in hard times".

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21 R.J. White - "A Defense of Vivisection" (in: T. Regan and P. Singer - "Animal Rights and Human Obligation"; op. cit.;) W. Paton (op. cit.). - D.A. Dewsbury, Professor of Psychology, unlike White and Paton, does not attempt to "defend" the use of animals in psychological research as such. His considerations are purely scientific, viz. that comparative behaviour study, i.e., the interaction of ethology and experimental psychology, is the most reliable and efficient mode of study ("Comparative Animal Behavior"; New York; McGraw-Hill, 1978; also: "Animal Aggressive Behaviour", "Animal Intelligence", etc., in: R.J. Corsini - ed. - "Encyclopaedia of Psychology", vol 1; New York/Toronto: John Wiley & Sons, 1984).

22 Op. Cit.; pp. 165/169

23 Op. cit.; p. 123

24 See R.D. Ryder - "Victims of Science" (op. cit.; pp. 12-5), in "Experiments on Animals" (in: S. and R. Godlovitch and J. Harris - eds. - "Animals, Men, and Morals"; London: Gollancz, 1971; p. 80).

25 Thus J. Glover: "It may be hard to sustain an opposition to medical experiments on animals when I remember my responses to human suffering caused by diseases" ("Causing Death and Saving Lives"; op. cit.; p. 27). Similar risk-benefit considerations infom the approach in his "What Sort of People should there be ?"; op. cit.) Yet on p. 25 in "Causing Death and Saving Lives", Glover warns that "(i)t is often said that human suffering matters more than animal suf. ring because we have rationality of a kind o: degree that animals lack. But reflection about feeble-minded children may make us question this as a reason for thinking that animal <u>suffering</u> is less important".

26 Op. cit.; passim; pp. 2, 26/7, 69/70, 77/78, 91, and also pp. 128, 132, 159.

27 "Victims of Science" (op. cit.; pp. 22/3)

28 Cf. J. Rachels - "Do Animals have a Right to Liberty ?" (in: T. Regan

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and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.; pp. 215-8). He cites experimenters as saying that "a majority of rhesus monkeys will consistently suffer hunger rather than secure food at the expense of electroshock to a conspecific".

29 E.g., tissue, organ and cell cultures obtained from autopsies and biopsies; umbilical cords; cell transformation assay; bacterial mutation tests and chromosome damage tests; combination of gas chromatography and mass spectrometry; models, i.e., dummies, computer models, mathematical and electro-thermical neural models; qualitative and quantitative analysis; educational, 3-D films, computer for data processing and diagnosis. - Cf. T. Hegarty - "Alternatives" (in: S. & R. Godlovitch and J. Harris - "Animals, Men and Morals" (op. cit.); R.D. Ryder - "Victims of Science" (op. cit.; ch. 12). Some doubts are expressed by Ryder himself as well as by W. Paton (op. cit,; ch. 8).

30 Even W. Paton admits this (ibid.; p. 108); see also pp. 26/7 on alternatives, and p. 127 on extrapolation. R.D. Ryder ("Victims of Science"; op. cit.; passim) stresses the economic viability of alternatives. T. Regan argues from scientific challenge in "The Case for Animal Rights" (op. cit.; pp. 388, 397/8).

31 E.g., G. Vlastos ("Justice and Equality"; in: A.I. Melden - ed. - "Human Rights"; op. cit.) fails to differentiate between "differential" and "unequal" treatment and to realize that "equal" and "differential" treatment are not incompatible. Also see D.D. Raphael's telling remarks (op. cit.; p. 177): "Justice and injustice, impartiality and partiality, arise only in our treatment of human beings and only in relation to the conferment of benefits or burdens on them. No question of justice arises over the action of the crackpot who treats his chairs differently, or of the farmer who treats his cattle differently". "Telling" not only in that Raphael allocates animals to the realm of things and so excludes them from considerations of justice and equality, but also in that he - though acknowledging that "equal" is not the same as "identical" - fails to see that "equal" and "differential" are compatible. - J. Feinberg employs the term "foci of subjectivity" in

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"The Rights of Animals and Unborn Generations" (in: "Rights, Justice and the Bounds of Liberty"; Princeton/N.J. Princeton University Press, 1980).

32 S.J. Gould - "The Ghost of Protagoras" (The New York Review; January 22, 1981; p. 43). See also T. Loebsack, A. Koestler, and E. Fromm (all op. cit.). On evolution being a ladder, see A. Gowans-Whyte - "The Ladder of Life" (London: Thrift Books, 1951), who traces the stages of development from the unconscious to the conscious and "mind" and "intelligence" (and the capacities of reasoning, of memory, etc.). See also B. Brophy - "The Darwinists's Dilemma" (in: R.D. Ryder and D. Paterson - "Animals' Rights: a Symposium"; op. cit.).

33 "Egalitarianism and Equal Consideration of Interests" (op. cit.; pp. 159-61). P. Singer argues forcefully against Benn in his "All Animals are Equal" (in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.).

34 Op. cit.; p. 44

35 Op. cit.; p. 437

36 R.D. Ryder - "Victims of Science", "Experiments on Animals", "The Struggle against Speciesism", "Speciesism in the Laboratory" (all op. cit.); P. Singer - "All Animals are Equal", "Animal Liberation" (both op. cit.), "Practical Ethics" (Cambridge: Cambridge University Press, 1979). - J.J. Degenaar speaks of "neutral" and "evaluative" discrimination (op. cit.; pp. 28/9).

37 (Op. cit.; pp. 107-9). Wasserstrom, it should be noted, does not think that animals have rights - our duties to them are duties which have no correlative rights (p. 98); yet he does not argue in support of this According to Wasserstom, the racist fails to acknowledge that the o is as capable of suffering as the white person; and the reason why a person is said to have a right not to be made to suffer unnecessarily is that we all in fact prefer freedom from such pain. And "if all

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persons do have equal capacities of these sorts and if the existence of these capacities is the reason for ascribing these rights to anyone, then all persons ought to have the right to claim equality of treatment in respect to the possession and exercise of these rights" (p. 106). Since animals share these capacities with human beings, it is unclear how one could, in Wasserstom's view, consistently withhold from them rights. It will not do to say they cannot "claim" or "exercise" them - there are many human beings other than infants, imbeciles, and the senile, who have no concept of rights, strictly speaking, and therefore cannot be said to "claim" or "exercise" them.

38 See above, n. 37.

39 A. Gewirth, despite his favouritism and moral [illegible]der-type approach, certainly does not wish to deny that animals have these basic goods ("Reason and Morality"; op. cit.; sect. 3.4. passim).

40 op. cit.; p. 161 n. 4/3

41 "Speciesism and the Idea of Equality" (Philosophy 53, 1978; pp. 252/3).

42 ibid.; p. 253

43 M. Midgley - "Animals and why they Matter" (op. cit.; p. 102). I suspect that the main reason for our preference is our ignorance of other individuals, species, and that our preference goes hand in hand with a certain complacency, and unwillingness to remedy this ignorance (if we recognize it as such in the first place). All cats are grey in the dark of our ignorance.

44 B. Steinbock (op. cit.; pp. 251, 255/6). She concedes, incidentally, that similar preferences may exist with respect to members of our own race, that it is not wrong to extend special care to them (p. 256), and that it is racist only "to fall below your moral obligation to a person because of his or her race".

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45 M. Midgley - "Animals and why they Matter" (op. cit.; pp. 104, 103).

46 C. MacLean - "The Wolf Children" (Harmondsworth/Middlesex: Penguin Books, 1977); M.K. Temerlin (op. cit.)

47 M. Midgley - "Animals and why they Matter" (op. cit.; p. 26).

48 M. Midgley - ibid.; p. 98

49 D.L. Hull - "The Rights of Animals" (Science 192; 1976; p. 680); M. Midgley - "Animals and why they Matter" (op. cit.; pp. 99, 101). - It is important to realize, however, that the possibility of classification does not make for inequality. The idea of equality, in this sense, is not a liberalistic sentiment, but a contingent fact of history, "contingent" because there could have been a difference in kind between human beings and nonhuman life (and as there might be between us and extraterrestrial organisms).

50 Cf. C. McGinn ("Evolution, Animals, and the Basis of Morality" op. cit.; p. 96): "Species .... are natural kinds, and what determines something as of a given kind may not be open to casual observation. Suppose .... that some evolutionary biologist discovered that a certain group of persons, hitherto regarded as members of the human species, were in fact not really of the same biological species as the rest of us: perhaps they evolved by parallel evolution, or perhaps they were subtly, though fundamentally, different in genetic structure. But suppose also that no mistake had been made as to their qualifying as persons. Would we then find ourselves ready to change our legal system in respect of the biologically deviant group or cease to regard them with the same degree of moral concern as before ? Of course not; so identity of biological species cannot have the moral relevance the speciesist claimed. In fact, this point is obvious once we ask whether our moral treatment of each other rests on recherche biological knowledge; it depends rather on our recognizing each other as persons".

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Ch. 4

1 R. Dworkin (op. cit.; ch. 6) - discusses "duty-based" and "right-based" theories, singling out I. Kant's categorical imperative and T. Paine's theory of revolution as examples. Utilitarianism is cited as an example of a "goal-based" theory, which is characterized by a concern with nonindividual aims, with consequences of actions.

2 Cf. J. Feinberg - "Duties, Rights and Claims" (in: "Rights, Justice, and the Bounds of Liberty"; op. cit.; p. 134); also see pp. 130-4 on the different kinds of duty, and p. 135 on "duties of status".

3 Aristotle - "Animals and Slavery" and "How Humans Differ from other Creatures"; T. Aquinas - "Differences between Rational and other Creatures" and "On Killing Living Things and the Duty to Love Irrational Creatures" (all in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.). In his booklet "God's Animals" (Westminster: 1973). Dom A. Agius, while asserting that "animals' minds differ from our own not merely in degree but in kind" (can things differ both in degree and in kind ?), nonetheless concedes them a soul (which he identifies with their loyalty, affection, and indeed their sentience, but our "duties" to them are actually duties to God, and are therefore, arguably, "indirect".

4 What is to count as a criterion of rationality ? Tool-making or fire-controlling capacity ? Human language ? And if these constitute valid criteria, are they "clear-cut" ?

5 I. Kant - "Duties to Animals"; D.G. Ritchie (op. cit.) (both in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.; pp. 122-3 and 183, respectively). H.J. McCloskey, too, eschews talk of duties "to" animals in favour of duties "in respect of" animals, e.g., the duty not to make them suffer unnecessarily ("The Right to Life"; op. cit.; p. 410); he also speaks of duties "about" animals.

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6 "Animals and why they Matter" (op. cit.; p. 61); see also her "Beast and Man" (op. cit.; ch. 10 passim).

7 "A Critique of Kant" (in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.; pp. 124-6)

8 S.I. Benn - "Human Rights - for whom and for what ?" (in: E. Kamenka and A. Erh-Soon Tay - eds. - "Human Rights"; op. cit.; pp. 65); see also his "Egalitarianism and Equal Consideration of Interests" (op. cit.; pp. 157,159).

9 J. Glover - "Causing Death and Saving Lives" (op. cit.; p. 50)

10 S.I. Benn - "Human Rights: for whom and for what ?" (op. cit.; p. 72)

11 J. Rawls - "A Theory of Justice" (Oxford: Clarendon Press, 1972; pp. 17, 504-12). Like Rawls, J. Narveson believes that we can have duties of justice only to those who have a concept of justice; which would involve treating them as "moral persons" ("Morality and Utility"; op. cit.; p. 87). See also D.D. Raphael (op. cit.; pp. 175-7), who promulgates a similar view.

12 "Animals and why they Matter" (op. cit.; p. 50)

13 The two quotations of Bentham which follow are from his "The Principles of Moral and Legislation", reprinted in a brief excerpt as "A Utilitarian View" (in: T. Regan and P. Singer - eds - "Animal Rights and Human Obligations"; op. cit.; pp. 130, 129).

14 J.S. Mill, too, believes this to be possible: "Granted that any practice causes more pain to animals than it gives pleasure to man; is that practice moral or immoral ? And if, exactly in proportion as human beings raise their heads out of the slough of selfishness, they do not with one voice answer 'immoral', let the morality of the principle of utility be for ever condemned". ("A Defense of Bentham"; in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.; p. 132).

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There are enough difficulties as it is in determining the extent of a certain kind of benefit and in measuring harm, partly due to the problem of predicting consequences and taking into account future benefits and harms; therefore, utilitarian calculation is very much an attempt at balancing incommensurables.

15 See, e.g., "Animal Liberation" and "Practical Ethics" (both op. cit.).

16 "The Concept of Moral Standing" (op. cit).

17 "Animals and why they Matter" (op. cit.; p. 92).

18 "Practical Ethics" (op. cit.; chs. 4 and 5)

19 "Causing Death and Saving Lives" (op. cit.; pp. 138/9, 140). The remark which follows is culled from pp. 158/9.

20 Mentally or physically handicapped people are normally worse off then normal people, but this does not mean that our relationship with them is one of inequality or that their interests do not have equal weight with our own (ibid.; p. 148).

21 "What Sort of People should there be ?" (op. cit.; p. 155).

22 T. Regan takes a strong stand against utilitarianism in, e.g., "Utilitarianism, Vegetarianism, and Animal Rights", "Animal Rights, Human Wrongs", (both in:"All that Dwell therein"; op. cit..), "The Case for Animal Rights" (op. cit.) and again in "The Case for Animal Rights" (in: P. Singer - ed. - "In Defence of Animals"; op. cit.).
Recall R. Nozick's dictum (cited above, ch. 2 n. 44) that what matters is not only a being's <u>experiences</u> and what a being is <u>like</u> but the actual activities connected with these aspects, to actually "live" one's life, in contact with reality, and until one finds a satisfactory, comprehensive answer to what matters to human beings <u>other</u> than their experiences and determines that this answer does not also apply to animals, "one cannot reasonably claim that only the <u>felt experiences</u> of

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animals limit what we may do to them" ("Anarchy, State, and Utopia"; op. cit.; pp. 45-7; my underlining).

23 J. Narveson ("Animal Rights"; Canadian Journal of Philosophy 7, 1977; pp. 172/3) rejects Singer's claim that carnivorous pleasures are trivial because they are unnecessary for human health, pointing out that listening to Beethoven is unnecessary for human health but not trivial. This analogy obviously misses the mark: the point here would be whether listening to Beethoven would evoke pleasures greater than the disadvantages for those whom the music causes to lie awake, to suffer headaches, or to be unable to study for an important exam. (Or suppose Beethoven were one of many composers forced to produce musical compositions in an intensive farm unit-type setting). - Some other pertinent considerations appear in: P.S. Wenz - "Act-Utilitarianism and Animal Liberation" (Personalist 60, 1979); T. Regan- "Utilitarianism, Vegetarianism, and Animal Rights" (op. cit.). P. Singer defends vegetarianism on utilitarian grounds also in "Utilitarianism and Vegetarianism" (Philosophy and Public Affairs 9, 1980), an answer to Regan's paper, ibid.

24 "Utilitarianism, Vegetarianism, and Animal Rights" (ibid.). T. Regan also argues that the principle of equal consideration of interests does not provide a utilitarian basis at all. It tells us only that we must give equal consideration to the interests of all sentient beings but not what we must do once we have done this. It does not show that the consequences of equal consideration are better for all, or most, parties involved. If this criterion is valid, it should still not prove fatal: the principle of equality could be combined with that of utility and extended accordingly (or "narrowed down", depending on how one looks at it).

25 op. cit.; p. 209; my underlining.

26 T. Regan - "The Case for Animal Rights" (op. cit.; pp. 297-307); J.M. Taurek - "Should the Numbers Count ?" (Philosophy and Public Affairs 6, 1976/7).

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27 "Animal Experimentation: First Thoughts"; see also: "Animal Rights, Human Wrongs (both in: "All that Dwell therein"; op. cit.), "The Case for Animal Rights" (in: P. Singer - ed. - "In Defence of Animals"; op. cit.). - An example: an amateur scientist might believe that injecting his rats with doses of morphine will make them happier animals.

28 T. Regan - "Animal Experimentation: First Thoughts" (in: "All that Dwell therein"; op. cit.; p. 69). See C. McGinn on feelings and the basis of morality, in "Evolution, Animals, and the Basis of Morality" (op. cit.; pp. 88, 91, 94).

29 A. Schweitzer - "The Ethic of Reverence for Life" (in: T. Regan and P. Singer - eds. - "Animal Rights and Human Obligations"; op. cit.; p. 134).

30 ibid.; p. 137. In fact, Schweitzer's own profession required him to kill some organisms (e.g., bacilli, or use plants and herbs for medicinal purposes) in order to cure human beings and curb disease.

31 "The Moral Status of Animals" (Oxford: Oxford University Press, 1977; Preface). The following quotation are from pp. 30, 90, 89.

32 "On the Basis of Morality" (New York: Bobbs-Merrill, 1965). Excerpts from this work are reprinted as "A Critique of Kant" (op. cit.). This citation appears in the latter collection, p. 126,

33 On "ahimsa", and Jain, Vedic, and Buddhist thinking, see U. Taehtinen: "Ahimsa: Non-Violence in the Indian Tradition" (op. cit.; chs. I, III, IV, V). A.K. Coomaraswamy discusses Vedic thought and Western tradition, and the connection between the doctrine of reincarnation or transmigration of souls of the Indian tradition and the ancient Greek idea of "metempsychosis" or "metasomatosis", both of which have similar implications with respect to animals, that to injure or kill them is to disrupt or impair the "chain of being" ("Metaphysics"; op. cit.; pp. 6, 77 ff., 83 n). L. Wittgenstein's remark is in: "Philosophische Untersuchungen" (op. cit.; 287).

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D.T. Suzuki's elucidation of "trisna" appears in the German translation of "Mysticism: Christian and Buddhist", "Der westliche und der oestliche Weg" (Frankfurt/Main: Ullstein, 1974).

34 "On the Basis of Morality" (op. cit.; pp. 131, 166).

35 ibid.; p. 145. D.W. Hamlyn ("Schopenhauer"; in: "The Arguments of the Philosophers" series; ed. T. Honderich; London: Routledge & Kegan Paul, 1980) and B. Magee ("The Philosophy of Schopenhauer"; Oxford: Clarendon Press, 1983) provide very useful discussions of Schopenhauer's views.

36 "A Critique of Kant" (op. cit.; p. 125).

37 B. Magee (op. cit.; ch. 9); D.W. Hamlyn (op. cit.; p. 123).

38 ibid.; p. 136

39 P. Mercer - "Sympathy and Ethics" (Oxford: Clarendon Press, 1972; p. 2) The following quotations are from pp. 2, 4/5, again 4, 11, 83 f., 114 f., 129 f.

40 Cf. L.J. Suzman who writes that deficiency of sympathy in racial, cultural or religious conclicts "is said to arise from defective criteria and to constitute a moral defect " (op. cit.). I doubt whether Suzman's "question of similarity", however, constitutes a substantive moral criterion. The inconceivability of pregnancy to men ("What is it like to be pregnant ?") does not render women's concerns difficult to be regarded as of equal rank, or render the issue of abortion a problem of lesser moral import.

41 T. Nagel expresses this pessimism in his Preface to "Mortal Questions" (op. cit.; pp. xii/xiii).

42 A.D. Woozley is the former theorist ("Law and the Legislation of Morality"; in: A.L. Caplan & D. Callahan - eds. - "Ethics in Hard Times"; op. cit.), C. Arnold the latter ("Analyses of Rights"; in: E. Kamenka & A. Erh-Soon Tay - eds. - "Human Rights"; op. cit.; p. 85). A. Gewirth -

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justifiedly, I believe - argues against Arnold's 'redundancy argument", pointing out that rights are logically prior to duties "in the order of purpose" and that "the nature of a claim-right is to some extent independent of its relation to the correlative duties" (Introduction to "Human Rights", op. cit.; p. 14). And R. Wasserstrom points out that rights fulfil certain functions that neither duties nor any other moral or legal concepts can fulfil (op. cit.; p. 98).

43 Cf. D.W. Hamlyn (op. cit.; p. 145).

Ch. 5

1 Here, I roughly follow J. Feinberg's suggestions in "The Rights of Animals and Unborn Generations", pp. 159/60, and "Human Duties and Animal Rights", p. 196 (both in: "Rights, Justice, and the Bounds of Liberty"; op. cit.).

2 E.g., J. Feinberg writes (ibid.; p. 202): "Human duties to respect animal lives .... are simply one part of the larger catalog of human duties of all kinds and must find their proper place in an order of priority". It does not follow, however, as Feinberg believes, that "animal claims" (e.g., to life) are "much weaker than human claims". By invoking an "order of priority" with respect to human duties one does not weaken the rights and claims of animals or decrease the moral weight of one's nonrights against animals. - T.L.S. Sprigge's differentiation between the import of "right" and "duty" is in: "Metaphysics, Physicalism, and Animal Rights" (op. cit.; p. 103).

3 R. Nozick - "Anarchy, State, and Utopia" (op. cit.; chs. 3 and 5 passim). T. Regan discusses the problem of identity in "The Case for Animal Rights" (op. cit.; pp. 82-4).

4 M. MacDonald - "Natural Rights" (in: A.I. Melden - ed. - "Human Rights"; op. cit.; p. 49; reprinted from: Proceedings of the Aristotelian Society, 1947/8). R. Nozick speaks of "value-seeking and "valuing" in

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"Philosophical Explanations" (op. cit.; ch. 5 passim, esp. sects. II and IV). - But J. Rodman ("The Liberation of Nature"; Inquiry 20, 1977; p. 117) writes: "Nature lies' beyond good and evil', which is why the attempt to bring it within the framework of the moral/legal consciousness is ...imately so perverse". Rodman would have to deal with the questions whether humans are "natural existents", and where the scope of moral and legal consciousness must end. - G. Vlastos (op. cit.; p. 95) grounds "human rights" on "equal human worth which may be translated into, but ...educed to, equal worth of human well-being and freedom". But <u>what</u> is it that remains <u>beyond</u> reduction (to human well-being and freedom) ? And if nonhuman species can enjoy well-being and freedom, why not extend equal worth to them and their capacities ? (Or is their "worth" reducible, and therefore a lesser worth ?)

5 Recall Bentham's dictum that "(t)he day <u>may come</u>, when the rest of the animal creation may acquire these rights ...", quoted above, p. 69. Cf. R.D. Ryder's account of its history in "The Struggle against Speciesism" (op. cit.).

6 J. Bennett (op. cit.; esp. ch. 4).

7 Ibid.; pp. 35/6. - See also D.A Dewsbury on "Animal Intelligence" (in: "Encyclopaedia of Psychology", vol 1, op. cit.). - In the above-mentioned lecture at the University of the Witwatersrand, S.J. Gould expressed strong opposition to the claim that worth can be assigned to individuals and groups by measuring intelligence as a single quantity.

8 To pursue C. McGinn's comparison of the emergence of consciousness with the sudden switching on of a light ("The Characters of Mind"; op. cit.; pp. 12-4): once the light is on, there may be degrees in brightness - cf., e.g., "dimming devices".

9 R.G. Frey - "What has Sentiency to do with the Possession of Rights ?" (in: R.D. Ryder & D. Paterson - eds. - "Animals' Rights: A Symposium"; op. cit.); J. Rodman (op. cit.; p. 91); P. Singer - "Animal Liberation" (op. cit.; p. 181).

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10 In what follows, I will not be directly concerned with the moral status of the dead or unborn generations. J. Feinberg ("The Rights of Animals and Unborn Generations"; op. cit.;) and J. Glover ("Causing Death and Saving Lives", and "What Sort of People should there be ?"; both op. cit.) provide useful discussions of these issues. My own reflective intuition is that speaking of the "rights" of persons who have died is only a way of registering their past claims, and that speaking of the "rights" of future generations serves to illustrate our concern for our cultural heritage and our environment.

11 I will address the issue of primary perception in plants in sect. 7 3.

12 Earthworms and bees, e.g., certainly have cognitive maps for their environment. And recent scientific evidence has demonstrated memory- and learning capacities in snails. J. Rodman thinks - correctly, I believe - that "the plight of (animals) .... arouses us not so much because we disapprove of unnecessary suffering or pain (though, other things being equal, we tend to do so), but because we react indignantly to ... external .... conditions being imposed on natural entities that have their own internal structures, needs, and potentialities" (op. cit.; p. 100; my underlining). - Or adaptive behaviour, sensory discrimination, and learning capacities, see D.A. Dewsbury ("Comparative Animal Behavior"; op. cit.).

13 Cf. M. Midgley - "Animals and why they Matter" (op. cit.; pp. 82/3). (Recall G. Vlastos' definition; cited above, ch. 5 n. 4). J. Glover's remarks concerning contractarianism are in "What Sort of People should there be ?" (op. cit.; pp. 144 f.).

14 J. Narveson - "Morality and Utility" (op. cit.; pp. 86/7); L.J. Suzman (op. cit.; p. 14). Suzman's implication here is that animals cannot have rights because they are incapable of making moral choices. Yet many animals can certainly (nonmorally) choose what is in their interest (see below, where the discussion revolves around moral agency). Rights might be invoked in order to insure that an individual can exercise her capacity for moral choice or function as a moral agent, but this constitutes only one aspect of the multifaceted language of rights.

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Rights <u>are</u> "there to acknowledge the power of moral choice", but this power is not necessarily the basis for their ascription: it is necessary only for certain rights, like the right to freedom of (moral, political, rational) choice. (Like animals, we are not free to choose - and change - our nature. Moral choice is a power which is necessarily limited and which, while issuing in the invocation of rights, is not the only facet of our nature in virtue of which an appeal to rights is made.)

15 A. Gewirth's and J. Wild's attempts to weight rights quantitatively against one another approach utilitarian calculations in their Sisyphus-like absurdity as well as in their moral reprehensibility. (A. Gewirth - "Reason and Morality"; op. cit.; sect. 3.4 passim; "Human Rights"; op. cit.; p. 150. J. Wild - "Plato's Modern Enemies and the Theory of Natural Law"; Chicago: University of Chicago Press; 1957; pp. 46, 118, 209/10, 219).

16 T.L.S. Sprigge - "Non-Human Rights: an Idealist Perspective" (op. cit.; pp. 445/6).

17 "New Scientist"; 30 June, 1977

18 S.R.L. Clark draws our attention to facts and considerations about animals' "ethical agency" in "The Nature of the Beast" (op. cit.; p. 107). I think that talk of "moral" and "ethical" (Gk: "ethos", "ethikos" - character; Lt. "ethicus" - standard of character set up by any race, nation (or species ?)) and "moral" (Lt. "moralis", "mos", "moris" - custom, pl. manners) have their counterparts in Aristotle's "natural" and "strict virtues" ("Nichomachean Ethics" VI. 13; Indianapolis: Bobbs-Merrill, 1962). Consider the origin of the term ethology. See also S.F. Sapontzis - "Are Animals Moral Beings ?" (American Philosophical Quarterly 17, 1980), and "A Critique of Personhood" (Ethics 91; 1981).

19 See A.K. Coomaraswamy's essay "Akimcanna: Self-Naughting" in his "Metaphysics" (op. cit.; pp. 92, 100 n). The underlining in the following citation is mine, for obvious reasons.

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20 R. Wasserstrom (op cit.; pp. 104, 109).

21 J. Narveson has coined this phrase in "Animal Rights" (op. cit.; p.164), in reaction to P. Singer's and T. Regan's views. See P. Singer - "All Animals are Equal" (op. cit.;) and "Killing Humans and Killing Animals" (Inquiry 22, 1979); T. Regan - "The Moral Basis of Vegetarianism" (in: "All that Dwell therein"; op. cit.).

22 "Interests and Rights" (op. cit.; chs. III & XI); "Vivisection, Morals and Medicine" (Journal of Medical Ethics 9, 1983).

23 W. Paton (op. cit; p. 39). Paton believes that the argument from marginal cases does not hold because "there are no 'hopelessly' defective human beings" (p. 34), in that "there is a chance with all of them they they may cease to be so" (p. 39). Surely this applies only to lunatics, but not to imbeciles. The point, however, is not that we are dealing with beings for whom a cure may be found in the future, but with beings who are mentally deficient now, below the normal human level and below that of many animals, and who deserve moral consideration now and because of their present status, not because of something that may happen in the future.

24 J. Kleinig - "Human Rights, Legal Rights, and Social Change" (in: E. Kamenka & A. Erh-Soon Tay - eds. - "Human Rights"; op cit.; p. 142); A. Donegan (op. cit.; chs. 3 and 5); A. Gewirth "Reason and Morality" (op. cit.; sect. 3.4); H.J. McCloskey - "Rights" (op. cit.; p. 124), "The Right to Life" (op. cit.; pp. 414/5), "Moral Rights and Animals" (Inquiry 22, 1979; p. 42 - the citation is from this paper); L.J. Suzman (op. cit.). Objections to the notion of present potentiality are in A.I. Melden - "Rights and Persons" (op. cit.; p. 221).

25 Contra J. Raz (op. cit.; pp. 204/5) whose "reciprocity thesis" implies that only "members of the same moral community" have rights, and which is a contractarian theory: if other beings share the capacities which characterize Raz's reciprocity agents, viz. to possess interests and to enjoy well-being, is is unclear on what grounds he can deny them rights. Similarly, in Gewirth ("Reason and Morality"; op. cit.; passim), freedom

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and well-being characterize agents, i.e., claimants of rights - but these, too, are shared by other animals: there must be something else that prizes his agents apart from other beings and once this is specified, the necessary connection between agency and claims, but not rights, becomes apparent. The reciprocity and agency requirements are discussed and rejected in S.F. Sapontzis' paper "Moral Community and Animal Rights" (American Philosophical Quarterly 22, 1985), on the basis that the weak and powerless cannot reciprocate and engage in moral agency. Sapontzis holds that common moral goals, such as protection from exploitation, would be more readily attained if moral rights were extended to all powerless beings, in other words, to animals as well.

26 T. Regan employes the term "moral patients" ("The Case for Animal Rights"; op. cit.; pp. 151-6, 279/80), which I wish to avoid: owing to its pathological connotations it seems to be appropriate only in the case of lunatics and imbeciles.

27 Professor G. van N. Viljoen, quoted by E. Brown in "The South African Bureau of Racial Affairs (SABRA)" (in: H.W. van der Merwe and R.A. Schrire - "Race and Ethnicity"; op. cit.; pp. 114/5). J. Narveson speaks of "sentimental interests" ("Animal Rights"; op. cit.), L. Pickering Francis and R. Norman of "strong emotional attachments" ("Some Animals are more Equal than Others"; Philosophy 53, 1978; pp. 510/1). J. Kleinig (op. cit.; p. 42) writes that if "we do not wish to ascribe rights to animals it is .... because we do not consider their welfare interests important enough to justify securing them by force".

28 A.I. Melden - "Rights and Persons" (op. cit.; ch. VI passim). But "Tarzan" and "Mowgli" are not merely fictional characters: see, e.g., C. MacLean (op. cit.) and M.K. Temèrlin (op. cit.). In his criticism of the "relations requirement" S.F. Sapontzis states that the existence of the animal rights movement demonstrates that such relations not only obtain but are very strong ("Moral Community and Animal Rights", op. cit.; p. 256).

29 "The Right to Life" (op. cit.; p. 416). Recall M.J. Adler's fear that the discovery that we might differ from animals only in degree and not

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in kind would serve to destroy our moral basis for holding that all human beings have basic rights and an individual dignity (sect. 2.2. above): why should this signal a "destruction" of this moral basis and not an "extension" ?

30 H.J. McCloskey - "Rights"; "The Right to Life"; "Moral Rights and Animals" (all op. cit.); R.G. Frey - "Interests and Rights" (op. cit.; chs. II, V, VII and XI). M. Midgley discusses "interests" in "Animals and why they Matter" (op. cit.; pp. 54ß); and J. Rachels treats "property" and "possession" in "Do Animals have a Right to Liberty ?" (op. cit.; pp. 207/8, 219/20).

31 A.I. Melden - "Rights and Persons" (op. cit.; p. 186) - and H.J. McCloskey - "The Right to Life" (op. cit.; p. 417) - embark on this attack.

32 It is possible to teach a dog to "shake hands", but it would be rather absurd to attempt to teach your pet snake this trick. If snakes have a "right to education" at all, they are certainly not educable in this way.

33 H.L.A. Hart, (op. cit.; both passages are on p. 66); L.J. Suzman - op. cit. (pp. 15/6). Contra Suzman, it might even be argued that an animal who is being mistreated or who anticipates danger will struggle, kick, scratch or try to bite, and that this might be a form of claiming its rights, albeit in the absence of a concept of rights or of the moral significance of the situation. (See T.L.S. Sprigge - "Nonhuman Rights: an Idealist Perspective"; op. cit.; p. 442.) However, I do not intend to endorse this assumption: it seems to be merely an interesting hypothesis.

34 Does "taking rights seriously" commit us to ascribing (moral) rights to artifacts ard inanimate objects which are often held to have "value in their own right" (cf. W. Paton - "Man and Mouse"; op. cit.; p. 36) ? I submit that attribution of moral rights to these objects would not only be counterintuitive but would render the scope of moral responsibility infinite and ultimately entail an attenuation of rights to the point of uselessness. But artifacts, like paintings, buildings, etc., could

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consistently be held to have "aesthetic rights", rather than moral rights. Similarly, soil, rivers, whole ecosystems (in abstraction from the fauna and flora they contain) might be said to have "ecological rights". Though rocks are not conscious or "alive", it would be indefensible to blow up the Matterhorn simply because it lacks life or feeling. What we do to rocks is not of "moral concern" (contra P. Singer - "The Concept of Moral Standing"; op. cit. - who locates the source of moral concern for mountains in their "extrinsic value", as means to the ends, e.g., joy, or inspiration, of human beings), but of "ecological" and perhaps also of "aesthetic" concern. Ecological and aesthetic rights might be said to converge in the legal realm, ultimately.

Ch. 6

1 E.g., by T. Regan - "An Examination and Defense of one Argument concerning Animal Rights" (in: "All that Dwell therein"; op. cit.; pp. 117/8), and J. Raz (op. cit.; pp. 197/8), who distinguishes between "core rights" and "derivative rights". Neither Regan nor Raz, however, furnish an account of what these rights are, what particular basic and nonbasic rights creatures have, and what place they occupy in their lives.

2 B. Brophy - "In Pursuit of Fantasy" (in: S. and R. Godlovitch & J. Harris - "Animals, Men, and Morals"; op. cit.; p. 127). L. Nelson, in "Duties to Animals" (ibid.; p. 150), writes that interests are the basis for rights, and that the interests of others are inferred from certain external or physical manifestatfons, known to be associated with "such processes" in oneself. It is a "matter of consistency", according to Nelson, that "men have no more interests and rights than animals": "either we can (ascribe interests and rights) by analogy or we cannot (ascribe them) at all."

A.I. Melden - "Introduction" to "Human Rights" (op. cit.) - and T. Regan - "An Examination and Defense of one Argument concerning Animal Rights" (op. cit) - do this.

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4 As is proposed by A.M. MacIver ("Ethics and the Beetle"; Analysis 8, 1948; p. 70) and A. Gewirth. Gewirth writes that "(b)y a principle of proportionality other beings, such as children, foetuses, mentally deficient persons, and animals can be shown to have moral rights in lesser degrees" ("Can Utilitarianism Justify any Moral Rights ?"; in: "Human Rights"; op. cit.; p. 150). Cf. also sect. 3.4 passim in his "Reason and Morality" (op. cit.). If it were contributory to the well-being and compatible with the freedom of rational agents, abusing all these "other beings" would be justifiable, in Gewirth's view, an implication he fails to give due consideration.

5 Relevant excerpts from these declarations have been reprinted in: A.I. Melden - ed. "Human Rights" ( ).

6 R. Goldwin - "Rights versus [illegible]o Contest" (in: A.L. Caplan & D. Callahan - "Ethics in Hard Times , [illegible] cit.; pp. 125/7). See also H.J. McCloskey in "The Right to Life" in particular (op. cit.) - Of course, to reduce all motives to a basic one, viz. that of self-preservation, is not very helpful in understanding behaviour, and it is unlikely that such a reduction will facilitate an understanding of moral concern, rights-discourse, etc.

7 This is H.L.A. Hart's "most plausible candidate": his thesis is that "if there are any rights at all, then there is at least one natural right, the equal right of all men to be free" (op. cit.; p. 61).

8 That it is not in an animal's interest to be confined in cages and enclosures is beyond reasonable doubt. See above, ch. 3, esp. my remarks at the beginning of the chapter and in sect. 3.2. On a tiger's liberty to eat human beings and on violation of this right as a matter of self-defence, see sect. 7.2.

9 It was not mere coincidence that Orwell conferred the role of leaders of the revolution onto pigs in his novel "Animal Farm": recent findings indicate a level of intelligence comparable with that of clever dogs. - On the rights to liberty, and to property, see J. Rachels - "Do Animals have a Right to Liberty ?" (op. cit.) - who bases his argument on a discussion of J. Locke's concept of property.

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10 The rights to freedom and to well-being are rights to those features which characterize behaviour and, indeed, "successful agency", and are therefore "fundamental", according to A. Gewirth ("Reason and Morality"; op. cit.; sect. 2.7.; see also his "Introduction" to "Human Rights"; op. cit.; p. 5). (Gewirth, I hasten to add, does not explicitly reduce the right to happiness to the right to well-being.) Cf. also R. Wasserstrom (op. cit.; p. 105), and G. Vlastos (op. cit.; p. 95). The "right to resistance of oppression" referred to in the French declaration of rights (there is something strangely paradoxical about this right: "right" presupposes justice and equality, and "oppression" implies the contrary) can be said to derive both from the right to liberty and from the right to well-being.

11 This problem is mentioned, but not discussed or resolved, by S.R.L. Clark - "The Moral Status of Animals" (op. cit.; p. 14 n).

12 M. Midgley - "Beast and Man" (op. cit.; pp. 215, 229/30, 249) - deals with such education and the interest chimpanzees have or take in it.

13 J. Rawls - "A Theory of Justice" (op. cit.; esp. sects. 3, 77; the quotation is from p. 505).

14 In mentioning these rights, I do not mean to imply that active and passive euthanasia are not morally justifiable. I think that excellent reasons can be furnished in support of these practices, though perhaps not necessarily or exclusively those advocated by J. Glover and P. Singer in their thorough accounts, "Causing Death and Saving Lives" and "Practical Ethics", respectively (both op. cit.). Unfortunately, the issue of euthanasia is beyond the scope of my inquiry: I will have to resign myself to discussing euthanasia with regard to animals only - see the following chapter.

15 Cf. S.R.L. Clark - "The Moral Status of Animals" (op. cit.; p. 73).

16 S.I. Benn mentions the first two in "Rights" (op. cit.; p. 198); A.I. Melden discusses the third in "Rights and Persons" (op. cit.; ch. VI, passim).

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17 A.I. Melden mentions this right; ibid.; p. 184.

18 S.I. Benn - "Egalitarianism and Equal Consideration of Interests" (op. cit.) - and R. Dworkin (op. cit.; pp. xiii, 273-8) -, respectively, claim this status for them.

19 ibid.; p. 63.

Ch. 7

1 E.g., D.G. Ritchie (op. cit.), and H.J. McCloskey - "Moral Rights and Animals" (op. cit). - For an opposing view, see B. Brophy - "The Darwinist's Dilemma" (op. cit.) - who writes that only as moral agents are we justified in, e.g., protecting birds from our cats. - Ritchie would counter that defending animals by appeal to rights would require that we secure their natural predators a fair trial before finding them "guilty" or "innocent".

2 Following a paper on "Just Punishment", given in the Department of Philosophy at the University of the Witwatersrand in March 1985, L.J. Suzman suggested that although their agency may approximate rational agency in some instances and a high degree of interspecific understanding may be possible (e.g., between shepherd and sheep-dog), animals cannot be "punished" in the primary sense, i.e., as one might take to task a rational agent.

3 J. Feinberg - "Human Duties and Animal Rights" (op. cit.; p. 201). - J. Gr'eve has suggested to me in conversation that even keeping carnivorous pets on a vegetarian diet might be regarded as cruel. (Now, what about the animals whose remains delight our pets ? But as long as there is no real petfood "industry" and our dogs and cats have to get by on "scraps", it might be argued, there is no real contest. Nevertheless, we have struck on another argument against keeping animals as pets.)

4 Recall my distinction between "moral agency" and "ethical agency" in

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sect. 5.2 - T. Regan suggests that only moral agents can violate rights, and that animals cannot and do not violate the rights of other beings ("The Case for Animal Rights"; op. cit.; p. 285). Here, curiously, rights would flow not from the creature who has them but from the agent who can violate them, and this runs counter to Regan's view.

5 Cf., e.g., J. Rachels - "Do Animals have a Right to Liberty ?" (op. cit.; pp. 220/1).

6 "The Right to Life" (op. cit.; p. 414)

7 This is the gist of R. Dworkin's "trump" theory (op. cit.; p. xi; and ch. 7 passim).

8 D.G. Ritchie speaks of "guardianship of their rights" (op. cit.; p. 183). - J. Glover, in "Causing Death and Saving Lives" (op. cit.; pp. 76 ff), speaks in terms of a "contest" between respect for autonomy and paternalism. The common assumption is that one cannot be "paternalistic" in one's treatment of animals, for they do not satisfy the "belief-requirement": it is sufficient that animals are subjects of a life and have interests, for characterizing human meddling with their lives and interests as "paternalistic". (See T. Regan - "The Case for Animal Rights"; op. cit.; pp. 103-9.)

9 "Animals and why they Matter" (op. cit.; pp. 25/6)

10 D.T. Suzuki - "Der westliche und der oestliche Weg" (op. cit.; p. 118).

11 "Animals and why they Matter" (op. cit.; p. 21)

12 J. Rachels - "Can Ethics provide Answers ?" (A.L. Caplan & D. Callahan - "Ethics in Hard Times"; op. cit.) - quotes from D. Hume's essay on suicide: "The life of a man is of no greater importance to the universe than that of an oyster" and suggests that Hume would no doubt have felt vindicated by evolutionary theory which eroded confidence about any special place for humanity in the scheme of things. - Contra Hume (and Rachels) it could be argued that human beings have families and friends

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who worry about them, unlike oysters, and that such a circle constitutes at least part of the "universe". And to respond to this that such relations, etc., make no difference to the course of the world would be to make a claim which is itself purely consequentialist.

13 Cf. L. Wittgenstein's "mixed remark" in "Culture and Value" (Oxford: Basil Blackwell, 1980; p. 72): "It would almost be strange if there did not exist animals with the mental life of plants. I.e., lacking mental life". And: "I do not transfer my idea (of pain) to stones, plants, etc. ... Only of what behaves like a human being can one say that it has pains". ("Philosophische Untersuchungen"; op. cit. 283).

14 K. Wilkes - "Physicalism" (op. cit.; p. 100). L. Wittgenstein's remark is in "Zettel" (op. cit.; 532).

15 P. Tompkins & C. Bird - "The Secret Life of Plants" (New York: Harper Celophan Books, 1984; first published 1973; p. xiii). On memory in plants and communication between plants and human beings, see C. Backster - "Evidence of Primary Perception in Plant Life" (International Journal of Parapsychology, 1968). Backster's inquiry, which was conducted by means of lie-detectors, involved dropping living brine shrimp into boiling water in order to test plants' "reactions". Judging from this callous treatment of animals, it is unlikely that he will have drawn any moral consequences from the "evidence of primary perception in plant life".

16 A.W. Galston & C.L. Slayman - "The Not-so-secret Life of Plants" (American Scientist 67, 1979); K.A. Horowitz, D.C. Lewis, & E.L. Gasteiger - "Plant 'Primary Perception'" (Science 189, 1975).

17 C. McGinn - "The Character of Mind" (op. cit.; pp. 31 ff). A similar argument constitutes one of his three objections to the idea of panpsychism. Cf. also pp. 82/3, 85, where he says that from the evolutionary point of view, "knowledge would be pointless without action", and that light-sensitive behaviour of plants hardly counts as agency.

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18 J. Glover asks whether the "direct wrongness" of taking life also applies to ants, mosquitoes, or in the case of weeding the garden, and takes the implied negative answer to render the doctrine of the "sanctity of life" unacceptable ("Causing Death and Saving Lives"; op. cit.; p. 42). - J. Rachels - "Can Ethics provide Answers ?" (op. cit.; p. 22). - K. Goodpaster discusses the interests of plants (op. cit.; p. 319).

19 C.D. Stone writes: "What is needed is a (theory) that can fit our growing body of knowledge of geophysics, biology and the cosmos. In this vein, I do not think it too remote that we may come to regard the Earth, ... as one organism, of which Mankind is a functional part - the mind, perhaps." ("Should Trees have Standing?: Toward Legal Rights for Natural Objects" (Los Altos/CA:William Kaufmann, Inc.; 1974; pp. 51/2). Some philosophers may disagree with Stone's claim that man is the "mind" of the earth and point to the havoc we have wreaked, both in dealing with nature and with our fellow human beings. Cf. ch. 2 n. 21. - But the point of Stone's remark seems to be that any judgment, feeling, or decision which concerns any form of life, is morally significant. Although he does not employ the term "moral" as such, there is a striking similarity between the "radical new theory", the "myth" he advocates, and the ethic of the future envisaged by J. Margolis, the discipline of "moral ecology" ("Value and Conduct"; op. cit.; pp. 7, 212). Both "focus not merely on the immediate use of the world for determinate human ends ... but also on the long-term use of the world for determinable ends" (Margolis).

20 Doubts about this are expressed by, e.g., J. Rodman (op. cit.; pp. 86/7, 126 n. 36, 97, 103/4, and passim). C.D. Stone's remark is in "Should Trees have Standing ?" (op. cit.; p. 10).

Ch. 8

1 R.G. Frey - "What has Sentiency to do with the Possession of Rights ?" (op. cit.;, "Interests and Rights" (op. cit.; esp. ch. 1, and Postscript). M. Midgley - "Animals and why they Matter" (op. cit.; pp. 61/3, 66).

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2 A. MacIntyre - "After Virtue" (London: Duckworth, 1981; p. 67/8); R. Dworkin (op. cit.; pp. 103/4). H.J. McCloskey names two reasons why talk of rights cannot be abandoned in favour of other ideas: first, because it is often logically primary and because something is lost when we refer only to the good or the duty which is the basis of what an individual may do; second, because the kinds of distinction drawn within rights do not parallel those drawn within duties, like "prima facie", "basic", "absolute" rights, etc.

3 Cf. R. Wasserstom - op. cit. (pp. 101/2).

4 R. Nozick - "Philosophical Explanations" (op. cit.; p. 459); Nozick speaks in terms of "value-seeking" rather than "reason-seeking".

5 A. MacIntyre (op. cit.; p. 68); see also M.E. Zimmermann - "The Critique of Natural Rights and the Search for a Non-Anthropocentric Basis for Moral Behaviour" (Journal of Value Inquiry, 19; 1985; p. 50), and T. Regan - "Exploring the Idea of Animal Rights" (in: R.D. Ryder & D. Paterson - "Animals' Rights: a Symposium"; op. cit.).

6 C. Pierce, in "Can Animals be Liberated ?" (Philosophical Studies 36, 1979; p. 74), contrasts liberation and the right to liberty: "Liberation requires us to resist and restructure a whole system of psychological pressures, whereas the right to liberty is given to us within that system". I expect that similar arguments can be constructed involving other rights. - M.E. Zimmermann (op. cit.; pp. 48/9) mentions the transitional usefulness of rights.

7 Thus, it might be argued that writing and/or acting on behalf of animals especially in a country like South Africa, is a kind of "displacement activity" which serves to channel one's energy away from, and to calm one's feelings of guilt over failure to concern oneself with, the "real issues" of apartheid and the emancipation of women (both white and black). - Another criticism could come from black South Africans who might claim that concern with the rights and the "liberation" of animals actually involves a racist bias against them: they feel threatened, e.g., by conservation politics and policies and consider it yet another

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example of racial discrimination that animals, wild animals, are assigned territory which is "rightfully" theirs, i.e., the Africans. The implication here is that arguments contra speciesism smack strongly of racism. (But consider: given the subordinated role of women in black South African tradition and culture, would it be discriminatory against black men to advocate the rights of the former ? Or would this amount to a contest between two species of paternalism ? If yes, which species is preferable, i.e., with respect to the individual black woman ?)

8 E. Fromm (op. cit.) furnishes an illuminating account of Hitler's vegetarianism (pp. 534, 537), of the rigorous training routines he put his dogs through (p. 562), and also of his relation to women (pp. 543-8).

9 C.D. Stone (op. cit.; p. 8)

10 Cf. J. Rodman (op. cit.; p. 103).

11 K. Marx - "On the Jewish Question" (in: R. Tucker - ed. - "The Marx-Engels Reader"; New York: W.W. Norton; 1978). Marx is surely wrong, however, in linking individualism with egoism and in detecting only egoistic motivation in appeals to rights. To some extent, as I have argued, it may be true that the invocation of rights is self-interested but the extension of rights to the hitherto underprivileged and to those who cannot themselves claim them surely disproves the argument from solely self-interested motivation. Duty-based theories seem to admit of such motivation to a much larger extent. - T. Nagel's doubts about rights are expressed in "Equality" (in: "Mortal Questions"; pp. 115/6), where he complains that rights limit the actions of others directly and <u>independently</u> yet leave a great deal of life ungoverned by moral restrictions or requirements. According to Nagel, the "justification of broad .... action to promote all aspects of the general welfare requires a much richer set of moral requirements" (which his "egalitarianism" purports to furnish; but there is no reason to believe that no rights-theory can accommodate <u>rights</u> in the sense of Nagel's "equal moral claims", rights which concern not only restrictions on how an individual may be treated but, indeed, whatever may happen to the individual).

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12 D.M. Raup & S.M. Stanley - "Principles of Paleontology" (San Francisco: Freeman: 1971; p.255; my underlining).

13 C. Pierce (op. cit.; p. 74). - J. Rodman's argument resembles the Piercean one; yet he contrasts the "moral/legal stage of consciousness" with a kind of ecological consciousness that transcends the narrow legalistic/moralistic framework. Like Pierce, he argues that one "can only liberate oneself, just as one can only actualize one's own potentialities". But, unlike Pierce, he sees "liberation" as constituting part of that narrow framework (op. cit.; pp. 101-4). He seems to fail to appreciate that we are necessarily caught up in this legalistic/moralistic web and that not every attempt to expand it, e.g., by restructuring a given system, must be doomed to failure.

14 In another sense of "liberation", the Buddhist sense, it is required not only that one have a sense of self, etc., but that one transcend it in order to be liberated. It is unlikely that even highly intelligent chimpanzees and rhesus monkeys could accomplish this feat. (Most humans might not be capable of achieving this, for that matter.) But then again, we do not know, do we ? Consider the famous Zen anecdote: A monk asked Joshu, a Chinese Zen master: "Has a dog Buddha-nature or not?"
Joshu answered "Wu".
("Wu" means "Wu", plainly what a dog might have answered to the question. This parable is cited by D.T. Suzuki, in "Die grosse Befreiung"; Frankfurt/Main: Fischer,; 1975.)

15 The etymological origin of "emancipation": (Lt.) "e" - out; "manus" - hand; "capere" - to take. "Manus" and "capere" are combined in "mancipium" - property. Hence, "emancipation", in Roman legal usage, meant "giving independence to ..." (cf. A.M. Prichard; op. cit.;), and has since been expanded to mean also: liberation from the inhibitions imposed by conventional morality, etc. (See, e.g., webster's dictionary). - T. Regan ("Exploring the Idea of Animal Rights"; op. cit.; p. 86) has called "animal rights" the "backbone of the humane movement", and sympathy ("compassion") its "heart", without actually inquiring into the possibility of their interaction in moral "physiology".

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