

Penultimate draft. For published version see *Philosophical Perspectives* 18, 2004

Puppies, Pigs, and People: Eating Meat and Marginal Cases

1. Fred's Basement.

Consider the story of Fred, who receives a visit from the police one day. They have been summoned by Fred's neighbors, who have been disturbed by strange sounds emanating from Fred's basement. When they enter the basement they are confronted by the following scene: Twenty-six small wire cages, each containing a puppy, some whining, some whimpering, some howling. The puppies range in age from newborn to about six months. Many of them show signs of mutilation. Urine and feces cover the bottoms of the cages and the basement floor. Fred explains that he keeps the puppies for twenty-six weeks, and then butchers them while holding them upside-down. During their lives he performs a series of mutilations on them, such as slicing off their noses and their paws with a hot knife, all without any form of anesthesia. Except for the mutilations, the puppies are never allowed out of the cages, which are barely big enough to hold them at twenty-six weeks. The police are horrified, and promptly charge Fred with animal abuse. As details of the case are publicized, the public is outraged. Newspapers are flooded with letters demanding that Fred be severely punished. There are calls for more severe penalties for animal abuse. Fred is denounced as a vile sadist.

Finally, at his trial, Fred explains his behavior, and argues that he is blameless and therefore deserves no punishment. He is, he explains, a great lover of chocolate. A couple of years ago, he was involved in a car accident, which resulted in some head trauma. Upon his release from hospital, having apparently suffered no lasting ill effects, he visited his favorite restaurant and ordered their famous rich dark chocolate mousse.

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Imagine his dismay when he discovered that his experience of the mousse was a pale shadow of its former self. The mousse tasted bland, slightly pleasant, but with none of the intense chocolaty flavor he remembered so well. The waiter assured him that the recipe was unchanged from the last time he had tasted it, just the day before his accident. In some consternation, Fred rushed out to buy a bar of his favorite Belgian chocolate. Again, he was dismayed to discover that his experience of the chocolate was barely even pleasurable. Extensive investigation revealed that his experience of other foods remained unaffected, but chocolate, in all its forms, now tasted bland and insipid. Desperate for a solution to his problem, Fred visited a renowned gustatory neurologist, Dr. T. Bud. Extensive tests revealed that the accident had irreparably damaged the godiva gland, which secretes cocoamone, the hormone responsible for the experience of chocolate. Fred urgently requested hormone replacement therapy. Dr. Bud informed him that, until recently, there had been no known source of cocoamone, other than the human godiva gland, and that it was impossible to collect cocoamone from one person to be used by another. However, a chance discovery had altered the situation. A forensic veterinary surgeon, performing an autopsy on a severely abused puppy, had discovered high concentrations of cocoamone in the puppy's brain. It turned out that puppies, who don't normally produce cocoamone, could be stimulated to do so by extended periods of severe stress and suffering. The research, which led to this discovery, while gaining tenure for its authors, had not been widely publicized, for fear of antagonizing animal welfare groups. Although this research clearly gave Fred the hope of tasting chocolate again, there were no commercially available sources of puppy-derived cocoamone. Lack of demand, combined with fear of bad publicity, had deterred drug companies from getting into the puppy torturing business. Fred appeals to the court to imagine his anguish, on

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discovering that a solution to his severe deprivation was possible, but not readily available. But he wasn't inclined to sit around bemoaning his cruel fate. He did what any chocolate lover would do. He read the research, and set up his own cocoamone collection lab in his basement. Six months of intense puppy suffering, followed by a brutal death, produced enough cocoamone to last him a week, hence the twenty-six cages. He isn't a sadist or an animal abuser, he explains. If there were a method of collecting cocoamone without torturing puppies, he would gladly employ it. He derives no pleasure from the suffering of the puppies itself. He sympathizes with those who are horrified by the pain and misery of the animals, but the court must realize that human pleasure is at stake. The puppies, while undeniably cute, are mere animals. He admits that he would be just as healthy without chocolate, if not more so. But this isn't a matter of survival or health. His life would be unacceptably impoverished without the experience of chocolate.

End of story. Clearly, we are horrified by Fred's behavior, and unconvinced by his attempted justification. It is, of course, unfortunate for Fred that he can no longer enjoy the taste of chocolate, but that in no way excuses the imposition of severe suffering on the puppies. I expect near universal agreement with this claim (the exceptions being those who are either inhumanly callous or thinking ahead, and wish to avoid the following conclusion, to which such agreement commits them). No decent person would even contemplate torturing puppies merely to enhance a gustatory experience. However, billions of animals endure intense suffering every year for precisely this end. Most of the chicken, veal, beef, and pork consumed in the US comes from intensive confinement facilities, in which the animals live cramped, stress-filled lives and endure

unanaesthetized mutilations¹. The vast majority of people would suffer no ill health from the elimination of meat from their diets. Quite the reverse. The supposed benefits from this system of factory farming, apart from the profits accruing to agribusiness, are increased levels of gustatory pleasure for those who claim that they couldn't enjoy a meat-free diet as much as their current meat-filled diets. If we are prepared to condemn Fred for torturing puppies merely to enhance his gustatory experiences, shouldn't we similarly condemn the millions who purchase and consume factory-raised meat? Are there any morally significant differences between Fred's behavior and their behavior?

2. Fred's Behavior compared with our Behavior.

The first difference that might seem to be relevant is that Fred tortures the puppies himself, whereas most Americans consume meat that comes from animals that have been tortured by others. But is this really relevant? What if Fred had been squeamish and had employed someone else to torture the puppies and extract the cocoamone? Would we have thought any better of Fred? Of course not.

Another difference between Fred and many consumers of factory-raised meat is that many, perhaps most, such consumers are unaware of the treatment of the animals, before they appear in neatly wrapped packages on supermarket shelves. Perhaps I should

¹ For information on factory farms, see, for example, Jim Mason and Peter Singer, Animal Factories, 2d ed. (New York: Harmony Books, 1990), Karen Davis, Prisoned Chickens, Poisoned Eggs: An Inside Look at the Modern Poultry Industry (Summertown, TN: Book Publishing Co., 1996), John Robbins, Diet for a New America (Walpole, NH: Stillpoint, 1987).

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moderate my challenge, then. If we are prepared to condemn Fred for torturing puppies merely to enhance his gustatory experiences, shouldn't we similarly condemn those who purchase and consume factory-raised meat, in full, or even partial, awareness of the suffering endured by the animals? While many consumers are still blissfully ignorant of the appalling treatment meted out to meat, that number is rapidly dwindling, thanks to vigorous publicity campaigns waged by animal welfare groups. Furthermore, any meat-eating readers of this article are now deprived of the excuse of ignorance.

Perhaps a consumer of factory-raised animals could argue as follows: While I agree that Fred's behavior is abominable, mine is crucially different. If Fred did not consume his chocolate, he would not raise and torture puppies (or pay someone else to do so). Therefore Fred could prevent the suffering of the puppies. However, if I did not buy and consume factory-raised meat, no animals would be spared lives of misery.

Agribusiness is much too large to respond to the behavior of one consumer. Therefore I cannot prevent the suffering of any animals. I may well regret the suffering inflicted on animals for the sake of human enjoyment. I may even agree that the human enjoyment doesn't justify the suffering. However, since the animals will suffer no matter what I do, I may as well enjoy the taste of their flesh.

There are at least two lines of response to this attempted defense. First, consider an analogous case. You visit a friend in an exotic location, say Alabama. Your friend takes you out to eat at the finest restaurant in Tuscaloosa. For dessert you select the house specialty, "Chocolate Mousse à la Bama", served with a small cup of coffee, which you are instructed to drink before eating the mousse. The mousse is quite simply the most delicious dessert you have ever tasted. Never before has chocolate tasted so rich and satisfying. Tempted to order a second, you ask your friend what makes this mousse

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so delicious. He informs you that the mousse itself is ordinary, but the coffee contains a concentrated dose of cocoamone, the newly discovered chocolate-enhancing hormone. Researchers at Auburn University have perfected a technique for extracting cocoamone from the brains of freshly slaughtered puppies, who have been subjected to lives of pain and frustration. Each puppy's brain yields four doses, each of which is effective for about fifteen minutes, just long enough to enjoy one serving of mousse. You are, naturally, horrified and disgusted. You will certainly not order another serving, you tell your friend. In fact, you are shocked that your friend, who had always seemed to be a morally decent person, could have both recommended the dessert to you and eaten one himself, in full awareness of the loathsome process necessary for the experience. He agrees that the suffering of the puppies is outrageous, and that the gain in human pleasure in no way justifies the appalling treatment they have to endure. However, neither he nor you can save any puppies by refraining from consuming cocoamone. Cocoamone production is now Alabama's leading industry, surpassing even banjo-making and inbreeding². The industry is much too large to respond to the behavior of one or two consumers. Since the puppies will suffer no matter what either of you does, you may as well enjoy the mousse.

If it is as obvious as it seems that a morally decent person, who is aware of the details of cocoamone production, couldn't order Chocolate Mousse à la Bama, it should be equally obvious that a morally decent person, who is aware of the details of factory farming, can't purchase and consume factory-raised meat. If the attempted excuse of

² I realize that I am playing on stereotypes for comic effect. Banjo-making, of course, has never really been one of Alabama's leading industries.

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causal impotence is compelling in the latter case, it should be compelling in the former case. But it isn't.

The second response to the claim of causal impotence is to deny it. Consider the case of chickens, the most cruelly treated of all animals raised for human consumption, with the possible exception of veal calves. In 1998, almost 8 billion chickens were slaughtered in the US³, almost all of them raised on factory farms. Suppose that there are 250 million chicken eaters in the US, and that each one consumes, on average, 25 chickens per year (this leaves a fair number of chickens slaughtered for nonhuman consumption, or for export). Clearly, if only one of those chicken eaters gave up eating chicken, the industry would not respond. Equally clearly, if they all gave up eating chicken, billions of chickens (approximately 6.25 billion per year) would not be bred, tortured, and killed. But there must also be some number of consumers, far short of 250 million, whose renunciation of chicken would cause the industry to reduce the number of chickens bred in factory farms. The industry may not be able to respond to each individual's behavior, but it must respond to the behavior of fairly large numbers.

Suppose that the industry is sensitive to a reduction in demand for chicken equivalent to 10,000 people becoming vegetarians. (This seems like a reasonable guess, but I have no idea what the actual numbers are, nor is it important.) For each group of 10,000 who give up chicken, a quarter of a million fewer chickens are bred per year. It appears, then, that if you give up eating chicken, you have only a one in ten thousand chance of making any difference to the lives of chickens, unless it is certain that fewer than 10,000 people will

³ Livestock Slaughter 1998 Summary, NASS, USDA (Washington, D.C.: March 1999), 2; and Poultry Slaughter, NASS, USDA (Washington, D.C.: February 2, 1999), 1f.

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ever give up eating chicken, in which case you have no chance. Isn't a one in ten thousand chance small enough to render your continued consumption of chicken blameless? Not at all. While the chance that your behavior is harmful may be small, the harm that is risked is enormous. The larger the numbers needed to make a difference to chicken production, the larger the difference such numbers would make. A one in ten thousand chance of saving 250,000 chickens per year from excruciating lives is morally and mathematically equivalent to the certainty of saving 25 chickens per year. We commonly accept that even small risks of great harms are unacceptable. That is why we disapprove of parents who fail to secure their children in car seats or with seat belts, who leave their small children unattended at home, or who drink or smoke heavily during pregnancy. Or consider commercial aircraft safety measures. The chances that the oxygen masks, the lifejackets, or the emergency exits on any given plane will be called on to save any lives in a given week, are far smaller than one in ten thousand. And yet we would be outraged to discover that an airline had knowingly allowed a plane to fly for a week with non-functioning emergency exits, oxygen masks, and lifejackets. So, even if it is true that your giving up factory raised chicken has only a tiny chance of preventing suffering, given that the amount of suffering that would be prevented is in inverse proportion to your chance of preventing it, your continued consumption is not thereby excused.

But perhaps it is not even true that your giving up chicken has only a tiny chance of making any difference. Suppose again that the poultry industry only reduces production when a threshold of 10,000 fresh vegetarians is reached. Suppose also, as is almost certainly true, that vegetarianism is growing in popularity in the US (and elsewhere). Then, even if you are not the one, newly converted vegetarian, to reach the

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next threshold of 10,000, your conversion will reduce the time required before the next threshold is reached. The sooner the threshold is reached, the sooner production, and therefore animal suffering, is reduced. Your behavior, therefore, does make a difference. Furthermore, many people who become vegetarians influence others to become vegetarian, who in turn influence others, and so on. It appears, then, that the claim of causal impotence is mere wishful thinking, on the part of those meat lovers who are morally sensitive enough to realize that human gustatory pleasure does not justify inflicting extreme suffering on animals.

Perhaps there is a further difference between the treatment of Fred's puppies and the treatment of animals on factory farms. The suffering of the puppies is a necessary means to the production of gustatory pleasure, whereas the suffering of animals on factory farms is simply a by-product of the conditions dictated by economic considerations. Therefore, it might be argued, the suffering of the puppies is intended as a means to Fred's pleasure, whereas the suffering of factory raised animals is merely foreseen as a side-effect of a system that is a means to the gustatory pleasures of millions. The distinction between what is intended, either as a means or as an end in itself, and what is 'merely' foreseen is central to the Doctrine of Double Effect. Supporters of this doctrine claim that it is sometimes permissible to bring about an effect that is merely foreseen, even though the very same effect could not permissibly be brought about if intended. (Other conditions have to be met in order for the Doctrine of Double Effect to judge an action permissible, most notably that there be an outweighing good effect.) Fred acts impermissibly, according to this line of argument, because he intends the suffering of the puppies as a means to his pleasure. Most meat eaters, on the other hand, even if aware of the suffering of the animals, do not intend the suffering.

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In response to this line of argument, I could remind the reader that Samuel Johnson said, or should have said, that the Doctrine of Double Effect is the last refuge of a scoundrel⁴. I won't do that, however, since neither the doctrine itself, nor the alleged moral distinction between intending and foreseeing can justify the consumption of factory-raised meat. The Doctrine of Double Effect requires not merely that a bad effect be foreseen and not intended, but also that there be an outweighing good effect. In the case of the suffering of factory-raised animals, whatever good could plausibly be claimed to come out of the system clearly doesn't outweigh the bad. Furthermore, it would be easy to modify the story of Fred to render the puppies' suffering 'merely' foreseen. For example, suppose that the cocoamone is produced by a chemical reaction that can only occur when large quantities of drain-cleaner are forced down the throat of a conscious, unanaesthetized puppy. The consequent appalling suffering, while not itself a means to the production of cocoamone, is nonetheless an unavoidable side-effect of the means. In this variation of the story, Fred's behavior is no less abominable than in the original.

One last difference between the behavior of Fred and the behavior of the consumers of factory-raised meat is worth discussing, if only because it is so frequently cited in response to the arguments of this paper. Fred's behavior is abominable, according to this line of thinking, because it involves the suffering of puppies. The behavior of meat-eaters, on the other hand, 'merely' involves the suffering of chickens, pigs, cows, calves, sheep, and the like. Puppies (and probably dogs and cats in general)

⁴ For a fine critique of the Doctrine of Double Effect, see Jonathan Bennett, The Act Itself, (Oxford 1995), ch. 11.

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are morally different from the other animals. Puppies count (morally, that is), whereas the other animals don't, or at least not nearly as much.

So, what gives puppies a higher moral status than the animals we eat?

Presumably there is some morally relevant property or properties possessed by puppies but not by farm animals. Perhaps puppies have a greater degree of rationality than farm animals, or a more finely developed moral sense, or at least a sense of loyalty and devotion. The problems with this kind of approach are obvious. It's highly unlikely that any property that has even an outside chance of being ethically relevant⁵ is both possessed by puppies and not possessed by any farm animals. For example, it's probably true that most puppies have a greater degree of rationality (whatever that means) than most chickens, but the comparison with pigs is far more dubious. Besides, if Fred were to inform the jury that he had taken pains to acquire particularly stupid, morally obtuse, disloyal and undevoted puppies, would they (or we) have declared his behavior to be morally acceptable? Clearly not. This is, of course, simply the puppy version of the problem of marginal cases (which I will discuss later). The human version is no less relevant. If their lack of certain degrees of rationality, moral sensibility, loyalty, devotion, and the like makes it permissible to torture farm animals for our gustatory pleasure, it should be permissible to do the same to those unfortunate humans who also lack those properties. Since the latter behavior isn't permissible, the lack of such properties doesn't justify the former behavior.

⁵ If someone were to assert that 'puppyishness' or simply 'being a puppy' were ethically relevant, I could do no more than favor them with an incredulous stare.

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Perhaps, though, there is something that separates puppies, even marginal puppies (and marginal humans) from farm animals—our sympathy. Puppies count more than other animals, because we care more about them. We are outraged to hear of puppies abused in scientific experiments, but unconcerned at the treatment of laboratory rats or animals on factory farms. Before the 2002 World Cup, several members of the England team sent a letter to the government of South Korea protesting the treatment of dogs and cats raised for food in that country. The same players have not protested the treatment of animals on factory farms in England. This example, while clearly illustrating the difference in attitudes towards cats and dogs on the one hand, and farm animals on the other, also reveals one of the problems with this approach to the question of moral status. Although the English footballers, and the English (and US) public in general, clearly care far more about the treatment of cats and dogs than of farm animals, the South Koreans, just as clearly, do not. Are we to conclude that Fred's behavior would not be abominable were he living in South Korea, where dogs and cats are routinely abused for the sake of gustatory pleasure? Such relativism is, to put it mildly, hard to swallow. Perhaps, though, we can maintain the view that human feelings determine the moral status of animals, without condoning the treatment of dogs and cats in South Korea (and other countries). Not all human feelings count. Only the feelings of those who have achieved exactly the right degree of moral sensibility. That just so happens to be those in countries like the US and Britain who care deeply for the welfare of dogs and cats, but not particularly for the welfare of cows, chickens, pigs, and other factory-raised animals. Dog and cat eaters in South Korea are insufficiently sensitive, and humane farming advocates in Britain and the US are overly so. But, of course, it won't do simply to insist that this is the right degree of moral sensibility. We need an explanation of why this is

the right degree of sensibility. Moral sensibility consists, at least in part, in reacting differently to different features of situations, actions, agents, and patients. If the right degree of moral sensibility requires reacting differently to puppies and to farm animals, there must be a morally relevant difference between puppies and farm animals. Such a difference can't simply consist in the fact that (some) people do react differently to them. The appeal to differential human sympathy illustrates a purely descriptive psychological difference between the behavior of Fred and that of someone who knowingly consumes factory-raised meat. It can do no serious moral work.

I have been unable to discover any morally relevant differences between the behavior of Fred, the puppy torturer, and the behavior of the millions of people who purchase and consume factory-raised meat, at least those who do so in the knowledge that the animals live lives of suffering and deprivation. If morality demands that we not torture puppies merely to enhance our own eating pleasure, morality also demands that we not support factory farming by purchasing factory-raised meat.

3. The Texan's Challenge.

Perhaps what I have said thus far is enough to convince many that the purchase and consumption of factory-raised meat is immoral. It is clear that the attribution of a different (and elevated) moral status to puppies from that attributed to farm animals is unjustified. But, one philosopher's modus ponens, as they say, is another Texan's modus tollens. Here is the modus ponens I have been urging:

- (1) If it's wrong to torture puppies for gustatory pleasure, it's wrong to support factory farming.
- (2) It is wrong to torture puppies for gustatory pleasure.

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(3) Therefore it's wrong to support factory farming.

But some may be so convinced that supporting factory farming is not wrong that they may substitute that conviction for the second premise, and conclude that it is not wrong to torture puppies for gustatory pleasure. Thus we are confronted with the Texan's modus tollens:

(T1) If it's wrong to torture puppies for gustatory pleasure, then it's wrong to support factory farming.

(T2) It's not wrong to support factory farming.

(T3) Therefore it's not wrong to torture puppies for gustatory pleasure.

I'm not saying that there is a large risk that many people, even Texans, will start breeding puppies for food (outside of those countries where it is already accepted practice). What they may do (and have done when I have presented them with this argument) is explain their reluctance to do so as a mere sentimental preference, as opposed to a morally mandated choice. They may claim, in a somewhat Kantian spirit, that someone who can treat puppies like that may be more likely to mistreat humans. They may agree that all animals deserve equal consideration of their interests. They may then justify their different treatment of animals either on the grounds that they are simply giving some animals more than they deserve, or that they are attending to their own interests. If the former, they could claim that morality mandates minimal standards of conduct, but that nothing prevents us from choosing to go beyond the requirements of morality when we feel like it. If the latter, they could claim that their sentimental attachment to puppies, kittens, and the like, makes it in their own interests not to raise and kill them for food. Nonetheless, they may insist, in terms of moral status, there is a clear difference between humans and other animals. Humans have a moral status so far above that of other

animals that we couldn't even consider raising humans for food (even humanely), or experimenting on them without their consent, even though we routinely do such things to other animals.

4. Humans' versus Animals' Ethical Status—The Rationality Gambit.

For the purposes of this discussion, to claim that humans have a superior ethical status to animals is to claim that it is morally right to give the interests of humans greater weight than those of animals in deciding how to behave. Such claims will often be couched in terms of rights, such as the rights to life, liberty or respect, but nothing turns on this terminological matter. One may claim that it is generally wrong to kill humans, but not animals, because humans are rational, and animals are not. Or one may claim that the suffering of animals counts less than the suffering of humans (if at all), because humans are rational, and animals are not. These claims may proceed through the intermediate claim that the rights of humans are more extensive and stronger than those (if any) of animals. Alternatively, one may directly ground the judgment about the moral status of certain types of behavior in claims about the alleged natural properties of the individuals involved. Much of the debate over the moral status of abortion proceeds along these lines. Many opponents of abortion appeal to features that fetuses have in common with adult humans, in order to argue that it is, at least usually, just as seriously wrong to kill them as it is to kill us. For example, John Noonan claims that it is the possession of a full human genetic code that grounds the attribution to fetuses of this exalted ethical status. Such an argument may, but doesn't have to, proceed through the intermediate claim that anything that possesses a full human genetic code has a right to life. Many proponents of the moral permissibility of abortion, on the other hand, claim features such as self-

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consciousness or linguistic ability as necessary conditions of full moral status, and thus deny such status to fetuses.

What could ground the claim of superior moral status for humans? Just as the defender of a higher moral status for puppies than for farm animals needs to find some property or properties possessed by puppies but not by farm animals, so the defender of a higher moral status for humans need to find some property or properties possessed by humans but not by other animals. The traditional view, dating back at least to Aristotle, is that rationality is what separates humans, both morally and metaphysically, from other animals. With a greater understanding of the cognitive powers of some animals, recent philosophers have often refined the claim to stress the kind and level of rationality required for moral reasoning. Let's start with a representative sample of three. Consider first these claims of Bonnie Steinbock:

While we are not compelled to discriminate among people because of different capacities, if we can find a significant difference in capacities between human and non-human animals, this could serve to justify regarding human interests as primary. It is not arbitrary or smug, I think, to maintain that human beings have a different moral status from members of other species because of certain capacities which are characteristic of being human. We may not all be equal in these capacities, but all human beings possess them to some measure, and non-human animals do not. For example, human beings are normally held to be responsible for what they do....

Secondly, human beings can be expected to reciprocate in a way that non-human

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animals cannot...Thirdly,...there is the ‘desire for self-respect’.⁶

Similarly, Mary Anne Warren argues that “the rights of persons are generally stronger than those of sentient beings which are not persons”. Her main premise to support this conclusion is the following:

[T]here is one difference [between human and non-human nature] which has a clear moral relevance: people are at least sometimes capable of being moved to action or inaction by the force of reasoned argument.⁷

Carl Cohen, one of the most vehement modern defenders of what Peter Singer calls ‘speciesism’ states his position as follows:

Between species of animate life, however—between (for example) humans on the one hand and cats or rats on the other—the morally relevant differences are enormous, and almost universally appreciated. Humans engage in moral reflection; humans are morally autonomous; humans are members of moral communities, recognizing just claims against their own interest. Human beings do have rights, theirs is a moral

⁶ Bonnie Steinbock, “Speciesism and the Idea of Equality”, Philosophy 53, no. 204 (April 1978). Reprinted in Contemporary Moral Problems, 5th edition, James E. White (ed.) (West, 1997) 467-468.

⁷ Mary Anne Warren, “Difficulties with the Strong Animal Rights Position”, Between the Species 2, no. 4, 1987. Reprinted in Contemporary Moral Problems, 5th edition, James E. White (ed.) (West, 1997), 482.

status very different from that of cats or rats.⁸

So, the claim is that human interests and/or rights are stronger or more important than those of animals, because humans possess a kind and level of rationality not possessed by animals. How much of our current behavior towards animals this justifies depends on just how much consideration should be given to animal interests, and on what rights, if any, they possess. Both Steinbock and Warren stress that animal interests need to be taken seriously into account. Warren claims that animals have important rights, but not as important as human rights. Cohen, on the other hand, argues that we should actually increase our use of animals.

5. The Challenge of Marginal Cases.

One of the most serious challenges to this defense of the traditional view involves a consideration of what philosophers refer to as ‘marginal cases’. Whatever kind and level of rationality is selected as justifying the attribution of superior moral status to humans will either be lacking in some humans or present in some animals. To take one of the most commonly-suggested features, many humans are incapable of engaging in moral reflection. For some, this incapacity is temporary, as is the case with infants, or the temporarily cognitively disabled. Others who once had the capacity may have permanently lost it, as is the case with the severely senile or the irreversibly comatose. Still others never had and never will have the capacity, as is the case with the severely

⁸ Carl Cohen, “The Case for the Use of Animals in Biomedical Research”, The New England Journal of Medicine, vol. 315, 1986. Reprinted in Social Ethics, 4th edition, Thomas A. Mappes and Jane S. Zembaty, (eds.) (New York: McGraw-Hill, 1992) 463.

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mentally disabled. If we base our claims for the moral superiority of humans over animals on the attribution of such capacities, won't we have to exclude many humans? Won't we then be forced to the claim that there is at least as much moral reason to use cognitively deficient humans in experiments and for food as to use animals? Perhaps we could exclude the only temporarily disabled, on the grounds of potentiality, though that move has its own problems. Nonetheless, the other two categories would be vulnerable to this objection.

I will consider two lines of response to the argument from marginal cases. The first denies that we have to attribute different moral status to marginal humans, but maintains that we are, nonetheless justified in attributing different moral status to animals who are just as cognitively sophisticated as marginal humans, if not more so. The second admits that, strictly speaking, marginal humans are morally inferior to other humans, but proceeds to claim pragmatic reasons for treating them, at least usually, as if they had equal status.

As representatives of the first line of defense, I will consider arguments from three philosophers, Carl Cohen, Alan White, and David Schmidtz. First, Cohen:

[the argument from marginal cases] fails; it mistakenly treats an essential feature of humanity as though it were a screen for sorting humans. The capacity for moral judgment that distinguishes humans from animals is not a test to be administered to human beings one by one. Persons who are unable, because of some disability, to perform the full moral functions natural to human beings are certainly not for that reason ejected from the moral community. The issue is one of kind... What humans

retain when disabled, animals have never had.⁹

Alan White argues that animals don't have rights, on the grounds that they cannot intelligibly be spoken of in the full language of a right. By this he means that they cannot, for example, claim, demand, assert, insist on, secure, waive, or surrender a right. This is what he has to say in response to the argument from marginal cases:

Nor does this, as some contend, exclude infants, children, the feeble-minded, the comatose, the dead, or generations yet unborn. Any of these may be for various reasons empirically unable to fulfill the full role of right-holder. But...they are logically possible subjects of rights to whom the full language of rights can significantly, however falsely, be used. It is a misfortune, not a tautology, that these persons cannot exercise or enjoy, claim, or waive, their rights or do their duty or fulfill their obligations.¹⁰

David Schmitz defends the appeal to typical characteristics of species, such as mice, chimpanzees, and humans, in making decisions on the use of different species in experiments. He also considers the argument from marginal cases:

Of course, some chimpanzees lack the characteristic features in virtue of which chimpanzees command respect as a species, just as some humans lack the characteristic features in virtue of which humans command respect as a species. It is equally obvious that some chimpanzees have cognitive capacities (for example) that are superior to the cognitive capacities of some humans. But whether every human

⁹ Cohen, Op. cit. 461.

¹⁰ Alan White, Rights, (OUP 1984). Reprinted in Animal Rights and Human Obligations, 2nd edition, Tom Regan and Peter Singer (eds.) (Prentice Hall, 1989), 120.

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being is superior to every chimpanzee is beside the point. The point is that we can, we do, and we should make decisions on the basis of our recognition that mice, chimpanzees, and humans are relevantly different types. We can have it both ways after all. Or so a speciesist could argue.¹¹

There is something deeply troublesome about the line of argument that runs through all three of these responses to the argument from marginal cases. A particular feature, or set of features is claimed to have so much moral significance that its presence or lack can make the difference to whether a piece of behavior is morally justified or morally outrageous. But then it is claimed that the presence or lack of the feature in any particular case is not important. The relevant question is whether the presence or lack of the feature is normal. Such an argument would seem perfectly preposterous in most other cases. Suppose, for example, that ten famous people are on trial in the afterlife for crimes against humanity. On the basis of conclusive evidence, five are found guilty and five are found not guilty. Four of the guilty are sentenced to an eternity of torment, and one is granted an eternity of bliss. Four of the innocent are granted an eternity of bliss, and one is sentenced to an eternity of torment. The one innocent who is sentenced to torment asks why he, and not the fifth guilty person, must go to hell. Saint Peter replies, “Isn’t it obvious Mr. Ghandi? You are male. The other four men—Adolph Hitler, Joseph Stalin, George W. Bush, and Milton Friedman—are all guilty. Therefore the normal condition for a male defendant in this trial is guilt. The fact that you happen to be innocent is irrelevant. Likewise, of the five female defendants in this trial, only one was guilty.

¹¹ David Schmidtz, “Are all Species Equal?”, Journal of Applied Philosophy, Vol. 15, no. 1 (1998), 61, my emphasis.

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Therefore the normal condition for female defendants in this trial is innocence. That is why Margaret Thatcher gets to go to heaven instead of you.”

As I said, such an argument is preposterous. Is the reply to the argument from marginal cases any better? Perhaps it will be claimed that a biological category such as a species is more ‘natural’, whatever that means, than a category like ‘all the male (or female) defendants in this trial’. Even setting aside the not inconsiderable worries about the conventionality of biological categories, it is not at all clear why this distinction should be morally relevant. What if it turned out that there were statistically relevant differences in the mental abilities of men and women? Suppose that men were, on average, more skilled at manipulating numbers than women, and that women were, on average, more empathetic than men. Would such differences in what was ‘normal’ for men and women justify us in preferring an innumerate man to a female math genius for a job as an accountant, or an insensitive woman to an ultra-sympathetic man for a job as a counselor? I take it that the biological distinction between male and female is just as real as that between human and chimpanzee.

A second response to the argument from marginal cases is to concede that cognitively deficient humans really do have an inferior moral status to normal humans. Can we, then, use such humans as we do animals? I know of no-one who takes the further step of advocating the use of marginal humans for food (though R.G. Frey has made some suggestive remarks concerning experimentation). How can we advocate this second response while blocking the further step? Warren suggests that “there are powerful practical and emotional reasons for protecting non-rational human beings,

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reasons which are absent in the case of most non-human animals.”¹² It would clearly outrage common human sensibilities, if we were to raise retarded children for food or medical experiments.¹³ Here is Steinbock in a similar vein:

I doubt that anyone will be able to come up with a concrete and morally relevant difference that would justify, say, using a chimpanzee in an experiment rather than a human being with less capacity for reasoning, moral responsibility, etc. Should we then experiment on the severely retarded? Utilitarian considerations aside, we feel a special obligation to care for the handicapped members of our own species, who cannot survive in this world without such care....In addition, when we consider the severely retarded, we think, ‘That could be me’. It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey....Here we are getting away from such things as ‘morally relevant differences’ and are talking about something much more difficult to articulate, namely, the role of feeling and sentiment in moral thinking.¹⁴

This line of response clearly won’t satisfy those who think that marginal humans really do deserve equal moral consideration with other humans. It is also a very shaky basis on which to justify our current practices. What outrages human sensibilities is a very fragile thing. Human history is littered with examples of widespread acceptance of the systematic mistreatment of some groups who didn’t generate any sympathetic

¹² Warren, op. cit. 483.

¹³ For a similar argument, see Peter Carruthers, The Animals Issue: Moral Theory in Practice. (Cambridge University Press, 1992.)

¹⁴ Steinbock, op. cit. 469-470.

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response from others. That we do feel a kind of sympathy for retarded humans that we don't feel for dogs is, if true, a contingent matter. To see just how shaky a basis this is for protecting retarded humans, imagine that a new kind of birth defect (perhaps associated with beef from cows treated with bovine growth hormone) produces severe mental retardation, green skin, and a complete lack of emotional bond between parents and child. Furthermore, suppose that the mental retardation is of the same kind and severity as that caused by other birth defects that don't have the other two effects. It seems likely that denying moral status to such defective humans would not run the same risks of outraging human sensibilities as would the denial of moral status to other, less easily distinguished and more loved defective humans. Would these contingent empirical differences between our reactions to different sources of mental retardation justify us in ascribing different direct moral status to their subjects? The only difference between them is skin color and whether they are loved by others. Any theory that could ascribe moral relevance to differences such as these doesn't deserve to be taken seriously.¹⁵

Finally, perhaps we could claim that the practice of giving greater weight to the interests of all humans than of animals is justified on evolutionary grounds. Perhaps such differential concern has survival value for the species. Something like this may well be true, but it is hard to see the moral relevance. We can hardly justify the privileging of human interests over animal interests on the grounds that such privileging serves human interests!

¹⁵ Certain crude versions of the so-called ethics of care do seem to entail that the mere fact of being loved gives a different ethical status.

6. Agent and Patient—the Speciesist’s Central Confusion.

Although the argument from marginal cases certainly poses a formidable challenge to any proposed criterion of full moral standing that excludes animals, it doesn’t, in my view, constitute the most serious flaw in such attempts to justify the status quo. The proposed criteria are all variations on the Aristotelian criterion of rationality. But what is the moral relevance of rationality? Why should we think that the possession of a certain level or kind of rationality renders the possessor’s interests of greater moral significance than those of a merely sentient being? In Bentham’s famous words “The question is not, Can they reason? nor Can they talk? But, Can they suffer?”.¹⁶

What do defenders of the alleged superiority of human interests say in response to Bentham’s challenge? Some, such as Carl Cohen, simply reiterate the differences between humans and animals that they claim to carry moral significance. Animals are not members of moral communities, they don’t engage in moral reflection, they can’t be moved by moral reasons, therefore (?) their interests don’t count as much as ours. Others, such as Steinbock and Warren, attempt to go further. Here is Warren on the subject:

Why is rationality morally relevant? It does not make us “better” than other animals or more “perfect”....But it is morally relevant insofar as it provides greater possibilities for cooperation and for the nonviolent resolution of problems.¹⁷

Warren is certainly correct in claiming that a certain level and kind of rationality

¹⁶ Jeremy Bentham, Introduction to the Principles of Morals and Legislation, (Various) chapter 17.

¹⁷ Warren, op. cit. 482.

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is morally relevant. Where she, and others who give similar arguments, go wrong is in specifying what the moral relevance amounts to. If a being is incapable of moral reasoning, at even the most basic level, if it is incapable of being moved by moral reasons, claims, or arguments, then it cannot be a moral agent. It cannot be subject to moral obligations, to moral praise or blame. Punishing a dog for doing something “wrong” is no more than an attempt to alter its future behavior. So long as we are undeceived about the dog’s cognitive capacities, we are not, except metaphorically, expressing any moral judgment about the dog’s behavior. (We may, of course, be expressing a moral judgment about the behavior of the dog’s owner, who didn’t train it very well.) All this is well and good, but what is the significance for the question of what weight to give to animal interests? That animals can’t be moral agents doesn’t seem to be relevant to their status as moral patients. Many, perhaps most, humans are both moral agents and patients. Most, perhaps all, animals are only moral patients. Why would the lack of moral agency give them diminished status as moral patients? Full status as a moral patient is not some kind of reward for moral agency. I have heard students complain in this regard that it is unfair that humans bear the burdens of moral responsibility, and don’t get enhanced consideration of their interests in return. This is a very strange claim. Humans are subject to moral obligations, because they are the kind of creatures who can be. What grounds moral agency is simply different from what grounds moral standing as a patient. It is no more unfair that humans and not animals are moral agents, than it is unfair that real animals and not stuffed toys are moral patients.

One other attempt to justify the selection of rationality as the criterion of full moral standing is worth considering. Recall the suggestion that rationality is important insofar as it facilitates cooperation. If we view the essence of morality as reciprocity, the

significance of rationality is obvious. A certain twisted, but all-too-common, interpretation of the Golden Rule is that we should ‘do unto others in order to get them to do unto us’. There’s no point, according to this approach, in giving much, if any, consideration to the interests of animals, because they are simply incapable of giving like consideration to our interests. In discussing the morality of eating meat, I have, many times, heard students claim that we are justified in eating meat, because “the animals would eat us, if given half a chance”. (That they say this in regard to our practice of eating cows and chickens is depressing testimony to their knowledge of the animals they gobble up with such gusto.) Inasmuch as there is a consistent view being expressed here at all, it concerns self-interest, as opposed to morality. Whether it serves my interests to give the same weight to the interests of animals as to those of humans is an interesting question, but it is not the same question as whether it is right to give animals’ interests equal weight. The same point, of course, applies to the question of whether to give equal weight to my interests, or those of my family, race, sex, religion, etc. as to those of other people.

Perhaps it will be objected that I am being unfair to the suggestion that the essence of morality is reciprocity. Reciprocity is important, not because it serves my interests, but because it serves the interests of all. Reciprocity facilitates cooperation, which in turn produces benefits for all. What we should say about this depends on the scope of ‘all’. If it includes all sentient beings, then the significance of animals’ inability to reciprocate is in what it tells us about how to give their interests equal consideration. It certainly can’t tell us that we should give less, or no, consideration to their interests. If, on the other hand, we claim that rationality is important for reciprocity, which is important for cooperation, which is important for benefiting humans, which is the

ultimate goal of morality, we have clearly begged the question against giving equal consideration to the interests of animals.

It seems that any attempt to justify the claim that humans have a higher moral status than other animals by appealing to some version of rationality as the morally relevant difference between humans and animals will fail on at least two counts. It will fail to give an adequate answer to the argument from marginal cases, and, more importantly, it will fail to make the case that such a difference is morally relevant to the status of animals as moral patients as opposed to their status as moral agents.

I conclude that our intuitions that Fred's behavior is morally impermissible are accurate. Furthermore, given that the behavior of those who knowingly support factory farming is morally indistinguishable, it follows that their behavior is also morally impermissible.¹⁸

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¹⁸ This paper, in various forms, has been presented in more places than I can remember, and has benefited from the comments of more people than I can shake a stick at. I particularly wish to thank, for their helpful comments, Doug Ehring, Mylan Engel, Mark Heller, and Steve Sverdlik. Finally, I should thank the wife of a former colleague, whose claim (apparently sincere) that her pleasure was more important than a veal calf's suffering motivated me to write it in the first place. I doubt whether this paper would change her mind, but at least it is a more articulate statement of my opposition to her callous comment than the incredulous denunciation with which I initially greeted it.