

**Directorate of Distance Education
NALSAR University of Law, Hyderabad**

Reading Material

Post-Graduate Diploma on Animal Protection

1.2 Introduction to Animal Laws and Ethics

Compiled by:

Humane Society International - India

(For private circulation only)

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Chapter 1

Introduction to Animal Welfare Ethics

Introduction

This lecture was first developed for World Animal Protection by Dr David Main (University of Bristol) in 2003. It was revised by World Animal Protection scientific advisors in 2012 using updates provided by Dr Caroline Hewson.

In This Chapter You Will Learn

- We will start by looking at what people mean when they talk about ‘ethics’ in everyday life and conversation.
- We will also address the common criticisms that ethics are ‘just subjective’ or ‘just preferences.’
- We will then focus on common ethical theories that have been applied to the question of how we ought to relate to animals.

Review

Previously, we learned that animal welfare concerns how sentient animals experience their lives in terms of their physical functioning, mental state/feelings and natural behaviors. To understand these three aspects requires science – hence animal welfare science. We also noted that animals’ experience of their lives is affected by our values – how we think we should treat animals, and what we think is important for them. Science helps us to understand some of these issues. Ethical theory, then, provides a logical framework by which to weigh up that knowledge with knowledge of other important factors such as the need to earn a living by farming, or to clear land and build houses. Using that framework, we can decide how we should treat animals. This chapter introduces you to the most common theories about how we should treat animals so that you can begin to understand the underlying reasons why people may disagree about this issue.

Sentience

Before we investigate ethics and philosophy and how they relate to animals, we should review what is known about animal sentience. ‘Sentience’ is the capacity to have feelings and to experience suffering and pleasure. It implies a level of conscious awareness. Animal sentience is the fact that animals can feel pain and suffer but also experience many positive emotions, such as joy and pleasure. Animal sentience is recognized in legislation around the world (e.g. the Lisbon treaty). Studies have shown many animals can experience complex emotions which are often thought to be unique to humans, such as grief and empathy. The acceptance of animal sentience is based on decades of scientific evidence from the fields of neuroscience, behavioral sciences and cognitive ethology.

Ethics Are Part of Everyday Life

When we think about ethics in everyday life, we start by considering that many of the decisions we make all the time have moral dimensions. That is, they have components which extend beyond self-interest and involve concern for others. In particular, we are concerned that our actions may make others worse off – i.e. they may be harmed or deprived. On account of this concern we all have views about which actions are ‘right’ and which actions are ‘wrong’. These views are our ‘moral values’. Often the ethical part of everyday decisions remains hidden because it is part of a routine or forms part of widely accepted practice. However, when we examine our decisions and the moral values behind them, we find that our values are influenced by societal norms, professional ethics, personal ethics, and – if we have studied ethics – ethical theory. We will now discuss each of these in turn.

- **Societal norms** (Rollin, 2006) are a social ethic: they are rules that have emerged to enable us to live together. Social ethics may evolve and change as new factual information is gained or collective preferences develop in line with increasing or decreasing prosperity. For example, in many countries there is an emerging social consensus that animals need formal protection and consideration because they are sentient. This has led, in turn, to stunning becoming permissible at slaughter for halal meat in some countries and forced molting of hens being illegal in several countries.
- Our views of right and wrong in regard to animals may also be influenced by **professional ethics**. Those guidelines vary from country to country. They may evolve with social ethics, or they may be a response to it, or sometimes they lead it. For example, cosmetic surgeries in dogs and cats are permitted by some veterinary jurisdictions and are widely accepted within the social ethic too. In other countries, the social ethic may be ambivalent on the subject, but the veterinary regulations are that performing those surgeries are grounds for censure and, possibly, losing your license to practice.
- Our **personal ethics** (Heleski & Anthony, 2012) also affect our views of what is right and wrong. Our personal ethics develop from our personal experiences. For example, you may visit a variety of dairy farming systems ranging from extensive farms with small herds, to large-scale, intensive production systems, causing you to have a personal preference for the more traditional, extensive system. These experiences and your associated feelings may result in a change in your behavior – therefore, your personal ethics may lead you to vote for a change in farming methods.
- If you also subscribe to an **ethical theory** – about virtuous behavior, for example – you might also buy dairy products from extensive, free-range farm systems (if they are available), even if they are more expensive, and regardless of whether that will have an impact on those dairy cows who remain in intensive systems. (Please note that this is only an example, not a suggestion. We will see in a moment that none of the ethical theories is absolute.)

Ethics and Philosophy

Our moral values may be informed by ethical theory – that is, ‘ethics’ in the academic sense. Ethics is the branch of philosophy concerned with the study of the logic behind our moral values – the reasons why we ought to relate to others in certain ways (Rollin, 2006). Animal ethics is the study of how we ought to relate to animals.

Some people are sceptical about the value of ethics. This is understandable, especially given

what we have just seen about the complexity of moral values and given the variety of ethical theory. Two common criticisms that you may hear are:

- Ethics is just subjective
- Ethics is just preferences.

Those criticisms are not valid, however, as we shall now see.

Are Ethics “Just Subjective”?

First, moral values and ethical theories are not simply an infinitely varied collection of subjective, private judgments. In reality, there is general agreement on objective reasons why certain actions are right and others wrong. Ethical consensus within any one society enables us to live harmoniously and thrive. If ethics was simply subjective, it would be likely to result in societal breakdown. The fact that many societies avoid that and can correct it when it does happen points to common reasoning and agreement about what is right and wrong. For example, the principle of the ‘golden rule’ (do unto others as you would have them do unto yourself) is found in most religions, most societies, and it is a component of some ethical theories. The rigorous logic of ethical frameworks also makes ethics more than “just subjective”.

Are Ethics “Just Preferences”?

Personal ethics are different from personal preferences. For example:

- ‘I like peas’ is a preference statement. It requires little rational defence because it does not attempt to make other people like peas, and it does not matter if anybody else shares this preference
- in contrast, the sentence ‘We ought to avoid eating animals and get our dietary protein from peas instead’ is a statement of moral values and attempts to tell others what to do. As such, it requires rational justification.
- The difference between moral values and preference values is more subtle.
- Our moral value about avoiding eating animals and eating peas instead is different from a preference value such as ‘It is better to get our dietary protein from peas than from animals’.
- Preference values are comparative, and they include a positive or negative value such as better or worse, or more important vs. less important. (Note that this is different from a simple comparative statement of fact such as ‘peas are smaller than sheep’.)
- Neither statements of our preferences for peas, nor statements of our preference values about eating peas, nor statements of fact about the comparative size of peas
- requires anyone to change his/her behavior, but they might influence our own behavior and choices.
- However, our moral values about eating peas instead of animals may compete with other preference values we have that are concerned with, for example, our income, our social standing, existing laws, etc. So, if those preferences are stronger than our preference

- for peas instead of meat, then this may lead to actions that are inconsistent with our moral values.

Getting back to the bigger question of why ethics are not just preferences:

- We have seen that statements about how people ought to act require some justification and that statements of what the speaker prefers are not an adequate justification
- Instead, you need a more impartial and logical standpoint for ethical statements so that the reasons can be recognized and weighed up, not just by the person making them but by people generally
- Ethical theory helps here, because it gives us a set of reasons that lead us to a conclusion.

Position 1: Animals Do Not Require Moral Consideration

Taylor (1999) reviews the positions on the moral status of animals as seen by philosophers over time and these views are summarized. One answer to how we should treat animals is that animals have no moral status and therefore we have no duties towards them in their own right. The only consideration is in regard to how their treatment may affect us – their treatment does not matter to them.

The reason why animals do not have moral status in their own right, according to this approach, is because, unlike us, they lack sufficient consciousness to reflect on their experience. In some views, animals could not have moral status because they lack a soul.

Philosophers who argued from this general perspective have included Kant and Descartes. For example, Descartes denied that animals could suffer, but Kant did not deny that animals could suffer, but argued that their suffering did not matter because they are not rational. The extension of their views was that, because animals lack language, consciousness and the power of reflection, they cannot take part in mutual arrangements and they cannot reciprocate any moral consideration that is given to them. These arguments are purely intellectual, and they do not match what we see in animals and what we know of their behaviour. Therefore, they do not seem to be common sense.

It is important to know that several world religions provide explicit guidance on the importance of how we should act towards animals. For example, Buddhism and Hinduism apply the concept of *ahimsa* which means not harming any living creature. Practicing *ahimsa* helps to ensure personal purity and avoid suffering in a future incarnation. This is a consequentialist argument, where how we should act is guided by the potential consequences of our actions. Judaism and Islam both have very clear guidelines about the treatment of animals and the avoidance of, for example, pig meat.

Such practices are seen as necessary for personal health and spiritual purity, and some of them are followed because animals are God's creation and, as such, require respect and kindness so that they do not suffer from ill-treatment. This guidance is a combination of a consequentialist position that is human-centred (maintaining personal purity) but also animal-centred (avoiding suffering). The guidance also includes a concept of duties as well as the potential consequences of different actions; the duties to animals follow from the human's special status as a rational creature.

Christianity does not have such explicit teaching on animals, but it does share sacred texts with

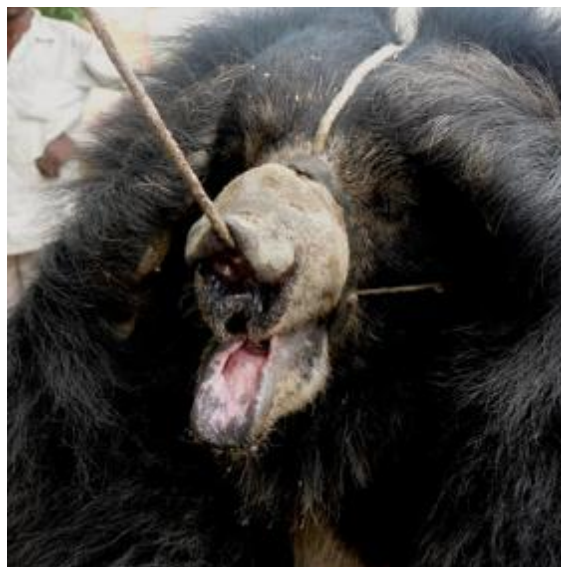
Judaism and so shares teaching about treating animals kindly. Moreover, the Christian tradition has drawn heavily on the ancient Greek view of the world as a 'great chain of being' with humans at the top and animals being necessarily excluded from moral consideration because they are not rational and cannot speak. This understanding of the world has of course changed considerably because of scientific knowledge, and much modern Christian thinking would now consider animals because we know they can suffer.

Note that some modern philosophers share the view that animals do not require moral consideration, for similar reasons to thinkers of the past. For example, in a book published in 1992, the philosopher Peter Carruthers argues that animals have mental states but are not conscious of them, and therefore they cannot suffer and do not require moral consideration.

Another philosopher, Jan Narveson, has argued that our interactions are driven by self-interest which causes us to enter into contracts of reciprocal consideration with each other. Because animals cannot speak, etc., they cannot enter into such contracts with us. Therefore, we do not have duties towards them for their own sake. However, we must treat animals well because harming them would be an indirect harm to other humans – with whom we do have contracts.

Narveon's argument leads to a related point about how to treat animals. That is, animals do not require moral consideration, but it is important to treat them well because it is important that we behave well and act kindly: if we do not, we damage our own moral character, which may have adverse consequences for us and for others. As we have seen, that is similar to the argument of some religions wherein mistreating animals has consequences for us, perhaps in the afterlife.

Position 2: Animals Require Moral Consideration Because They Can Suffer



Contemporaries of Descartes and Kant felt unease at their arguments that animals do not require moral consideration in their own right. Other people of that time noted, for example, that babies and people with certain disabilities cannot use language or reflect on their actions or return any moral consideration that is given to them. However, those groups of people have moral status. It follows from this that language, etc. is not a reasonable basis for deciding who should receive moral consideration. Instead, the capacity to suffer makes more sense logically and intuitively. As animals can suffer, they therefore deserve moral consideration.

The philosopher who is most famous for having made this point was an Englishman called Jeremy Bentham in the late eighteenth century. However, he actually only made that argument in passing, as part of a bigger argument about the treatment of people. Here we have summarized what Bentham wrote concerning animals. The very last part is widely quoted in animal protection arguments: “The question is not, can they reason? nor can they talk? But, can they suffer?” This kind of ethical framework is termed ‘consequentialist’ because it is the ‘consequences’ of our actions that matter – in this case, the ability to suffer and, its logical opposite, the ability to experience pleasure.

In the modern era, animal welfare science supports the idea that animals can suffer from pain and negative emotions. Other chapters in this course look at a variety of scientific evidence about this (e.g. the similarity of the emotional circuits in the human brain to those of some other animals; the role of analgesic drugs in routine surgeries in farm animals and the structure of the pain pathway). Research is also starting to examine the capacity of animals to experience positive emotions such as pleasure, and its importance to them. We can easily relate to the argument that animals deserve moral consideration because they can suffer as a result of human actions. However, moral consideration of suffering leads to the problem of how best to calculate and then weigh up the suffering and the pleasure caused to the different groups who may be affected by the action concerned. We could avoid that problem by arguing that animals require moral consideration not just because of suffering that our actions may cause, but also because they have value in their own right: that animals have ‘intrinsic value’.

Position 3: Animals Require Moral Consideration Because They Have Intrinsic Value



This approach differs fundamentally from the two earlier ones. The previous positions state that animals can be used as long as this does not cause them suffering or have adverse consequences for us. There, animals have value only because of their utility for us. Their value is ‘extrinsic’ or outside themselves. In contrast, if we say animals that have ‘intrinsic’ value we mean that the animal matters for the animal’s own sake, independent of effects on others. The reasons for this include:

- Animals have an interest in living – they seek to survive and their lives matter to them. They can make choices and direct their lives
- Animals have potential to fulfil
- Animals are sentient; they experience mental states and can suffer.

The existence of inherent qualities mean that we owe animals treatment that respects these attributes. That is, we have duties to them and unlike the logic of utilitarianism, we should not cause animals to suffer for the purpose of benefitting others. This view that we should make decisions about how we treat animals based on duty – as against consequences – is termed ‘deontological’. That word comes from the Greek *deontos*, meaning obligation.

Deontological ethical theories hold that there are some actions that are right in themselves whatever the future consequences. These are obligations. Therefore, human rights theory states that we should treat other humans as ends rather than means: we should not use our fellow humans in ways which do not respect their inherent worth, even if good consequences result. For example, we should not throw one person out of a lifeboat, even if that might stop the boat from sinking and save everyone else in it. It follows that if our intrinsic worth gives us rights, and we agree that animals have intrinsic worth, then animals must have rights too.

Summary So Far

To sum up so far: we have seen why ethics is not just subjective or preferences, but is a system of reasoning that helps us to know how we should act towards others. We have just looked at three of the most common arguments that have developed over the centuries regarding how we should act towards animals. The arguments have centred on whether or not animals have certain attributes: language, the capacity to suffer, and intrinsic value. As we have looked at those arguments, we have also come upon the concepts of consequentialist versus deontological positions, and the concepts of extrinsic and intrinsic value.

Five Ethical Theories

We shall now go through five ethical theories about animals that have arisen from these debates. You will recognize some of the arguments in the theories.

Contractarian

In ‘contractarian’ theory, we operate as a moral community based on self-interest. Because we can talk and agree, we enter into contracts with others and, if we break a contract by treating someone badly, he or she may retaliate. Therefore, we are motivated to treat them well, and vice versa. Because animals cannot talk, they cannot enter into contracts with us nor us with them. Therefore, we do not have moral obligations to them. We must treat them well only insofar as it benefits ourselves or other people with whom we do have contracts. We came across this earlier when reviewing the historical evolution of the argument that animals do not require moral consideration. The difficulty with this view is that it is anthropocentric – it only considers the needs of humans.

Utilitarianism

The second ethical theory is ‘utilitarianism’. This emphasises the consequences of actions. In particular, we are obliged to maximise ‘utility’, meaning happiness or the balance of pleasure over pain. So, we should aim to act in order to achieve the greatest good for the greatest number. We saw earlier that Jeremy Bentham believes that beings who can suffer should be included in this theory.

Utilitarianism seems simple and flexible. However, it can be confusing when it demands we break certain moral rules in order to bring about the best consequence. For example, people in an overloaded lifeboat may calculate that more people will survive if they prevent more people climbing aboard, even if those refused help will drown. However, it would normally be a strong moral imperative to help others in mortal danger.

How exactly we make the calculation is also unclear, especially when the costs and benefits are borne by different individuals. For example, a utilitarian form of cost–benefit analysis is often used by those deliberating on whether the use of animals in an experiment is worthwhile. If we need 100 rabbits to suffer moderately in order to have a 10 per cent chance of producing a vaccine against a mild human illness, how do we make the calculation? Do the costs and benefits balance at all when some individuals bear **all** the costs, and different ones gain **all** the benefits? Both the costs and benefits may also be unknown. In the example given, the costs (the suffering of the rabbits) are known, but the benefits (possible alleviation of the human illness) are uncertain.

Another argument that was made in Jeremy Bentham’s time and has been made since is that the human experience of happiness is in a different category from that of animals because humans are rational. For example, how can you balance the pleasure that a pig experiences while wallowing with the pleasure that a person experiences from reading a novel?

Another form of utilitarianism considers the value of consequences beyond simply pleasure and pain. This argues that we should maximize the satisfaction of preferences. If animals have preferences, then they should be included in our calculations. The most famous current exponent of this view in regard to animals is Peter Singer. His thinking has formed the basis for the notion of animal liberation. Broadly, his arguments are:

- Animals are sentient and can have preferences, but that does not include sufficient awareness to have a desire to keep on living
- It is therefore acceptable to kill animals for food if the following conditions apply:
 - They have had a good life (one in which they could satisfy their preferences)
 - They are replaced by other animals who would not otherwise have been brought into the world and given the chance to enjoy a good life, and
 - The animals can die painlessly and without suffering.

Based on this view, Singer argues from that because modern farming does not allow animals to have a good life, we should not eat animal products.

Animal Rights

‘Equal consideration of equal interests’ allows different treatment of different animals, but asks that we give equal weight to their morally relevant similar interests. So, if it hurts a goat as much as it hurts a human to be hit, we ought to avoid causing this sort of pain in both goats and humans.



Under this principle, unequal treatment of animals and humans is justified only if there are morally relevant differences between humans and that animal. For example, the freedom to practice religion is very important to some humans, but providing this freedom to farm animals is not necessary. This principle does not necessarily imply that all animal lives are as valuable as human lives. However, neither does it imply that all humans have a higher moral status than all animals of other species.

The second point, ‘speciesism’, was developed by Singer from earlier thinking (particularly by Richard Ryder). Speciesism is defined in the Oxford English Dictionary as “discrimination against or exploitation of certain animal species by human beings, based on an assumption of mankind’s superiority”. The principle here is that it is unjust to treat animals differently from ourselves simply because they have different biological characteristics. Again, if they are capable of similar experiences to us, this must be respected when we make decisions about how to treat them.

Many people would agree that it is permissible to raise farm animals and then kill them while they are young and healthy so that we can eat them. However, many people disagree with Singer that farming cannot provide animals with a good life. We have seen earlier that, for some people, an animal’s good physical functioning is enough for them to say that the animal has a good life, while for others an animal’s mental state or natural behaviour are important.

In reality, welfare comprises all three elements and balancing them is certainly a challenge. However, many people would disagree with Singer and would say that farming can give animals a good life before we kill them. Another point about Singer’s view of farming is that it does not typically take into account economic and other factors that have led to modern practices. That has in turn, perhaps, allowed activist groups to take a very confrontational view of farmers and accuse them of deliberate cruelty, without considering other possible reasons for their farming practices, or the animals’ experience of them.

We now move on to our third theory, which is ‘rights theory’. This is deontological – decisions are based on obligations rather than consequences. Rights philosophy was emphasized by Kant, whom we encountered earlier, although he excluded animals on the grounds that they are not rational. ‘Moral rights’ are very strong claims that cannot be overridden merely to produce beneficial consequences, and rights flow from the very basic interests of those that hold them.

The theory of animal rights was developed by American philosopher Tom Regan. He argues that mammals and birds are “subjects of a life”. That is, they are more than just alive and conscious – they have beliefs, desires, memory, emotional life and various other mental capacities. All this gives them an inherent worth, from which flows their rights. The most fundamental right is their right to have their inherent worth respected.

This right sets a rigid rule which forbids the use of animals as resources for humans, no matter what the benefits may be. Therefore, this approach is ‘abolitionist’, and does not allow any use of animals, including the use of animals for food, clothes, experimentation, entertainment or luxury items such as fur. Using rights theory to make decisions does not require weighing different consequences. It only needs us to consider whether the decision respects the individual animal’s dignity and preserves that. In contrast, in utilitarian philosophies, individuals are considered as parts of a whole group and the aim is to maximize the good for the most individuals.

Therefore, rights theory protects the individual, no matter how many others may or may not benefit. This view of animals is seen as radical and is at odds with common practices around the world. For example, most people accept that we can kill animals for our ends, e.g. food, clothes, etc. However, rights theory forbids this. Sandøe and Christiansen, who are ethicists at the University of Copenhagen veterinary school in Denmark, note that, while many people may not grant animals the right not to be killed, they may accept that animals might have the right to be protected from suffering. These authors note that much European legislation about animal welfare tends to offer this protection and that the principle of the right to be protected from suffering is gradually becoming a legal right.

Arguments against animal rights include the following.

- You cannot always respect everyone’s rights, even with humans. Regan does not discuss particular cases but, as with all ethical theories, it is impossible to apply animal rights consistently, all the time.
- For example, Regan allows killing animals for self-defence (which is a human interest) but not for laboratory research on life-saving medication (another human interest). It is inconsistent to be permitted to kill animals to save one’s life in one context but not in another.
- Other arguments against the assumption of animal rights is that they ignore the unique inherent value that humans have as moral agents, and that as moral agents we must enact the responsibilities that come with having rights. Animals cannot enact responsibilities, so they cannot respect other animals’ rights. Therefore, the concept of rights for animals is faulty.

Animal rights theory continues to be debated. For example, more recent animal rights philosophers and legal scholars such as Daniel DeGrazia, Steve Sapontzis and Gary Francione have argued against the notion that humans’ moral agency should be an obstacle to rights. Another scholar is the Christian theologian Andrew Linzey who has argued that animals have rights given to them by God as their creator.

Relational Views

The first theory discussed here (contractarianism) excluded animals from the moral arena on the grounds that they are not rational and cannot engage in contracts. The last two theories discussed (preference utilitarianism and animal rights) tend to dominate discussions of the ethics of animal use. Two important features of both of these are that they are impersonal and impartial: all sentient animals are considered equally. For any matter of equal moral concern, such as the need for painkillers at surgery, no individual or group is entitled to privilege or special consideration.



By contrast, however, some philosophers disagree both with the principle of impartiality and with the exclusion of animals from the moral arena. They have taken the realities of our relationships with animals as a more practical starting point for understanding how we should act towards them. In that school of thought, human beings tend to be in personal relationships, and we care instinctively when we see distress in others. Their distress is a moral concern because it means that the subject is suffering harm. Our concern for that distress does not start with a logical assessment of, for example, whether they are rational, or can suffer or have rights. Instead, our concern arises from some instinctive understanding that combines natural sympathy for their distress and our desire to live a good life and show compassion.

This is broadly called ‘care ethics.’ It was developed largely by feminist philosophers such as Mary Midgley, Nel Noddings and Carol Adams in the second part of the twentieth century, and continues to be refined. These scholars argued that rights were too legalistic an approach to animals, especially within a system which was quite patriarchal. Instead, our actions towards animals should be guided by our natural tendency to build relationships with animals and show compassion, which in turns gives us a duty of care to them, as they are dependent on us.

Related to that desire to show compassion is the much older idea of ‘virtue ethics’ first promulgated by Aristotle. Here a good life consists of living according to one’s nature, and our nature is to be happy, which we can achieve in part by doing good in relation to others. Some philosophers pointed out that failing to act kindly to animals predisposes us to act badly to other

people. Recent research into cruelty to animals bears this out, as we will learn in human–animal interactions.

This brings us to another relational view, extended from care ethics, which is rooted specifically in the human–animal bond and also involves the notion of virtuous behaviour. This bond-related argument rejects the notion that we should not be partial in our treatment of animals. Instead, how farmers ought to treat farm animals – and, by extension, how any animal owner should treat his/her animals – is necessarily partial and personal because of the dependent relationship animals have with their owner. That relationship means that owners are ‘trustees’ of the animals: it is true that they do not have a formal contract with their animals, but they do have an unspoken and implicit commitment to care for each one.

Moreover, the owner’s daily interaction with the animals does create a bond of empathy with some of them, at least. The animals, in their turn, have expectations of care. This does not necessarily imply complex conscious expectations. Other chapters in this course look at how animals’ experience involves the brain’s evaluation of present sensory input against past knowledge or memories, and how this evaluation results in changes in physiology and behaviour to maximise positive sensory input and avoid negative or unpleasant input. The success or failure of the animals in that regard in turn creates expectations of what a particular stimulus represents. It follows from this that animals rely on their owner. If the owner treats them cruelly or, in a lesser way, does not optimise their welfare, that person creates an injustice.

Respect For Nature

Our final theory today is called ‘respect for nature’ and is less concerned with individual animals. In this view, the preservation of the species within the ecosystem is more important than the wellbeing of individual members of the species. Here, for example, selective culling of healthy animals is permissible to preserve the wellbeing of the group, e.g. to reduce competition for food. In this view, the individual is not as important in their own right, but only as a representative of the larger group.



This ethical theory is commonly applied to how we should act in regard to wildlife. Individual domestic animals come second to the preservation of the wider ecosystem. Moreover, the artificial

selection that has been used to develop domestic species has disrupted their genetic integrity, which makes it difficult to talk in terms of preserving those species within a domestic ecosystem. Conventional farming is of particular concern for reasons including:

- Its use of drugs, which the animals excrete into the environment, affecting the local microbial and helminth populations
- Its reliance on concentrate feed with ingredients sourced from around the world, which affects local species and ecosystems and the wider ecosystem.

Some thinkers, however, would also argue that respect for nature applies to individual domestic animals. In particular, Bernard Rollin has applied an idea from Aristotle which is that animals have an inherent nature or *telos*. This is genetically determined and is represented by their species-typical behaviours and traits. Animals have behaviors that are important to them and that they are highly motivated to carry out, even in very unnatural domestic environments. Rollin's point is that we should respect the interests that domestic animals have as a result of their *telos*. For example, pigs have a strong interest in being able to root and, sometimes, to wallow. Hens have a strong interest in nesting before they lay an egg. Unlike philosophers of the respect for nature school, however, Rollin does not see artificial selection as unnatural, so long as the interests of the resulting individual are respected.

Ethical Theories Are Logical But Conflicting

Under this we have reviewed the five main ethical theories (contractarian, utilitarianism, animal rights, relational views and respect for nature). We have summarized the main logical arguments of these theories:

- Animals cannot enter into reciprocal arrangements with us (contractarian)
- Animals are sentient and their suffering or pleasure is of concern (utilitarianism)
- Animals' lives do matter to them (animal rights)
- We do have bonds with our own animals and a particular duty of care towards them (relational views)
- harming animals can tend to make us more likely to harm people (relational views)
- A species as a whole is different from the individual and preserving the species may require sacrificing the individual. (respect for nature)

However, the theories conflict on some or many points. For example:

- Rights theory does not allow the raising and killing of animals for our purposes.
- Utilitarianism and relational views allow farming and meat consumption, under certain conditions, but disagree about the degrees of moral responsibility that are involved for owners.
- The utilitarian takes a universal, impartial approach where we all share in the responsibility to ensure the animals have a good life, a humane death and are replaced.
- In contrast, the human–animal bond implies partiality and means that a farmer has particular

responsibilities to his/her animals, which are more binding than his/her responsibility to farmed animals generally.

- Meanwhile, the respect for nature theory is more concerned about the wider ecosystem and, inasmuch as it applies to farmed animals, will allow farming and meat consumption if this does not disrupt the overall balance of the ecosystem and the animal's *telos*.
- With the 'respect for nature' theory, some organic farming standards may not permit prompt use of drugs for, e.g., mastitis, and so cause preventable suffering in individual animals. That would not be consistent with a relational or utilitarian approach.

Hybrid Views

Because no one ethical theory adequately addresses all possible moral concerns, and because elements in each are compelling, many people do not subscribe only to just one view, but pick components from each. In his book *An introduction to veterinary medical ethics*, Bernard Rollin calls for a hybrid view of consequentialist and deontological ethics for animals. This view invokes:

- Utilitarianism to protect animals from suffering; recall that this is a consequentialist theory
- Rights, to allow animals to live as far as possible according to their nature; that is our obligation in respect of animals having species-specific characteristics. Recall that this makes it a deontological theory
- The relationship/bond by which we continue with the 'ancient contract' of mutual advantage between stockperson and animals, e.g. the provision of shelter, food, comfort and all the other needs of a dairy cow in exchange for her milk and, ultimately, her flesh. This ancient contract creates obligations which make this ethical approach deontological.

Unlike rights, this emerging social ethic does not take the completely abolitionist position of animal rights. It allows for laboratory animals, and farming and keeping pets if their wellbeing is protected and cared for. It also allows animals to be killed for our benefit. However, it does not allow what Rollin calls "frivolous usage" such as hunting, trapping, entertainment, etc.

An example of this pragmatic view was found in a study of vets and shelter workers in Canada (Schneider, 2001), which indicated that vets used a combined ethic like this in making decisions on how to treat companion animals. Therefore, they did not permit intense suffering and sought to protect animal welfare, but they allowed euthanasia of healthy animals in shelters.

Conclusion

This concludes today's introduction to animal welfare ethics.

- You now have an overview of what people mean by 'ethics' in everyday life and conversation.
- You know why ethics are not 'just subjective' or 'just preferences'.
- You are aware of the common ethical theories that have been applied to the question of how

we ought to relate to animals, and how those arguments have evolved.

The second chapter on ethics will look at how ethics can be applied in different situations concerning animals and people.

Chapter 2

The Application of Animal Welfare Ethics

Introduction

This chapter was first developed for WSPA by Dr David Main (University of Bristol) in 2003. It was revised by WSPA scientific advisors in 2012 using updates provided by Dr Caroline Hewson.

In This Chapter You Will Learn

This chapter looks at specific uses of animals and how each of the different ethical theories guides us in these cases. This chapter will discuss how ethical theories can be applied to a number of animals uses and how this should guide the treatment of the animals in our care. We will also investigate how our actions impact on environmental ethics. This chapter aims to familiarize you with the practice of applying ethical theories, rather than examining issues in detail. At the end of the chapter we will examine two frameworks that can help you make ethical decisions in practice.

Reviewing Ethical Theories

Previously, we saw that ethics concerns how we think people should act. That concern arises because actions may harm others, i.e. make them worse off than they are at present. Ethical theory provides logical reasons why a particular course of action may avoid causing harm, and this helps us to decide how to act. We saw that there are five main ethical theories of animal use and these are listed here. Each theory has some compelling logic, yet despite that they may not completely allay our moral unease in a particular case. The theories may be categorized broadly into two types. There are obligation-based theories known as deontological theories from the Greek word ‘deontos’, which means obligation. There are also consequentialist theories. These will be covered in the next two headings and applied throughout in this chapter.



This heading shows the three main consequentialist theories. Recall that none of these three theories accord animals inherent worth. Rather, the animal's value lies only in the consequences of his/her use. The contractarian argues that the consequences of the use for animals themselves do not need to be considered, whereas the other two positions do include the consequences for animals, to some degree. This shows the two deontological (obligation-based) theories. In these cases, animals are given intrinsic value and therefore the consequences of our actions for the animals themselves must be considered.

Areas of Concern

We shall now consider four common examples of popular concern regarding animal use, using the five ethical theories to guide us in how to act. We will also use the examples to introduce you to some additional points. Please be aware that we will only be able to conduct a brief overview of the issues here. The goal is to accustom you to applying the different ethical theories so that you have a better understanding of why there can be such disagreement about the best way to treat animals, even if everyone wishes to do the right thing.



The main areas of concern we will look at are:

- Breeding dogs with heritable defects
- Farming animals for meat
- Controlling infectious diseases in animals
- The use of animals in research

Breeding Dogs With Genetic Defect

There is increasing concern that many dog breeds are selected for appearance without regard to

the fact that these physical features are accompanied by impediments to physical functioning that increase the dogs' risk of suffering. Those impediments may be overt physical defects that interfere with their function (e.g. brachycephalic airway obstruction in breeds such as boxers, pekinese, bulldogs, etc.), or inherent genetic predispositions that increase their risk of disease (e.g. mitral valve disease in Cavalier King Charles spaniels). Many people feel that it is wrong to breed such animals and to profit from it when it is possible to breed dogs with a different genetic make-up that would reduce the risk of impaired physical functioning and associated suffering.



Credit: Colin Seddon

A very challenging philosophical argument in answer to that concern is called the ‘non-identity problem’. The fundamental point here is that we are concerned about individuals who suffer are worse off or harmed – because of their genetic make-up. However, the logic of ‘non-identity’ is that those individuals are born like that – the risk or reality of impaired physical functioning is part of their unique identity. It cannot make them worse off, as individuals, than they could otherwise be because, if the owners had selected parents who would produce a dog with a different appearance that would be a completely different individual from the dog in question. This argument is logical and it does not in any way argue against treating those dogs and alleviating any suffering. However, it leaves most people uneasy because it does not solve the concern that dogs with those traits suffer, and that continuing to produce such dogs is somehow wrong. In the next heading we will see how the five ethical theories deal with the breeding of dogs with genetic defects.

- The ‘contractarian’ perspective is that current breeding practices point to an underlying human attitude that lacks understanding and compassion – two desirable traits to which humans should aspire. It is always better act virtuously, and we should breed healthier dogs because that is more consistent with virtuous behaviour. Also, healthier dogs would mean fewer veterinary costs for owners (e.g. at the time of birth for bulldog puppies, whose large heads often necessitate delivery by Caesarean section).

- Under ‘utilitarianism’, the goal is the greatest good for the greatest number, and we know that it is possible to breed dogs who are healthier. If we do, those dogs can have better lives and owners need spend less on veterinary care. So, improving breeding practices would increase overall happiness.
- ‘Animal rights theory’ is generally abolitionist. It seems very reasonable to argue for banning the breeding of dogs with hereditary defects. However, many rights scholars accept keeping companion animals. Moreover, if genetic knowledge can be used to improve the lot of brachycephalic and other genetically defective dogs in future so that they have the chance to live happy lives, might this be acceptable under rights theory? This is not entirely clear.
- The ‘care ethic’ implies an obligation to care for animals. As newborn puppies are initially in our care, until we sell them, the care ethic would seem to oblige us to support more careful breeding policies in future, in order to eliminate hereditary disease.
- ‘Respect for nature’ would also seem to support the notion that we should improve breeding policies. Better policies would arguably create a more ‘natural’ genetic make-up by which the animal’s and the breed’s nature is expressed. This would improve the genetic integrity of the breed and species, as well as enabling the dogs to fulfil their potential by being healthier and living longer, maximising the survival of the breed. However, not all proponents of respect for nature would accept this argument, pointing out instead that dog breeding is already unnatural, and artificial selection for either healthy or unhealthy traits remains unnatural.

Breeding Broilers

You can see from the overview of the case of breeding dogs that understanding ethical theory can give you a logical set of reasons in support of your views. For example, Dawkins & Layton (2012) examined the case of broiler chickens. Modern broiler farming poses welfare concerns associated with the young birds’ rapid growth rate, specifically:

- Painful limb deformities and circulatory disorder occur because the skeleton and heart, respectively, cannot accommodate the rapidly growing and oversized muscle masses
- Parent birds are chronically hungry because the inherent rapid growth of the young stock is supported by a large appetite. If fed to appetite, the parent breeding stock would become obese and unwell, and farmers could not afford their loss in production or the feed itself, because the profit margins in broiler production are very small.



That paper does not concern itself with ethical theories about whether the birds are harmed by having been bred as they are. The authors focus on the general ethical principle that it is imperative to improve breeding practices, and that we should not assume that developing genetic lines of broilers with traits that support welfare – such as good walking ability – must necessarily disadvantage farmers because of necessitating the genetic trait of slower growth. Currently, however, that is the assumption, i.e. healthier birds will grow more slowly, but farmers will then make no profit on the birds unless the general public pays more for chicken, which would disadvantage us.

Applying Ethical Theories to Breeding Broilers

This weighing of costs and benefits to birds and people is a common utilitarian approach. Let's see what utilitarianism can tell us.

- In a simple utilitarian framework, genetic lines of birds might have to be kept as they are, despite the associated welfare problems, because otherwise farmers would lose their livelihoods. However, it is difficult to weigh the suffering of broilers against the potential suffering of farmers who lose their livelihoods.
- In applying the more nuanced utilitarianism developed by Peter Singer, better breeding seems to be an imperative because so many birds cannot otherwise have a good life. In fact, Singer's view is simply that we should not farm, because modern farming practices cannot provide animals with a good life.

We shall consider what our other ethical theories tell us here.

- Under a contractarian analysis, the human outcomes of lost livelihood or increased price of chicken meat might also make better breeding problematic, although that might be offset by the point that better breeding is a more virtuous way of farming and give consumers more peace of mind.

- Rights theory does not support farming, and so cannot support better breeding practices.
- The care ethic strongly supports better breeding practices.
- Respect for nature would seem to do so as well, but with the same objections as we saw for dogs, in that the selective breeding has resulted in breeds that are no longer ‘natural’.

Farming and Eating Animals

As we see from the broiler example above, farming is a complex issue and one that is contentious for many people. Consequently, many people around the world avoid eating meat. The principal ethical concerns that lead people to avoid meat are listed under this heading. Note that some views concern the effect of farming and slaughter on the animals, and others are more concerned with issues such as the basic dietary needs of our rapidly growing human population, around the world, personal health, or the indirect effects of farming on people and the local and wider ecosystems.



Vegetarianism is also practised by many people for religious reasons, e.g. Buddhists and many Hindus practise it as part of their belief in *ahimsa*, the avoidance of causing harm to other beings. Being vegetarian in that instance is an act of personal purity, and prevents one from suffering in a future incarnation. Some Christian communities also practise vegetarianism or periodic abstention from eating animal products; this is carried out for spiritual reasons such as to avoid increasing one’s passions, or as penance. These religious imperatives not to eat meat follow logically from the belief concerned; however, for those who do not share that belief, other intellectual reasons are needed to guide how we should act.

Utilitarianism

We will start with the concern shared by many people that animals are harmed by farming and slaughter. This concern leads many people to avoid eating meat of any kind (‘vegetarianism’) and

sometimes to avoid eating any animal products ('veganism'). One of the most famous philosophical advocates of vegetarianism is Peter Singer:

- animals are sentient and can have preferences, but that does not include sufficient awareness to have a desire to keep on living
- it is therefore acceptable to kill animals for food if the following conditions apply:
 - they have had a good life (one in which they could satisfy their preferences)
 - they are replaced by other animals who would not otherwise have been brought into the world and given the chance to enjoy a good life, and
 - the animals can die painlessly and without suffering.

However, because modern farming and slaughter in particular do not allow animals to have a good life, we should avoid animal products and we should certainly not eat animals. Nevertheless, Singer also supports the idea of eating animal products from farms with high standards of welfare, since this marketplace pressure can help to raise standards of animal welfare generally.

Emerging Social Ethic

Singer's pragmatic view aligns with what many people around the world also seem to think. You will recall from **before** on ethics that the ethicist Bernard Rollin believes there is an emerging social ethic in many countries in relation to farming. This ethic is a combination of utilitarianism, rights and relational approaches. Under this, people may feel ethically justified in eating meat if the animals have had lives that did not cause them to suffer (utilitarianism), and their right to live according to their nature was respected (rights theory). In this view we and our farmers continue with the 'ancient contract' of mutual advantage between stockperson and animals (relational). That is, we support the farmer in caring well for his/her animals in exchange for their products.

Animal Rights

Animal rights theorists disagree with such approaches. One notable scholar is Gary Francione who argues that veganism is the only possible diet that respects animal rights. That is, rights create a logical moral imperative not to farm animals or to consume any animal products, for food or any other reason. From this perspective, neither Rollin's nor Singer's pragmatic approach is tenable, and quality assurance schemes are misguided.

So far, this overview of reasons why some people do not eat meat and the underlying ethical arguments has only considered the animal. However, matters are complicated by the fact that animals are not the only subjects of ethical concern in the question of meat consumption. Consumers also have needs that they are seeking to meet: that is, we all have to eat something and get our fat and protein from somewhere. Balancing these basic human needs against wider considerations, including the animals' needs, is an ethical challenge.

Fairness

This summarises some of the wider concerns in regard to *fairness* in the consumption of animal products. A prevalent view in many societies is that animal products cause diseases, e.g. the association between saturated fat and heart disease, or red meat and certain cancers. Others take the view that animal products are an essential part of a pleasurable and healthy lifestyle, and meat consumption in particular can be a sign of affluence and social standing. People with those concerns may generally have a contractarian view of farming, whereby they are not particularly concerned about the effects on animals, but more about the effect of their diet on their health, social standing, etc. For some, concerns about their own health are added to concerns about farming methods and animal welfare, and this informs their decision to be vegetarian or vegan. Conversely, for others, higher-quality meat from more welfare-friendly systems increases their sense of social standing. For yet others, being able to go to cheap fast-food restaurants is important.

A wider concern is that intensive farming relies heavily on the rapid growth of young animals until they reach slaughter weight, and this in turn creates a reliance on concentrated animal feeds, primarily cereals and crops such as soy. Growing these plants takes up large areas of land, which may displace local wildlife and people, and cause damage to local and wider ecosystems. Moreover, ruminants in particular produce large amounts of methane when fed concentrated foods. This is considered to contribute significantly to greenhouse gases and has knock-on effects for the entire global ecosystem.

Perhaps most pressing of all is the knowledge that many millions of people in the world are poor, malnourished and do not have enough to eat. They quite rightly aspire to having enough income and food. It seems intuitively wrong that crops should be grown to feed livestock for human consumption when the same land could be used to produce nutritious plant-based food that would ensure the poorest people no longer went hungry and could then be in a position to improve their lives and to be able to afford to eat meat products if they wish to.

The book cited here (D'Silva & Webster, 2010) critiques these concerns in detail.

For example, not all authorities agree that feeding cereal to livestock deprives hungry people of food. Instead, the argument is that we can easily grow enough feed for livestock and food for people, and the widespread hunger in the world is mainly a result of social inequality and problems such as conflict, poor governance in individual countries, poor infrastructure and poverty. To sum up, the reasons why we might believe meat consumption to be right or to be wrong are not simple. Farming involves more than just animals and the local environment and local consumers. Balancing the immediate and more indirect human needs, animal needs and ecosystem in a way that is fair is complex, especially when those debating the issues may have conflicting ethical views on the many issues concerned such as:

- What constitutes good welfare
- Whether animals should be farmed at all, and

- Whether animals need to be considered in the moral debate about consuming animal products.

In such debates, we may use scientific information to help us to understand the consequences of certain actions. For example, would changing a farming system make animals happier? Would they prefer one system to another? Would consumers pay more for that? What is the carbon footprint of free-range vs. intensively farmed meat? A common assumption here is that science is objective and value-free. However, that is not so: subjectivity is part of the scientific method. For example, it influences whether we accept that qualitative measures may be valid, or only quantitative measures. It influences our interpretation of statistics and It also influences whether we think physical functioning, mental state or natural behaviour is the most important aspect of animal welfare.

Farming and Eating Animals

Broadly, we can say that, in terms of animal protection, there are two main views of farming and eating animals. One assumes that it is acceptable to kill them. This view also supports continual improvement in farming practices. The approach is grounded in a hybrid of ethical views, like the new social ethic, and it is reflected in quality assurance schemes and concern for animal welfare at the financial and political levels internationally. It has been called the ‘animal welfare strategy’ and it is currently prevalent worldwide.

The second approach does not assume that it is acceptable to farm or to kill animals. Here the assumption is that animals have inherent value, and this calls for veganism.

However, note that wider ethical views are needed when we consider the sustainability of consumption of meat. That is an important issue for us as citizens, because of its complex effects on human health, economics, ecosystem health, etc. Abolitionist answers do not seem adequate for the current reality of cultures and human existence globally. However, further discussion of the topic overall is beyond the scope of this chapter.

Introduction to Environmental Ethics

That brief overview of the complex ethical concerns around meat consumption introduces the wider issue of the impact of our actions on the environment, both locally and globally. Environmental ethics is a separate and broader field than animal use ethics, but we will touch on it here. The first way of looking at environmental ethics is a human-centred view. In this view, only humans have intrinsic moral worth. All other species have moral worth according to their utility to humans. In this view of ethics, we must not cut down the rainforest in order to grow soy or cereals to feed farm animals, because doing so might cause soil erosion which leads to flooding. Also, the forest contains plants which may cure human diseases or provide a habitat for indigenous people. You may recognize this as the contractarian view.



Sentience-centred ethics extends intrinsic moral worth beyond humans to all sentient animals (those with the capacity to have feelings). In this view, it could be wrong to cut down the rainforest to feed farmed animals because it provides a habitat for many sentient creatures, which might include indigenous people, and also snakes, birds and primates. This is a utilitarian view. Many environmentalists would claim that this is an insufficient extension of traditional ethics, as it denies moral consideration to most of the living world, which may not necessarily be sentient, yet which is part of an interrelated system of life that is necessary for the survival of sentient beings.

An alternative view is that of 'life-centred ethics' or 'biocentric' ethics. In this view, all living things, including non-sentient things such as plants, are granted intrinsic moral worth. Albert Schweitzer was an early proponent of this type of ethics, arguing that we ought to adopt an attitude of 'reverence for life'. Even though plants cannot have welfare, things may still go badly or well for them, so some people consider that they have interests which should be respected.

An extended, holistic view of the world is the idea of 'environment-centred' ethics, or 'eco-centric' ethics. This ethic attempts to grant intrinsic moral consideration not just to living things, but to groups of living things, such as species and ecosystems. One proponent of this line of thought, Aldo Leopold, stated that 'a thing is right ... when it tends to preserve the integrity, stability and beauty of the biotic community'. Eco-centric ethics therefore encompasses respect for biodiversity and provides one explanation for our concern when a species becomes extinct, especially when that happens as a direct or indirect result of human practices such as those related to livestock farming and meat consumption.

Eco-Centric Ethics and Animal Ethics: Differences

You can see that this wide ethical approach is different from the narrow focus of most of the ethical theories of animal use that we are considering today. There are four principal differences between most animal use ethics and eco-centric ethics:

- Animal ethics tends to be very concerned with the lives of captive or domestic animals, whereas environmental ethics may have little to say about these unless the species concerned is endangered or the practice impinges on the environment.

- Animal ethics tends to be sentience-centred, so concern for plants, rivers and ecosystems is only of concern in as much as it affects sentient animals.
- Animal ethics focuses on minimising pain or death, whereas environmental ethics often views these as essential elements of nature. Environmental ethics is more concerned with species extinction and the destruction of ecosystems.
- Animal ethics focuses more on the welfare of individuals, whereas environmental ethics tends to focus on systems and structures. Therefore, some environmentalists would be willing to sacrifice individual wellbeing in order to preserve the system. Indeed, it is possible to be concerned only about the 'wholes' such as species and not at all about the individuals of which the species is composed. For example, some hunters and anglers (or population control officers) might have these types of concerns.

Controlling Infectious Diseases

Having talked about farming, we will move to the question of controlling infectious diseases in farm animals and others. There are a number of infectious diseases that are highly contagious and may also be zoonotic. Examples are foot and mouth disease, swine vesicular disease, equine infectious anaemia and rabies. With the global nature of transportation (of feed, food, animals, and other disease-carrying vectors), and personal travel by air in particular, these diseases can easily be spread between countries and they can profoundly disrupt national economies and human wellbeing. Consequently, for economic purposes and to protect their export markets and tourism, countries may operate a policy of slaughtering all animals within a given distance of known cases, sometimes testing for the disease first so that only infected individuals may be removed.

However, for highly contagious diseases, the entire herd including healthy animals may be slaughtered without testing. For such diseases, the scope of the slaughter may need to be wide, based on models of disease spread, local wind forecasts, etc. For example: in 2001, when there was an outbreak of foot and mouth disease in the UK, nine million animals were slaughtered on farms and their carcasses were burned. This decision was made because the disease is highly contagious and causes high morbidity with a huge drop in production, which devastates the local economy, as well as preventing any export of animals and their products.

This culling of healthy animals caused immense distress across the nation, and other personnel who were involved were deeply affected. There was widespread doubt in some quarters that it was the right response to the disease (perhaps vaccination might have been a better response for the animals and their caregivers, while still protecting the economy?). However, vaccination would then have to be an ongoing national strategy and long-term expense, and the country would lose its valuable status, in the export and even tourist markets, of being an island that is entirely free of foot and mouth disease. The ethical arguments relating to that case are shown here.

The contractarian view that you are now familiar with is 'consequentialist'. Under this theory, the only considerations are the costs and benefits to people. Therefore, large-scale culling is not a concern if it benefits people overall. However, if culling causes a lot of public distress which may adversely affect business in the long term, and, for example, reduce tourism, vaccination might

be preferable even though it might be more expensive. The utilitarian view need not be against culling as, although foot and mouth disease is not necessarily fatal for livestock, it causes high morbidity and a lot of suffering from lesions on the feet and in the mouth, and associated weakness and potential susceptibility to other infections. So slaughter before becoming ill is acceptable, especially because it would be difficult for farmers to afford the cost and care of many affected animals. Therefore, for human benefit as well, culling may be the best way to prevent suffering.

A proponent of utilitarian theory could also support vaccination. However, the long-term economic cost of the production and ongoing use of vaccines, and the effect of now being a country where foot and mouth disease is endemic, could adversely affect export status and income from exports, which might reduce the overall human benefit. Animal rights theory is abolitionist regarding farming. However, under the circumstances of foot and mouth disease, the logical rights view would be to minimize the number of animals culled. Relational ethics also permits culling because slaughter is part of the relationship. However, culling of the entire herd is deeply distressing to each farmer and not part of the mutually advantageous relationship, when vaccination is also a possibility, so a relational approach would wish to minimize culling.

A very different example of the control of diseases concerns the control of wildlife such as rats, who may spread serious zoonotic diseases such as rabies, typhus and leptospirosis. Rats are a highly adaptable and intelligent species, used widely in research and as pets. However, the wild species are feared and disliked and methods of their control have not been widely scrutinized ethically. Although most of us do not consciously subscribe to a hierarchical chain of being with humans at the top and all other species in a chain below us, starting with the most conscious and desirable and ending with the least, that is how some people view animals. Therefore, in Western cultures and most others in the world, rats are liked much less than dogs or horses or monkeys. (However, where stray dogs are a problem around the world, they may be feared and disliked as much as rats are.)

Wild rats are typically killed by laying poison, commonly agents that interfere with blood coagulation, such as warfarin and coumarin. They cause death by haemorrhage, typically over some hours or days. The death is thought to be painful because of haemorrhage into the joints and spleen, for example. The poison is typically put in grain that is colored blue, so that people can recognize it, and this helps people to prevent their children and pets from eating the poison. Sticky glue pads are also used to kill rats (they prevent the animal from getting away) and they then die from starvation, dehydration and exhaustion. Applying our ethical theories:

- The contractarian will be not concerned about the rats' experience and will favor the cheapest, easiest, and most effective method that poses the lowest risk to people
- The utilitarian will be concerned about the rats suffering under both methods, but will also have to weigh up the risks and benefits to people, and would want research into which method is more humane.

According to animal rights philosophy, we are allowed to kill animals in self- defence. However, because each individual has inherent worth, rights theories do not allow the general rule that it is always acceptable to kill wild rats. Each case would have to be proved, including that there was no better way of protecting people such that it was necessary to kill the rats. For example, inspecting the house and ensuring all possible entry points for rats were blocked might be the first

step.

The relational theories cannot help much, as wild rats are not welcomed into our houses and do not offer us a known return so there is no mutual relationship there. Therefore, killing the rats by any means is acceptable and may be necessary to protect those animals with whom we do have a relationship, e.g. so that our dog or cow does not contract leptospirosis. A humane method is desirable, with care taken that a poisoned rat is not eaten by any of our own animals.

Respect for nature also does not present an easy solution: on the one hand, individuals are less important than the species, and rats are prolific and adaptable. However, the killing is not being done for the benefit of the species, and represents an attack on a wild-living species. Moreover, rats who are poisoned may be eaten by other wildlife. If that species is endangered, the death from eating the poisoned rat would be a great harm.

Sliding Scale of Moral Concern

Before we leave this consideration of wild rats, note that the tendency not to give the methods of controlling them the same moral status as we would the euthanasia of a pet rat or of a monkey differs from the idea of 'equal consideration of interests' discussed earlier. Whereas equal consideration suggests that a similar interest deserves equal moral attention, no matter what species of animal is concerned (so equal pain in a fish or horse or human deserves equal consideration), the sliding scale devalues all animals' interests on the basis of species membership.

Use of Animals in Research

You should now have a clearer understanding of how different ethical theories of animal use apply to real, topical ethical questions. We shall next look at the ethical issues around the use of animals in research. However, veterinary research also requires the use of laboratory animals. In addition, animals are also used to test the safety of new household products and cosmetics. You will see human conflict in the later chapters that animals may also be used in research on aspects of weaponry and the injuries that they cause.



Credit: Digital Visions

Given the range of uses for animals in the laboratory, and the purposes of this, you can imagine that our ethical theories may not always agree in this area either. An additional factor in our relative ethical concern is the preference that many people have for, say, dogs over rats and mice and for chimpanzees over fish, as we have seen in the sliding scale of moral concern mentioned previously. Taking each theory in general, this outlines the position of each one.

- The contractarian is concerned only with human feelings: high standards of laboratory animal welfare may be set in order to allow the public and those working with the animals to have maximum peace of mind. However, the standards should also permit all necessary research so that humankind can benefit maximally from the knowledge.
- The utilitarian pays very close attention to the animal's welfare under the principle of equal consideration of equal interests for each animal. So, fish deserve as much environmental enrichment or pain relief, appropriate to them, as a chimpanzee does. Also, in the utilitarian view, everything must be done to minimize the use of animals in research. This is summed up in the principle of the '3Rs' which refer to:
 - Replace: where possible, rather than use animals in research, you use a non-sentient alternative. For example, you use tissue culture to study the effects of drugs on cells
 - Reduce: here the number of live animals needed is minimized, by e.g. appropriate study design, and use of inbred lines of mice with minimal genetic variation. However, note that inbreeding may create bias in certain studies
 - Refine, so that you stop an experiment when the animal starts to show symptoms caused by, e.g. an induced fatal infection or a toxic drug, rather than letting them become sick and die.

However, this utilitarian humane approach is not completely satisfactory because the wider concern is that, for much medical research, the benefit to people is unknown or unclear at the start and is hardly ever immediate. Therefore, Peter Singer would argue that experiments on animals do not satisfy the criterion of clearly benefitting people much more than they burden the animals. A further difficulty is how exactly we weigh up the burdens carried by the experimental animals (e.g. restricted housing, fear, pain) against the benefits to people.

Rights theory is more radical here. Animal rights theory assesses the issue simply by asking if experimentation respects the animal's rights and preserves his/her dignity. As animals' intrinsic value gives them the right not be killed and not to be used as a means to an end, this means no experimentation is permissible on animals, for any reason. So, there can be no animal testing even if any harm they suffer is very minor and the benefits to other people or animals could be immense. However, Sandøe and Christiansen (2008) argue that perhaps a moderate rights view might be applied in some cases. Therefore, animals would have the right to be protected from certain uses, e.g. those causing extreme pain, even if they benefit people, but other experiments would be possible.

The other ethical theories are not usually invoked in discussions of research ethics. A relational

view might permit experiments as a variation on the contract of mutual benefit between the animals and their caregivers. However, the contract might fail, because it is not clear who the primary human contractor is: is it the technician who feeds and looks after the animal, the researcher who may only use some animals briefly, after which they are handed over to other researchers, or possibly the general public or others who are funding the research? The 'respect for nature' view would probably take most issue with the genetic uniformity of laboratory animals such as mice, rats and beagles.

As you know, laboratory research on animals is very contentious. Sandøe and Christiansen point out that, in pluralist societies, compromise is normal and necessary, and could be applied in the case of animal experimentation. They suggest a policy which is a compromise between all three viewpoints, and note that such compromises are prevalent in Europe, North America and Australasia.

Broadly, the compromise policy has three elements:

1. The research question must be of vital importance.
2. There is no other way to study the issue except by using animals.
3. The animals should not have to suffer more than the experiment requires. For example, they should have enriched housing unless that would confound the results.

The authors point out that the three main ethical positions we have discussed could all accept this, as follows:

- Contractarians would be content because this would reduce public concern over unnecessary use of animals in research.
- Utilitarians might accept it because it focuses on maximising benefits or minimising harm. However, they could have concerns because the animals' interest such as, in our example, environmental enrichment is not given equal consideration to the human interest in the scientific findings.
- Rights: the abolitionists would not find the compromise acceptable because it still involves using animals as a means to an end. However, a moderate rights view might find it acceptable especially if research that caused prolonged or severe suffering was not permitted except in rare circumstances.

If we follow the utilitarian perspective, which is perhaps the commonest one, to guide us in accepting laboratory research, Peter Singer has pointed out that we cannot know at the outset that the research will be of vital importance, such that the benefits will ultimately be significant when compared to the costs to the animals. For example, medical research usually involves a prolonged sequence of studies starting with basic science studies, and proceeding to toxicity studies and then clinical studies. Each study builds on the results of the preceding one. Until most of them have been carried out, it cannot be certain that the research will be very beneficial in the so-called 'real world'.

A further point is that a significant proportion of commercial pharmaceutical research is not essential for human or animal good, in that it does not provide significantly more beneficial treatments than those that are already on the market. For example, there is no appreciable difference in safety and efficacy between most of the newer generation veterinary non-steroidal anti-inflammatory drugs (NSAIDs) that are currently on the market in many countries, such as meloxicam, carprofen and many others. However, the licensing of each one would have included basic toxicity and pharmacokinetic studies on laboratory rodents and dogs and cats.

Similarly, with the development of vaccines against common veterinary pathogens, the free market encourages competing formulations of these medicines. There is relatively little additional benefit to the domestic animals needing vaccination, yet there are several different brands of the same vaccine. This is not all bad by any means: competition in the market helps to reduce prices, and freedom of choice is an important aspect of many economies. Moreover, the market niche for a variety of vaccines or NSAIDs enables the companies concerned to make profits, which can then be passed on to shareholders, many of whom are investing in the companies as a way to grow their pension funds so that they can eventually retire.

Moving on to other concerns about the real importance of laboratory research: In the case of human medical research, some of the conditions in question are not life-threatening, e.g. baldness in men, myopia, or diseases that are caused by individuals' lifestyle choices, such as smoking. A further problem in using animals in human medical research is that data derived from laboratory animals may not predict the action of the drugs in people. These points are not meant to persuade you against the use of laboratory animals in research. They are simply facts that we need to incorporate into our ethical decision-making.

Summary So Far

To sum up what we have covered so far, we have seen four examples of animal use that are a common cause of ethical concern, and we have outlined the five main ethical positions in each case. In doing this, we have uncovered some limitations and challenges in different theories.

When we considered the breeding of dogs, and then of broiler chickens with known heritable defects or predispositions to disease, we ran into the problem of 'non-identity' where having the genetic problems did not necessarily make those individuals worse off. However, our five theories all agreed that the breeding of such animals was problematic, albeit for different reasons, and better policies should be enacted.

We then considered the issue of eating animals, and this led us to wider ethical considerations and the concept of environmental ethics. We saw that animal ethics and environmental ethics differ quite markedly because animal ethics is predicated on concern for sentient beings, whereas environmental ethics includes non-sentient life and minerals as all having moral worth.

Next, we looked at the problem of controlling infectious disease in farm animals, and the spread of zoonotic diseases by wildlife such as rats. This reminded us of human bias towards certain categories of animal, independent of their sentience or other morally relevant attributes.

Last, we explored the complex issues of laboratory research, whether for human or primarily veterinary purposes. This introduced the concept of the '3Rs' and the problem that animals may

be used in research which is not a major benefit to human or veterinary medicine.

In each example, we applied the main ethical theories in a very general and theoretical way. This is important because it helps us to understand the complexity of issues, and the reasons why people who all are concerned about animals may reach the same conclusion for very different reasons or may not agree about the right course of action.

We shall end this chapter by introducing you to two approaches that you could use in practice when faced with ethical dilemmas (complex situations that require a difficult decision to be made, because no one solution is entirely satisfactory to all parties concerned).

Approaches to Animal Ethics: An Ethical Matrix

THEORY or PRINCIPLE	Animal	Consumer	Producer
Utilitarianism (maximise good, minimise harm)	Welfare	Availability of safe food	Producer income and working conditions
Autonomy	Behavioural freedom	Freedom of choice (food labelling?)	Freedom of choice to adopt or not adopt certain practices
Fairness or Justice	Equal consideration of interests?	Universally affordable food?	Fair trade?

One approach to try to evaluate ethical problems with animals is an ‘ethical matrix’. In the matrix, different ethical theories are represented by rows and the viewpoints of the different parties to the ethical problem in columns. The intersection of each column and row then represents a different dimension of the ethical problem. As many columns and rows can be added as ethical theories, principles or parties to the problem are identified. The matrix may not enable a solution to the problem, but helps us to explore all its different aspects.

The example given here considers the use of the cattle growth hormone bovine somatotropin (BST; also known as bovine growth hormone, BGH) to stimulate more milk production in dairy cows. In utilitarianism, the cow is concerned with maximizing her own welfare, the consumers are interested in the availability of safe food, and the producer is concerned with income and working conditions.

BST predisposes cows to mastitis and to metabolic exhaustion. So, using BST fails to maximize good and minimize harm for a cow. From the consumer’s point of view, any health effects of milk from BST-treated milk could be identified, as well as the effect on the price and supply of milk. What effect will BST have on the farmer? Does its use threaten the farmer’s health in any way?

Would he or she be better off if he or she used it? Other issues for the consumer are that the milk must be safe for them to drink (it is), and whether the farmer and the farmer's staff were benefitting adequately from using the drug. Under autonomy, the cow would be concerned with having the freedom to express her natural behavior, the consumer would want total freedom of choice in buying products, while the producer would want the freedom to adopt certain practices or not.

Increased milk production is associated with a very large udder which may cause discomfort, making it harder to walk and more difficult for the cow to lie down and stand up. Would consumers know that milk had been produced in this way? Could they avoid it if they wished? Would it be labelled? Are alternatives available? What pressure for or against its use is the farmer under (e.g. economic or legislation, respectively)? Here, for consumers, labelling is necessary for autonomy, and for farmers the freedom to use the drug or not is important too. Given all the benefits and risks identified by the preceding rows, under 'fairness or justice', we can attempt to see if they are borne equally among the parties. Are all the risks (e.g. farmer's income, cow welfare, consumer information) shared equally, or is the animal bearing all the costs while all the benefits are received by the farmer and the consumer?

Similarly, we can ask whether all consumers and farmers are affected similarly, or do some bear unfair costs? This example demonstrates that although the matrix does not solve our problem, it can be used to raise questions about many aspects of the problem for each of the parties concerned. That way, we can avoid allowing unconscious biases such as our personal ethical view, or a sliding scale of moral concern, impede a full and fair consideration of each party's interests.

You can find the ethical matrix online at www.ethicalmatrix.net/

Six- Point Framework

The second approach follows a six-point framework in sequence. The 2012 reference [here](#) provides a detailed example of using the framework, and the ethical matrix, in a practical situation, namely the surgical alteration of a horse's tail for showing purposes (i.e. for cosmetic reasons only). Briefly, the first step is to identify all the possible courses of action. If a possible course of action is missed out at this stage, you will not be able to consider its potential merits. This first step is a factual exercise only: no moral value is placed on any of the courses of action at this stage. You will use moral values later to decide on the best course of action.

The animal, owner and vet will all have an interest in the ethical dilemma. The animal is the only one who cannot speak for him/herself. The vet's role is to safeguard the animal's welfare and to represent the animal's point of view. Use a logical ethical theory in order to choose a particular course of action. Different ethical theories may be appropriate for different situations and if you know which one you are using, the reasons for your choice of action will be clear. This is useful for your own peace of mind, and if the owner or any authority later questioned whether you had made a good decision.

Once you have decided on your course of action logically, using ethical theory, there may be ways to reduce any harm caused by that situation. This might include using a better analgesic regime, or providing follow-up for the farmer to address any doubts or second thoughts that he or she may have after consenting to let you take the recommended action. Essentially, you are refining the

welfare impact of the decision on all parties.

Conclusion

This brings us to the end of our second **chapter** introducing you to the interaction of ethics and animal use. You can see that the questions under discussion are complex, and you can understand why the subtleties of the logic, and conflicting conclusions that the logic may result in, may lead people to trivialise ethical reasoning as ‘just subjective’ or ‘just preferences’. However, you now know from these **chapters** that ethical theories provide a logical set of reasons that underpin people’s views about how we should act towards animals.

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Ch.4 - The Property Status

Ch.7 - Human Communities with Animals

Ch.8 - We all Have Interests

Ch.12 - Ethical Judgments

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Ch.15 - Do ethics within or upon global corporations and gouts

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CHAPTER 3

RESPECTFUL USE

If we accept that at least some animals are ethical subjects that may be used by humans, even as they remain within some version of the property-law system, the critical question that must be faced is, Which uses are acceptable and which are not? My determination is that it is an acceptable use if it is a respectful use.

What is respect? The power of the concept was crystalized in the song “Respect,” sung by Aretha Franklin in 1967. While the song never exactly says what the word might mean, it was an anthem for the women’s movement of the time. Everyone thought they knew what she meant and agreed she should get it. And we men knew what she meant and that she was right. Husbands should show respect for their wives, when either he comes home or when she comes home. If marriage is to last, it must be supported with respect.

At its core, showing respect consists of several components. The first is an acknowledgment of the presence of another being as part of your world and that you need to interact with this individual in a particular way. The focus here is on the verb in question. He hit the dog; he hugs the dog; he respects the dog. The dictionary says that respect means *to consider worth of high regard, to have concern for, to refrain from interfering with*; “respect implies a considered evaluation or estimation.”¹ It is disrespectful not to show regard or concern for another. Respect is not how you act, but rather how you feel, or what you believe, which will, in turn, cause you to act in a particular way. For instance, “Alfred never talks back to his mother; he is respectful of her.” While this may be an outward manifestation of respect, it may or may not be motivated by

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internal respect. Alfred may engage in respectful acts out of fear of being beaten with a belt.

“Respect,” as it will be used in this book, is an individual’s judgment or state of mind that produces a belief that may result in actions or inactions in regard to another individual. This process may or may not be controlled or understood by the conscious part of the brain. Consider how this may play out in your daily life: It is a wet night, at dusk; you pull up at a stop sign and notice movement on the edge of the road. It is a small wet mound of fur, a cat perhaps. You put the car in park, get out, and pick up the wet bundle and put it your car. You have shown respect for the cat, her life does matter.

Respect is a state of mind that arises because of a specific capacity for complex judgments within the brain (see chapter 10, “The Process of Making Judgments”). This capacity is a judgment not about external facts like sound and color but about the state of affairs within an individual’s brain regarding relationships with others. Respect is not an on/off, black-or-white option. Rather, respectfulness can be projected on a continuum, moving from slightly respectful to highly respectful. Moving along this continuum to greater respect will result in the ethical actor giving increasing weight to the interests and needs of the ethical subject—the animal or child. And, of course, just to make it more difficult, this process has no physical attribute. It is the sum of our experiences and reasoning, shaped by the neuron network within a particular human mind. When we have or seek positive relationships with others, we have respect for them. This book seeks to expand our awareness that “others” can and should encompass nonhuman beings.

As a quick legal aside, “respect” is not a word found within the law, but the requirements of humane treatment for animals does arise out of a societal respect. There are no laws specifically requiring respect, because it is almost impossible to truly understand what thoughts or emotions exist within a specific human head. And it is not possible to define the word with legal precision. Also, the law is not really certain who should be respected.

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However, the law may feel comfortable in seeking to control disrespectful acts, such as the stealing of a cat from a human or the kicking of a dog. The law may also promote respectful acts such as, the making of charitable contributions to soup kitchens and humane societies. In this sense, the law reflects the difference between promoting acts and holding beliefs.

How does this sense of high regard come to exist within an individual's mind? One path is when the other being represents a threat to you, to your physical well-being. To stand on the plains of Africa's Serengeti in the presence of a group of young male elephants, with local escorts who have only a spear to protect the visitor, will cause the human there to have a respect for those amazing beings. This will not necessarily happen when seeing an elephant in a zoo, behind all those thick steel bars. Respect is an acknowledgment of the presence of another who has the capacity to impose his will upon us. This is respect arising out of the motivation for self-preservation and a capacity to understand the risk before us. On my farm, the younger rams acknowledge the presence of the senior ram, move out of his way, and are almost courteous to him; they show and feel respect. My cats are respectful of Annie, my large Great Pyrenees dog, perhaps with the respect flowing into fearfulness.

But of course, respect out of personal fear is not really the focus of our discussion, since we ethical beings seldom are in the presence of animals we fear. Rather, it is when we seek to act, or not, and it is foreseeable that the action will have an impact on this other being about whom we have a threshold of concern. Returning to the story about Homer, when he opens the door and makes a decision about what to do next, it would be disrespectful to inflict pain on the dog. It would be respectful to hug the dog.

Respect is the internal acknowledgment of another being who is deserving of your time, attention, and resources. It is a socially attractive force that is critical to holding our social structure together. The degrees of respect, which exist within someone's mind, create the differing levels of ethical obligations that arise within the same mind. (See figures 3.1 and 3.2 at end of this chapter.) Respect is changeable, as new information

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is gained, and values may change with life's experiences. Who might be deserving of respect is a social as well as an internal conversation. Choose three people you know and ask yourself: Do I respect them, how much do I respect them, and why do I do so? Do you respect your companion animal? How about the animals at the zoo?

Now, as I will do a number of times in this book, a consideration of children will be touched upon to provide some context before a detailed consideration of animals. This is not to suggest that animals are morally equal to human children, but rather that children are beings who are living their lives in the ignorance of the concerns of ethics or law and who cannot advocate for themselves within our adult world. Is it ethically acceptable for a couple to use the labor of their children? Yes, usually. Much of human history finds that children have been used by their family to support the family with their labor. The child's labor can be an important asset of a human family. Such use may be respectful or disrespectful. How many farmers and ranchers historically and today depend upon their children to make the farms and ranches economically viable? Additionally, it is often through the imposition of labor and the responsibilities placed by parents upon their children that the human values of a family are transmitted from one generation to the next. This might include acceptance of responsibility, pride in work, the need to work, self-reliance, and the confidence needed to accomplish tasks.

Can the use of children become ethically unacceptable outside the home, in other words, disrespectful? Yes. In the early 1900s children were taken out of school, often kept in unhealthy and unsafe working conditions. Working ten-0hour days for six or seven days a week is too much use. It does not allow the child to be educated, receive healthcare, or develop those characteristics that are important to them as individuals in the realization of their potential. Historically, when industry had possession and control of a child, and the primary goal was the making of money, clearly some abused that position of power. There had to be some lines drawn by society to protect the children from abusive parents or

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abusive jobs. The risk of abuse by business is deemed so high that our society has adopted laws to prohibit the use of children under a certain age, in most circumstances.²

Does the real likelihood of abuse of some children require the conclusion that there should be no children born at all because some may be abused? No. Society has the duty to reduce the risk of abuse, and it must be acknowledged that, notwithstanding our best efforts, some abuse still exists. Likewise, the risk of abuse of animals by humans does not support the conclusion that there should be no domestic use of animals. It must be acknowledged that the risk of abuse of animals by humans is significantly higher for animals than it is for children, particularly for agricultural animals where human owners (corporations) are primarily focused on the desire for economic profit. Additionally, whereas the farmer of one hundred years ago knew, and often respected, the individual animals on the farm, today the shareholder and officers of the corporations seldom, if ever, see or touch the animals they own. Commercial animals often are not considered as individuals but are viewed as just a bunch of inventory to be used to make products like chicken salad or soup. In such circumstances there is a high risk of disrespectful use.

The following poem is one of a number written by me and sprinkled throughout the book. They are a break in the flow of the chapter, a moment to pause and consider something a little different. They deal with the human relationship with animals specifically, or the human relationship with the environment, or simply about being human. Now, you might ask: why is he dragging environmental issues into a book about relationships with individual animals? This is because the ultimate abstraction of showing respect for animals is the showing respect for the planet that holds the entirety of all living beings we know. We must respect the home of others, be they human or animal. Okay, you say, but why any focus on humans? We often forget, or set on the side, the reality that humans are animals, and therefore to the extent we can learn about ourselves, we can learn about the nonhuman animals as well.

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An Ethical Compass

*Do you have a
Compass?
Inside your
Mind?*

*Which way will
You go?
With Animals?*

*Do you care
Enough?
To learn about
Animals?
To work for
Animals?
To support
Animals?*

*Do they care?
About what?*

*Can you show
Them,
Respect?*

Someone might believe that his or her use of an animal is respectful, while others might disagree. For example, is it respectful of a cat to have her claws removed? If the cat's claws are removed, then the human has the benefits of a reduced risk of modest harm or discomfort to themselves, their children, and the furniture. The removal for the cat is like a human losing the first joint of each finger. Yes, the cat can continue with life, but he or she is without a physical attribute fairly important to the

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cat. In my judgment, claw removal is not a respectful act to perform on a cat. Indeed, the cutting off of any body part of a dog or cat seems disrespectful. However, if the removal of claws is the only option for the cat to continue to have life, it is better to have life without claws than to have the death of the cat. This also required the cat owner to recognize that a declawed cat places on the owner a special obligation to safeguard and protect the cat from potential danger in which the cat normally would be expected to protect itself but would not be able to.

Another example is dogfighting. Is the putting of a dog into a ring in the presence of another fighting dog, with the anticipation of perhaps a fight to the death, a respectful use of the dogs? It is not clear that humans who fight dogs see the dogs as “other beings” with their own interests. If this were the case, then dogfighting is not an ethical decision to that person. In the mind of these humans, their interests in gaining money, prestige, and other rewards obviously outweigh any consideration of the extreme pain and suffering imposed upon their dogs. But in this case the consequences to the dog are so horrific that society has decided, through the law-making process, that the use of dogs for fighting is so disrespectful that it must be considered criminal activity. This judgment is reflected in the federal and state laws that make dogfighting, the supporting dogfighting, or possessing fighting dogs a serious crime.³ Society, through the adoption of laws, can block or deter disrespectful acts, regardless of personal judgments. The same judgment has also been reached on the issue of cockfighting.

The reader might have noticed that I have not offered a formula for how much weight to allot to the interests of an animal when a human makes a “use decision” about an animal. This is not possible. Ethical decisions are personal and complex decisions not subject to fixed formulas. Some issues, like dogfighting and cockfighting, are so obvious that delicate balancing is not necessary. However, there are some signposts to help a person judge whether ethically acceptable, respectful use is occurring.

The threshold is crossed when an individual realizes the appropriate-

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ness and necessity of engaging in the balancing of one's conflicting interests with that of an animal. One can hypothesize that humans engaged in dogfighting do not pass this threshold. A person who decides whether or not to declaw a household cat may or may not have crossed that threshold. That is, either it is not an ethical decision in the person's mind, or it is an ethical decision that can have a yes or no outcome.

A second step occurs when the keeper of the animal seeks out information about the animal, both the nature of the species and the characteristics of the individual animal with which the person is dealing. Does the cat keeper understand what is entailed in the declawing operation itself and what the lifelong impact on the cat's behavior and capacity will be? Will the cat be going outside? Will she need to protect herself?

The third test of the presence of respectful use is whether or not the individual human, in fact, changes his or her conduct to accommodate the interests of the animal. If the human interests always win, then it is not working. The cheapest and easiest way to take a four-day, pet-free, weekend trip if you have a pet cat or dog is to put a bucket of water and an open bag of dried food in a room of your house or apartment. Then just put the animal in the room and close the door. More than likely the animal will be alive when the human returns, but somehow this does not seem to be a respectful form of care of the pet. It will take time and money to find a pet-sitter or a good kennel, but that is what respectful use requires. The issue is not what is legal or illegal. It is what is ethical and what is unethical.

The fourth test, an objective test, is to look at the animal in question and observe whether or not she is a healthy, well-adjusted, and socially balanced animal. A dog on a tether for twelve hours a day is not being treated respectfully, and more than likely the dog will not be healthy, well-adjusted, or socially balanced. A horse may be used to pull a wagon, but the continuing health of the horse should be a primary concern of the owner, not just the money generated by horse's labor. If money becomes more important, the objective evidence of the failure to realize a proper balance will be found in observing the well-being of the horse herself.

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In such a case the use of the horse may have moved from respectful to disrespectful.

What if the wagon-pulling horse is clearly not in good health? There are no ethics police to call. If physical conditions slide far enough, then a violation of the criminal law relating to the humane treatment of animals may occur, but our ethical standards often demand more than the law may require. The only real option for an outsider is to try to engage the owner/keeper of the animal in dialogue, to have a conversation about the horse, what might be done differently, and why the horse matters. Ethical conduct arises out of self-enlightenment. Sometimes others can aid in the process of realization of self-enlightenment, but not always.

Those humans who are classified as hoarders of animals represent a particularly difficult case. This may be the case when a sixty-year-old woman is found to have eighty cats in her suburban home. The house is a mess and the cats are not being cared for, yet the woman is in denial about the conditions being faced by the cats. Such a person may well agree that animals should be respected and believe deeply that she does respect her animals. But such a person is unable to engage in the respectful acts that ought to follow. There is a significant disconnect between the person's subjective beliefs and the objective disrespectful conditions that the animals actually live in. A hoarder has lost the mental capacity to transform beliefs into action or to understand what action needs to be taken. The only real remedy is to separate the human from the animals and to provide support and treatment for both. Sending a hoarder to jail is disrespectful of the human.

One final point to consider is how the likelihood of respect is increased when the human being is in physical and visual contact with the animal in question. The likelihood that respect will arise within a specific human mind is greater the more the human personally sees, interacts, and perhaps touches a specific animal. It is more likely that Homer will be respectful of his dog than that the family at the zoo will be respectful of the animals they observe. If there is a separation of ownership and keeper

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of an animal, then respectful attitudes are even more difficult to generate. If the owner is separated from the animal and the use (death) of the animal makes money for the owner, it is a third level away from respectful use. Consider the racehorse that is never seen by the 10 percent owner who lives three states away, compared to the groom who cares for the horse every day. But it is the owner, not the groom, who controls the future of the horse. Consider shareholders of the megacorporations who own farms of chickens intended for slaughter. The owners of the chickens, the shareholders, are usually not aware of the existence of individual animals, let alone do they have a respectful relationship with these creatures.

Respect has a strong emotional component that is triggered by the individuality of an animal with which the human shares some space. However, once a human respects a specific animal, and understands that respect, it becomes a relatively easy task to project that respect to other, perhaps unseen, animals. In such a case the human draws an analogy between the animal he or she knows directly and those that are not known so intimately.

Respect is a core concept or state of mind when developing an ethic by an individual human and the creation of internal, self-imposed limitations of action by that individual. Respect may be a motivation for political action and legal change, but no law can make one person respect another being. The law may set up social conditions and expectations that trigger self-examination, which in turn could result in respect. It is illegal to discriminate in hiring individuals on the basis of race. This should be a trigger for individuals to ask themselves, "Well, why is it illegal?"

Show a little respect.

Should dogs and cats have moral rights because we love them, because they love us, or for some other reason?

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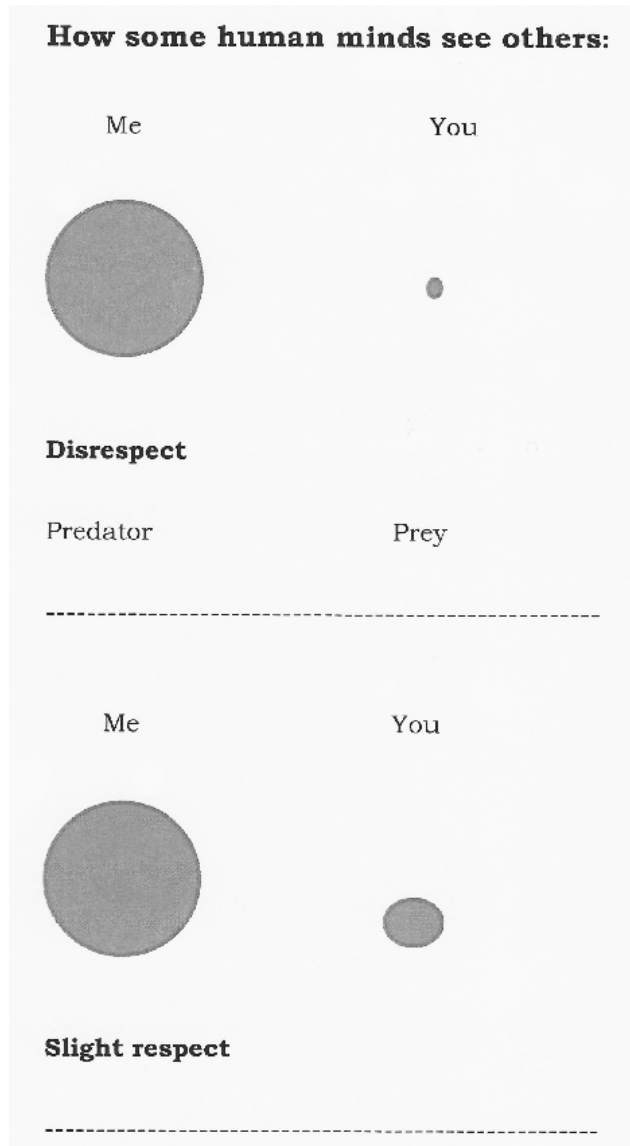


Figure 3.1.

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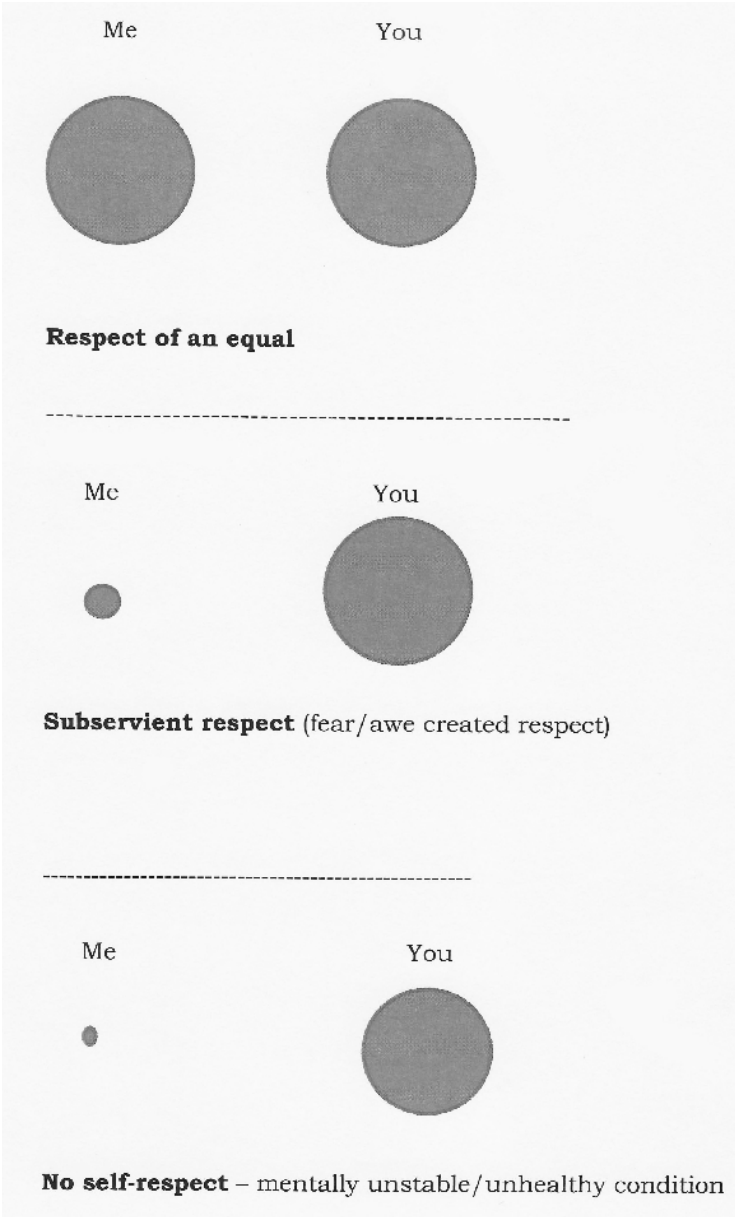


Figure 3.2.

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Each person may have different relationships with other humans and animals, and most of us have a mixture of the above options.

A POSTSCRIPT

This chapter is about the nature of respect as an intellectual, neurological capacity existing within our brains. Perhaps a few words about why this capacity exists would be useful as well. The human animal has any number of biological capacities. We see in color, we hear within a specific range of sound frequencies, we have the capacity for word recognition and language that relates to a specific site within the brain⁴. More abstractly, we can think about and plan for the future; we are wired to be curious and, at a higher level, to ask that extraordinary question, “Why?” For instance, my sheep are curious but I don’t think they can ask themselves, “Why is this happening?” All of these capacities exist as a result of them being positive attributes for the evolutionary survival of the individual humans who compose our species.

As one of the few social species of animals, our capacity to form multigenerational groups, which operate as social groups, was critical in the evolution of the human species. What are the bonds that allow for the creation of groups or communities of humans? This is a book topic in and of itself. Let me just suggest as a hypothesis that while the family shared genes, being bonded by love is critical to social-group cohesion. The genetic evolution that has given us the capacity for creating respect has also been a major factor or characteristic for successful biological survival as social groups, thus supporting the idea of group selection in the forces of evolution. In the absence of direct genetic relationships between individuals, such as mother and daughter, a person can nevertheless decide with whom to work or not work through judgments of respect and disrespect. Respect provides a capacity by which an individual sorts the world for humans fit for association.

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It is a capacity of our brain, a higher level of abstraction not present in most animals, which arose out of positive evolutionary feedback. Respect is not particularly integrated with our language center. That is, even though we certainly can talk about respect, the actual judgment or decision of whom to respect and how much weight to give to that respect for a particular person usually occurs outside either the word center or the sentence-driven consciousness of our mind.

The importance of this capacity is suggested for early humans who formed social groups that were not genetically related. Respect can be the glue that holds together a group of humans even if they are not related. Even in related groups of humans, for a group to function together there must be respect between the leaders and the followers. Does an individual have respect for the leader of his group? Was he willing to do his or her bidding: to build the fire, to go to war, or to collect the fruit for the group? Respect creates emotionally supported positive or negative relationships between individuals. These are judgments of the moment and subject to change as more information is provided to an individual brain. The capacity to form a judgement of respect is fundamental to being human.

CHAPTER 4

THE PROPERTY STATUS

The property status of animals needs to be briefly discussed at this point because of existing attitudes and beliefs of the animal abolitionists, those who believe that all animals merit full personhood in the legal system. One of the premises of the abolitionist worldview is that the reality of animals being the personal property of humans is demeaning to the animals; it is viewed as the equivalent of being animal slaves to humans, and that their freedom from this legal status is required before animals can receive their due legal rights. Whether the property status is demeaning to the animals is discussed below. Some discussion of property law will be useful at this point.

Property law is a set of socially adopted rules that provide social stability by describing the rights and obligations that exist when a person owns property: real, personal, or intellectual property. A significant subpart of property law is the rules that relate to obtaining and transferring the ownership of an item. If you presently have a sheep or a cat and are the sole owner of the animal in the eyes of the law, then you can transfer ownership to another human by gift, sale, or bequest in your will. If your sheep or cat is female and gives birth to a set of lambs or kittens, the law awards ownership of offspring to the owner of the mother.¹

Property law is admittedly primarily focused on human-to-human rights and responsibilities. The law does not usually say much about the property, the animal, or obligations toward the animal. The general property rule is that, if you own personal property—say, a chair—you may do what you want with it: sit on it, throw it, chop it up, burn it, abandon it, or give it to someone. But here is the first important legal point: if the

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personal property is an animal, say, a kitten, you may not do anything you want to or with the kitten. The restrictions are within not properly law but criminal law, as articulated in the criminal anti-cruelty laws of each of our states. It is a felony violation almost everywhere in the United States if the owner of a cat burns or abandons the cat. This distinction suggests that law, not just property law, already acknowledges that at least some animals are different from chairs. There is no such thing as a “chair anti-cruelty law.” We see this reflected in our language, as well; the cat is considered not an “it,” as might be appropriate for most personal property, but a “she” or a “he.”

My next book will present a detailed argument for and vision of a changed legal concept of property law for the betterment of animals. Everyone within the animal-rights movement agrees that having dogs and cats in the property category of personal property, along with cars, chairs, and balls, is not helpful to the animals. An alternative to not being property at all is a new category, “living property,” for which new policy considerations can develop new rules about the relationships between owners, other humans, and the animals themselves. No one knows what will be the status of animals in our legal system in two hundred years, but it is highly unlikely that the next change for domestic animals will be the elimination of their status in the world of property, as proposed by the abolitionist.

When the new category of living property is created, a fresh consideration of some very old property rules will be appropriate. For example, an important attribute of personal property law is that the owner has the power to sell the property and reap the economic value of the animals. What if a new rule regarding the sale of animals were proposed? The owner of a cat would not be allowed to sell the cat, but could transfer ownership by gift (adoption) or by will at the owner’s death. There are interesting and important policy arguments on both sides of that possible rule. To start this discussion, we could begin with, say, cat ownership but leave sheep ownership for another day. Rules could differ by species or community. This would allow maximum opportunity for incremental improve-

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ment for the status of animals in the legal system. The creation of a new category, living property, also allows the continuation of the existing rules for humans owning inanimate personal property. Also, before you object and want to talk about the commercial value of your sheep, note that it will be perfectly acceptable to limit a rule to a species such as domestic cats and not to apply it to the honorable category of sheep.

But to the more-critical point, does keeping animals in any property status prohibit them from having legal rights? No. Who may hold legal rights is a social judgment, not a fixed law of the universe. Indeed, a fair case can be made that some animals have some minor legal rights within our present legal structure even though they are personal property (see chapter 16, “A Foray into the Law”). The possibility of legal rights for animals is expanded greatly by moving animals to their own subcategory of property.

Turning to the other point of the abolitionist: animals are diminished by being property. This statement is not meaningful. The human-designated status of property is not loathed by the animals within the human community. The property status of an animal does not demean the animal in his own sense of self, such as that could be determined. While physical space is important for animals, I do not think the sense of personal liberty of movement is nearly as important to animals as it is to humans. What causes them harm is not the property status but the disrespectful use of animals by some owners. Neither the dog nor the rooster complains about being property. It is a concept beyond the grasp of animals. The concept of property is a human construct created to allow animals to become part of various human communities.

There is a risk of a bad, disrespectful relationship for an animal in a property relationship. But consider that the rites of human marriage create a human relationship that contains within it the risk of a bad outcome as well. This outcome is inherent in the creation of the relationship. Does the risk of things going wrong demand that the availability of the relationship for everyone be denied? Perhaps we need to institute pre-

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conditions for allowing the relationship to be created rather than denying the possibility of the relationship. Further, there will need to be procedures and rules for when the relationship goes bad. Humans can ask for a divorce, but at the moment animals cannot.

Let me share with you a “conversation” I had a number of years ago, one that set me on the path being pursued today in this book:

THE JET DISCUSSION

It was a brisk fall day when I decided to put some questions to Jet, a ram born on our farm the year before. A mellow ram, he was more approachable than some of the others. In fact, the two of us had often talked football as I scratched his neck and back. He was polite enough not to disagree with most of my keen observations, but he did express a strong preference for the Rams over my favorites, the Lions. We got along, as typical guys talking sports. After the usual pleasantries, I looked him in the eye and put the question to him:

“Do you feel oppressed? Are you troubled by your status as property?”

Jet looked at me with his thoughtful eyes as if to say, “No, I had not noticed that I was property. What does that mean? And ‘oppressed.’ . . . Well, last night you would not let me into the north pasture, where I wanted some new grass, but I think that is being frustrated, not oppressed. In fact, I have been worried that you and your wife are feeling oppressed by all the obligations you have on our behalf. Marty hauls water for us every day and moves the electric fences for new pasture. On the weekends I see you building shelters and feeders and planting new pasture for us. Two weeks ago, I saw you store two hundred bales of hay in the barn for the winter. All we do is eat, drink, chew our cud, and watch the lady ewes. I hope that our demands are not too much for you, because I like our life.”

Then I said, “Well, that’s an enlightened view for a young ram. And, don’t worry, the work is worth it to us. We will continue to work

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for you as required. But what about the fact that we take your wool from you? It's not a pleasant process, twenty minutes of being held at awkward angles, and an occasional nick of the skin."

But the ram was not concerned and looked at me as if to comment: "You forget that we pretty much live in the moment. Once it's over, I don't dwell on it. Believe me, getting rid of the blanket is liberation. The only problem is that it's hard to remember who is who when suddenly everyone is naked."

"Well, that's a relief," I replied, and then I sought to pose just one more question. "This is a little abstract for a ram, but give it a shot. Do you believe that the world would be better off if you and your mothers and sisters did not exist, so that humans would be free from the status of being oppressors of animals?"

I could swear Jet looked at me with a strange expression that seemed to suggest, "You're kidding me, right? Get a life! Just because you have psychological issues doesn't mean I don't appreciate being alive."

His glance into my eyes crystallized the answer. It is better to exist as part of the human world, even as property, than to not exist at all. Having shown me this truth, Jet wandered away to find some grass.

From the animal's perspective, a key benefit of being property is that there is a specific human or human substitute who is responsible for his or her care. Under the laws of every state, the owner or keeper of an animal has a duty of care for the animal that is set out in the criminal laws of that state. Under our present legal system, full responsibility comes with ownership. Most animals within the domestic control of humans are not capable of self-care, regardless of their age, and, if released or abandoned by their human owner, they would find themselves in an environment hostile to their existence. (Admittedly, some dogs and cats do and could survive as feral animals, but that raises issues not pursued here.) If domestic animals are not some form of property, then there will be no domestic animals, no companion animals, no food animals—no animals except those that can exist outside our possession and control.

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Therefore, at present, legal ownership needs to continue to exist so that responsibility for the care of the domestic animal can be squarely placed on a specific human or group of humans. Of course, this responsibility is broader than just a duty of care toward the animal. Owners are also responsible for bodily injuries or property damage caused by the animals they own.

While a logic loop might be involved with the next thought, it should be set on the table. Without the property-law construct, humans would not be willing or able to support the birth of new generations of domestic animals. Property law allows humans to realize the different values that domestic animals represent to them, thus creating the incentive to support a next generation of animals. These values can be emotional, spiritual, physiological, or monetary.

The abolitionist might say: "That is correct; property law promotes more domestic animals, which is a horrible outcome as animal slaves will be abused and killed by humans." Therefore, they would say, we need to eliminate the property status as an option for creating animal/human relationships.² What do you think? Clearly, at present, many animals are abused and killed by humans. Should that reality drive a stake in the heart of a property law that allows a relationship between specific humans and specific animals? Do more animals win or lose by being part of a property relationship? The answer to that question will vary greatly depending upon which human-animal community is considered. In the area of animal companions, most animals are winners; in the area of industrial agriculture, most animals are losers. What of animals raised for their fur, such as minks or chinchillas? What about animals in zoos or those in the entertainment industry?

Another perspective, more practical in nature, is that viewing animals as property is a social construct that simply is not going away any time soon. Domestic animals are ingrained in our society at such a level that anyone proposing elimination of domestic animals to a legislature will not be taken seriously. If there is a desire to help the animals among us

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and the future generations of animals, the existence of property relations with animals has to be accepted as a given. Now, that does not mean that particular legal rules cannot be changed. No, it does not. Property law has a great capacity to change, to evolve as society changes or evolves.

That's enough of law for the present. It's time now to turn back to ethics.

**For domestic animal, first there
must be life, then liberty.**

INTERLUDE: FENCE ROW FARM

Although our genetic heritage is our starting point, we are what we have made of our journey of life. Until 1997, my wife, Marty, and I had a life journey that was very ordinary in a number of ways. We both grew up in typical American suburbs with our respective families. We started our marriage while I was in law school and we were living in the back half of an old farmhouse surrounded by cornfields. When we left that home neither of us had any idea we might someday own a cornfield. After graduation, as I moved from the practice of law to the teaching of law, we moved through four different houses in subdivisions of Virginia and Michigan. When the law school that has employed me since 1977 moved from downtown Detroit to Michigan State University in East Lansing, we saw an opportunity to fulfill a dream: to escape the suburbs and buy a little land. After an amazing string of improbable events, we ended up owning a 100-acre row farm southwest of the university.

When we purchased it, the parcel had 67 acres of row crops, 27 acres of woods, and an abandoned 5-acre field that was made up of weeds rather than a meadow. A tree-lined lane split the rectangle lengthwise, from

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the west side (with the house and barns on the west side) to the back woods, a half a mile to the east. We live off a public dirt road. The back side of a 400-acre farm is across this road, preserving a perfect setting for amazing sunsets. Our neighbor uses horses to plant and harvest his fields. The west side of our neighbor's farm across the road is a small river/creek that is summer home for numerous birds, including Canadian geese and Sandhill cranes. They provide a sound landscape during the fall as they fly over our land, preparing for migration. Sometimes we hear the beating of their wings; other times they are high in the sky, but always honking back and forth, in the joy of life.

Resting at the lip of this modest river valley, we have gently sloping land. Maple and walnut trees of eighty-plus years line both the public road and the edges of our property; the south side is bounded by an abandoned railroad track and a very occasional stream from snow and spring rain. In the summer, no other house is visible from ours. In the winter, when the maples and walnuts have dropped their covering leaves, the twinkling lights of our neighbor farms remind us that we are not entirely alone.

In Michigan, roads usually have been placed along existing land-survey lines, so that we are part of a one-mile square. For our square, there are no houses or roads except on the edges; the interior of the square consists of cropland, woods, or pasture. The rectangle of our land pushes into the center of the human-free square.

The impact of the land on our quality of life may be obscure to many—certainly to the young who seek out the energy and vitality of the peopled city life. As you walk on our land, away from the house and barns toward the center of the square, you dip in to a soothing silence that with time brings restfulness to the soul. In the summer and fall, a quiet wind through the leaves provides a natural low background sound. It is generally so quiet that you can hear the tire noise of one car half a mile away; an airplane occasionally breaks the silence on its way from Detroit to Chicago. But there are many moments when no human-generated sound can be heard, and you are in a private wilderness. In the fields after a snow-

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storm, the silence is complete. How many people have experienced the delicate beauty of new patterns of snow, observed in complete silence? We know we are lucky, that few have the opportunity to live this rural life.

Shortly after moving onto the farm, I stepped down as dean of the law school, and one of the staff members who knew me fairly well gave me a book to read, Gene Logson's *The Contrary Farmer*. It suggested an entirely new perspective on the agricultural industry of which we were now a part; it suggested all was not well with big machines and high capital investments. Other books followed, and then we discovered a monthly newspaper, the *Stockman Grass Farmer*, edited by H. Allan Nation. Again, it suggested a different vision, one of agricultural animals on grass: healthy for the animals, healthy for the humans, and much better for the environment.

When we first owned the farm, we leased out the land to a big equipment farmer who rotated corn and soybeans with occasional crops of wheat. The growing crops were beautiful and the farming equipment impressive, but the land lay naked most of the year, subject to erosion and unusable by us. After ten years, we did not renew the lease. Instead, we decided to plant pasture and grasses over all the crop fields. We cleaned our land palette of the chemicals of commercial crops and have sought to establish a living, breathing soil with pasture plants.

As our youngest child set her sights on college, my wife's eyes roamed over all the land and decided that we needed animals. In her mind was a vision of the ideal family farm, the classic Old MacDonald's farm. One summer, before our daughter departed, we tried keeping horses, and while my wife enjoyed their presence and their soft muzzles, they seemed big and dangerous to me. Our daughter liked the idea of horses but was not so taken with their daily requirements. So we returned them to their owners. While Marty was contemplating the merits of goats, a friend urged us to come see some sheep that she had bought. The next day, we attended the Michigan Fiber Festival in Allegan, Michigan, to see her new Icelandic sheep. Visiting the exhibit, we were struck with their beauty, with their

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long, multicolored fleeces and the impressive horns of the rams. Their eyes had a clarity and focus that was different from other sheep. Months passed by, some fences were built, and we became the proud possessors of a flock of four sheep. Now, a few years later, we started showing our sheep at the same festival, allowing others to discover their beauty. Somehow the four turned into thirty, then sixty, and with the arrival of the new lambs, perhaps eighty amazing sheep. Icelandic chickens appeared one day; another day brought some llamas. Of course we needed Great Pyrenees to help guard the sheep; and the cats just show up, looking for food and shelter.

Dealing with the sheep on our land has shaped my vision of the human-animal future. They are not pets, but they have names. They do not have emotional attachments to us like our dogs or cats, but they are dependent upon us. The rams like back rubs and head rubs, but most of the ladies stay just out of my reach. They are not from a line of predators (like dogs and cats) but are prey species and, as such, view the world differently. I have looked them in their eyes, on beautiful summer days and in snowstorms when they decide to stay outside and are covered with white. I believe their life is good, worth living, and that the family farm of multiple species is an ethical and environmental positive. Living this way has given me an experience and an understanding that was impossible in the suburbs or a city. It has recast my outlook and allowed a complex ethic to develop. I think it useful to share this view of animal/human relationships with those who have not had the opportunities that I have. I will come back a number of times to the role of the farm in my vision of the future world.

CHAPTER 7

HUMAN COMMUNITIES WITH ANIMALS

The list of possible human communities is almost without end; and while many are not populated with animals, some very important ones are. Our communities with animals tend to be focused by physical location: on the farm, in the forest, in the laboratory, or in the home. The following identifies some of the most important communities; others certainly exist. These communities will provide ample opportunity for the application of the ethical concept of respectful use. Again, the threshold question will be, Which animals are or should be considered ethical subjects, rather than mere personal property, within a particular community?

We are a sight-driven species (although not all individual humans have the capacity for sight, of course). What is important to us is usually within our viewing, or direct contact. It is in our nature to care about that which we can see or experience firsthand. Our motivations for ethical obligations are primarily driven by those we see, those we know, and those with whom we interact. In the online world of today, we can see much more than we used to see. But, you might say, what about all the others we don't see; don't we have a duty to them as well? What duty we may have to them is very light, but that is acceptable because if each human dealt ethically with those around him or her, then our concerns about those out of our sight would be considerably allayed. Everyone should be within the sight of someone.

This problem of unseen others is even more difficult when the ethical subjects are animals. In the communities with animals set out below, some

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animals are not seen by any humans, others are seen by humans lacking the capacity to do anything for the animal, and still others are seen daily by some human with the capacity to help or harm the animal.

As we proceed through the following communities, there is one significant factor that helps predict the level of risk that an animal will be treated disrespectfully. Does the owner of the animal share a physical space with the animal such that the owner is able to literally “see” the animal as an individual, to see the eyes of the animal looking back at him or her? For us humans, eye contact can create bonds of awareness and respect. When animals have no eye contact with humans, there is a higher risk of disrespectful use and thus a greater need for external intervention, including prohibitive and protective laws.

THE COMMUNITY OF COMPANIONS (OF FAMILY)

On the whole, animals with which people have the closest personal relationships can be classified as pets or companions. These animals are easily identified because they have been given names and usually live with people. Horses and other large animals that are not brought into the physical space of the home may be companions nevertheless, but the line is more difficult to discern. The other critical identifier of a companion animal is that there is at least one human within the family who has a strong emotional attachment to the animal, which is usually reciprocated. Millions of people have formed such attachments with animals, populating the animal-companion community with millions of animals. But there is the goldfish-in-the-tank issue. Does mere physical presence make it part of the community of the family? In some cases, fish are merely moving decorations within a home, not unlike a light display or a lava lamp. While it is possible for a human to have an attachment to a goldfish, it is doubtful that the emotional attachment is reciprocated. For the pur-

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poses of this discussion, the focus is on mammals as companions; lizards and fish can be the consideration of another day. (I suspect that many would claim that lizards, snakes, and such similar creatures do bond with their humans.)

It is stating the obvious that companion animals are treated differently than cows in the field or eagles in the sky. They are treated differently not because of inherent moral worth or legal requirements, but because they are not found existing within the important community of the family. Here people show friendship and individual care for animals, a relationship usually considered a social good for the human and the animal. (Some people become hoarders of animals under the cover of caring about companion animals, but hoarders do not understand that they often inflict harm upon the animals under their control.) A fair presumption is that if an animal is sharing a living space with a human family, then he or she is a companion animal. But this can be rebutted in individual sets of circumstances. What about a service animal that helps a handicapped individual recognize the onset of a seizure, or one that provides sound or sight assistance for a specific human? They are normally within the living space of the human family, and it might be expected that a service animal and the human have an emotional attachment, but if they do not, then the service animal will be in the broader category of working animals.

The initial dog that we met, Rover, was in the home of Homer, and therefore he was presumed to be a companion animal. When a family makes a visit to the zoo, they see many animals, but none of them would be considered a companion animal, since they are not admitted into the family. How about hunting dogs kept in kennels in the backyard or guard dogs chained to trees in the front yard? These animals perform services for humans but are not, for the most part, thought to be within a specific family community. Because they have not been admitted into the home, they do not have a presumption of companionship. However, they could still qualify as a member of the companion community with the showing

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of an emotional attachment and personal concern by some member of the family. Otherwise, they also will fall into the category of working animals, which will be discussed below.

COMMUNITY WITH WORKING ANIMALS

This community contains many different activities, and it is a bit of a catchall category for domestic animals. If an animal/human relationship does not fit in any of the other categories, then the animal should go here. Humans have interacted with animals with many different motives, including economic profit, performance of labor, and entertainment. Unlike the next category, food animals within industrial facilities, the animals in this category do not have to die to perform their human-desired function. The animals in the zoo, or in a circus, or show animals that are not companions, and most domestic horses are all part of this community. If a hunting or show dog is not a companion, then he will fit in here. While it is possible that some of these animals will have human caregivers that form an emotional connection with the animal, it is usually not by the owner of the animal. When ownership is by a corporation, it is not possible for the creation of an emotional attachment between the owner and the individual animal; it is well understood that corporations as such are entities without the capacity for human feeling or emotion. Thus, the groom of a racehorse may have a deep affection for a horse in her care, but that human does not have control over the key decisions about the well-being of the horse: whether or not to race, to breed, to give drugs, and to live.

Dolphins at aquariums, dogs caged for commercial breeding, animals bred for research purposes, and big cats held by private individuals in backyard cages are all examples of the working-animal category. What constitutes respectful use of these animals can sometimes be difficult to judge. If they have been captured in the wild, then those animals are at

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more risk of disrespectful use, because they have been removed from their natural habitat.

Even wild animals can become part of this community when captured to become part of the world of human entertainment. For example, consider the life of Keiko the orca whale, who became a celebrity in the *Free Willy* movies. In 1993, the first of three movies featuring Keiko was released by Warner Brothers. The film is about a boy who befriends a whale, Willy. The whale was a wild animal that came within the community of humans and was given a name. He bridged the gulf between anonymous wildlife and part of our entertainment community. Keiko was not only a pet to some individual humans who cared for him but also part of our pop culture. After his movie years, there was great debate about what was in his best interest—to stay in the company of humans or to be released back into the wild. A long story followed, but ultimately millions of dollars were spent trying to teach him to survive again in his natural environment. However, when he was released into the open ocean, he did not bond with fellow whales. Instead, he showed a preference for the company of humans. He lived his final retirement years in a Norwegian fjord, voluntarily interacting with the tourists who sought him out, and he was fed every day by his human support group. While perhaps a few people would have been willing to kill him as just another whale, most people would have morally rejected the killing and eating of Keiko, since he was not really wildlife but was within the human community as an individual, even if not a pet.¹ He was part of a one-person retirement community for whales.

COMMUNITY WITH LOCAL WILDLIFE

Before the first dogs or cats joined human families as companions, humans shared their local space with wildlife. Indeed, the presence of local wildlife was often critical to the survival of the families. These were the animals

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living alongside humans, sharing the same space. The wild animals at the zoo are not part of this community, regardless of the number of humans who see them in their cages. Also, a rabbit born in the wild but caught and put in a cage in the backyard is no longer a part of the local wildlife community.

This community is defined by a “not” rather than an “is.” A member of the local wildlife community is not the property of people or corporations and is not under human dominion and control. Ever since the time of the Romans, legal systems have dealt with the distinction between wild and domestic animals by creating rules for the legal transformation of wild animals into human personal property.² In theory at least, wildlife lead an independent life, perhaps in parallel with humans. But a human’s view of wildlife is strongly influenced by the cultural context in which the person lives. Wildlife may be considered a source of dinner; a source of income; a source of entertainment; or simply part of a wilderness experience, not to be killed or captured. We in the United States seldom rely on wildlife for daily subsistence or for economic return, unlike the frontier days, when wildlife meat and pelts could be sold as commodities. And that cultural context shapes our ethical relationship and rules of law dealing with this category of animal. But for all cases of local wildlife, there is an ecosystem shared by both. For a farmer in rural areas, this can be a robust relationship with daily interactions with many species of animals. The interactions can be positive or negative, as when the wild raccoon eats the newly laid free-range chicken eggs. In a city, it is a more modest community, but one that exists nevertheless (and, yes, the rats and pigeons are part of that local wildlife community).

On my farm, there is an extensive local wildlife community. The frogs in my pond; the deer and snakes in my field; and the dozens of bird species, at our feeders or not, are all local wildlife sharing the same ecosystem. There is an enhanced duty to local wildlife because of the physical proximity of the animals; this duty is not going to be due to wildlife in the next category of animals, the community of global wildlife.³

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Think about It

I am sitting at the kitchen table in my parent's home in Florida, reading the local paper. The headlines suggest the dilemma that humans face in defining the nature of their community with wild animals. "New Jersey's Bear Hunt Ends; 328 Confirmed Dead." The state of New Jersey had just allowed the first bear hunt in thirty-three years. They were hoping to kill upward of 500 of the 3,200 bears in the state to stop the "rising tide of complaints" about the bears in suburban areas. The other headline, on the next page, reads: "Woman Raises, Releases Orphaned Bears." The story tells us that for more than eighteen years, a woman had cared for and released thirty-five bear cubs and was presently working with four more.⁴

In this latter case, we can see that some individual animals cross the lines between communities. What can I say? Is this woman's life's work foolish or noble?

Sometimes it is the animal that chooses to cross over from one community to another.

The Sheep and the Wolf Shall Not Lie Down Together

The following is an e-mail my wife and I received because we are part of the ISBONA (Icelandic Sheep Breeders) Community; it is reproduced here with permission.

To: ISBONA List serve
From: Yeomen Farm, Canada
Date: Oct. 20, 2004
Subject: GOLSA

My dear old pet Golsa is no more. She was killed this morning by wolves. I let all the ewes out shortly after 9 this morning and sometime

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after that all the ewes came home. I was busy shearing so I had not followed them out to the pasture as usual. Around 10:30 we were finished and I decided to go out on the pasture for exercise. I came over the hill and at the bottom, 200 feet away was Athena, our guardian dog standing over a creature that I thought was a dog that one of the people in the village had lost a few days ago. As soon as Athena looked up, waving her tail at me, the “dog” took off and I saw it was an eastern red wolf. Athena took after it. I ran home yelling at Ray to come out and both of us went down to the pasture. I was a bit ahead and then I saw a grayish hump. It was Golsa. Torn apart, but with head intact. I thought I was past emotional reactions over killed sheep—but I am not.

We looked for the wolf in the pasture Athena had chased it into but did not find it. However, I saw a wolf in another pasture further away. We went there but it was gone too. While we were having lunch I looked out of a window where I could see Golsa’s remains and the wolf was back. We tried to get there without being seen, but the wolf took off. Now Ray is stalking the wolf, waiting for it to come back.

Many of you do have Golsa in your sheep’s pedigree. She was STS 37Z-416054—a remarkable sheep and one of my special ones. You will probably read more about her in our Newsletter, when I will be feeling a bit better.

Stefania

Icelandic sheep since 1985

The expectation of Stefania was that the dog would guard the sheep from the harm and death caused by wild predators such as the wolf she saw. And yet, she saw them together. The members of these two different communities seemed to be mingling, standing together over the carcass of Golsa. (She was one of the first ewes of the Icelandic breed in North America, and indeed one of our sheep does have her as an ancestor.) A subsequent e-mail from Stefania made this situation even more complex when she reported seeing the wolf and the previously spayed guard dog coming out of the edge of the woods together. Has the dog changed the

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community with which she identifies? Some stories will never be fully known. Stefania's experience detailed above is not an unusual blending of pet animals, traditional farm animals, and local wildlife.

COMMUNITY WITH GLOBAL WILDLIFE

We do not see whales on a daily basis, so we cannot consider them local wildlife. Similarly, the great apes of the wild, the elephants of Africa, and penguins of the Antarctic are far removed from our daily lives. This community of global wildlife encompasses all wildlife that is not part of the community with local wildlife as experienced by each individual. To a local landowner, an eagle may be a member of local wildlife, since the bird uses the lake on her land; to me, the eagle is unseen and therefore one of thousands in the global wildlife community. Your link to any one individual animal across the world is very thin, but, in the aggregate of millions of animals in the global wildlife community, the link has a cumulative weight supporting a duty toward the unseen. This community is tied together with two threads. First is the linkage of shared genetic heritage. While we are most like other humans around the world, we share a DNA heritage with all mammals, and, going further and further back in time, with all animals. It is perhaps the ultimate in diluted family relationships. But if aliens were ever to arrive from a distant galaxy, we humans would not have that DNA linkage with the aliens, even though they would presumably be living beings. (This suggests an even-larger community: that of all living beings of the universe—but I'm not going to push that thought until they reveal themselves more fully or we manage to find them.)

Perhaps more important than the genetic link with wildlife is the fact that we share our present lives through the larger ecosystems we cohabit. A mere two hundred years ago, when the global human population was only one billion versus the seven billion of today and ten billion of the

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future, human cohabitation was not threatening to the global wildlife, because human activity did not seem capable of impacting the ecosystems or the wildlife therein on a global basis. Today, however, it is clear that humans do impact whole ecosystems and the wildlife therein, and, therefore, humans must confront the consequences of their choices in an ethical context.

The first means by which ecosystems are impacted is by the destruction or transformation of land at the local level around the world by individual humans and the businesses they create. There are two different types of human impact on local lands and wildlife. First, the increasing number of humans around the world requires the consumption and transformation of the places they live. The energy, food production, housing, and transportation necessary to support increasing numbers of humans can significantly alter, if not destroy, local ecosystems. The consequences to the environment, our shared ecosystem, of having another human child born seems so modest that it almost never is a factor in a couple's decision to have a child, but in the aggregate the consequences on a global scale are considerable. Future additional billions of humans are a great threat to an already-fragile Earth.

The second human factor resulting in ecosystem destruction arises out of increasing monetary wealth in a globally traded world. As millions of humans reach the position of middle class and the number of millionaires climbs ever higher, consuming an increasing amount of goods from around the world becomes highly likely. When this happens, there is a disconnection between what is seen by the consumer (the product) and what was not seen by the consumer (the environmental consequences of the manufacture of that product). For example, what are the consequences to the oceans of the world when ten million sharks are killed so that shark-fin soup can be served as a marker of wealth in the Far East? Likewise, what if someone buys a jar of palm oil at the local store? Does he know where it came from, how much wildlife was killed or displaced, and how much habitat was lost in the creation of the palm-oil planta-

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tions? In Indonesia, upward of four million hectares (twelve million acres) of wildlife habitat has been destroyed for the creation of palm-oil plantations.⁵ We consumers in the West do not see the wildlife killed or displaced by the clearing of land. There is no pile of bodies to give witness to the destruction; they simply disappear. We can only imagine the wildlife that might have lived on the land in the past (see chapter 13, “We Are the Gods of Old”).

While every human individually is part of a local wildlife community, they together are also part of the global community of wildlife that comprises all the wildlife that is not part of their local community. The ethical discussion about this community will not be about a duty to individual animals, as it might be for a companion animal, but rather for the aggregate of millions of unseen animals. We share Earth with ethical subjects we do not know, tied together by our global ecological systems. What ought to be our obligations toward them?

COMMUNITY WITH INDUSTRIAL AGRICULTURAL ANIMALS VERSUS HISTORICAL AGRICULTURAL ANIMALS

Beyond the daily interface with companion animals, the most common exposure humans have to animals is the consumption of their bodies for human food: the agricultural food animal. These animals differ from those in the working-animal community because the animal's flesh or product—meat, poultry, eggs, or milk—is sold directly to the consumer. The purpose of this ownership has a primary motivation of economic profit; perhaps it is the sole purpose of ownership. This is the community that has the highest risk of disconnect between the human owners and the individual animals, thus possessing the highest risk of disrespectful use. These animals (chickens, hogs, feedlot cattle, and others) are not seen every day by someone inherently concerned with their welfare. Most con-

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tacts are by unskilled, uninterested workers who do not seek any connection with the animals. For example, consider the building that has no windows but twenty thousand egg-laying chickens, with automatic water and feeders, and automatic egg collectors. What are the odds that anyone ever looks at the individual beings stuffed five or six to a cage?⁶ (The brutal conditions faced by some industrial animals will not be detailed in this book. Numerous books and websites exist to explain and show the grisly details. I am not a dispassionate observer of these conditions, but I choose not to dwell on them here.)

Personal connections may exist on many small, family farms, but to say that a facility is owned by a family does not mean it can be removed from the industrial-agriculture category. On the other hand, the presumption of disrespectful use by a large or corporate facility does not mean it is impossible for respectful use of agricultural animals, since the owners can intentionally set into place rules about the conditions of the animals' lives that move toward the judgment of respectful use.

Respectful use is much more likely when the animals are seen by their owner(s). On family farms, historically, ownership and direct oversight of daily care were combined in the same person or family. A person had to like the company of animals to spend his or her life raising and working with them. Over the past thousands of years, family farms have represented the vast majority of human-animal relationships. They are the sheep cared for by the shepherds of the Bible. They are the chicks and cows on Old MacDonald's farm. They are the animals cared for by their owners, even if the owners use them to their advantage. The thirty pigs in a fenced field or barnyard, even though not named by the family, are cared for each day by someone of the family; the quality of life and health are easily tracked by those with the responsibility to care for the animals.

Disrespectful use is much more likely when the animals are not seen by those with the power to shape the lives of the animals. Our ethical and legal goals should be to eliminate the unseen animals and support and encourage communities in which agricultural animals are seen animals.

HUMAN COMMUNITIES WITH ANIMALS

And, of course, on the other side, just because a human has only a few animals to deal with and sees them on a regular basis does not mean that they will be treated respectfully in a specific case. This is when the law needs to step forward and make demands of minimum care.

Where the risk of disrespect is high, the animals will be denoted as industrial agricultural animals. Where the risk is low, the animals will be denoted as historical agricultural animals. The term “historical” is meant to refer to the period before 1940, when almost all farming was organic and small-scale. Not that a replication of exact historical conditions is sought or suggested by this reference. But best outcomes for today will arise when the scale that can be humane is combined with the scientific information and technologies of today. The term “historic” rather than “traditional” was used as a descriptor of this community because some of the industrial practices have been in place for forty or more years, and it is not clear how long something has to continue before it is considered traditional.

THE COMMUNITY OF OUR KNOWLEDGE SEEKERS OF SELF AND SOCIETY

This is a set of animals that are apart from working animals generally because the motivation for their use is the obtaining of information or knowledge by those who own the animals. However, this category must be considered to possess two subparts: those activities that seek to expand the knowledge of science and those that expand only the knowledge of particular individuals. The latter arises in the areas of education and testing where science gains no new information but only the individual who is engaging in the action does. Science uses large numbers of animals in seeking the cure for cancer. Some cosmetic companies also use live animals to test the safety of commercial products, but this does not produce new information important to science. Since most people would

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assign different values to these two activities, they will be treated separately when determining a judgment about their ethical use.

It is assumed by most observers that millions of mice are used each year in research, but since there is no legal duty or legal requirement to report the number of mice or rats used in research, the actual number is not known. Other mammals such as dogs, cats, primates, and rabbits are also used and counted. (In 2016, US institutions reported using 71,188 primates [the vast majority are monkeys], 60,979 dogs, and 139,391 rabbits in scientific research involving pain.⁷)

NEGATIVE COMMUNITIES

The community of humans seeking to create entertainment and profit by the fighting of dogs or other animals is a longstanding outlawed community. While not yet dealing with judgments about respectful use, this is a fairly clear example, at least in the United States, of a community that has been judged by a majority of citizens as disrespectful, unhealthy, and unacceptably inflicting pain and suffering. As a result of this judgment, I will categorize dogfighting and other forms of animal fighting as a negative community. This ethical judgment is so strong that under many state and federal laws it is a felony to be a dogfighter or cockfighter. It is usually a crime to even seek to join the community by attending a dogfight or a cockfight.

Another repulsive community that a few humans have created with animals involves the death of a small animal in a human sexual context. With the internet has come awareness that some humans are recording and distributing “crush videos.” (Crush videos are defined as fetish videos in which small animals are taunted, tortured, and then crushed to death under the feet of provocatively dressed women.) This is wrong at so many levels that such activity, and the recording and distribution of such videos, quickly became illegal at the national level.⁸

HUMAN COMMUNITIES WITH ANIMALS

As will be shown, some communities created by humans will be made illegal, as the above examples show, while others will have to be regulated to assure that they are ethically acceptable. The community of commercial blood bullfighting, in which the bull is killed as a climax to the event, is representative of one activity perceived as both positive and negative in cultures in countries such as Spain and Mexico.

THE COMMUNITY OF GENETIC CREATION

In all of the above categories, it has been assumed that the animals in question came to life through natural birth, with perhaps a little help by humans motivated to engage in selective breeding for traits useful to humans. But there is now a new category of animal that is expected to increase considerably in the future. These animals may or may not be commercial, be found in the wild, or have personal names. The defining factor is that they result from genetic manipulation beyond that of historical selective breeding. The first step down this path was represented by the cloning of Dolly the sheep in 1996. Today it is possible to clone a pet.⁹ The next step was when the DNA from different species were mixed to create a new animal. For example, the GloFish carries mixed genes from different species.¹⁰ Human genes may be mixed with the genes of chickens, pigs, and sheep to produce an assortment of products.¹¹ Perhaps in the future this community will include chickens that have no feelings and can be kept in the dark to save a little money, or pigs that carry human genes in order to provide beneficial hormones. This community differs from the others because we are not just the keepers of these animals but their creators. Perhaps in time this category will dissipate into the other four, but for now, with the genetic processes so new and so risky, and with the field so wide open, they deserve special consideration. Ethically speaking, the risk is the experiment that doesn't work, the one that results in creatures that may be malformed and die or be in pain.

RESPECTING ANIMALS

An Occasional Very Short (Fictional) Story

What if, by some biotechnical means, changing genes resulted in enhancing the intellect of animals? What if they could demand their rights? What then?

The Uplifting

It seemed reasonable enough at the time, but then it always does. The intelligence-enhancing drug Genioxtum had been available for humans for about a year outside the United States.

The drug worked by resetting the timer on the genes in the brain that created the neural network during the first two years of brain growth in humans. Many millions of potential neuron cells are created in the brain during that time, but many never become integrated into the neural net and die off. The drug allowed the genes to again create a surplus of neuron cells. The treatment would not have any effect unless the individual was placed in an enriched sensory environment full of new information, requiring the brain to store, sort, and organize the new materials—then the new cells would create new, stronger networks of information. The increase in intelligence was the result not of the new information per se but arose because 10 percent of the cells formed a bigger, more robust network that managed the new information, enhancing the ability to see patterns in the information. Intelligence is a function not of information storage but of the structure of neurons created to do pattern identification within the information, resulting in an understanding of that information.

Someone was curious about what would happen if Genioxtum were to be administered to a dog. Of course, because the neuron network of a dog is fundamentally like that of humans, it was just as effective. The key to having the drug work was finding the super-enrichment environment that would set up the enhanced neuron-network in the brain. For

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the dogs researchers decided on exposing them to classical music and the SS-HDTV (smell and sound enhanced) for three two-hour segments each day. The dogs had been on the drug for about three weeks when a few small changes were noticed. The investigators swore that they saw the animals smile at mirror images of themselves. Second, the animals started engaging in devious but cooperative behavior in order to get their handlers to give them more food. About six weeks into the experiment, the investigators knew something had happened when the dogs appeared to be bored watching cartoons and seemed to pay attention to baseball games. There was even one particular dog that showed a preference for the talking heads of the O channel (Opinions Only, 24/7).

The investigators never did figure out how the animals contacted the attorneys who filed the petition for their release from the lab as enhanced animals capable of self-sufficiency and, therefore, deserving of liberty from human control. Of course, with attorneys always filing crazy things, the court and world were not impressed until the dogs were shown to score in the range of 90 to 108 on the standardized IQ test. (The Chihuahua scored only a 60, but no one considered him part of the enhancement program, since he was the pet of a lab technician who had been slipped a few pills.)

**Will human-enhanced
intelligence in animals change
our ethical duties toward them?**



CHAPTER 8

WE ALL HAVE INTERESTS

IF SOMETHING IS ALIVE, IT HAS INTERESTS

The word “interests,” as in the interests of humans or dogs, is an important concept because the process of deciding ethical conduct toward others will necessarily require the balancing of often-conflicting interests. What are the interests of the ethical actor (you) and the ethical subject (the animal)? Take, for example, that you have the need to get to work on time, but your companion animal has an interest in play or in eating breakfast. What is the ethically correct outcome? It is unclear because the term “interest” is a bit too loose to help sort the important from the trivial. For purposes of this discussion, the concept is split into two major categories.

The first category of interests is designated as “biologically provided self-interests.” These are interests that arise out of the evolution of our DNA. Some are obvious: the need for oxygen so cells can create energy, a diet of a variety of foods so different cells can perform their function, clothes to protect our bodies from negative external factors, and to be a part of a community (hopefully a positive community).

A second type of interest is at least one step removed from biological interests and can be referred to as “experience interests.” These are the desires of individuals that arise out of the life experience of an individual. Homer, the dog owner we met earlier in the book, along with all other humans, has an interest in the consumption of food to retain health and life. Homer, and not all other humans, has found a focus for this interest in

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the consumption of cherry pies. While all humans have a genetically provided interest in the seeking out of sugar, not all humans have an interest in cherry pies. While cherry pies are a source of sugar, such pies, per se, are not required for the sustaining of life. The preference or interest in cherry pie is most likely a result of childhood positive experiences. This interest itself usually has no ethical consequence even though it might impact the waistline of Homer. However, a professor of logic might suggest: if he eats too many cherry pies, then he will become a diabetic or have a heart attack and die young, thus not fulfilling his ethical duty to provide a full life of support and comfort to his wife and children. But I will ignore that chain of thought.

We will need to sort, to give weight to, a wide variety of interests in ethical decision-making. We will also need to sort those interests that are so important as to justify the adoption of laws to control human conduct from inappropriate interference (freedom from torture, for example). One premise of this discussion is that biologically created interests are more important, deserving of more weight on balance, than are experience interests.

THE SOURCE OF BIOLOGICAL SELF-INTEREST

Biological self-interest is derived from the existence and nature of the DNA that creates each individual being on Earth. Inherent and most unique about the nature of the DNA molecule is the fact that it self-replicates, that is, by its biochemical nature it will produce copies of itself. The DNA that is found in living beings consists of special groups of self-replicating molecules that have evolved increasingly complex packages surrounding the molecule that help assure the replication of the next generation of DNA molecules; they are the winners of the battle of evolution.¹

We are survival machines, but “we” does not mean just people. It embraces all animals, plants, bacteria, and viruses. We are all survival

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machines for the same kind of replicator—molecules called DNA. Beginning with the simplest life-form, the forces of genetic selection over millions of years have evolved different bodies in shape, size, and ability to support the DNA that pushes for the birth of the next generation.² It is one of the amazing aspects of life that a complex molecule that clearly cannot be self-aware has been pushed by evolution to create a body to carry it that can be self-aware.

The domestic cat, the blue bird, the monarch butterfly, the chimpanzee, and the human all come into existence (are born) because of the combining of DNA from an egg and a sperm from their biological parents in a special environment. It is amazing how by changing the code by which the DNA is constructed (which consists of only four distinct variables), such amazingly different packages/bodies are produced. No one can choose what body to be; you simply are the body that you are. The body is of course much more than just the physical structure. Each body or survival machine protects the DNA from environmental harm. Thus, we vertebrates have pain receptors to warn us of external threats. The turkey is born with an eye a bit different from a human's and an instinct to watch the sky. They have a set of brain neurons that quickly sort the incoming visual signals and will call out alarms with the sighting of objects in the sky that might be predators. This is a critical capacity for a turkey in order to survive long enough to produce the next generation. This is an instinct, not some mystical event; it is hardwired in this particular animal by its DNA.

Some bodies learned to breathe oxygen and walk on legs. Some can see the world with color; others smell the world around them. Many DNA bodies have developed the capacity to feel pain, and some of these have a capacity for self-awareness or degrees of consciousness. These diverse bodies carrying their DNA, which we see as the animals around us today, have evolved over millions of years under evolution's rules of natural selection. One of the most complex, and at the moment most successful, packages is that of *Homo sapiens sapiens*, today's humans. Remember that rocks and

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cars have no DNA and do not have a capacity to self-replicate, and they do not have an interest in so doing. Indeed, they have no interests at all.

DNA-constructed beings have a will to live, will fight to live, and will kill other living beings in order to stay alive. Importantly, it is the balance between life and death that drives the evolution of different life packages. To say that a living being has biological interests is simply to acknowledge that each individual has been endowed by its DNA with a package of skills and capabilities that may be expected to be exercised by the individual in pursuing its life and the creation of the next generation. A primary interest of a bat is that it be in darkness during the day, while the turtle will seek out the sun to raise its body temperature and become fully functional. To deny the turtle the heat of the sun or the bat the flight of the night is to interfere with a fundamental interest of an individual of that species.

As a starting point, some of the behaviors that most, but not necessarily all, animals engage in and that demonstrate the scope of their interests include:

- fighting for continued life,
- finding and consuming food on a regular basis,
- socialization with others (usually of same species),
- mating,
- caring for their young,
- sleeping,
- accessing sunlight (or not),
- exercising their inherent mental capacities,
- moving about in their physical environment.

HUMAN INTEREST

The entire above list also applies to humans. For example, consider how much of human activity is directly or indirectly related to the DNA com-

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pulsion to create the next generation, to produce babies and support them until they can be independent. At the primary level there is sexual attraction between individuals and the sex-versus-love tension. At a more abstract level it is why sellers of cars seem to always have attractive women in their commercials. Likewise, most animals invest most of their day in finding and eating the appropriate food, which makes it a primary interest for animals. But for many of us humans food is everywhere, we just need to work to gain the money necessary to buy it.

Human brains are much more complex than other animals', and with that complexity comes the capacity for many more interests. Most of us have at some point said: "I wish I could lead the simple, good life of my dog or cat." No cat or dog will have to figure out what immigration policy the United States should adopt or how to make a democracy work or how to get his daughter to band practice after school while he is stuck at work. The social structure and neurological complexity of humans has given us the invention of farming and gunpowder, to name just two things. Life is indeed fairly simple for our companion animals compared to ours. Not only does the human brain have many, many more neurons to obtain and process information, but because we are one of the few species to go through social group evolution, few other animals have the constant tension of humans who seek to be both an individual and part of a social group. To have social communities requires that some of the members possess those character traits that produce leadership abilities for the group to survive. As an ever-present counterpoint to being part of a group is the desire to be selfish in order to ensure individual survival. Whom to kill or whom to help, on an evolutionary scale, was usually decided by knowing what community an individual was part of, and by recognizing family ties.

One of the things humans did a while ago was to invent money, which is extremely useful for building complex communities. Humans understand clearly the necessity for money in today's world. It is with money that we are able to satisfy first our biologically created interests and then a wide assortment of experience interests (e.g., helping others,

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racing horses, or collecting beer cans). Reflect for a moment how much of life is focused upon the enterprise of obtaining and spending money and how much of the human character is revealed in this process. Just as sugar, with its DNA-driven roots, has been a problem in the modern world, in which sugar is too abundant, perhaps money has become too available in the modern world as well. Often animals or animal products are used to satisfy these uniquely human interests (e.g., for shoes, burgers, racing animals, and watching animals at zoos). But understand that obtaining money is not really an important interest in itself; it is merely a means to satisfy the real interests of the human individual.

COMMUNITY INTEREST

As discussed in chapter 6, humans are a part of many different communities. In turn, each community is composed of a set of humans. And being composed of humans, a community has within it often-different ideas about how the community should proceed. It is fairly well accepted that it is not unusual that an ultimate decision of a community may run against the best interest of some individuals within the group. A consideration of which communities a person is part of will help identify which experience interests are important to him or her.

With many communities, if an individual disagrees with a community decision, then the person has the option of leaving the community. For example, if a religious group decides to allow/not allow women to have a leadership position, then the individual who disagrees with the decision must decide to stay within the community or leave it. While it is natural to talk about the interests of the community (e.g., a condo association, a specific city, or an organization like the Boy Scouts of America), such interests are really just a cumulative pile of the individual interests of the humans composing the group. I don't have ethical duties toward cities or organizations, but I will have ethical duties toward the humans

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and animals that are a part of the community. When animals are part of a community, they usually do not have the option of leaving the community, which is one reason why we need to be more aware of just what are the circumstance in which they live.

ENVIRONMENTAL INTERESTS

Can we talk about the environment having interests? Not really, since the environment is primarily a place where beings live, not a being itself. But like a city composed of humans, Yellowstone Park, for example, is a place composed of many, many living beings. We humans often refer to Yellowstone as if it were a being itself, but it is only a shorthand notion used to speak of the cumulative interests of all the inhabitants bundled up together, as well as all of the conflicting interests of the various individuals and the ecology of the place. But, as will be seen later, this shorthand notion will also be useful to us.

CONFLICTS OF INTERESTS BETWEEN HUMANS

Human beings have interests. Sometimes, many times, these interests are in conflict with the interests of other human beings. To help us understand some of the complexities, let us return to Homer, who has an interest in cherry pies; he would love to have a pie every day. There is nothing inherently wrong with this interest, and presumably he is free to fulfill this interest within the limitations of his culinary skill and personal resources. However, if he seeks to satisfy this interest by taking a pie made by Sally Top, without paying or without her permission, then his interest will be in conflict with Sally's interest in either eating the pie herself or in receiving compensation for her labor and cost of materials.

Now the question becomes, Can we make an ethical judgment about

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this conflict? If Homer takes the pie against the wishes of Sally, is that unethical conduct? Our intuitive answer is yes; the conduct is unethical and should be condemned by right-thinking people. Now is not the time to unpack that judgment, and though the issue seems a bit on the trivial side, the principle is of great significance. Indeed, the principle is a fundamental component of our legal system. Theft is a crime. Human history suggests that protecting someone's work product or invention from theft is a critical component in the keeping of a peaceful society and, therefore, the community has adopted a series of rules/laws to deal with this conflict.

At a less trivial level, Homer may also have an interest in having a social date with Ms. Top. And again Ms. Top's interest may be the opposite. She may have an interest in being free from the attention of Homer. Is his conduct unethical? Assuming that this is a verbal exchange, then it does not seem unethical to ask. Men have been asking forever. This conflict will normally be resolved by Homer and Sally, and indeed thousands of times daily this conflict arises and is resolved without the intervention of the law.³ If, however, Homer decides to further his interest by touching or grabbing Ms. Top, or perhaps by calling her and following her for days on end, he has exceeded the norms of social conduct. He has interfered with her liberty rights. As such, his conduct has moved into the unethical and perhaps illegal area. The legal recourse for her would be in the form of criminal charges for harassment, battery, or stalking, and the civil right to seek an injunction against further intrusion of her privacy.

CONFLICTS OF INTERESTS BETWEEN HUMANS AND ANIMALS

As a set of examples to show some of the complexity of conflicting interests between humans and animals, please consider the following three scenes in which JoJo, an adult chimpanzee, is the focal point.

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1. JoJo lives in the Potsville Zoo. He is one of a group of ten chimpanzees on a three-acre track that was part of a \$6 million project the zoo built three years ago. Zoo visitors can see the chimpanzees from five viewing positions. However, chimpanzees have the ability to retreat out of view if they wish. There is a trained caregiver on duty ten hours a day. The caregiver has the obligation to observe the chimpanzees for medical needs, to provide them with creative food-gathering challenges, to ensure that their individual interactions do not cause harm, to control humans so that they do not do stupid things, and to generally ensure the chimpanzees' well-being. Homer complains to the zoo that regardless of the size of the cage, JoJo is still not able to move about in as large an area as he would in nature, and that the confinement interferes with his fundamental interest in personal freedom. Is the keeping of JoJo in the zoo unethical? This is basically the situation suggested at the beginning of the book. What do you think? Balance the interests of the chimpanzee, the zoo, and the visitors to the zoo. Should it be illegal?
2. JoJo lives in the basement of the home of Big Jones in a commercial cage measuring 5' $\times$ 5' $\times$ 7'. Big Jones collects exotic animals and shows off JoJo to all his beer-drinking friends by banging on the cage to get a reaction out of JoJo. After several months in residence, JoJo no longer reacts to cage rattling and has cut back on eating the table scraps that Big Jones feeds him. This comes to the attention of Homer, who sends a letter objecting to this possession as unethical conduct by the owner of such a complex being. The fundamental interests of JoJo are clearly at risk. There is no socialization, no physical exercise, no enrichment of the environment, a lack of appropriate food, and clear psychological abuse. JoJo is basically a living trophy for Big Jones. The interests of the owner, Big Jones, are personal: he has a modest financial investment in the animal, and he feels important as the center of atten-

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tion within his community of human friends with JoJo in his house. It makes him feel special, providing part of his self-identity and self-esteem. Is the conduct of Big Jones unethical? Balance the interests. Should it be illegal?

3. As a final example, consider JoJo, who has lived for twenty years in an institutional lab at Big University. His cage of iron bars meets the requirements of the federal law, with physical dimensions of 5' × 5' × 7'. However, he never sees the natural light of the sun or the touch of any other chimpanzee. There is nothing for him to do in the cage, no emotional connection with others or activities to provide intellectual focus. He has been part of three different scientific protocols over the past fifteen years. Is this keeping of a chimpanzee unethical by the university or the individual researcher? Does it matter what information has been or might be gained in utilizing this animal in the name of science? Should the question be framed in terms of this particular chimpanzee, or should it be framed in terms of all chimpanzees held at research facilities? Balance the interests.

In example 3, it would not be unusual for the reader to see both sides of the dispute, as both have important values that they represent, making ethical decisions more difficult. This last hypothetical suggests how important but difficult determining the weight of a particular interest will be when making an ethical judgment. Some believe the inquiry of science wins over any interests held by the individual chimpanzee; other humans believe that science could never justify its significant interference with the chimpanzee's fundamental interests in a laboratory-research setting.

One complexity of the third example is that the potential benefit of scientific information could flow to large numbers of humans. But, it is impossible to know in advance of engaging in specific animal experiments what, if any, usefulness the experiment may have, or even when the information might be useful. On the other hand, there is the certainty of the

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negative impact on the animal used in the experiment. Today it is highly unlikely that a chimpanzee would be the subject of an invasive experiment, because the scientific community has quietly decided that chimpanzees should no longer be used in science.⁴ So, to pursue this question of balance between human and animal interests, should experiments be done with a dozen beagles instead of a chimpanzee (or perhaps fifty rats)?

So, if the currency of the discussion is the kind and level of interest, how are we to give value to different kinds of interests? How should we decide about the ethics of the use of animals by humans?

For Their Sake

*Pigs and chickens and cows,
Are interesting.
Have interests.
Can we see them?
Can we hear them?
Can we act,
For Them?*

CHAPTER 12

ETHICAL JUDGMENTS ABOUT ANIMALS

MAKING PRIVATE JUDGMENTS

Let's suppose that Ms. Maple has three cats that live with her in a nice apartment in New York City. She has just received an invitation to visit a friend on Martha's Vineyard for a four-day weekend, but she cannot take the cats. She must make a judgment about what to do with the cats. We hope that the judgment is ethical and respectful. She could put out a big bowl of water, open a bag of dry food to leave on the floor, and lock the door on the way out. The cats, most likely, would be alive when she returned, but most certainly not happy. In Ms. Maple's mind, that judgment may be considered respectful and ethical. The acts are not illegal, since she is providing a minimum level of care. Should someone have a discussion with her to try to change her mind?

Alternatively, Ms. Maple may be able and willing to place the cats in a nice cat hotel, with playtime paid for, at the sum of \$100 per day per cat. Is one option respectful and the other not? If the big money is spent, does it mean she is more respectful? If she does not have the money to spend, does that make keeping them at home less respectful?

Remember that respect comes in many different colors and is an individual judgment based upon the person's information, resources, and experience. It is subjective. One measure of respect is how well it accommodates the interests of the animals in question. Would four days in the

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apartment impose risk of harm for these cats? Well, it depends on the cats. Are these highly social young cats that expect human interactions every day? Or are they rescue cats that mostly stay in a bedroom every day and do not seek out human companionship? In my experience, most cats could handle a few days without human social interactions. But what if the water bowl was tipped over or the food bag fell shut against the wall? It seems to me that four days without any humans looking in on them to make sure all is well is too long. Something could go wrong, something totally unforeseeable. It is were up to me, I would say that the appropriate level of respect would require at least having a human stop in to see what is happening each day. On the other hand, the exotic food and silk pillows of a pet hotel are not necessary for a showing of respect. Should I try to talk with her? How could I change her mind?

What if she had three Australian sheep dogs or German shepherds instead of cats? They are different from cats; respect requires more effort on the part of Ms. Maple because the dogs have more demanding needs. Also, remember that respect is always in relationship to the individual animals in question and the context or community in which the animals and the humans exist. These issues are placed in the community of companion animals.

What if Ms. Maple decided to visit a local zoo, let's call it Sunshine and Roses Zoological Park, which charged a \$25.00 admission fee? Is it ethical for her to support this zoo with her money? Once she learns of the facility, she might say to herself: "Does this zoo treat its animals with respect? If not, I will not go, because I do not want to support an organization that is disrespectful of the animals that are in its care." Perhaps she has no information about how the animals are kept. She will gain information while attending and afterward, without detailed reflection, she may simply say, "I am uncomfortable with the small cages I saw the animals being kept in. I don't think I will go back." Such a thought is an ethical judgment, a holistic one, that is, the quick judgment without a sentence-based analysis.

ETHICAL JUDGMENTS ABOUT ANIMALS

What about the zoo: have the zookeepers made good ethical decisions about their animals? They may have made a financial decision that they can make money by reducing their costs using small cages and hope that most people don't notice or care about the cage size. The zoo director or zoo board has a mixture of decisions to make: financial, ethical, and legal. The ethical questions may be the most difficult: *Does the law allow us to obtain the big cats we want to display?* Both federal and state law will be consulted. *Can we secure enough income to cover the daily cost of operation? Where will the animals come from? Can their capture be accomplished in an ethical and respectful manner?* But this last question cannot be forced upon the zoo operators by outsiders because the zoo owners may not even see the animals as ethical subjects, and therefore not believe an ethical question is even before them. As an outsider, I would say that financial goals should be considered only after a baseline of respectful care is provided to the animals. If the zoo cannot provide respectful care, then it should not continue to exist.

Sunshine and Roses Zoological Park is one enterprise within the animal/human community that uses animals for entertainment. Among the leaders of this zoo community in the United States there is a high level of concern for animals and their well-being, both physical and mental. (Often this concern is greater than the law requires.) Therefore, the ethically acceptable bar for treatment by zoos is high and a number of places displaying animals for the public to view do not meet this bar. This is particularly true of roadside zoos with just a few animals; in these cases, the animals are really just eye candy to get the driver to stop at the commercial store that is holding the animals.¹ In the zoo community, rather than focusing on socialization with humans, as is the case in the community of companion animals, the focus is on respecting their wild nature and trying to provide habitats that allow the animals to experience an environment that accommodates their genetically driven interests. (For example, heat level, humidity, cover against the elements, and food acquisition.) This ethical approach will be costlier for the zoo and may not be required by the law, but it is still the "right" thing to do.

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As previously discussed, our intellectual framework for rational, logical discussion is respectful use. Let us return to the example that started the book. When Homer walks in the door of his home and decides whether to kick and what to kick, it is a holistic judgment arrived at within a few seconds. There will not be time for rational contemplation with words and sentences. If respect for the dog does not preexist before he walks in the door, then it is doubtful that it will be realized at that moment. The holistic judgment is dependent upon previously stored information and judgments (habits) toward living beings. Now, if Homer does kick the dog and the dog cries out in pain, then Homer, one hopes, will have a rational discussion with himself about what happened, that it was wrong, and that in the future he will show enhanced respect for his pets. Now, when the urge to strike out comes upon him in the future, he will come to a different holistic judgment and not kick the animal. This is called being human.

MAKING COLLECTIVE JUDGMENTS

In 2008, an undercover video taken by the Humane Society of the United States was released showing the pushing of a downed cow by a bulldozer at a slaughterhouse. Anyone who sees this footage most likely will make an immediate, holistic judgment that the human treatment of the animal in this film is ethically wrong, whether or not it was illegal.² It does not matter that in thirty minutes the animal will be killed to provide food for humans; in fact, in some ways that makes the issue even more important. (The video and resulting public reaction provide the political impulse for changing the law to make it clear that such conduct is unacceptable in our society.) This is an example of individual ethical decisions coming together with one vision or voice and creating a group ethical decision. There is no need for a scientific expert to discuss the matter, and no defense could possibly be offered up by the actors. It is also an example

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of what most individuals would categorize as disrespectful—if not downright cruel—actions by a human to an animal. Some decisions do not need a logical analysis.

The pictures of the clubbing of baby seals on the Canadian ice flows bring the same sort of revulsion to most viewers: it is unacceptable conduct. The death of the young, the spattering of blood, the mother seals in anguish, give all the clues necessary to trigger a negative holistic judgment in the viewer. (For a sample of this visceral public impact, type “seal clubbing” into YouTube’s search bar.) Being offered the additional information that the person needs the seal pelts to make money and that death by crushing the brain is sometimes near instantaneous for the seal pup does not sway us from this judgment. The human interests do not seem to overcome the overwhelming visual impact of what is happening to specific individual baby seals.

Yes, emotion is part of the judgment, but whether we acknowledge it or not, emotions have always been part of the judgment-making process. Sometimes emotions will lead us places that on balance we should not go, and in such instances the logic center acts as counterpoint to the holistic, quick response. Road rage is an example of emotion resulting in a bad outcome. But the logic center may not be able to take charge until after the heat of the moment. (That is one reason we have so many humans in jail. When asked about why a convicted person acted as they did, a common response is: “It seemed like a good idea at the time. What was I thinking?”)

One of the keys to the above examples is how important the visual impression is to the making of holistic decisions. Pictures speak more than a thousand words. Of course pictures are also a possible starting point for logical discussion, consideration, and judgment. But when seeing a scene for the first time, it is hard not to react with a quick judgment, which may or may not be followed up with a contemplative reflection of what is truly within the picture.

There is a debate within the animal rights/welfare movement as to

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which part of the brain should be addressed to get people's attention and change their habits concerning animal treatment. Some use shock images to get the attention of their audience. Others choose to engage in rational, logical discussions. The development of public policy and new laws does and will require considerable use of the logical approach to an issue before the end result can be realized, but arousing the emotion of the public may be a necessary first step toward achieving political action. However, walking into an elected official's office with pictures of bad things happening to animals will usually not produce the desired outcome, even though, as with the downer cattle video, sometimes the dramatic impact of a picture is necessary. Are the pictures of hens in battery cages sufficient for individuals to stop buying eggs from such a facility (assuming they even know that their eggs come from such a place—we buy eggs from the grocery store, not directly from the egg producer)? Perhaps some people would be persuaded, but probably not many. It is hard to know how many people have actually seen videos of battery caged hens and have chosen to not act, compared to individuals who have not seen any such videos.

Returning to the zoo issue, note that it is not like the blood and violence in the clubbing of the baby seal, or the possible intense pain and suffering of Homer's dog, Rover. The visual is not as important or as immediate. As we pass by the cages, we see passive animals, sitting, pacing, or sleeping; there is no blood, no threat of death, and nothing triggers immediate concern in the visitor of something being wrong. But, have the visitors asked the right questions? Do we have sufficient information? As an autistic person who is also a professor of animal welfare, Temple Grandin has a book that makes clear, our information about animal behavior is often seriously lacking, and without this information rational decision-making is truly handicapped.³

If the context of respectful use is kept as a frame of reference, then there is a starting point. For the example fact pattern of the zoo, the first question would be: *Is it possible to respect the physical and emotional needs of an animal of a particular species in the spaces that are available in a par-*

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ticular zoo? Animals that are known to range widely in the natural environment, such as lions and wolves, may have emotional difficulties living in a cage that allows them to move only 100 feet in any direction. (But what about a specially constructed lion enclosure that mimics the wild?) Penguins will need cold, hummingbirds need warmth. Could any facility accommodate their needs in a respectful way? If not, then they should not be allowed to keep the animals. Some zoos have decided that they cannot accommodate the needs of elephants and have sent the animals to sanctuaries to live out their lives.

At the moment, no law really raises these questions fully. The Federal Animal Welfare Act does require zoos to have certain minimum physical standards, but they are not based upon the emotional and psychological needs of the animals in question, and the law only covers mammals (not reptiles, birds, and other species). These are ethical (and sometimes political) decisions for those who control and direct the zoos around the country and around the world. Self-regulation of the zoos through membership in a private organization like the Association of Zoos and Aquariums does seek a more comprehensive view of the keeping of animals in captivity.⁴ But voluntary, private associations are no better in the care of individual animals than the ethics and resources of the individuals that comprise the association. Members of the public can agree or disagree with a particular organization and bring financial and political pressure on the organization to move it to obtain better outcomes for the animals. Can or should we leave it to the experts at the zoos to meet these requirements, or should we draft a more comprehensive law to create specific standards of respectful use? What is the risk that money issues will overcome the respectful use needs of animals in this community?

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IMPACT OF MONEY

One great difficulty when making ethical decisions about animals arises when money/profit is part of the context. Is it ethical for the owner and keeper of a horse to take it for a run around the track? Can it be done respectfully? Yes indeed, it is very believable that many horses would like the experience; just as some humans enjoy the physical activity of running at various distances. The key is that the human respects the horse, by understanding what the horse is capable of doing and not asking that it do more. If there is no money at issue, there is much less reason to believe an owner would not be respectful of the horse.

What happens when we add to this picture the impact of money and the physical disassociation of the owners from the horse? Is commercial horse racing ethical? To the degree that outcomes are unethical, for example, the use of illegal drugs and/or racing a horse when it is injured, should horse racing be illegal? It is no longer, if it ever was, solely an athletic event. It is about big money and big egos: money to be spent, money to be gambled, and prize money to be made on the track as well as breeding fees when a horse's racing days are over. The winners are few but wealthy, and the losers lose money. At least some of these humans lose sight of the fact that a horse is a being with limitations as well as abilities, and not just a machine for making money that can be tossed aside if it does not perform. The most obvious evidence of something being wrong is the number of times a horse has been shot and killed on a racetrack because it has broken a leg or is otherwise severely injured while running a race. The risk of racehorses being misused is particularly high when the owner of the horse makes no effort to understand and appreciate his horse. This may arise when the horse is seen not as an individual living being but as an investment. Social judgment about unethical outcomes that occur in the greyhound dog-racing industry has already shut down these racetracks in a number of states.⁵

Consider a horse named Shirley that had great genes, suggesting that

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she could be a winning racehorse. A group of ten people purchase the horse for \$100,000 and turn her over to a trainer to get ready for racing. The trainer makes good money due to his reputation for producing winners. How much will he push the horse to do physical things that put the horse at risk of harm? How often will a trainer or a veterinarian give drugs to the horse to mask the risk of harm in running a race? I don't know the percent, but clearly disrespectful decisions are made, and horses pay the price with their lives and health. Because it keeps happening, it is clear that some owners find it an acceptable risk, so the question is whether we, the public, think these risks to horses are acceptable. Do we need to supersede these individual judgments and assure respectful use with legal action?

This is a judgment that is both holistic and rational. There is no knowable advantage to a horse in assuming this kind of risk. The advantage is only to the horse's owners who seek to gain money, reputation, and ego stroking. Those do not seem particularly important to me. So my personal judgment is that unless the industry can reduce the risk of harm to horses to near zero, then the activity should be banned. Let the rich play with their other toys but not living beings. What is your judgment? What factors do you believe to be important here?

What if we change the context for horse racing so that the primary motive for disrespecting the horse will be eliminated? What if a law was passed that said the maximum winning pot for any horse race was \$10,000, and 10 percent of every dollar won by a horse had to be set aside in a trust for the future benefit of that horse? Would that be enough of a buffer against the corruption of money to ensure respectful use?

**The purpose of life is not to make money.
We make money in order to seek the
purpose of life.**

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INFORMATION

Let us focus for a minute on how dependent good ethical judgments are on having good information. A premise of respectful use is that the possessor of an animal has an obligation by virtue of his or her intimate connection to the animal to seek out information about that animal in order to make respectful judgments about how to act toward and support the animal. Consider a fifty-year-old woman named Charlotte who has had a financially successful life in marketing children's clothing but wants to pursue another direction. Being tired of the big-city grind, she contemplates moving to the countryside and raising sheep because she thinks there is an upscale urban market for cheese made from sheep's milk. Her plan is to buy a farm, get fifty ewes and five rams, and start marketing her sheep cheese in the big city. At the moment, there is nothing to stop her from doing so if she has the money. But she is clueless as to what is important for the health and well-being of the sheep.

An ethical seller of sheep would not sell to her unless the person was satisfied that she has the resources and the requisite information to support the sheep appropriately. Is there adequate fenced acreage with existing pasture, or at least access to quality hay? Is there a barn and water supply? Does she have a veterinarian? Are there predator risks in her area? Does she know about supplemental minerals she may need to give the sheep to compensate for any deficiencies in the food source from the local environment? Does she know about sheering the sheep, and who will do it? Does she know about likely parasites, and does she have a control program in mind? Does she understand the shots that newborn sheep require? Does she know anything about birthing lambs? Does she know about the factors that will be important in setting breeding groups? The information necessary to raise sheep respectfully is significant. And if she bought that number of sheep to start with, there is a real risk that she could be overwhelmed on the learning curve. If she does not have an agricultural animal background, it will take considerable time to "see" the

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sheep, so that there can be awareness of possible problems with individuals in the flock. (A flock of sheep needs to be observed over a considerable time period in order to establish what is normal conduct and activity for the flock and the individuals within the flock before being able to discern in a timely manner when the pattern is being broken and whether one or more individual sheep are at a health risk.)

Before the life and welfare of so many beings are put at risk, she needs information, which can only grow with experience into knowledge. The particularly difficult part is that she may in good faith not even understand what questions to ask, let alone the likely answers. Again, one would hope that a respectful seller of sheep would provide this information as well as offer support and coaching after the sheep are delivered. But if the seller does not care and the buyer is ignorant, then the risk that the sheep could suffer and die is high. Perhaps society has to step in and say, "You need to take a class and do site visits of existing sheep operations before you can take delivery of the sheep." Much like requiring a driver's license before you can drive, there should be a sheep-knowledge test that you must pass before you can possess and raise sheep—just a thought to put on the table.

Should we require an education test before a dog is brought into the home? Information is critical if we are to make respectful-use decisions. The question becomes, How do we make sure the information is obtained by the individuals who will make the animal-use decisions?

WEIGHING THE INTERESTS

In the above examples when a rational, thoughtful judgment is made, there normally is a weighing of competing interests. The outcome of the thought process in deciding whether or not to do something will be a result of weighing the benefits and costs of the action or inaction to all of the relevant ethical subjects; that is what makes something an ethical question.

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The immediate difficulty is finding the correct currency to use in doing the weighing. What are the marks on the scale? We all understand money and understand (sort of) how to calculate the financial benefits and costs of an action or inaction. But, as suggested in the previous chapter, ethical decisions must often take into account other values. Our public policy accepts the importance of other values, but it is often impossible to put numbers, let alone dollar amounts, on these values. Many people believe in the value of preserving and restoring endangered species; consider the government efforts in supporting the restoration of the eagle and the wolf in the United States. We believe (or at least express the belief) that families should be supported as the key social group from which societies emerge. We also believe that children should not be abused.

Is it ethical to keep lions or elephants in a big public zoo? What are the benefits and the costs to the humans and to the animals that will inhabit the zoo? The human organization that controls the zoo will be the owner of the animals and make the critical decisions about their well-being and care. The humans might perceive two interests being served by having mega fauna on the premises: First, it will help draw customers who will pay the entrance fee or become supporting members of the zoo. It can be presumed that economic success is a base premise in their decision-making. Second, the human organization may well see such ownership and displays as partial fulfillment of their corporate mission to provide the public with positive animal interactive experiences. As discussed in the first chapter, this can be complex and not so easily monetized. What is the social and environmental value of a zoo exhibit containing lions and elephants that results in a dozen individuals deciding to dedicate their lives to protecting lions and elephants in their natural habitat? What is the value of a pleasant day at the zoo for a thousand humans? It is more than the cost of admission, but again, it is hard to calculate.

If you see some difficulties in measuring the human benefits, consider what might happen when you attempt to value the consequences to the individual animals. For this purpose, we can accept as a premise that basic

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food and veterinary care will be available. Do we have the information necessary to make a judgment about the consequences to the individual animals at a particular zoo? What will be their quality of life—as measured by what? This book is not the place for the factual resolution of the questions I am raising. But assuming that you can reach some judgment about quality of life for the animals, what value is put upon that and how is it weighed against the human benefits? We seek a rational judgment about an ethical question, but the reality is that for most of us it can be a lengthy and only somewhat (but never really fully) informed holistic one.

THE ETHICS OF PURCHASING

We humans make purchases every day, from things as simple as a cup of coffee to a \$4,000 carving made from the ivory of an elephant tusk. Each purchase ought to be considered an ethical decision, but seldom are they considered as such. When we spend money, we create a market preference for a particular activity or commodity. The invisible hand of the market will engage the capitalist system to provide you with the item that you want, be it in a lawful market or a black market. If you want a cup of coffee, someone has to grow the beans, harvest the beans, roast the beans, and then package and ship the beans to you. The purchaser of the cup of coffee has no idea who has performed these tasks, or at what cost to the growers or to the environment. Over a decade ago, consumers in the developed world came to understand that humans who grew the coffee beans often did not seem to be appropriately paid for their efforts; instead, others in the chain of commerce made the larger profits. To deal with this problem the concept of fair-trade coffee was developed.⁶

Your rich cup of fair-trade coffee can help farmers escape poverty. Most small-scale family coffee growers live in remote locations and lack access to credit, so they are vulnerable to middlemen who offer cash for their coffee beans at a fraction of its value. Fair trade guarantees farmers

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a minimum price and links farmers directly with importers, creating long-term sustainability. Through fair trade, farmers earn better incomes, allowing them to hold on to their land and invest in quality crops.⁷

Then the consumers of coffee received the information that considerable wildlife habitat was being destroyed to make room for the coffee plantations. But this did not seem right or fair to the wildlife that die and whose habitat is lost in order for consumers to have a cup of coffee in the morning. So the Smithsonian Institute's Migratory Bird Center started a project promoting coexistence between commercial coffee plants and wildlife by urging that coffee plants be planted in the shade of existing natural plants.⁸

These are examples of the most abstract type of ethical decisions. The humans or wildlife whose existence is impacted by the decision of a consumer to buy coffee will not have been within the immediate awareness of the coffee drinker; indeed, it is usually impossible to even ask about whose existence is impacted. This is because coffee is an international commodity, thus it difficult to determine the specific individuals involved. But not knowing where the consequences occur or on whom they fall does not mean there are no consequences. This is an ethical decision within the context of the global community that we share with other humans and wildlife. While our duty may be light, it is still present.

Of course the first level of difficulty is creating the awareness in the consumers of coffee that their actions have an impact on other beings, and that therefore purchasing a cup of coffee is an action with ethical consequences. The second problem is obtaining information that allows for a good decision to be made. Because that information is basically impossible to obtain at the point of purchase of that cup of coffee, frustration arises for those who are willing to make an ethical decision. The concept of providing symbols on consumer goods, such as the fair-trade symbols, has been one such cultural answer to this problem. The consumer delegates the information gathering and weighing of interests (e.g., what is a fair price to pay the growers of coffee) to an organization that com-

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municates the presence of an acceptable balance of interests through the symbol on the consumer packaging. This is an appropriate way to deal with the light ethical issue that the purchase of coffee represents.

Let's look at the second purchase mentioned above: The ivory carving is different. the carving itself is valuable because it is ivory and not a plastic substitute. Ivory comes from elephant tusks. To consider buying it is an ethical and legal decision. It is a legal issue because, with only a very few exceptions, it is illegal to import ivory under the US Endangered Species Act, and it is illegal to kill the elephant in its natural habitat, based upon local statutes of the countries involved. Purchasing the carving is an ethical issue because in today's world the brutal, premature death of a specific elephant is required to obtain the raw ivory. (There are no humane slaughterhouses for elephants.) Whether or not the human carvers of the ivory are paid appropriately for their service is another ethical concern, but I do not know and choose to set aside this issue in the face of the death of the elephant. Killing elephants in general will have ecological consequences at some level, but more immediate is the death of the elephant herself and the consequences to the social group of which that elephant was a member. This is the killing not of insects but of intelligent beings that deserve a high level of respect within the community of global wildlife. In no ethical world is the death of the elephant justified by the human "need" to purchase ivory objects. Finally, there is the additional value of protecting an endangered species.

What would be the benefit to the purchaser of the ivory carving? Enjoyment of the visual and tactile feel of the carving might indeed be a positive for that person. Perhaps it is a simple financial investment, in which the purchaser believes the carving will increase in value over time, or for perceived health benefits.⁹ But there are many alternatives available to the purchaser for these motives. Many who can afford the cost of such an item are, in all likelihood, aware of the illegality of the purchase and the death of an unseen elephant to provide the ivory. Often the purchase of the item suggests an assertion of human ego, of showing that purchas-

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er's importance within the human communities that he or she inhabits. It is unlikely that you or I would change the mind of such a person with additional information or a well-crafted rational argument. Is the answer more information, more law, or changing the habits and beliefs within some human communities? So long as the consumer demand exists, the elephant deaths will continue.

Ethical judgments occur every day, when dealing both with the animals in front of us and the animals around the world, unseen and unidentified, but impacted by global trade.

CHAPTER 13

WE ARE THE GODS OF OLD

In room A we have a man, standing naked, looking out the window. In room B we have a chimpanzee, standing naked, looking out the window. What do we see? How are they alike and how do they differ? Their biology and DNA are very similar. Both will act to avoid pain and request of you (in their own way) not to inflict it. This gives an ethical presumption to both, as ethical subjects, that I should not impose pain upon them without a very good cause.

The man is both an ethical actor and an ethical subject. The chimpanzee, on the other hand, is primarily an ethical subject; the chimpanzee is an ethical actor only in the modest way that a very young child is when learning to deal with others. Let's examine the differences between the man and the chimpanzee. The man designed the software for a computer system that the chimpanzee might be able to use at a rudimentary level but could never design. Two thousand years ago, the humans of the time would have considered the computer a miracle or a demon. The man can arrange for a new habitat to be built for the chimpanzee, but the chimpanzee cannot do the same for the man. The man can have the natural habitat of the chimpanzee clear-cut and sold to assorted lumber companies; not only can the chimpanzee do nothing about it, the chimpanzee may well die because of such an action. The man has information and powers many orders of magnitude greater than the chimpanzee.

Now plug in a dog, a crow, and or a snake into the above paragraphs, and the difference is even more stark. Don't even try with a jellyfish.

Note that this chapter's title suggests a multiplicity of gods. I do not seek to engage anyone's religious beliefs, and I do not claim for humans

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any vision or wisdom that is godlike. Rather, the chapter title suggests that a higher level of control and impact on the beings and physical processes of this earth is now within the conscious and unconscious control of humans, both as individuals and when organized as states and corporations. Human activity now has effects that in the past could have been attributed only to one's god(s). Perhaps it is best to think of us as the gods of ancient Greece and Rome: they were claimed to be all too human in emotions and limited in wisdom, but with powers not previously available to mortals.

We have given ourselves exceptional physical capacities, yet those human traits that have supported our advancement into this new evolutionary position may not be adequate to exercise the judgment required to ensure the respectful use of the beings of this planet. This is about the community of all beings. Our highest level of abstraction contains our most difficult issues about ethical duties toward others. Frankly, the question is, Are we respectfully using our planet and the inhabitants therein?

HOW HAS THIS HAPPENED?

How have we become godlike? First our evolution gave us a language center in our brain with amazing flexibility, capable of understanding and producing all of the languages of the planet. Next came the critical step that no other animal has been able to take, to transfer information from within the brain to external storage devices: from stone tablets, to parchments and books, and now, something that humans of only a one hundred years ago clearly would believe an act of the gods, little thumb drives with unthinkable storage capacity for information. (The early science fiction writer Jules Verne might be the sole exception.)

We humans can accumulate our knowledge; with every other animal, unless they have taught their offspring, the knowledge they learn through life disappears when they die. They have no way of recording their knowl-

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edge. Our information, the trivial and the profound, can be recorded and saved indefinitely. Just as the printing press made this stored information available to a much wider circle of humans, our digital world and Internet search engines make most of human knowledge and digital information just finger strokes away. Wisdom is a lot harder to find, but I am sure it must be there.

Historically, as the information accumulated, individual humans discovered new information and developed new technology. At first it was simple things to aid humans in their activities. But at some point, perhaps at the time gun powder was discovered, but certainly by the discovery of nuclear power, the power dynamic between species changed entirely. We had what no other animal had: the ability to transform power beyond what the individual could do. The bow and arrow was an aid to individual humans, as was the flintlock rifle. But how do these compare to a nuclear aircraft carrier with fifty planes and a pile of cruise missiles? Every other animal is limited in its physical impact on the natural world to that which it can do with its own physical abilities. At the same time that the knowledge and power of the individual human is accelerating, the number of humans has increased dramatically. In any time frame relevant to ecosystems and evolution, the level of seven billion humans (and counting) represents extraordinary positive and negative risks for all of the other species. Will this power be used respectfully?

We humans today have godlike capacities beyond the imagination of our early ancestors. Not only do we know about the speed of light and the power of gravity, we can also see the viruses around us and in us. Indeed, we humans in a collective sense now possess the power of life. Genetic engineering is a reality. We can make life that has never existed in the natural world. This door of human knowledge has just been opened. What will be possible in a hundred years? What did the Wright brothers think possible about human flight a hundred years ago compared to where we are today? The future is not always foreseeable, because we are always limited by the knowledge we currently possess.

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It has been a breathtaking run from when humans gathered around a social fire in the woods to putting humans in a space station orbiting around Earth. We are not animals in the definition of evolution; we have long since pushed ourselves to the status of mini-gods relative to other species on the planet. Of course the information and power is not uniformly distributed among all humans. During the twentieth century there was a wide disparity among humans who could take advantage of our information and power. Over the past ten years or so the benefits of being the information species has spread dramatically with the ubiquitous use of cell-phone technology, a tool that has the capacity to swiftly overcome limitations of individual isolation and provide information access for many billions of humans (a study conducted by the United Nations suggests that six billion humans have access to cell phones¹), drawing our communities closer together.

In today's world of the super-empowered individual, some humans have personal wealth in the billions of dollars. This wealth combined with political and social connections support their capacity to do extraordinary things, both positive and negative, each having ethical impacts on both other humans and other beings. Bill Gates and his foundation can take on the issue of overcoming human death by malaria. Or one unidentified person can post pictures of the brutal beheading executions of Americans on the Internet for millions to see.

HUMANS AS THE INFORMATION SPECIES

Our human community is the first of the information species on this planet. Historically, biological species are driven by the unseen hand of evolution. The environments in which biological species exist shape the evolution of the species. For more than a century, we humans have had the power to reshape the environment in which we live to our liking. We have the capacity to control the environment and in so doing frustrate

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the unseen hand of evolution. We are just on the threshold of having the capacity to intentionally and directly change our own DNA. Some individuals object to such exercises of power, suggesting that it is wrong to play god. But we are the gods. It is going to happen. The question is, Who will direct it and toward what ends?

Beyond ourselves, we now have the capacity to control and destroy, or direct and support life on this earth. To morally or legally equate a dog to a child is to miss the context of humans as members of this new type of species. It is not so much that this means that the individual human has a higher ethical value than the individual dog. Rather, it means that we have the burden of figuring out how and when to use our power and information, because with great power comes great responsibility.

Pause for a minute before your ego expands to fill the room; recognize that the transformation of humans into the information species is very recent, and it is not at all clear that this is a stable state of affairs. There are a number of paths forward in time that eventually bring humans to a place in which we lose our information advantage and quickly revert to a traditional biological species. Retention of this new status is not assured, and given the present state of the world, politically and ecologically, the status can be considered very fragile indeed. In time, admittedly several billion years from now, our own sun might put an end to our lofty status with one big solar flare that fries all information receptacles in the world. But I think human actions and inactions are the highest risk to our continued existence as the information species. Do we have the wisdom and political will to control the power that we possess? The following memos suggest that all the information we have may or may not be sufficient to control the future of ourselves or the other living beings of our planet. Our broadest ethical duty, to preserve and promote the life of humans and animals, may not be realized.

RESPECTING ANIMALS

PROFESSOR XYBERY LECTURE

Occasional Very Short Stories Series

Lectures by Nonhuman Beings about Human Beings

By: Professor Xybery (Date: 022.555.23933) (Universe 223)

University of Liddum, Ramatus

Course 408, Species Directed Self-Evolution into Stability, Lecture 17

Version #1

Today we shall focus our attention on the most critical step in the evolution of a species into thinking beings, the Barrium Threshold (BT). Those of us who have reached the stability of post-Barrium evolution can only marvel that our genetic ancestors had the balance and wisdom to make it through that difficult transformation. As we have noted before, the process of biological evolution is very straightforward, regardless of time or location in the galaxy. Your basic courses in biology, genetics, and ecology have provided you with these universal rules. As you will remember, being on the path of increasing intelligence can mean survival for a species. Intelligence can provide the necessary edge for survival, but other attributes are also genetically successful. It is usually the case on a planet that after the evolution of movable life on land, it is only a billion or so years before some species will obtain an edge by evolving intelligence. While this process may be slow, building for a time, when the language creation barrier is broken, the Evivan Threshold, then things can develop at an ever-accelerating pace. In perhaps as little as a hundred thousand years after the species develops language, there comes the accumulation of knowledge and the discovery of tools and technology that support the gaining of more knowledge and brings the species to the Barrium Threshold.

Our work over the past century on the planet known to the prior

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inhabitants as Earth has provided us with an excellent example of a species unable to pass through the Barrium Threshold. It occurred during their designated time of the twenty-first century, or approximately 033.988.13060 on our calendar.

Let us remind ourselves that the Barrium Threshold is that point at which a species becomes self-aware of the genetic code upon which their lives are built, allowing them to manipulate and create beings, while at the same time the nonintellectual characteristics of the species are pushing the species toward self-destruction. Characteristics such as greed, pride, self-promotion, a focus upon the immediate and visible, and constant sexual reproduction, which were all important in pushing the species toward the BT, will bring it down if not controlled. Thus, the BT is successfully passed through when the power of genetics is used to reduce or control the negative characteristics of the species. The effect of the change is to place the species in harmony with the other live beings on the planet.

Inherent in the gaining of the knowledge that places a species at the BT is the raising of ethical questions about how to treat other genetically driven beings and the new beings that the species is able to create. Whether this ethical issue is fully addressed is usually predictive of whether the species passes through the BT. It is the ethical questions that ought to drive the species to use the genetic information to seek new solutions. On Earth, their twenty-first century saw the collapse of the human species (*Homo sapiens sapiens*). And it was fifty thousand years before the dolphins were able to rise up and pass through the Barrium Threshold and join the other successful races of the galaxy.

Consider the Classic Issues Faced by Humans

Excessive sexual reproduction resulted in the species spreading out over all the available landmasses, reducing the genetic diversity of the planet by the killing off of competing species. Amazingly, they allowed all of the other primates of their evolutionary family to go extinct. While

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the killing off of competitors is natural in mindless evolution, the lack of ethical concern for other beings suggests the species' intelligence was unable to control individual conduct.

The demand for immediate profit and protein resulted in the ecological collapse of the world's fisheries. This was one of the triggers of the species' collapse.

While the appropriate ethical issues were raised and discussed by portions of their society, the economically powerful controlled the political process, making the implementation of new ethical perspectives almost impossible.

The individual drive of some humans for wealth, ego gratification, and selfish wishes resulted in poor allocation of resources, great bitterness, and division between the members of the species. This division resulted in wars between the resource-rich and those without, and between have-nots who wanted to climb over each other to become rich.

Like adolescents with new toys, humans created and destroyed without any awareness of the respect for life necessary to move to the next level of evolution.

Politically, the issue of national sovereignty was allowed to trump all other values, allowing the selfish, narrow interests of some states to inflict global consequences upon all.

Their planet-wide movement of goods and people driven by global capitalism resulted in the translocation of species into new environments, exotic species causing conflicts with long-existing local species. Only the most ruthless and aggressive species survived, resulting in the dangerous simplification of ecosystems around the world.

Moving into the realm of the use of genetic information, with the primary force of global capitalism at work, genetically modified animals and plants were shipped around the world, ignoring the safety and stability provided by natural genetic diversity. Again, these acts were signs of an egotistical unawareness, or worse, a lack of concern about predictable ecological consequences.

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The presence of a global industrial animal protein system resulted in local human populations being unable to provide for themselves. They had relied entirely on megacorporations to deliver food from great distances away; this was very economically efficient, but high-risk.

Foreseeable climate change arose as a result of an increasing population with increasing per capita energy consumption, again resulting in loss of species and the inability to protect ecological complexity.

While cases of species failure differ in the details of the collapse, the general pattern is clear. A calamity will occur that brings global transportation to a halt, resulting in the starvation of millions of individuals who had relied upon global food distribution for their survival. This is the predictable result of unchecked free trade in food that moves from local to global corporate control. The threads of the economy that were part of the global reach come apart. Unemployment surges, tax collection drops, government spending becomes inflationary, and millions lose their jobs. The final step is when the global communication system breaks down and individuals of the species must return to a state of locally based resources for survival, instead of their globally based resource-distribution system. Fairly quickly, death occurs for those unable to support their lives locally, resulting in a large population collapse as the rules of ecology ruthlessly reassert themselves, as in the case of any species that expands beyond the carrying capacity of the environment in which it lives.

In the case of humans on Earth, the collapse occurred during their years of 2033–2035. A number of different events occurred in a short period of time. Political instability in the Middle East resulted in one party using a nuclear weapon against another, which in turn resulted in countermeasures that resulted in much death, but, more importantly, sharply slowed the production of fossil-based hydrocarbons. A virus was found in South American cattle that put consumers at risk. The response was to shut down imports of the beef, but there were inadequate supplies in much of the world and a glut at other locations. A drought in the western United States, in Canada, and in Russia reduced wheat and

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corn production. The United States and other countries were spending so much money on building dikes around their major cities to stop the sea rise that inflation took hold of the dollar and investors got spooked and withdrew billions from the US stock and bond markets. Gold became very expensive.

Business began to fail and hunger arrived in the major cities, resulting in political unrest, and an attitude of protectionism on the local level took precedence over global interests. This had a downward spiraling effect with the resulting loss of more jobs and a significant increase in violence. In the United States there were almost no factories left, and it took only a few mad individuals to stop the flow of energy pipelines within the country. Members of the middle class could not pay their bills; the dollar was not worth much; the large corporations ground to a halt, laying off even more people. The state tried to take over communication, but local control points had long since been phased out in the name of corporate efficiency, and rebuilding them in a short period of time was impossible. While the United States and China had to address serious internal matters, the rest of the world started local wars over water and wheat, causing resource shortages, and again creating political instability and investor nervousness. Someone cut the communication into and out of three of the major stock exchanges, and the global economy came to a halt. The movement of people out of cities, where no food existed, into the countryside, produced local violence, as the countryside could absorb only a few of the city dwellers. Might became right, and law was at the end of a gun, until they ran out of ammunition. Intellectual and cultural activities, such as universities, had no paying students and had to shut down.

The global village was returned to local villages; the global flow of money and investments reverted to a barter system. Animal protein was not available in many areas. When the genetically created food animals were taken out of their industrial confinement, they were unable to survive in an open-air, grass-based system, as they had existed when humans were a developing species. The human population quickly killed

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off all the local wildlife that might have been a food source. Previously, grain crops had been genetically modified by large corporations so that the seeds could grow for only one generation; then it was necessary to buy more seeds from them the next year. When the corporations collapsed, the seeds were no longer available. Most areas had no backup seed stock, so large-scale grain farming failed. Whereas in the past humans had been able to subsist off local fisheries and wildlife, these resources had all been destroyed in the years leading up to the current conflict. There was almost nothing to eat for billions of people. Humans simply starved, and they did not go quietly. In the process of their collapse, humans stripped areas of anything edible, leaving a destroyed ecosystem in many places that would take thousands of years to reestablish balance and complexity.

Within a brief two years, the species lost all but the most primitive of technology. Their population was only 15 percent of its previous numbers, and most of these were humans who had previously existed in local economics disconnected from the previous global economy.

Or perhaps in ten thousand years the efforts by humans to find the positive path forward will be acknowledged by the professor.

Occasional Very Short Stories Series

Future Lectures from Nonhuman Beings about Human Beings

By: Professor Xybery (Date: 022.555.23933) (Universe 224)

University of Liddum, Ramatus

Course 408, Species Directed Self-Evolution into Stability, Lecture #17

Version #2

On Earth the twenty-first-century humans reached the tipping point, and while it was touch-and-go for a while, they were able to work through the maze of technology and political decisions.

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The key point was when it was realized that additional intelligence, vision, and self-control were going to be a necessity, or human activity would not get past the Barrium Threshold (our name, not theirs). Next it was realized that the necessity of changing human beings was not going to happen by evolution; the process was too slow and not manageable because of the billions of beings that existed. Therefore, the logical next step was to enhance the existing brains of as many humans as possible. While different species have addressed the same issue with different approaches, the humans chose brain enhancement during the age of two to twenty-one years as the primary method. Using information derived from stem-cell research, and nano- technology for delivery, medical personnel delivered molecules into the neocortex of an individual's brain. After ten years of treatment, the neocortex and frontal lobe in particular had 10 percent more neurons within that portion and 30 percent more connections between the frontal lobe and the locomotion and speech centers. "Enhanced intelligence" was defined as the ability to see and comprehend patterns plus the ability to control and direct behaviors toward long-range goals, with a dampening of emotions and impulses. Among other results, this treatment counteracted the genius effect, which often caused those of high intellectual capacity not to work well in political or social contexts.

Of course it should be noted that humans almost did not make the transition, as there was a strong movement against enhanced humans, but ultimately the enhanced humans got control of the political process and withstood the wave of opposition. The tipping point came when about 10 percent of the population in the developed countries over the age of twenty-five had received the treatment at some point in their lives.

The usual unexpected consequences included the elimination of boxing as a sport, creation of exceptional gardens in all parts of the world, and the equivalent of three Beethovens and five Einsteins within a forty-year period.

At first it was only suggested that elected offices should be reserved

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for the enhanced adults, but after a decade many countries required that all elected officials worldwide be enhanced. What was essential to the transformation, but not foreseeable by many who took the treatment in order to enhance power and wealth, was that after the treatment they came to understand how limited such goals were and how humans needed a longer, broader vision.

As has been shown by repeated studies, that 90 percent of the species that make it past the Barrium Threshold do so only by developing group self-awareness as a significant limitation on individual self-awareness. Genetic evolution inherently pushes toward self-awareness as a significant positive factor for survival. This allows for self-preservation and self-protection to become clearer goals and allows for a long-term focus on activities. While this phase will also produce some degree of empathy and altruism, selfish self-fulfillment is the dominant motivation for action or inaction. It becomes nearly impossible to make political decisions for the benefit of those controlling the political system or future generations. Usually a capitalist economic system becomes dominant because it so clearly allows self-interests to effectively and efficiently make short-term decisions. But to save a species (and the supporting ecosystem) from self-destruction requires a next step, in which individual actions are tempered by awareness of consequences of the actions upon others tied with an actual concern for the welfare of others. (The Vulcans remain a prime example for the positive path forward.) When this occurs, the simplistic and negative outcomes of capitalism are realized and a post-capitalism period occurs during which business decisions are still separate from political decisions, but more non-economic values are imposed upon the process. Before these events, such ideas might have been clustered under the title “socialism,” but this attitude came to be known as “humanized capitalism.”

Several genetic paths are available for this phase, including hive awareness, but usually it is obtained by significant enhancement in intelligence, as reflected in pattern identification and abstractness that result in a much broader awareness of impacts of actions on others. Addi-

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tionally, there is a significant broadening of the communities of which each individual considers himself or herself a part. A typical side effect is the specific inclusion of other species in their community, which in turn becomes a motivation for better care and respect for the needs of other species. While this process is not necessarily aimed at reduction of volatile emotional reactions, it is a common side effect, such that while all prior emotions still exist and can operate, they are less triggered by self-protection and ego gratification and more by fulfilling the needs and reducing the suffering of others.

THE DUTIES OF THE GODS

As we sit high on our imaginary Mount Olympus, surveying the contradictory activities of billions of humans, how do we organize our thoughts? How might we show our respect for others at such high levels of abstraction, where the individual melds into ecosystem identification?

The starting point should be, again, respect for others; respect for the millions of biological species from which we have tentatively separated. Also, there needs to be a humbleness about the power we possess—awareness of the consequences of the exercise of power on other beings, as well as on ourselves. It is useful to break the issues into two broad categories: those within us and those outside of us. Outside of us is the physical world in which we live, the communities that we share with other humans and other beings. Within us is the unseen world of our DNA.

The following are the results of decades of pondering any number of issues. A broader dialogue with many others may well result in modifying these premises of perspective. It is a result of my holistic judgment.

1. **Premise about the habitats for all beings on Earth:** Human activity should seek diversity of life and a higher density of life within that diversity. Given the proven human capacity for eco-

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system destruction, we must go beyond the idea of preservation of the environment by:

- a. supporting existing systems so as to retain ecological viability,
 - b. preserving natural areas not yet impacted by human activity,
 - c. adopting positive programs to recover degraded ecosystems,
 - d. creating new ecosystems, in particular to make up for the destruction of prior ecosystems.
2. **Premise for the individuals within the ecosystems:** We should promote opportunities that allow individual beings to realize and to experience those capacities that their DNA has provided them.

BEING A CIVITIST

The duty to other beings requires us first to ensure they have a place to live, to exist. This duty is also broader and deeper than that which is usually incorporated within the term “environmentalism.” Therefore, a new term will be used to describe an individual who accepts the duties set out above: a “civist.”

Supporting, preserving, and protecting existing habitats is within the realm of a normal environmental focus. We in the United States have an extensive system of ecological protections with our parks and national forest and reserves. But in many parts of the world, even when important wildlife areas have been identified, they have not received the requisite protections. As 2018 begins, we continue to see the protected lands of the United States put at risk under the policies of President Donald Trump.²

Restoration is difficult and expensive. We may or may not understand what is critical to reboot an environmentally degraded area. If a farmer decided to leave a field alone so that the natural prairie can be restored, it most likely will not work, at least not on a timescale meaningful to humans. An ecosystem is a dynamic place where the interactions of both plants and

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animals create a pattern of life and death within the capacity of the place. Most prairie ecosystems require the presence of grazing animals and the actions of fire to maintain a specific diversity of life. An unused cornfield will just become a weed field with the most aggressive alien species taking over; this will normally not support a good diversity of wildlife.

Of course some issues are very difficult to approach. If we do not wish to degrade the near-shore ecosystem of the Gulf of Mexico every summer, some method of controlling the flow of agricultural runoff contained in the Mississippi River must be developed. To preserve the ecosystems of the western rivers, the human consumption of water must be reduced or contained. The laws of the western states concerning freshwater resources reflect the mentality of the times when the west was originally settled, not the present day. But of course the value of water has created a significant vested interest in continuing with old rules, to the detriment of existing wildlife and the habitat they need to live. Then again, the twenty- or thirty-year effects of global warming, another negative human impact on the life of the planet, may negate any difference that changing the legal system might obtain. There simply will not be enough water for present human use. I suspect that the burden will first fall on the wildlife.

To intentionally create a desert out of a forest, field, or prairie would be seen by everyone as a sad waste for both humans and wildlife. A place of no or little life is a negative state of affairs. Yet humans intentionally support a near desert-like environmental status when they support monocultures in agriculture and forestry. Chemical farmers are the opposite of civitist. They seek to destroy and kill anything that is not their crop. They support no diversity of life and will kill the diversity of life when they begin farming an area. There is no concern for the health and well-being of the soil; therefore, the existence or well-being of the diversity of life is not just ignored, but intentionally destroyed. A field of corn may have considerable biomass per square foot, but it has no biodiversity. While this may provide maximum profit for some humans, it represents a failure of our ethical duty to other beings of this planet. It is the ultimate con-

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flict in values, where the weight of the lives and well-being of thousands of small, perhaps unseen creatures mean nothing when weighted against the profit to the chemical farmer and the megacorporations that support the endeavor.

In the “inefficient” farms of a century ago, there was room for the crops and the wildlife. Indeed, the humans who seek only economic efficiencies are the enemy of the ecological complexities critical to our duty to be a good civitist. A pasture can be full of sheep or cattle while supporting a rich and diverse local habitat for wildlife. A good pasture starts with supporting and developing good soil, the opposite of the monocrop mentality.

Of course there are many human activities that destroy and degrade local environments: fishing practices, strip-mining, clear-cutting, road building, dam building, pollution dumping, and so on. While many of the most egregious of these activities now occur outside the United States, it is often the consumer demand of the developed world that creates the financial incentives for these destructive activities. The focus on mono-agriculture is because it is perhaps the largest single land use in the United States. We are the gods of destruction and creation.

THE DEER PARK PROBLEM

A concern for protection of ecosystems has often caused a conflict with those who seek to protect the life of individual animals. Animal welfare/ rights advocates often oppose the intentional killing of deer in small parks controlled by local or regional governments. While protection of individual life is always a high priority, there are times when individual life must give way to the greater good of the other beings in an area.

Deer populations within confined city or county parks often produce a clear example of this conflict of views. If there are no predators within the human-created and human-controlled park, then there is a risk

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(almost a certainty) of deer births creating a condition of overpopulation. That is, the number of deer will grow to the point that they exceed the carrying capacity of the park (available food production). Unless the deer population is reduced, the deer will consume the vegetation of the park, killing off all the other grazing species, such as rabbits, as well as the predators that depend on the presence of prey such as rabbits. The deer would also be eliminating the habitat of other species such as ground-nesting birds and frogs.

If a rich and diverse ecosystem is a desired outcome, as all civitists desire, then the number of deer has to be controlled in the absence of natural predators. Often, in the eyes of people who care about local animals, the foreseeable death and suffering of the individual deer is unacceptable. Negative views about sport hunting add to the heat of passion. But it is not a sport-hunting issue. We humans have created an unnatural ecosystem, with a lack of predators to keep the population of herbivores in balance. This results in an imbalance of the ecosystem. In the long run, it will be destructive for the deer themselves; their overpopulation will destroy their food base through overconsumption, and the deer will begin to starve. The ensuing suffering and death will perhaps bring the deer population down to the sustainable levels, but then the cycle will begin again.

We are the gods that created the situation with fences and the death of natural predators; for the balance and well-being of all the living beings within the ecosystem, we must accept the responsibility for ecosystem maintenance. While the introduction of a wolf pack would restore the natural balance, the risk of other negative outcomes might mitigate against such an approach in most places. The deer population should be kept in balance with the ecosystem in which they exist. How to accomplish the balance is a complex issue to be solved on a case-by-case basis. (Perhaps the use of birth control would work, perhaps not.)

Would the story be different if the subject was elephants rather than deer?

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INDIVIDUAL LIFE

If the goal of the second premise is that we should promote opportunities that allow individual beings to realize and experience those capacities that their DNA has provided them, then the context for human conduct continues to be that of respectful use as set out in this book. If wildlife exists in a habitat where human activity is not really present, then while there may be a duty of habitat preservation, we have no control, no responsibility for the life experiences of each individual animal. It must be understood that some, perhaps most, individual beings born into that community will have short lives with frightening ends, as they are consumed or harmed by other animals. The laws of evolution and ecosystems proceed as they have for billions of years; we cannot revoke those laws.

If wildlife exists in human-provided enclosures such as zoos and aquariums, then there is a standard by which to decide if the holding of the animal is respectful. Does the enclosure combined with the management practices of the human keepers provide sufficient opportunities for the individual held to experience those capacities that their DNA has provided them? But of course this simple test has great complexities. Should the zoo provide the lion with live gazelle to hunt and kill for dinner? Can the management of the lion separate the lion's need to experience hunting from the need to consume meat? We are the gods who decide who lives and who dies and under what conditions both will happen.

THE DNA WITHIN LIFE

A second major category of individual animals to be concerned about arises out of controlling and manipulating the DNA of life. Now we need to distinguish between the evolution of species and breeds by the natural or human selection of parents who combine their DNA to produce a new generation of life, and the biological science of genetic engineering.

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Humans have been breeding animals since the beginning of the domestication process. It has resulted in Great Danes and Chow Chows being different breeds of the same species. While some of the extreme outcomes of this process can be troubling, that is not the focus of concern here.

Genetic manipulation is important because it represents the possibility of a different community of animals. Species and individuals are not just nudged by selective breeding but are created solely for human use. With this godlike power comes the issue of what community will exist or be created between humans and these animals. Will they be cherished pets or the hidden animals of an agricultural community, living a life of unseen suffering for corporate profit? What will be our ethical duty to these animals? There is a risk that they will be considered different from “natural” animals, with less concern for their well-being as created entities and more for human short-term economic well-being. Manipulation of genes has within it both the power to enhance the quality of life and to degrade the experience of life. Who shall decide or limit such activity?

For example, what if someone manipulated the genes of a chicken so that the bird was constantly hungry and would eat as much as possible, resulting in 50 percent more weight gain per week? The chicken could be slaughtered earlier to reduce overhead costs, thereby enhancing profit. But such a chicken would be under constant stress, driven by an unnatural desire to eat, constantly looking for food, setting aside all other natural movements and activities. The chicken would add weight so fast that its bones and muscles would be inadequate to support it. In the last three weeks of life, the chicken would suffer lameness and joint stress. By the time of slaughtering, the chicken would barely be capable of walking. The reduction in overhead costs would benefit the stockholders of the corporation that raises the chicken, as well as wholesalers and retailers, and consumers, who could buy cheaper poultry. Is such an outcome ethically acceptable? Who shall decide?

Rather than just messing with the genes of a particular animal, there is also the possibility of blending the genes of different species, perhaps

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adding in some human genes as well. These are referred to as “transgenic” organisms. Many bits of human DNA are now inserted into mice for the use of science.³ What will the future bring? Global science is not under the control of the US Congress.

GloFish were created more than a decade ago by scientists in Singapore who injected genes from sea coral into zebra fish eggs. The resulting fish had bright, fluorescent colors, and passed them on to offspring.⁴ It is, of course, ironic that this extraordinary power, the accumulation of centuries of human scientific advancement, was exercised for such a trivial goal. It is a classic example of the results of mixing the economic forces of capitalism with new knowledge. What is the outcome for the fish? Is the birth rate and survival rate of the young better or worse? Is the quality of life changed? Do the fish live longer? Does the change cause pain or suffering? What happens when, not if, the fish is released into the waters of California or Asia? (Glowing is not a good trait when it comes to avoiding predators, but the fish may have other protective characteristics, for example, a bad taste.)

The questions around genetic engineering are significant and unsettling. The issues call for caution and wisdom, but it is more likely that the desire for commercial products will drive the activity. The point for this book is that this capacity is fundamental to demonstrating that humans are the information species, for good or ill. The guidelines suggested below are some initial thoughts about how respect might apply in the context of creation.

ETHICAL CONTEXT FOR GENETIC CREATION OF NEW ANIMALS

These are suggestions about the context in which to judge respectful creation and use. Genetic modifications:

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1. Shall not result in beings that can live in only artificial, human-controlled conditions, such as cages or windowless buildings.
2. Shall not increase or eliminate the capacity for an animal to feel pain.
3. Shall respect the natural form and beauty of the species' parent stock.
4. Shall not decrease the intelligence of an animal.
5. Shall not mix the genes from different species unless it is highly probable that the outcome will be stable beings with a good quality of life.
6. Shall not be solely for novelty and entertainment. (It seems that those who care least about the welfare of animals are the most willing to create new life to profit by the novelty of it.)
7. Shall not occur without an evaluation of what would happen when the new being escapes human control into the natural environment.
8. Shall, in the case of commercial animals, be in the direction of less dependency on humans, not more. Self-sufficiency for the new being is preferred over dependency.

Beyond the issue of new animals, there are the issues of genetic manipulation of humans. This is more complex, since it touches closer to home. It gives rise to religious issues, and even the need to define what it means to be a human. By manipulating genes, can we make the human species healthier, smarter, or longer-lived? Can we add wings or gills? Should we? Why not? Can we, will we, reinvent ourselves, as gods who can engage in self-transformation?

We have no social consensus on these issues, no law providing positive directions. It is clearly an issue of the future. First steps were taken in the United Kingdom in 2015 when a measure was adopted allowing a child to be composed of the genes of three adults.⁵ It is unclear what event will finally produce the full social discussion of all that is involved.

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To say that we are the gods of today on this earth, with enhanced powers of creation and destruction, does not suggest how this will work out over the next one or two hundred years. Should the human species be viewed as if it were a four-year-old child with a loaded, hair-triggered gun in its hand, or like a forty-year-old man who has respect for the power of the gun? How much death will the human species inflict upon itself and the others of the planet before our power is harnessed, before wisdom and respect become the guiding paradigm for the individual and for the communities we inhabit?

We are the gods.

CHAPTER 15

DO ETHICS OPERATE WITHIN OR UPON GLOBAL CORPORATIONS AND GOVERNMENTS?

Having developed an understanding of how humans engage in ethical judgments and acts, and how animals can and should be part of our individual ethical world, a significant difficulty remains. There are two major institutions or communities that can have a significant impact on the lives and welfare of animals, yet they stand apart from the world of ethics. Do corporations and governments operate with a self-derived ethical compass? Even though they are composed of humans, they do not always act as an individual human might when faced with ethical choices.

In the world of law, corporation and governmental entities have a visible presence. They may file lawsuits and be sued; they are legal persons. Are they persons or ethical actors in the world of ethics? They are not living beings; instead, they are the accumulation of the subparts of large numbers of humans. They are not alive and therefore have no interests apart from the humans who compose them. Are they ethical actors? Well, they certainly have the capacity to understand that their actions or inactions impact humans outside the corporation, as well as the environment and animals. They also have the capacity to direct their actions to be more or less respectful of ethical subjects such as humans or animals. (Whether corporations can be ethical subjects is equally complex.) To the extent

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that corporate leadership is strongly held in one individual human, then the corporation may well reflect the ethical judgments of that specific person. The focus of this chapter is not on the closely held corporation created by an individual or family. In these cases, the shareholders and the decision makers are exactly or nearly the same and the leadership can decide to make less profit in order to be appropriately respectful of others—including animals. Also, this discussion does not deal with ethics within the corporation and issues like the treatment of women or minorities. Rather, the concern is specifically about corporations' relationship to animals and the general environment in which they work.

The focus here is on the megacorporations in which there is significant separation between the shareholders and the management of the corporation. In such cases the ethical perspective of a single individual does not guide the decision-making nearly so much. There is significant shift in context. Emotion, empathy, and the capacity for holistic judgment recedes, and accounting becomes the language of the community. The human desire for profit becomes dominant. The individual human transfers this desire to the corporation but does not transfer all of the other components of being human. Instead of building positive communities, megacorporations seek profit under the rules of capitalism. There are business judgments to be made, not ethical judgments. However, a business judgment may be about ethical issues (e.g., "should we clear-cut this forest in order to plant corn?").

Likewise, it is not respectful use that drives governmental entities; the rules of politics do. The context for judgment within the world of politics is that of seeking or keeping power or control over humans, animals, and resources. The drive for power, like the drive for profits, can become so dominate in some individuals that negative ethical consequences have little weight in the decision-making. Respectful use is not realized. Clearly some who seek and obtain power do so in an ethical context that allows and promotes respectful use. But in others it clearly does not.¹ Unelected government employees are limited and rewarded within the confines of

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the laws adopted by the elected officials and the desire to retain their jobs. Both elected officials and government employees do not exist in a world that promotes respectful use of others.

While both corporations and governments may act in respectful ways toward individual humans and animals, it is not a primary goal of their existence. It would be a huge mistake to expect either corporations or governments to engage in self-reflection and determination of future actions based upon the ethic of respectful use. When, as in China, some business corporations are controlled by the government, the problem is magnified. Respectful conduct toward humans, animals, or the environment by these organizations usually requires the constraints of law. It is possible that respectful use will occur because of customer demands on the corporation or voter demands on the politicians. Note that both entities may well have very ethical individual humans who are part of corporations and governments. But the culture of both entities often frustrates the application of ethics to the actions actually undertaken by either form of human organization. They are not individual ethical actors, but they may have much more power to impact the lives of animals and the environment than you or I.

THE NATURE OF LARGE CORPORATIONS

A corporation is an artificial legal entity created as a method of combining individual human assets (such as money, land, and ideas) while limiting the individuals' liability or responsibility for the acts of the legal entity. A corporation allows for, but does not require, a separation between those who provide the assets by investing in the enterprise and receiving stock in return and those who manage the enterprise (e.g., the chief executive officer [CEO], the chief financial officer [CFO], chairperson of the board, etc.). There are other forms of business enterprise such as partnerships, but they are not really relevant on the global scale, even though they are driven by the same rules of capitalism.

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The goal of the corporation is to return to investors more money than they initially invested. We will not address managers who cheat the corporation, diverting its assets for their personal benefit with multimillion-dollar salaries, but for the purposes of our discussion we shall assume that management in good faith is seeking to provide a profit to the investors.

When one corporation operates in a niche of the economy, it normally has a few competitors striving in the same market. For example, if the corporation provides timber to homebuilders, then there are likely to be a few corporations competing for the dollars of the many homebuilders. One corporation may provide better lumber, another lesser-quality lumber but at a lower price. Another will specialize in hardwoods. Perhaps customers will support all of these approaches, perhaps not. This is called competition. It is the nature of the competition between business entities that is a fundamental part of the enterprise of capitalism.

Capitalism in the past century competed with a bastardized version of communism and state socialism as alternative methods of resource allocation. The victory of capitalism (combined with democratic governments) showed that nonpolitical, noncentralized business decisions produced the best economic outcomes, that is, better-quality products in greater abundance and at a cheaper price.

A corporation cannot decide how big an army should be, whether the drinking age should be twenty-one, or the level of taxes to be imposed upon individuals or corporations. Those are political decisions to be made by a government, which is a political community, not a business community. The goal of the political enterprise is to respond to the needs of those citizens who live within a particular political state. As it is the state's law that allows for the creation of corporations, the state has the responsibility, and indeed the duty, to control corporations. The corporation has no right to control the state.

(I know I have not yet said anything about animals or the environment. Just hold on, this is not easy stuff, so I fear a more-detailed introduction is necessary.)

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There is an inherent conflict between the goals of a government and those of a business enterprise. Critical to success in the capitalist world is keeping the cost of production at a minimum. But many of the techniques used to reduce costs run counter to the goals of the government to protect other, noneconomic interests of the citizens, for example, the well-being of children. Almost one hundred years ago, the United States made a political decision that its young citizens would be best served if they obtained an education rather than if they worked in factories or shops for cheap wages. Thus, an ethical position about the use of children was imposed upon corporations by the operation of law. This helped realize the social goal of an educated population but increased the cost of production for corporations that had previously used child labor. Corporations exist not to provide social good but to provide products (e.g., cars, potato chips, and CDs) at the highest possible profit margin.

Within the United States, all corporations had to abide by this rule prohibiting child labor; as a result, some experienced an increase in cost, and the consumers paid more for some products. The corporations had to find other strategies to control or reduce costs. The same dynamic has played out for many issues related to the welfare of the people who work for corporations (e.g., the minimum wage, maximum work week, etc.). So long as the economic market and the reach of the laws had more or less the same boundaries, then the human social rules did not cause large advantages or disadvantages to those within the marketplace. Additionally, the benefit and the burden of the laws were realized by the same set of people, the citizens of the United States. But the new world of globalization has caused a new complexity for corporations. It is illegal to use child labor in the United States, but it is not illegal in many other countries, thus creating for the cost-conscious corporation an incentive to move its manufacturing activity to the less-regulated and lowest-cost country.

The awaking of the United States environmental movement in the 1960s occurred when people realized that many, many corporations were producing unwanted by-products, wastes that were simply dumped into

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the air, water, and ground. This kept the cost of the product low but, as the science of the time began to show, it did so at a destructive cost to the environment, even affecting the people who had to drink the contaminated water and breathe the polluted air. Citizens decided that this destruction of the environment was wrong and therefore directed their legislatures to impose laws upon the operation of corporations to protect both themselves and the environment. At the time, a number of corporations wailed that these restrictions would lead to their demise. And so it was for a few, but most corporations adjusted to the regulations. New laws were catalysts for some corporations to find alternative methods of production that reduced pollution and kept costs low. (Paper production is an amazing, if now old, story of new engineering solutions to difficult pollution problems—capitalism at its best—once society told producers what level of pollution was acceptable.²) Again the ethical beliefs of citizens caused the government to restrict the options of the private corporations. But this is okay since corporations exist within a social-political context that ought to limit their operations if they are viewed as detrimental to the society.

CORPORATE MOTIVATION

How could the negative conditions under which industrial egg-laying chickens live have come about?³ What is it about the nature of corporations that lets them not only accept unethical living conditions for the hens, but also promote this industrial mode as a moneymaking model for the world? The answer to these questions is critical as we seek to shape our future and give focus to the political action and legal changes that are necessary to move forward. This same inquiry will also show us why megacorporations have the potential to inflict harsh consequences upon humans and the environment.

The first step in understanding capitalist corporations is to understand the rules under which they exist and grow.

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RULES OF CAPITALISM

1. *Maximization of profit is the golden measuring rod. Not only must there be profit, the profit must be an increasing level of profit—if not quarterly, at least annually.*

Mixing this point with the reality of globalization produces examples such as IBM, which in December of 2004 announced that it was going to sell its computer-manufacturing division to a Chinese firm. Consider the motivation for the sale. IBM had decided that although the division was profitable, higher profit was not available since sales would be driven primarily by price competition and volume and thus increasing sales and high profit margins were unlikely. So it was not that computer sales were not profitable, but that the sales were not sufficiently profitable enough. For IBM, sales of services represented the best potential for growth of profits. The Chinese firm that purchased the division, Lenovo, immediately became the third largest PC maker in the world. Capitalism marches on.⁴

2. *Wherever possible, replace human labor with capital investment.*

Machines don't require sick days or retirement plans. Depreciation of capital investments can often be accelerated, thus increasing short-term profit; labor costs can seldom be accelerated for tax advantage; and future labor costs like retirement and medical benefits remain uncertain but will undoubtedly be large, thus reducing future profit.

3. *Simplify. Seek uniformity in products and methods of production at the level of quality that the market will support.*
4. *Seek economies of scale. Bigger is better because it allows for the largest capital investments and the realization of cost efficiencies in management, advertising, and other parts of business practice.*

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5. *Eliminate competitors. Consolidate and get bigger; most products and services need only three to six global producers.*

There are only two makers of large commercial airplanes; six companies control 80 percent of the world market in automobiles; and so on, with computer printers and airlines for instance. Most recently the process has been working in the area of agriculture and seed production.⁵

6. *Shift market risk to suppliers.*

There was a time when the US auto companies made many, if not most, of the parts that went into their automobiles. But over several decades the companies divested themselves of these functions. This was, in part, to avoid the labor costs, including health and retirement benefits, of the people making the parts. It was easier to seek outside suppliers than to reduce their own cost structure in which unions had the power to support the workers. It was the only real way to allow price competition, to bring down the cost of the parts themselves. But once spun out, the stand-alone parts firms were caught in a squeeze. In 2005, Delphi, GM's major parts supplier, filed for bankruptcy protection.⁶

Thus, much of the risk of capitalism is borne not by the auto company but by the smaller enterprises, their workers, and shareholders. If these US corporations cannot perform, then parts companies in China will undoubtedly step forward. Indeed, one of the strategies of the US auto-parts companies has been to take the production process to China before Chinese companies can figure out how to get into the US car-parts market. This is fully appropriate conduct under the rules of capitalism, even if it results in job losses to US citizens.

7. *Play by the rules: the rules of the stock exchange, the rules of accounting standards, and, if it can't be avoided, the rule of law.*

This is taking the high road; the low road would argue that

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corporations will play by the rules only if the positive consequences outweigh the negative consequences, that is, on accumulation of profit. For example, human corruption is an economic inefficiency to be avoided if possible, but corruption is sometimes less costly (more profitable) than is playing by the rules.

8. *Give out as little information as possible.*

Increasingly, public corporations are required to disclose information about the nature or impact of their products (e.g., smoking causes cancer), and there has been a countercurrent of corporations going private.

Note that increasing the quality of human life, preserving the environment, and respecting animals do not make the list. Do you see why not? But, remember, I said that capitalism is the best economic system available.

**The larger and more global the corporation,
the less likely that it will be constrained or
directed by noneconomic values.**

CORPORATE LEADERSHIP

A key element in understanding the human world around us is to understand how and why corporations make decisions that negatively impact human labor, the environment, and animals. It is important to separate out the personal beliefs and ethics of the individual humans outside the corporate setting and the context in which they have to make decisions within the corporate setting. As an example in history, consider the railroad barons of the nineteenth and early twentieth centuries: Andrew Carnegie, Jay Gould, and Cornelius Vanderbilt. This was a period of unrestrained capi-

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talism. While many of these men ultimately did a number of public good acts after they had cumulated their wealth, any description of the business process used to obtain their initial wealth would contain words such as *ruthless*, *unconscionable*, *union busting*, and *environmentally destructive*. For almost a century, laws in the United States have constrained much of the early negative effects of corporations, but the issue has arisen again in this century, with much more complexity in our new global capitalist context. Corporations are created in many other countries. It cannot be presumed that those individual humans as part of the governance of foreign corporations share the ethical view of those of us in the United States, and, indeed, they may well operate under a very different set of laws about animals and the environment, or under no laws at all on these issues.

When profit becomes the dominant value in an organization, what happens to the individuals contained therein? A decision maker in a corporation can be like a member of a slow-moving and well-dressed mob. A mob enjoys freedom from personal ethical responsibility, a freedom from normal personal constraints or beliefs. Its members face pressure to behave in accord with the culture of the mob, the corporation. The actions of a mob may make sense within the mob but be diametrically opposed to the actions that individuals within it would take on their own. The corporate director would never personally pour petrochemical waste in a river or look into the eyes of a thirteen-year-old and tell him his wages for the day will be fifty cents or confine a hog to a lightless pen, as they do in confinement agriculture. Instead, others within the corporation act on the behalf of the corporation: time, space, and displacement of acts onto others are the buffers between the decision maker and the repugnant actions. The corporate culture is a soothing salve for individuals who might otherwise shrink from their own actions.

A successful decision maker in a corporation is one who accepts judgments on the terms of the corporation. Profit is the god, good ethical outcomes are not. Ethically correct outcomes are not inherent in the corporate structure; they are not the ultimate measure of corporate success;

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they are not the reason for corporate existence; and they are not measured or reported to the board of directors. Concern for ethical outcomes is the realm of religions, philosophy, and governments only when citizens have effective control over the composition of government. Corporations exist in the world of money, supply and demand, and economic efficiency. They are constrained in action and outcome by those laws that the corporation must obey. It is the duty of the state to protect and seek ethically good outcomes while capitalism is at work. That is why the government needs to pass laws to constrain the corporate dragon. (Many small, local corporations do operate with the ethics of their owners when the corporation is really an extension of an individual, particularly if the founder is the executive of the corporation. My concern is global corporations. Additionally, there has been a movement for the past few years to have corporations assume some social responsibility. We will see what happens.)

It is important to acknowledge one feedback mechanism within the capitalist system that can impose respectful use by corporations. If their customers demand it, then it might happen, but it has to be customers with significant leverage over the sales of the corporations. For example, for decades individuals and nonprofit animal-welfare organizations have been trying to change the conditions under which egg-laying chickens are raised. Their one big success has been in California, which now requires somewhat-better cages for the birds.⁷ But, in 2014–2015, some of the big purchasers of eggs, like McDonald's and Walmart, announced that their suppliers would need to change the living conditions for the egg-laying chickens.⁸ The egg producers will listen to this because failure to do so might significantly reduce egg sales. The welfare of egg-laying chickens should improve. This is an unusual example of one corporation forcing better animal welfare on another corporation in the absence of law. While a number of animal organizations have pushed this approach for a long time, I believe the suppliers' actions occurred only after the issue of hen welfare had gained in importance not only to corporate customers but also to the individuals on the egg suppliers' boards. I also suspect, but do

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not know, that they received information that in taking this act, their cost structure would be impacted at a low level.

Understand that the risk to the corporation in ignoring profit and seeking ethically positive outcomes is that other corporations will not, and thus the latter group will be more efficient in producing lower-cost products. Therefore, the ethical corporation will lose (either close up, be bought out, or go bankrupt) in the only playing field that matters: the marketplace. For instance, how many of us are willing to pay one thousand more dollars for a car so that the company can pay lifetime health benefits for its workers?

Corporations are the economic engines of today's society. It is wrong of us to judge them otherwise. They are essential in the critical task of efficient allocation of resources so as to create wealth, for individuals, for societies, or for the entire globe. But to ignore their character is to allow a bull loose in a china shop. Something fragile will be broken. It might be a person's health, an animal's chance to live without suffering, or the purity of a stream. We do not want to kill the bull; we want to constrain it so that it can perform its job without harm to others. The pen for the bull is constructed out of legal planks.

This critical view of corporations is not meant to suggest that they do not sometimes do ethically good things. But, with only a few exceptions, such good acts are done only when the corporation perceives its own benefit in the act. Judgments of right and wrong do sometimes affect corporate action, particularly when a public image will otherwise be harmed and sales drop (e.g., Nike and the use of third-world child labor⁹). Those who run a corporation know they can polish its public image with ethically good actions. But if directors do not make a profit for shareholders, they will not long be around to run anything.

We may need more inefficiency in our capitalist system. The capitalist system rewards efficiency of production, which normally creates profits and accumulation of wealth. But protection of the environment, protection of workers from exploitation, and animal welfare are also goals for

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our community. They reflect values that actually run counter to those of capitalism. Fairness is not a value of capitalism per se. The well-being of the planet or a species or individual animals is not a goal of capitalism. Assurances of basic health needs like clean water are not goals of capitalism. Human rights and reproductive freedom, even freedom of the press or freedom of religion, are not values of capitalism. Yet we humans hold these values most highly. The protection of these values is a reason for the existence of government, to ensure our mutual well-being, at least for those who accept democratic principles. To adopt provisions that constrain corporations may make the capitalist system more economically inefficient. If protecting workers, animals, and the environment result in higher costs, then so be it. The difficulty arises in seeking an acceptable balance in a political system awash in corporate money.

But the government must also recognize its limitations. It does not make good economic decisions; it is an ineffective and inefficient wealth producer. One lesson from the last century is that economic well-being is not best left to governments. The positive wealth effect that we want includes the creation of a middle class with its political stability, the protection of human rights, and sufficient tax income to help provide human needs and protect the environment. But as corporations generate wealth, it gives them considerable power and political influence. They can't vote, but corporations can use their money to influence outcomes in the political process. Corporations create a political counterweight to citizens who seek to limit corporate operations because of a desired social good or outcome. Corporations grasp the process of lobbying.

In the United States, historically, we have done as good a job as any, perhaps even the best job, in balancing the benefits of capitalism with the noneconomic needs of citizens. Each state or region of the world establishes a different balance between the strength of the state in asserting the interests of the citizens in maintaining a clean environment, in less work, and in more pay against the strength of corporations' efforts at getting more work from employees, with less pay, and fewer benefits. Old Europe, with its

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more socialist outlook, has perhaps constrained capitalism too much, and its corporations may find it harder to compete internationally. The Chinese win a number of economic battles because they give almost no protections to individual workers (a curious outcome for a Communist government) or the environment. There must be a balance within each community. It's hard to believe that China will not move to protect workers, and the environment in which they all live, over the next decade. But I fear that animal-welfare issues are not given the same level of concern. Time will tell.

What do you think would be the public reaction if a candidate for the presidency of the United States made a speech as follows:

*Political Speech by Then Presidential Candidate Carol Remmy,
July 4, 2020, in Washington, DC.*

This evening I have decided to address something a little more abstract than any particular law. I think it might be useful to reexamine the role of the government in fostering the ethical development of its citizens—this government that I am seeking to lead.

A government is based upon the needs and desires of the people for which it is formed, to be the shepherd of a diverse and dynamic flock. Thus, we protect ourselves from external threats with a military and have created a law enforcement and legal system for social stability and fair dealings within our society.

But what of the spiritual needs of the people? What is the role of the state? This country was founded with the realization that there must be a separation between the government and the organizations promoting specific religious beliefs. It is not the role of the government to impose a religious perspective on each individual; the choice of religious beliefs is a personal decision for each citizen. Our Constitution, and specifically its first ten amendments, seeks to protect the individual from those within government who would impose their specific perspectives on others. But does this mean that the government has no ethical perspective? Can it not act to promote an ethical outcome? I think there is a necessity for a strong ethical perspective in our government

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actions. The balance is to draw from the ethical beliefs of the diversity of our citizens without preaching a particular religion. For example, in the United States we have strong ethical beliefs in the equality and self-worth of every person. This is also a fundamental thread of many religions and philosophies. If a person comes from another part of the world where the prevailing belief is that the husband or father has full control over wives and children, then their behavior must be modified in our country. In the United States, the abuse of a child or wife is not acceptable, ethically or legally. It is through the legal process that citizens reach consensus as to the ethical perspective of government and law. It is a fundamental strength of the United States that our law represents a consensus arising out of a great diversity of personal beliefs.

One value maintained by most religious organizations, and for that matter by many without religious beliefs, is the importance of the family as the premier social unit. As such, it is appropriate and necessary for the government to support the family unit. It is in the context of the family that the fundamental information and values for a satisfactory life are transferred from one generation to the next. Our history is rich in the role of families: immigrant families, pioneer families, slave families, wealthy families, and political families. Ideas such as honesty, fair dealing, respect for others, self-sufficiency, self-reliance, confidence, the value of work, and the necessity of sacrifice for the family are at the core of beliefs widely held in our society and therefore should be reflected in our government policy. Yet it seems harder and harder for the family to function in its traditional role, with all of the competing claims upon time, distractions of peer pressure, and corporate intervention, by means of marketing, into younger and younger lives.

The government must balance the desires of the corporations for profit and efficiency with the needs of families for protected space in which the time-honored process of fostering values can take place. While many aspects of this issue might be examined, tonight I want to look specifically at the loss of the family farm as a place for values to be nurtured and transferred. What has happened to the family farm? It has largely disappeared over the past forty years. We have an agricultural industry but not family farms.

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I believe that getting meat and potatoes a little cheaper is not sufficient reason to eliminate this historically important context for the development and transmission of traditional family values. Certainly the farm life can be a hard life, and it is not for everyone, but we—both individual citizens and the government—ought to preserve the option for those who wish to live as did so many in generations past. We must eliminate the barriers to family-level entrepreneurship in farming. We must return to local markets as a significant source of meat and produce.

The organic foods movement must be supported, so that labor and care are rewarded with higher value in the market. There should be limits on the size and vertical integration of the food industry.

Fair and open labeling is necessary so that we understand where food comes from. It is time to outlaw cruel conditions of animal confinement in the food industry, to say that no chicken can be kept in a cage for its life. Doing so would take away the economic advantages held by the megacorporations and eliminate their abuse of animals. Limits on animal densities need to be established, for the betterment of these living creatures, those that raise them, and the environment. We need to see a broader space for the multiple-species family farm where children work with their parents, to give a time and a place for the transfer of those values and ideas that this country was founded upon.

As your president, I will seek this and other ways to return family farming to the forefront and, within this social context, our traditional values can be conserved, and our freedoms continue to flourish.

As a starting point for discussion I propose the following:

CODE OF RESPONSIBILITY FOR ANIMAL-OWNING CORPORATIONS

1. The natural life of the animal shall be the benchmark by which conditions are judged.
2. Individual life shall be respected.

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3. Quality of life and swiftness of death shall be discussed and understood at the executive and board level.
4. All executives and members of the board shall visit unannounced (monthly for executives and quarterly for board members) an animal-production facility controlled by, or under a source contract with, the corporation.
5. Any board member of an animal-owning corporation shall be required to possess compassion for animals. (I know, I know . . . but it's my book.)

A final thought on government decisions. The political process within a democracy ought to allow for the concern that the general population has for the welfare of animals within their various communities to be transformed into government policy by the adoption of laws. And this has occurred. The states of the United States have a large number of criminal laws in place to protect the welfare of animals. But if we focus on the activities that are exempted from the law and the goal of good animal welfare, we are apt to be discouraged. The presence of overwhelming amounts of money in the political process and the desire of those holding elected political power to keep power by the drawing of boundaries of election districts is significantly reducing the feedback loop that elections are supposed to provide the citizens. I have no specific answer for this concern, but I suggest that the concept of respectful use of animals cannot be fully implemented without invigorating the right to vote and the consequences it should have on those holding political power.

Control the Dragon



CHAPTER 16

A FORAY INTO THE LAW

It is now time for a brief and hopefully painless foray into the realm of law. The bridge between personal ethical decisions and law is a bit tricky, even a little risky. In most democracies, if enough people believe an action, like dogfighting, is unethical, then they can make a social statement by the adoption of a law that outlaws the activity. This is society deciding on what is acceptable personal conduct and in so doing taking away from the individual his or her prior right to act upon personal beliefs. Thus, ethical positions can become law, but are all laws ethical? Since there is no external objective standard by which to judge the moral nature of an act, the judgment must be viewed as a personal one. In my mind, the answer to the above question is no. Some laws are ethical, some are not, and others have no particular impact on ethical subjects and therefore are not subject to ethical analysis.

I may strongly believe an activity is unethical. But you may disagree. We may have an argument and seek to change each other's mind. Or if you have political power, you may choose to simply ignore me and pass a law that will make my belief irrelevant to the broader society and force me to change my conduct (but of course a law cannot force me to change my belief). For example, the issue of human abortions is an ethical issue with strongly divergent views within our society, and both sides seek to trump the other's ethical view by the passage, repeal, or litigation of laws.

Laws exist as the result of the exercise of political power, however that might be defined within a particular country. Clearly, the keeping and obtaining of political power often does not reflect any attempt to balance the interests of animals against the interests of humans. The small-cage

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confinement of egg-laying chickens was lawful everywhere in the United States until about ten years ago and represents a near-total suppression of the interests of the hen over the profit making of the corporations. Who had the political power? What would the law be if the chickens could write the law?

But this chapter is not about political power, it is about the presence or absence of animals in the legal system and how they could have an enhanced presence in the legal system. This chapter is also not a short course on animal law¹; rather, it is an opportunity to expose you to some new ideas that can facilitate change in the legal world such that the law will better respect animals. I seek to enhance their presence and visibility in the legal system because at the moment I believe their interests are not adequately represented. That is, too often the legal system either ignores or does not give sufficient weight to the interests of animals.

LEGAL PERSONALITY

Historically, with animals as property, the law viewed animals as objects about which humans had legal rights and responsibilities. Animals were not the holders of any legal rights or responsibilities themselves. Therefore, the threshold question in the arena of law is whether or not animals should have any presence in the legal system as holders of legal rights. The simplistic answer, the one most often espoused within the animal-rights movement and elsewhere, is that animals have no legal rights. It is true that at the moment animals are not allowed to file lawsuits in their own name.² This is because in order to file lawsuits, the individual or entity must have the characteristic of being a legal person, that is, the ability to be a recognized actor in the legal world. (Just like in the world of ethics there are ethical actors.) And, of course, it is the legal system itself that decides who is a legal actor. A stark example of this from our darker past is the US Supreme Court case concerning Mr. Dred Scott. In this case,

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Mr. Scott sought to use the legal system to challenge his property status as a slave. The Supreme Court, however, held that because he was a human slave, he had no legal status; the law did not see him as a legal person with the capacity to file a suit on his own behalf, and the case was dismissed.³ With the elimination of slavery came the elimination of that category of “nonlegal human persons.” In the United States today all children and adults are legal persons by simply being human. The difficult conceptual question before the courts today is whether or when a human fetus is a legal person in possession of some or all human legal rights.

This special status is also given to “others,” such as cities and corporations. All of these others who may file lawsuits are really just groups of humans whose particular interests have been gathered together under the umbrella of entities such as cities and corporations. Because these groups have legal personhood status, the law is very careful about defining what group of people may use that umbrella. There are very specific rules in the law about how to form a corporation, and if you do not meet the rules, then you cannot declare yourself a corporation. There are also legal oddities such as ships and the estates of dead people, like Elvis Presley, which have legal personality. But really these are just clusters of human economic interests. In the end, it must be said that the legal system appears to be entirely human-centric, in that the ability to access the legal system to intentionally assert legal rights or to protect oneself from others is reserved to individual humans or groups of humans.

So, if animals are not legal persons within the realm of law, what are they? They are property, personal property to be more precise. (The other property categories are real property [land and buildings] and intellectual property.) Let us return to the living room of Homer and view the scene through a legal lens. Homer is a legal person; an actor with visibility in the legal system. The ball is property; a human is the owner of the ball. The owner of personal property, as a general rule, may do as he wishes with his ball: he can sell it, give it away, play with it, eat it, destroy it, bury it, or enshrine it in a gold case. In all such cases, the law does not

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care and will not intervene. The ball is an “it” in the eyes of the law, not a legal person. Remember, the presumption is that the human has the right to do as he wishes with property unless specifically restrained by law. In no sense can it be said that Homer has any legal duty toward ball, just as he has no ethical duty toward the ball. So the law is mute on the issue of whether to kick or hug the ball.

Homer’s son is a human and therefore a legal person. His son has legal personality, legal visibility in the legal system. The son has legal rights that impose obligations on others. Note that this is the case even though the son has not sought the status and is entirely unaware of the status. It is a gift to him by our legal system for simply being a human child. He does not have the full set of rights that will be available when he is an adult, and his obligations to others are also very limited, but he does have legal personality. Therefore, the law has a number of things to say about how Homer should or should not interact with his son. The son’s rights impose limitations on Homer’s actions. The son has the right to be free from physical injury and trauma. Homer has the duty to not impose physical injury or trauma and to provide adequate care.

Since Homer does not know what he will do after he opens the door, the law is not helpful at this point except as a possible restraint on bad acts as Homer holistically weighs what to do. If he hugs his son, then the law remains silent; there is no duty to hug and no punishment for not hugging. If he kicks his son, then the law will have much to say after the act has happened. The law, through the prosecutor’s office, may file criminal charges for assault and battery. Another part of the legal system may begin an action to revoke his status as a parent and remove the child from the home. He is in trouble. The son is not an “it” but a legal person. Therefore, it is also possible that a civil lawsuit might be filed against Homer in the child’s name, to recover money damages for the harm, the pain and suffering, inflicted upon the child by Homer.

Now what about the dog, Rover? It might be said that since Rover is personal property, then the law will treat *it* like the ball and not like the

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son. But that is incorrect. Beginning in 1867, in the state of New York, animals have had a hybrid status a little like the ball and a little like the son. Under this law, which has propagated since then into every state in the union, a human may not cause an animal unnecessary pain and suffering.⁴ Under the scenario previously set out for Homer, the law would have a slightly different perspective than an ethical analysis. It is a reasonable assumption that a jury would find that the kicking of Rover is the unnecessary infliction of pain or suffering and therefore that a crime has been committed. Depending on broader circumstances, such a criminal act could result in jail time or a criminal fine and might include mandatory counseling for anger management. What cannot happen in the world of law is that Rover may not file a civil suit against Homer to obtain money damages for the pain and suffering. So is Rover an “it” or a “he”?

Itness

*Demeaning, sexless
Would you like to be
An it?*

*Lowest, disrespectful
Is your cat
An it?*

*Grammar, reflecting
Legal status.*

*Animals have sex,
Deserve respect.*

*Companions are
He or she.
So are chickens.*

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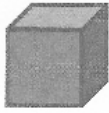
LIVING PROPERTY: ANIMALHOOD

When the status of something is uncertain, the old-time saying is that they are “neither fish nor fowl.” In this case, the fish and fowl are neither entirely personal property nor human legal persons, rather, a bit of both. This causes jurisprudential confusion. How are we to think about animals? Why has this confusion arisen? It is because as a society we acknowledge that animals do have interests (as in the interest not to be harmed by humans), and we have placed that acknowledgment in the anticruelty laws. There is no anticruelty law for balls or cars or computers, because they do not have any personal interests; they are not alive. But, on the other hand, animals are not humans. The weight of centuries of having animals strictly as personal property lays heavy upon our legal thinking. Indeed, going back in time, many animals did not even have the dignity of being considered personal property, since only animals with economic value (e.g., work animals, show animals, and the like) were protected by the law. Messing around with the fundamental categories of property is not lightly done; many judges will not allow it in their courts.

There is one simple way to clear up this confusion. Animals need to be removed from the category of personal property. Some might suggest that animals simply be merged with humans and become juristic persons. While this is possible, and it might well be what happens in a few hundred years, an intermediate step is required at this point in time. For over a decade I have been urging in my legal articles for the creation of a new category: living property.⁵ This category would be a formal acknowledgment by the legal system that animals are different from other objects (e.g., balls and cars) and as living beings they deserve a new, distinct status in the legal system.

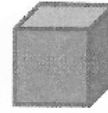
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Nonliving Personal Property



tables, cars, & books

Living Property



dogs, cats & chimpanzees

Figure 16.1.

There is one country that has already done this. In the Swiss Civil Code (Article 641a), it states: “Animals are not chattels” (an old term referring to tangible, movable property, e.g., personal property). However, the Swiss law having removed animals from the personal-property status did not create a new positive status for them. It is a bit awkward to say that my dog is “not chattel.” What, then, is he? I would respond by saying, “He is living property with animalhood within the law.”

The point of having a new category is to create a new blank slate where we can thoughtfully create new rules of relationship and legal rights for animals without confusing things or insulting humans by claiming there is no difference between a dog and a human. Within this new space change will come slowly, issue by issue, or species by species, or community by community. It is expected that some legal advantages for companion animals may be adopted that are not available to animals in research. This is the case because it is the nature of law and legal change that it comes in pieces, paragraph by paragraph as the legal system grinds through the political law-making process. While many in the animal-rights movement wish for an abrupt change that will be for all animals simultaneously, that will not happen. There will not be a civil war fought over this issue, no sweeping elimination of property status for all domestic animals. The best we can expect is that the political process will deal sequentially with the various human-animal communities.

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WILLS AND TRUST

The formal use of wills and trusts to set aside financial assets for the support of companion animals exists today as a widely accepted concept that can easily be moved into the living-property arena. It is representative of the future integration of animals into the legal system. The law of wills has been developing for centuries in the common law countries. The English statute first allowing wills to transfer title of property was adopted in 1540 during the reign of Henry VIII. Until very recently it was not possible to leave any money in a will at your death for the benefit of your companion animal, or any other animal. The quick historical justification was that you could not give property (money) to property (the dog) and that such a grant would violate the Rule Against Perpetuities (don't ask). But, over twenty years ago, the creative thinkers in this area of law decided that there was not really a public-policy reason to prohibit a widowed pet owner from leaving some money for the care of her life companion, be it a cat, a dog, or a human. Recognizing that a companion animal could not handle its own money (just like a human child could not), the mechanism now available in most states is the expressed creation of a trust within a will that designates a human trustee who has the duty to take care of the money and distribute the money for the benefit of the identified animal.⁶

Although it is not known how many companion animals have had trusts created for them by their humans, the notorious hotel owner Leona Helmsley created one that received front-page news coverage after her death. The New York billionaire created a trust, effective at her death, with \$12 million in it for her beloved Maltese dog. A judge later reduced the amount to a mere \$2 million, which apparently was sufficient to support the dog until his death several years later.⁷

The existence of these laws represents the reality that the legal system has the capacity to acknowledge and protect the interests of individual animals. While it does not allow the animal in question, denoted as a

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beneficiary in legal terms, to file an enforcement lawsuit in the animal's name, humans may file suits on behalf of the beneficiary animal to ensure that the will is adhered to. This is a key example of animals having some status in the legal system, but not full personhood. It is important to have a name for this status. Animals are not full juristic persons who have personhood within the law; but they should be considered to possess animalhood, defined as a set of live beings who have a presence in the legal system, which requires for at least some issues an acknowledgment of their interests, which will need to be weighed against human interests by the legal decision maker.

HUMAN DIVORCE

Another area of the law, which is now being drawn into our new living-property arena, is that of companion animals that become intertwined in the divorce proceedings of their humans.⁸ If you talk with judges who deal with divorce matters, there are many stories about how important custody, visitation, and support issues for companion animals can be to some humans going through the process of divorce. It is evidence of the growing importance of companion animals to humans as the family unit shrinks, with fewer or no children, and the animals become increasingly important to the emotional central core of the human family.⁹

The legal difficulty with existing divorce law is that in almost all states animals are considered just property, and resolution of disputes about the animals will focus upon ownership of the property. The laws of these states do not specifically allow the courts to consider what is in the best interests of the companion animal caught in the middle. If the husband bought the dog, then the husband has the first claim to the dog, regardless of the future capacity of the husband to care for the dog, or who was previously the caregiver within the home, or with whom the animal had the strongest attachment. (I am ignoring community property states, which

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can be more complex.) In contested divorces, animals become pawns in the conflict.

There are two exceptions to the above discussion. In 2016, the state of Alaska amended its divorce law to give legal visibility to companion animals.¹⁰ The Alaska law allows the relevant court to make specific determinations in a final divorce order about companion animals:

(5) if an animal is owned, for the ownership or joint ownership of the animal, taking into consideration *the well-being of the animal*.¹¹ (Italics added.)

In 2017, the state of Illinois also amended its law with the same result.¹²

These laws are a clear acknowledgment that an animal in the midst of a divorce has interests independent of the spouses—that the animal has legal personality to be seen and considered by the legal system when a divorce proceeding impacts its life. This acknowledges that an animal within a family is in the conceptual position of a child (both have interests but cannot self-advocate for those interests), and the court has an independent duty to consider the best outcome for the animal, rather than the wishes or property ownership by one of the spouses seeking the divorce. Other state legislatures have now also seen bills submitted that would change the laws in their state.

EQUITABLE SELF-OWNERSHIP

(Note: This section is more for the lawyer than the nonlawyer.) Our legal system already contains some concepts concerning owning or holding title to something, which can be used to support the idea of a new legal space for living property. The British common law, which is foundational to the US legal system, has long allowed the title of property to be divided into two parts: legal and equitable. Let's return to the case of Homer.

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When Homer sets up a trust for his son and places \$10,000 in the trust for his education, then the title to the money transfers to the trust (which has independent legal existence) and the son is considered to have equitable title (a legally enforceable interest in the money, but not full control).

One or two steps away from this legal construct is the idea of companion animals having equitable self-ownership. Their animalhood within the law can be seen as an equitable self-interest supporting a legal personality, while acknowledging that a specific human also possesses legal title. The human has a legal interest in an animal at the same time that the animal has an equitable interest in him- or herself. This legal construct also supports the idea that the human would have direct obligations toward the animal, as the legal title holder in a trust now has obligations toward the equitable title holder or beneficiary.¹³

If we can say that humans are self-owned (where legal and equitable title come together), and I think we can, then it is possible to say that the animals are partly self-owned, halfway between human status in the legal system and the nonstatus of personal property such as tables and cars. This would give them sufficient legal presence that the legal system would have to recognize the animals at some level. I am presently drafting a deed of dignity that would allow animal owners to create or acknowledge this new status for any animal they own. Stay tuned. Accepting this view of animals will mean that the law is more respectful of the animals, giving them legal status, legal visibility.

WHAT ABOUT WILD ANIMALS?

Wild animals or wildlife present a different kind of problem when considering their status in the law. Wildlife by definition are animals in their natural habitat that are not the property of any human or human substitute. This discussion does not cover wildlife in zoos, which are property. Also, in this discussion we will ignore the complexities of feral animals, particularly

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feral cat colonies. The focus will be upon Big Bob, a black bear in Michigan. Now, that is my name for him and I acknowledge that he has not had the opportunity to name himself (but then I did not name myself either). However, he is a specific bear. He was born in 2013 and has been fending for himself very nicely since he left his mother's care. He is smart enough to stay away from humans and is attractive to the female bears as a mate.



Figure 16.2.

Since he does not fit into any of the property categories, how does the law view Big Bob? Historically, wildlife have been considered things without title, *ferae naturae*, available for capture by any human, as is the water in the ocean. In common law countries, it is not proper to say the state owns all wildlife. Rather, the state asserts the right to control when and if humans may take possession of a wild animal. (The US govern-

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ment has even less control over wildlife, it being an issue usually reserved to the states.) If Big Bob were to decide to kill a sheep in the field of Joe Farmer, the state of Michigan is not liable for the value of the sheep under common-law principles for the harm done by the bear, since the state does not possess or control the bear. The state could decide to pass a statute allowing recovery of money for harm to sheep if it wanted to, but is not required to do so.

In the United States, each state has game laws that direct which species of wildlife require a permit to kill or capture individuals of that species and which species do not require a permit. In Michigan, a state-licensed hunter may kill Big Bob roughly between mid-September and the end of October.¹⁴ The robust Michigan anticruelty law contains an exception for lawful sport hunting; as a result, the law of Michigan is mute about the degree of pain and suffering that might be inflicted upon Big Bob should he come within the sight of a permitted bow-and-arrow hunter. Also, the question of whether his death is necessary is set aside if the hunter has a permit and is hunting within the allotted time period. There is no place in the legal system where Big Bob may assert his interest to continued life or to the manner of his death.

One difficulty is that our present legal system does not think of bears as individuals, only as part of a group. Wildlife are given attention only as categories of species (i.e., endangered, game, threatened, or nongame) or as inhabitants of a place (e.g., the bears and deer of the Upper Peninsula in Michigan). He is only an unseen part of an indistinguishable group. While it is ecologically useful to consider these groups when making some decisions, it is time to also consider the pain and suffering of individual animals when it is inflicted by humans.¹⁵

So it is that wildlife will not neatly fit into the category of living property, since they are not property. But they are living, and while it is possible to change the name of the category to perhaps “animals,” which could easily encompass both domestic animals and wildlife, the title “living property” seems more useful, and we should just wink and let the

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wildlife under the umbrella. It does make some sense because the primary concern of the legal system arises when humans seek to make wildlife their property, so to stretch the term would seem to be just.

In the case of wildlife, there is no need to go through the linguistic difficulty of declaring them as possessing the legal status of equitable self-ownership. Since no human is in possession of them and therefore cannot own them, they simply have self-ownership as might any human. Big Bob has the same capacity for independence, and self-direction, as does a human. He is responsible for his own food, housing, and reproduction of the species. He is an individual independent from humans, but an individual not recognized by the legal system at the moment. What do you think about that? How can we ignore the reality of his individual existence?

How important is it that this animal has a name? In the summer of 2015, a big-game hunter from the United States shot a lion with an arrow in Zimbabwe. He was a “beloved” lion with the name Cecil. Condemnation went viral and global. The lion had a name, a story, and pictures. He was easily identifiable by his black-fringed mane and a GPS tracking collar. For many people he was considered as a person. Very few humans around the world showed any concern over the deaths of the hundreds of other unnamed lions killed that year by hunters in Africa. Afterward, the hunter said that he would not have shot the lion if he had known it had a name.¹⁶ Why is a name so important?

Remember, I do not seek a status for Big Bob of being a human in the legal system; I advocate just that he has visibility in the legal system—that he has animalhood.

WELFARE VERSUS RIGHTS

The animal-rights debate is fraught with misunderstanding, emotion, and definitional problems. When speaking in public I try to not use the term “animal rights,” because in any audience there is a wide spectrum

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of response and understanding of what the term might mean. Remembering that we are in the world of law and not ethics, let us start with two points that we might all agree upon. First, no animal presently has the capacity to be named as a plaintiff in a lawsuit; this leads most people to say that animals do not have any legal rights. Second, we presently have the legal capacity, but not the political will, to protect all of the significant interests of animals, to enhance their welfare. In discussions within the animal-rights movement, those promoting welfare are considered a different group from those promoting legal rights. The gap between the two appears at first glance to be significant. Many individuals perceive that a call for animal rights is a call for equality of animals and humans and a significant threat to their meat-eating diet. But a careful look at where the legal system is today shows great complexity and a blurring of what many see as distinctly different worldviews.

(This material is discussed in law school under the heading of “standing.” This is not a scholarly discussion of the topic but an introduction to some of the fundamental ideas. I do not seek to burden the reader with a string of Supreme Court opinions and legal jargon.)

It is not useful to focus on the question of whether an animal can file a lawsuit. That may be the highest level of acknowledgment for a rights holder, but it is not the threshold for being a rights holder. A better definition of a holder of legal rights is when at least one interest of an individual animal is acknowledged by some part of the legal system and the interest is taken into account by the courts or agencies separate from the human interests in making a decision. So, there are a series of preliminary questions that can be asked in order to reveal the complexity of the topic:

1. Does the entity in question (e.g., baby boy, New York City, your car, or your cat) have the capacity to hold a legal right? Does the entity possess personhood, or in this case animalhood?
2. Does the entity have protection from any legally recognized harm (e.g., freedom from physical beating by a human, or the need for food)?

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3. May the entity file a lawsuit for its own protection from the legally recognized harm? May someone else seek protection for the entity from a legally recognized harm?

The problem of discussions to date is that if an individual answers point 3 in the negative, it is presumed that the answer to the first two questions is also negative. But a careful look at the status of animals within the law suggests otherwise.

Look at question 2: Are animal interests recognized within the law? The above discussion about wills, divorces, and trusts shows that the interests of animals in continuing to have the resources for a good life can be protected by the drafting of a trust for the benefit of named animals. So, in one small context, the interests of specific animals are acknowledged and protected by the law.

However, the most important and longstanding legal acknowledgment of animals can be found in the anticruelty laws of every state. In this short chapter I cannot set out all of the history of these laws, and I have done so elsewhere,¹⁷ but here is the key point for our discussion today: The 1867 New York law pushed forward by Henry Berg made it a minor crime for the cruel beatings and needless killing of *any* animal.¹⁸ As clarified by judges in subsequent court cases, the purpose of the law was to protect animals, not humans or the property interests of humans, but the animals themselves.

While the statutes of the fifty states today are not identical, the core principle is that humans should not be allowed to inflict unnecessary pain, suffering, or death upon an animal. This addresses both questions 1 and 2 above. The interests of animals are specifically acknowledged in the criminal laws of the states; in so doing, the legislature accepts that animals have legal personality. However, the law does not allow the animal itself to assert the protection provided by the law, as it is criminal matter; thus, the action in a specific fact pattern is filed by a representative of the state, usually a local prosecutor. Consequently, if Homer kicks Rover, Rover is

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unable to use the protections of the anticruelty statutes to file a case, but the local prosecutor could file a criminal complaint. (The state itself is the plaintiff in the case.) The prosecutor has full discretion to file or not file the case, which might best be characterized as a weak protection for Rover, but the concept is present and the possibility of punishment for violating Rover's rights exists.

However, while this analysis works well for companion animals, most states have a list of exceptions that usually include hunting and fishing and agricultural farm animals. These animals are within animal-human communities but without this legal right at present.

Might it be possible to do better for Rover? Yes. The state of North Carolina has adopted a law going one step further. The state has a typical anticruelty law plus one additional statute. The second law allows other humans or organizations to file a civil (not criminal) lawsuit for the enforcement of the criminal cruelty laws. So if Rover is in North Carolina, then his interests, his right to be free from unnecessary pain and suffering or his right to receive proper care, can be asserted in the courts by either a private party or the local prosecutor, or both.¹⁹ Animalhood is more robust in North Carolina. There are only political reasons that stop the adoption of this law in all the states. Clearly Rover is intertwined in the legal system in ways that the ball cannot and should not be intertwined. There is no "ballhood."

Again, the interest of animals is acknowledged and will be taken into account by the court in making a ruling. Does this capacity of the court represent the animal's legal rights or welfare? I would claim it is both. Advocates for animal rights, however, reject this as welfare-ism and not rights law since it still remains that in North Carolina Rover may not put his name on the filing of the lawsuit as plaintiff. Rather than *Rover v. Smith*, the heading of the suit will be *Animal Defender v. Smith*, where Animal Defender is the lawyer for Rover. In North Carolina the evidence presented and the legal discussion before the judge will be about Rover (not Animal Defender's interests) whichever case heading is used. So, the

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reality is that Rover's interests are before the court and in my mind that is what constitutes the threshold of being a holder of legal rights.

Another example of a small step forward for the legal rights of animals is a 2016 Connecticut statute that allows attorneys or law students to be appointed to advocate for animals when a human is charged with a violation of the anticruelty law or when the owner has a hearing about custody of an animal. The statute states that an "advocate be appointed to represent the interests of justice."²⁰ This speaks in terms of justice rather than specifically allowing them to represent animals directly, as clients. But, clearly, the statute contemplates that such appointed individuals could present the court with information and suggestions about the best interests of the animal(s) at issue. It is just limited to dogs and cats. Goldfish have been left out, as well as birds, reptiles, rodents, and any other type animal one might keep as a pet. These are small, incremental steps forward into the arena of living property. Legal developments are showing increasing respect for some animals.

So some animals, in some areas of the law, have some legal rights. The animal-rights movement should accept the victory and move on to urge every state to adopt laws like those in North Carolina, Alaska, and Connecticut; find the resources to enhance enforcement of any existing legal rights; slowly expand the list of communities to which the rights apply; and expand the circumstance when their interests can be asserted (as in divorce proceedings).

Much more can be written about the nature of legal status, the nature and development of legal rights, and how the future of animal law might look. But that is for another book. This chapter is intended to support the idea that since animals are ethical subjects, they are presently limited legal persons with animalhood before the law. But their present status is inadequate to protect their interests. It is time to rethink the nature and extent of human obligations toward animals and to have the law reflect the respectful use of animals.