On the Moral Status of Non-Human Animals and *Vulnerable* Human Beings[1]

Abstract: What do the reasons given for and against various moral views about many non-human animals imply or suggest for moral views about human beings in *all* their varieties, especially "vulnerable" human beings? And what do the reasons given for and against various moral views about the variety of human beings imply or suggest for our moral views about many animals? Some people are offended by *some* of these claims and arguments, but which are genuinely offensive? These and related questions are discussed and answered here.

[1] DRAFT December 27, 2018: Google Docs allows for comments on the document.

1. Introduction

This article explores relations between moral arguments about non-human animals (hereafter, 'animals') and moral arguments about human beings, focusing on especially *vulnerable* human beings, for example, human beings who very young or very old, who are ill or injured in certain ways, are disabled in certain ways.[2]

Moral epistemologies for what might justify moral claims about, first, animals and, second, the varieties of human beings are developed. I then evaluate these justifications, in part, by observing what these justifications imply or suggest for the corresponding topics. So, what do the reasons given for and against various moral views about many animals imply or suggest for moral views about human beings in *all* their varieties? And what do the reasons given for and against various moral views about the varieties of human beings imply or suggest for our moral views about animals? I review these relations among the arguments to help determine which argument are best, in terms of providing rational support for their conclusions.

A second concern is the actual or perceived offensiveness of some of these claims and arguments. Some positions on these issues *offend* some people. These feelings and judgments of offense are sometimes justified: it makes sense to be upset about what is said since the claims express some unfair negativity about someone or a group, or support some unjust categorization or rankings, or harms will likely result from some people accepting the what is said. However, people can, and sometimes do, take offense with no good reason: they are offended even though there is nothing genuinely offensive: perhaps they misunderstand, or their offense results from their own mistaken, and perhaps *offensive*, beliefs. I discuss what might be offensive about some

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[2] I understand *vulnerable* human beings simply as human beings who, for a variety of not uncommon but *ultimately unjustified* reasons, are presently more likely to be believed to *lack* rights or "high" moral status (that is, a moral status equal to human beings for whom their rights or high moral status is uncontroversially accepted) or for whom there are *unjustified* controversies about their rights or moral status. (Whether vulnerable human beings are *more likely* to be disrespected or their rights violated is, potentially, an empirical question, depending on the sense of probability meant by the claim; but when rights are violated and these human beings disrespected, however, this is presumably partly because of what abusers *believe*, hence my understanding vulnerability in terms of beliefs. A potential consequence of this is that, if all sentient human beings' rights were always, and somehow *had to be*, profoundly respected, there would be no vulnerable human beings).

For an overview of various concepts of "vulnerability" see Martin A, Hurst S. On vulnerability—analysis and applications of a many-faceted concept. In Les ateliers de l'éthique/The Ethics Forum 2017 (Vol. 12, No. 2-3, pp. 146-153). Centre de recherche en éthique de l'Université de Montréal. Also see Martin AK, Tavaglione N, Hurst S. Resolving the conflict: clarifying 'vulnerability' in health care ethics. Kennedy Institute of Ethics Journal. 2014;24(1):51-72.

important arguments on these topics, with the goals of increasing understanding and lessening future offenses and potential harms.

I conclude by directly answering the basic questions of what people, from different starting points on the rights of human beings and animals, should think and do about these issues, and how we should try to persuade people to accept better views, especially about animals. In particular, can appeals to moral concerns about vulnerable human beings be part of an acceptable, or even valuable, strategy for advocating for animal rights? Or is this often or always just a wrong and offensive way of approaching the issues?

For brevity, I usually present the moral concern as whether, and why, animals and human beings have "rights." This simplification is partly because of how people tend to conceptualize the issues: regardless of any moral theorizing presented, the topics are nearly always understood as "animal rights" and "human rights." Here, however, this rights-talk should always be understood as *moral* rights (although I do support *legal* rights to protect the moral rights under consideration here). And "having rights" is always shorthand for something like "there are serious moral obligations to that individual." Whether these obligations are based on genuine rights, or concerns about overall utility or goodness, virtue, care, or some other moral foundation is undefined since, for our purposes, these details don't matter.

2. Moral Epistemologies for Animals

To begin considering what might justify moral views about non-human animals or make them reasonable, we need to be specific about what animals we have in mind.[3] Our focus is *sentient* animals: animals who are conscious and so are aware of the world, are capable of negative and positive experiences and feelings, and so their lives can go better and worse *for them*. The animals we are concerned with also have some identity over time: they have some memories of the past and expectations for the future: they don't live moment-to-moment existences.

Common sense and genuine science tell us which animals fit this description: they are, at least, mammals and birds. Arguably, but more controversially, they are vertebrates generally,

[3] "Animals" is a very broad biological category – a recent estimate of number of species of animals is that there are at least 8 million. Mora C, Tittensor DP, Adl S, Simpson AG, Worm B. How many species are there on Earth and in the ocean?. PLoS biology. 2011 Aug 23;9(8):e1001127.

including fish; and common observations and scientific research suggest that at least some invertebrates might fit this description also. Reviewing these matters, however, is not our task here.

2.1. "Intuition"

What might justify moral views about animals? What can make them reasonably held, if and when they are?

For some people, their moral views about animals might be justified on the basis of what could loosely be called "intuition."[4] People learn or see what happens to animals and *immediately* believe that what's done to animals is wrong: they empathize with animals and just *see* that animals are due respect and care, certainly not ill-treatment or abuse. This is believed on the basis of little to no explicit reasoning or argumentation since, from their point of view, it all just seems quite obvious and in no need of argument or defense.[5]

On this epistemological theory, belief in animal rights might be justified, as might the *denial* of animal rights. Such beliefs would be justified, however, *only until* compelling objections are raised, which provide reasons to doubt what initially seemed clearly true. So, someone who "intuitively" believes that animals have rights might hear this:

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[4] The quick "intuitionist" proposal offered here is a hybrid of moral epistemologies based on "phenomenal conservatism" and "contextualism." *Phenomenal conservatives* argue that someone is justified in believing some claim if that claim *seems* true to that someone and they have no good reason to doubt that seeming. *Contextualists* argue that different contexts impose different standards for what's required for a belief to be justified. So, for example, to many people, it might vividly seem that it is clear moral common sense that, say, *torturing people for fun is wrong*, and they have no reason whatsoever to doubt that especially since it seems to them that nearly everyone believes that (and that if anyone didn't believe that would be "crazy" or evil): if this is how things seem in this context, the person's belief would be justified. This person, however, could move to a different context (say, a philosophy seminar on nihilism) where reasons are given to think that no actions are wrong at all, and so doubts might be raised that make that initial belief unjustified. For a development of such views, see Huemer M. Ethical intuitionism. Springer; 2005.

[5] Tom Regan characterizes animal advocates who "immediately" believe that animals are treated wrongly and due respect as "Da Vincians" who, like Leonardo DaVinci, seem to have an almost "innate" respect for animals. Other categories include "Damascans," who have some distinct experience that leads them to animal advocacy, and "Muddlers," who have no great innate sympathy for animals, and no great "conversion" experience, but rather muddle along, developing their views about animals slowly. See Regan T. Empty cages: Facing the challenge of animal rights. Rowman & Littlefield; 2004.

> But animals aren't rational; they aren't moral agents; they don't 'do' anything of value; they don't contribute to society; they act merely on 'instinct'; they don't do anything for 'us'; they don't reflect on their own existence: in sum, they don't have what we will call 'high rationality' or related abilities that depend on this type of rationality; therefore, *animals don't have rights*.

And for anyone who "intuitively" believes that animals *lack* rights, they might hear this:

> But many animals are conscious; they are sentient; they have feelings; they have knowledge and understanding needed to navigate the world; they have cognitive abilities; they are able to reason in manners appropriate for who they are; they have emotions; they have memories and expectations; they have friends and families; therefore, *many animals have rights*.

In each case, the objections undercut the intuitive justification. For the belief to remain justified, the believer must go beyond intuition to arguments.[6]

2.2. Arguments from Non-Species-Specific Properties

The objections to the claims above suggest arguments in their favor. First, an argument *for* animal rights:

(1) Animals are conscious; they are sentient; they have feelings; they have knowledge and understanding needed to navigate the world; they have cognitive abilities; they are able to

[6] Is there anything *offensive* about this independently plausible moral-epistemological proposal applied to animals? It allows some people to have justified moral beliefs about animals, which some might take offense at, especially when considering perspectives contrary to their own. The theory also allows people to have justified views *rather easily*, which some might take offense at also: "Don't these people realize there are good arguments against their views? Why don't these objections make a difference to what they think?" Intuitionism urges making these objections known and clear to the believers in question, since this might introduce new evidence that the believer *must* consider: they might respond in irresponsible manners, but they might also agree that, given the new evidence, they should revise their views, for what now seems to them to be the better.

reason in some manners; they have emotions; they have memories and expectations; they have friends and families, and so on.[7]

(2) *Anyone, or anything, who is conscious, sentient, has feelings, has emotions, has relationships and so on has rights.*

(3) Therefore, animals – at least sentient animals – have rights.

And an argument *against* animal rights:

(A) Animals aren't rational; they aren't moral agents; they aren't self-aware; they don't contribute to society; they act merely on 'instinct'; they don't do anything for 'us,' and so on.

(B) *Anyone, or anything, who is not rational, is not a moral agent, is not self-aware and reflective, doesn't make contributions to society, and so on, has no rights.*

(C) Therefore, animals – at least sentient animals – have no rights.

These arguments have a virtue that their moral principles are general and species-neutral, applicable to anyone, not just animals: this makes the arguments less likely to be circular or question-begging. How should the arguments be evaluated otherwise and overall?

2.2.1. The Argument for Animal Rights

The argument *for* animal rights seems strong. The claims about many animals in premise (1) are true and well-justified.

[7] If someone were to charge animal advocates with "anthropomorphizing" animals or "humanizing" animals, this is literally mistaken: the argument above is based on characteristics that *some* human beings have, but not *only* human beings have them: the characteristics are species-neutral or species-shared, since many species have these same or similar characteristics. The claim isn't that animals are "like" human beings in every way, but rather that *some* animals and some human beings have these characteristics: being conscious, sentient, cognitive, feeling, social and so on. So charges of "humanizing" animals are mistaken. Animal advocates might also reply when people try to "animalize" human beings they are mistaken also: they are attributing characteristics to *some* human beings that *some* animals have, but since some human beings have these characteristics it makes little to no sense to call these "animal" characteristics: again, they are just characteristics that individuals of different species can have, with no *essential* tie to any single species.

And the general moral principle (2) – that *anyone, or anything, who is conscious, sentient, has feelings, has emotions, has relationships and so on has rights* – is reasonable: it plausibly identifies what it is about, at least, human beings that makes us have rights. It identifies morally-relevant psychological capacities of human beings at many or all of our ages, stages, and conditions that result in the possibility of us being harmed, or made worse off, which seem to be the basis of why we have basic rights. Carrots and bacteria lack psychologies or minds, so they cannot be harmed and so they lack rights. *We*, of course, have minds, so we can be harmed, and so *anyone* or anything with a mind can be harmed and so has basic rights. The insight of the argument is the recognition that many animals also have psychological capacities that determine rights: they too have rights, for the reasons we have rights.

Is there anything *offensive* about this pro-animal argument, with its moral principle (2) that has positive implications for human beings? Some could be offended by the idea of a *general* moral premise, applicable to both human and animals, thinking that particular premises that focus on the uniqueness of each type of being are better. But that is a mistaken reaction. By comparison, a general principle that explains why both women *and* men are wrong to kill is better than one principle for men and a different principal for women. Simplicity and generality are virtues, so when two types of things are relevantly similar, a single principle applying to both is better than distinct principles.

Others might also be offended by the argument's presumption that (some) animals and (some) human beings are *similar*. But we *are* similar, in *some* ways, and different in others, just as *everything* is. And the observed similarities are "positive": animals and humans are both due respect and care, and have rights, because of the underlying similarity of being sentient. Advocates of this argument do not claim that humans and animals are similar in *every* morally relevant way, only that animals and humans are similar in ways relevant to having basic rights.[8]

[8] This article focuses on some similarities, comparisons or likenesses among animals and human beings, especially types of vulnerable human beings. Other comparisons have been presented, for example, comparisons between the poor treatment of animals and human slavery, the treatment of animals and the treatment of people in the Holocaust, the treatment of animals and the treatment of women, and more. These comparisons are always that there are *some* relevant similarities between the treatment of animals and the treatment of these different groups of human beings, not that the issues are "the same" or "equal" or "alike" *in every way*. Some people, including members of these oppressed groups, accept these partial comparisons, others reject them, finding such comparisons to be offensive. See for example, Spiegel M. The dreaded comparison: Human and animal slavery. New York: Mirror Books; 1996

In sum, this basic, species-neutral argument for animal rights appears strong.

2.2.2. The Argument against Animal Rights

The argument *against* animal rights, however, is unsound: it fails to justify its conclusion. And it is offensive.

First, its claims about animals, in premise (A), are generally false and contrary to the evidence. For many people, their proposing (A) would express ignorance that might be willful and culpable: failing to understand or know morally-relevant empirical facts about animals, and believing and proclaiming falsehoods about animals, is blameworthy, since these beliefs, especially when expressed, could only contribute to further ill-treatment of animals.

The argument's moral principle (B) – that a*nyone, or anything, who is not rational, not a moral agent, not self-aware and reflective, doesn't make contributions to society, and so on has no rights* – is also false. It has dismal implications for animals, and has dismal implications for many human beings who are *not* "rational" *in the intended sense of the premise*: human beings who are very young, or old, or sick in certain ways, or disabled or neuroatypical in certain ways and more. On this premise, they lack rights, since they lack the type of rationality said to be necessary for having rights. That's false, and so the premise is false.

The principle is also offensive. It's offensive to the human beings who it falsely implies have no rights. It's offensive to people who care about these people and recognize their dignity and worth. Nearly everyone has, or has had, such experiences, and everyone *should* recognize the rights of these human beings, which this principle denies.[9] In an often-quoted passage, Kant

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Jul. Patterson C. Eternal Treblinka: Our treatment of animals and the Holocaust. Lantern Books; 2002. And Davis K. The holocaust and the henmaid's tale: A case for comparing atrocities. Lantern Books; 2005.

I do not want to be insensitive to anyone who is offended, but we should notice that some offenses might be are due to (a) an unsupported assumption that the poor treatment of animals is just not wrong or only a trivial wrong (and so is not comparable to the *knowledge* that they or their ancestors was profoundly wrong) and so a mistaken thought that 'since it's not wrong to treat animals badly, these comparisons suggest that it's not wrong to treat human beings badly' (which is not said, argued or intended by such authors); or (b) a misunderstanding in thinking that the claim is that the various issues are *exactly the same* in their moral dimensions or seriousness, which typically is not what's argued, or (c) mistaken reasoning that if an issue is *less* important than another issue, that lesser important issue is *not important*.

While, in general, we don't want to offend, we also don't want to be overly timid since some ideas, *once understood*, are not as offensive as they seem initially, prior to actually understanding them. And, of course, some ideas are deemed offensive because of faults in the evaluator, not the idea itself.

[9] For brilliant discussion of many of the issues of this essay, especially those concerning disability, see Taylor S. Beasts of burden: Animal and disability liberation. The New Press; 2017 Mar 7. It is an understatement to say that

writes: "Animals are not self-conscious and are there merely as a means to an end. The end is man."[10] The unstated assumption *essential* to the reasoning is that *anyone not self-conscious exists to be used as mere means towards (self-conscious) man's ends*. It's an understatement that *many* historical and even contemporary thinkers agree with Kant's insistence that self-consciousness or related, often considered "sophisticated," mental abilities such as certain type of rationality, are *necessary* for rights and the basis for rights. That is false *and* offensive.

Rationality-based rights theorists often invoke secondary principles or add other conditions to their core theory to "grant" or establish the rights for human beings who lack the type of rationality or related characteristics (for example, moral agency) they claim is necessary for having rights. But being an "afterthought," an "add-on" or a "complication" in someone's theory of rights is, again, offensive. And that is what these types of theories lead to, at best: "rational" human beings are at the center of the moral universe with anyone else in "moral orbit" around them. Whether, despite their offensiveness, these theoretical augmentations are intellectually plausible is addressed below.[11]

2.3. Arguments from Animals' Relations to Human Beings

Let's now consider some arguments for animal rights with premises that are not species-neutral. These arguments attempt to establish, or deny, animals' rights by appealing to reflections on human beings and their rights.

2.3.1. Arguments from Human Beings "In General"

Some animal advocates argue that to see that and why animals have rights, we can simply reflect on ourselves. The argument:

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this is an incredibly insightful book, in so many ways. For a summary and discussion, see Chloë Taylor, Cripping Animal Ethics: Review of Sunaura Taylor, Beasts of Burden: Animal and Disability Liberation. New York and London: The New Press, 2017. (260 pages). In Animal Liberation Currents.

[10] Kant, I. Duties toward Animals and Spirits, in Lectures on Ethics, trans. Louis Infield. New York: Harper and Row; 1963 1780).

[11] It's perhaps worthwhile to note that we have been exploring the justification of moral views about animals and human beings *dialectically*, by thinking about what some people would or might say in dialogue, discussion and debate. We should notice that the false and offensive principle (B) – that a*nyone, or anything, who is not rational, not a moral agent, and so on has no rights* – was based on a common objection to arguments for animal rights: *critics* of animals rights raised this type of principle with its false and offensive results. The animal advocates' argument above, however, acknowledges vulnerable human beings' value and identifies their rights.

Human beings have rights.

If human beings have rights, then some animals have rights.

Therefore, some animals have rights.

It is worth noting that by "human beings," people typically mean *sentient* human beings. They don't literally mean *all beings or entities that are biologically human*, or "human beings" in that broader sense: they need not claim, and often do not claim, that, for example, biologically *human* embryos or early human fetuses, or human beings who are known to be permanently comatose have rights.[12]

With this qualification in mind, the first premise is true and believed, or at least professed, by minimally decent people: these rights being genuinely embraced and acted upon is, unfortunately, another matter.

The second premise results from asking what *makes* us have rights and answering with *psychological* characteristics: we are conscious, aware, sentient, have thoughts and feelings, and so on. The premise includes the basic reasoning that, since many animals are *like us* in these morally-relevant ways, those animals have rights also.

Some animal advocates are offended by this reasoning, thinking that animals' rights should be established *not* by appealing to their similarities to human beings: animals don't have to be "like" human beings to have rights. Fortunately, this argument doesn't literally say this: it appeals to human beings *only* to help us *see* that properties had by many different species determine rights: in this way, the argument "reduces" to the species-neutral argument. However, if we ask why we should accept a species-neutral principle, we would likely appeal to their explanatory power for identifying human beings' rights: the principle is thereby justified by appeal to cases, and the judgments about cases are justified by appeal to the principle.

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[12] For discussion of the relations between arguments for animal rights and abortion and other pre- or permanently-non-conscious beings that are human, see my Nobis, N. Review of Sherry F. Colb and Michael C. Dorf, Beating Hearts: Abortion and Animal Rights (2016), Notre Dame Philosophical Reviews. 6/25/2016 and Nobis, N. Abortion and Animal Rights: Does Either Topic Lead to the Other? On What's Wrong? the not quite official blog of cu-boulder's center for values and social policy. 7/16/16. Reprinted in Nobis N. Animals and Ethics 101: Thinking Critically About Animal Rights. Open Philosophy Press; 2016.

Some human rights advocates could also be concerned about the argument because of the logical maneuver that "one person's *modus ponens* argument is another person's *modus tollens* argument." Animal advocates add to the premise – *if human beings have rights, then some animals have rights* – the affirmation that *human beings have rights*, yielding the conclusion that *some animals have rights* (*modus ponens*). It's at least possible, however, that someone would respond with, "Since *animals don't have rights*, it follows that *human beings don't have rights* either" (*modus tollens*).

Who might respond this way? Nobody who accepts human rights. And nobody who accepts animal rights, including animal rights advocates who argue *for* animal rights *from* human rights. Only critics of animal rights could give this response. But *most* do not and would not: they tend to insist that human beings have rights, *but* for reasons that don't apply to animals: human beings have rights *because* we are rational, self-aware, are moral agents, and so on. This response *is* problematic since it suggests that many vulnerable human beings lack rights. But the response *is not* that human beings, in general, lack rights *because* animals lack right.

Few people are apt to seriously consider, much less accept, arguments that no human beings have rights, especially in the looser sense of "rights" used here. A more realistic concern then is about an argument for animal rights based on the *varieties* of human beings, focusing on vulnerable human beings. Such an argument has a premise that *could* have false implications and bad effects for especially *vulnerable* human beings. This argument will be discussed below.

In sum, an argument for animal rights from human beings, in general, is likely strong.

2.3.2. Arguments from All Human Beings

Let's review the dialectic:

> Many animal advocates argue that animals have rights *because* animals are sentient. Critics deny that and argue that what we might call "high rationality" is necessary for rights and so conclude that animals lack rights. Critics of these critics reply that this is false and offensive concerning human beings who lack high rationality *and* that this has

false implications for animals, and so any principle that restricts rights to "rational beings" is false.

From here, animal advocates tend to offer augmented versions of their previous argument, beginning with these affirmations:

- Human babies and very elderly human beings, including with dementia or similar conditions, have rights.
- Human beings who are temporarily *or* permanently (seriously) cognitively or emotionally disabled, and human beings who are neuroatypical, have rights.
- Human beings who exist without "high rationality," or even the *potential* for it, have rights.

These claims all contribute to this more comprehensive argument:

Human beings, in all their varieties, stages and ways of existing, have rights.
If human beings, in all their varieties, stages and ways of existing have rights then some animals have rights.
Therefore, some animals have rights.

Again, by "human beings," animal advocates typically mean sentient human beings. Given this, the premise that *human beings, in all their varieties, stages and ways of existing, have rights* is true, and everyone *should* believe it.[13] Unfortunately, many people don't believe it, or their

[13] It should be acknowledged, however, that rights are *prima facie* in nature: they can be overridden, or undercut, by a variety of concerns. One potential concern is autonomy. Another concern is well-being or quality of life. Combine these and we have a potential case for voluntary euthanasia: when (a) someone's quality of life is so poor, they have such low levels of well-being, that they (b) judge, for themselves that they would prefer to no longer keep living, then it can be right to assistant them in ending their lives. Any such a case would be rejected by those who claim that it's always wrong to kill any human being or let them die, when their life can continue.

It is perhaps worthwhile to observe that some of the background context of the philosophers who Eva Feder Kittay has discussed, or debated, issues about ethics and human disability are philosophers who have argued in favor of the potential acceptability of some euthanasia. In arguing that euthanasia is can be or is *sometimes* acceptable, and providing potential examples of when this might be so, it might be that these philosophers have made uniformed and under-informed judgments about how many human beings experience their lives (as critics of euthanasia sometimes

actions strongly suggest that they don't, especially about vulnerable human beings.[14] "They are not *like us*," some say, to try to justify and excuse negative attitudes, feelings, and beliefs about vulnerable human beings. These beliefs make for actions and policies that are, to say the least, sometimes unfriendly towards these human beings. There has been important progress on these issues, but we, individually and collectively, often have a long way to go towards fully believing and acting like *all* human beings, in *all* their varieties, have rights.[15]

Why do *all* human beings have rights though? Even if it's clear *that* we have rights, there are competing explanations *why.* It is clear that human beings have rights *not* because they have some level or kind of "high rationality," since many human beings lack this. We have rights, at root, because we are sentient, because our lives can go better and worse from our own points of view. This is why the first premise is true.

The second premise of the argument relates that explanation to sentient animals: since human beings, in all their varieties, have rights *because* of properties that many animals have, it follows that many animals have rights. To put it another way, if animals are believed to *lack* what makes for rights, then many human beings lack rights also; but these, and all, human beings have rights, so many animals have rights too. These insights lead to an argument, that can be stated in different ways, that involves core premises such as these:

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do, e.g., in insisting that pain-killing medications are adequate in all cases, that nobody *really* wants to die, and so on). If this is so, and especially if it is willful, that is unfortunate, since we should always try to be responsibly informed about any important issues we address.

[14] Sometimes, vulnerable human beings are neglected; they are abused; they are treated in disrespectful ways; they are ignored, misunderstood and not sought to be understood; their perspectives and preferences are dismissed; they are mocked; they are viewed with contempt, seen as burdens, seen as inferior, and seen as not worthy of the material, emotional and relational goods needed for their lives to flourish. Sometimes it is judged from afar that *their lives* must not be worth living, that *they* are worthless, without even asking them what their perspectives on their own lives are.

[15] Some might object at this positive affirmation of the rights of vulnerable human beings by asking about "lifeboat" cases: there is a variety of human beings in the lifeboat, including vulnerable ones, some of which we allegedly "must" throw overboard or all remaining will perish. The question of who, if anyone, should be thrown overboard in this *hypothetical* situation is sometimes said to be illuminating for, some would say, has the most value, worth and who the greatest obligations are owed to in *actual* circumstances. I reject this strategy, since it is usually presented as an "excuse" to harm. But it obviously isn't: I might save my child over you in such a lifeboat, but in no way would that justify my drowning you in any ordinary circumstance or mean that you are inherently less worthy or due respect. "Lifeboat" cases then *tend* to distract from the pressing, actual issues at hand.

Others object to thinking there are serious positive duties to vulnerable human beings by claiming we lack adequate resources to provide for them. In response, I will observe that, for many people in much (but not all) of the world, our lives are overflowing with frivolities and waste, often to our own peril. So, any claims of inadequate resources for vulnerable humans is a result of *choices* made and how our priorities are set. These priorities, of course, are not inevitable: they can be changed, and they *should*.

- *If* vulnerable human beings have rights, *then* so do animals.
- If animals *don't* have rights, then neither do vulnerable human beings.
- Either *both* animals *and* vulnerable human beings have rights, or *neither* does.
- If "high rationality" is *necessary* for rights, then *neither* vulnerable human beings *nor* animals have rights.
- If sentience is *sufficient* for rights, then both human beings and animals have rights.

From these premises, we add other premises affirming that vulnerable human beings have rights and concluding that animals also have rights.

This type of reasoning, historically, has been called the "argument from marginal cases." [16] More recently, this argument has been renamed the "argument from species overlap." This new name makes clear that morally-relevant characteristics *overlap* different species, for example, the properties of consciousness and sentience "overlap" with human beings and animals, so both humans and animals have rights since that's what determines rights.

How should we evaluate this argument, in the many ways it can be evaluated?

2.3.2.1. Is the Argument Offensive?

First, we should acknowledge that earlier name of the argument, from "marginal cases" or "marginal" humans or human beings, is *offensive*. Calling innocent human beings "marginal" is just rude, to say the least. Suppose we consider someone a "marginal" spouse, or parent, or teacher, or writer, or friend, or even just a pretty "marginal" person in general. When this is false, this is offensive, and this is *always false* of vulnerable human beings, and so *always* offensive.[17]

Second, names and labels like these matter. Calling someone "marginal" influences how they are seen and treated. Conceptualizing and categorizing a group of human beings as "marginal" *cannot* help them in any way: that is *not* language that can or will help improve

[16] Daniel Dombrowski in *Babies and Beasts* reports that Jan Narveson gave this type of argument this name. Narveson is a well-known critic of arguments in defense of animals. Dombrowski DA. Babies and beasts: The argument from marginal cases. University of Illinois Press; 1997, p. 1.

[17] For discussion, see Horta O. The scope of the argument from species overlap. Journal of Applied Philosophy. 2014 May;31(2):142-54.

anything for them. If they are seen as "marginal," then bad things that happen to them might not seem so bad, so there's really no need to work for change for the better, for them. This language was unfortunate, in many ways. Fortunately, some people are doing better or trying to do better, beginning with word choice.

2.3.2.2. A Dangerous Argument?

Calling the argument the "argument from species overlap" avoids these language-based offenses, but there are worries about the argument itself.

Advocates of the argument claim that since vulnerable human beings have rights, so do many animals. Some are positively influenced by the reasoning, but others *could* respond with this: "Since animals *do not* have rights, then, apparently, neither do vulnerable human beings!"[18] This response is very bad: if it's ever given or inspires any harmful actions toward vulnerable human beings, that's even worse. Vulnerable humans *have* been "animalized," treated "like animals" and abused, and we don't want to in any way encourage that. If *strong* arguments for animal rights exist that avoid even the *potential* for any "animals lack rights, so *any human beings who are 'like animals' lack rights* also" reaction, that would be ideal. I argue below, however, that it is unlikely that any strong arguments for animal rights could avoid this *potential* misuse or abuse.

We might wonder, however, how common this response is or would be: how likely is it that anyone would respond this way to try to justify harming any human beings? As far as I know, the only philosopher who has reasoned *exactly* this way was Ray Frey, who seemed open to the possibility of "human vivisection" being justified *if* animal vivisection was justified (and he apparently thought it was, on utilitarian grounds). Frey's position, however, was rejected by

[18] For expression of these concerns, see O'Brien, GV. People with Cognitive Disabilities: The Argument from Marginal Cases and Social Work Ethics. Social Work. 2003; 48 (3): 331–337. It should be noted that O'Brien does not address the question of *why* any human beings have rights and so whether these rights-conferring properties are also had by any animals: in that way, he misunderstands the point of the argumentative strategy that he rejects. For a reply from another social worker, see Ryan T. (2014) The Moral Priority of Vulnerability and Dependency: Why Social Work Should Respect Both Humans *and* Animals. In: Ryan T. (eds) Animals in Social Work. The Palgrave Macmillan Animal Ethics Series. Palgrave Macmillan, London. For another expression of this concern, see Crary, A. The Horrific History of Comparisons Between Animals and Cognitively Disabled Human Beings (and How to Move Past it). In Lori Gruen and Fiona Probyn Rapsey, eds., Animalides, Bloomsbury, 2018.

nearly everyone, especially advocates of harmful animal use who insist that there are clear moral differences between humans and non-humans.

But there may be awful people who attempt to rationalize abusing human beings and deny their rights, *on the grounds that* they think animals lack rights and so animal abuse is not inappropriate.[19] For example, some people, often beginning as children, abuse animals and then go on to abuse human beings, vulnerable and not. This abuse is wrong with both animals and humans, of course, and so it couldn't get any moral justification from anything related to the "argument from species overlap," insofar as these beliefs are not justified.

Could (mis)understanding the argument *inspire* more abuse? This depends, in part, on why an abuser abuses. Do these abusers abuse human beings because *these* humans are "like" animals, in that they too lack "high rationality" or are especially vulnerable in various ways? If so, then the concern about appealing to the "argument from species overlap" seems to be that certain animal abusers didn't notice that their (bad) reasons to abuse animals extend to some human beings and that they will realize this and accept this implication.

How likely though is it that such abusers do not already realize this? Abusers are bad, and sometimes even evil, but they likely can see obvious similarities between different types of beings, especially if they are intentionally seeking victims. If they didn't notice this and think, "Aha, since I am abusing animals *for these reasons* . . to be consistent I should also abuse human beings!" the *root* problem is their believing that abusing animals is acceptable and, if they have reasons to believe that, that their thinking that their reasons are *good* reasons: the root of the problem is *not* acknowledging the truth that animals and humans are similar in some important ways. Consider a man who abuses women. Suppose he is told, "If abusing men is wrong, then

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[19] The relationships between animal abuse and various types of human abuse, including negative attitudes and beliefs about other human beings, is complex since there is no clear connection between the types of abuse and negativity. For example, many Nazis had positive views about many animals, and many contemporary school-shooters have had positive relationships with animals; and many people abuse animals in various ways, but few of them go on to abuse humans. For discussion and references, see Herzog, H. Animal Cruelty Does Not Predict Who Will Be A School Shooter, Animals and Us Psychology Today blog, Feb 21, 2018, https://www.psychologytoday.com/us/blog/animals-and-us/201802/animal-cruelty-does-not-predict-who-will-be-school-shooter and Arluke A, Sax B. Understanding Nazi animal protection and the Holocaust. Anthrozoös. 1992 Mar 1;5(1):6-31. The point, as I suggest below, is that it is hard to identify an "ideal" potential animal abuser or animal-rights denier who would be *likely* be emboldened to abuse any human beings or deny their rights *because* of their understanding of the "argument from species overlap" or the premise that *if vulnerable human beings have rights, then animals have rights.*

abusing women is wrong, since they are relevantly similar." If he responds, "Well, I guess I should be abusing men too!" the problem here was *not* sharing the true observation of relevant similarity: the problem was his other false beliefs, at least.

To reiterate, abusers might seek victims who they can, say, inflict pain on, or are vulnerable, or who lack "high rationality," and so abuse both animals and humans. Such abusers, of course, have false moral views about animals: their *unsound* arguments about animals, with their false views about, e.g., "high rationality" determining rights, *do* extend, however, to other false conclusions about humans who lack high rationality. This is all problematic, and we should try to correct their false moral assumptions, but it is hard to see how denying the truth that some animals and some human beings are similar, in morally significant ways, would be part of an effective strategy to respond. Indeed, denying that would seem to be counterproductive. Kymlicka reports that:

> . . the evidence shows that the more sharply people distinguish between humans and animals, the more likely they are to dehumanize other humans, including women and immigrants. . . Social psychologists have shown that inculcating attitudes of human superiority over other animals worsens, rather than alleviates, the dehumanization of minorities, immigrants and other outgroups. . . Reducing the status divide between humans and animals helps to reduce prejudice and to strengthen belief in equality amongst human groups.[20]

So, while some might be concerned that the "argument from species overlap" will give wrongdoers more bad ideas about what else they should not do, observations of morally significant similarities between animals and human beings might have positive effects.

In sum, it is hard to see how any actual abuse of human beings would get inspiration from the "argument from species overlap."[21] Some human beings *are* regrettably "animalized": they

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[20] Kymlicka W. Human rights without human supremacism. Canadian Journal of Philosophy. 2018 Nov 2;48(6):763-92, pp. 773-774.

[21] It has been observed that some workers in animal-abuse industries (for example, slaughterhouse kill-floor workers) more often victimize other human beings. Is this *because*, if and when they (falsely) believe that harming animals is *not wrong*, this *causes* them to (falsely) believe, by way of analogy, that it's also not wrong to harm

are called "animals" or said to be "like animals" to try to "justify" treating them badly.[22] Treating humans "like animals" is profoundly wrong (just as it is wrong to treat *animals* "like animals," in this way of thinking!), of course, but this gets no *literal* inspiration from the argument above, which *begins* with the firmly held presumption that *all* human beings are due respect and to be treated well and *ends*, at least in the intended formulation, that *animals* shouldn't be treated "like animals." "Animalizing" human beings began with thinking that animals are worthless and due no respect, which this argument denies.

If we must consider any bad *potential* results from the "argument from species overlap" and its expression, we must also consider any good potential results. One powerful, and not uncommon, basic insight gained from thinking through the argument is an expression like this:

> "I know it would be profoundly wrong to treat *any* human being the ways these animals are treated, and so I now *see* that it's wrong to treat many animals these ways also."

The argument *definitely* sometimes has these results, and we wouldn't want to lose them unless they would be gained in another, better way, or unless it's just wrong to appeal to the argument.

Most importantly, restricting ourselves from the full range of human beings puts us at a serious epistemological disadvantage in our moral theorizing for animals. First, to *refute* principles that claim only individuals with "high rationality" have rights, we must provide counterexamples, such as vulnerable human beings, to show that these principles are false. And to justify general species-neutral moral principles, or moral principles about human beings in general, with pro-animal implications, we will likely have to support these principles by appealing to their positive implications and explanatory power for particular cases, including

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certain human beings who they find in some ways similar to animals? Here what seems more likely the emotional and moral stress resulting from repeated brutal wrongdoing influences their character, which leads them to lash out at other human beings, especially those they can get away with abusing.

[22] Typically, being treated "like an animal" or viewed as being "like an animal" is profoundly wrong and offensive due to common negative assumptions and associations with animals. One potential exception though is that it's widely thought that animals with a very poor quality of life ought be humanely euthanized. It is argued that some human beings *should* be treated "like animals" in this way, when their quality of life is so poor that they judge, for themselves, that they would be better off no longer living and so wish to be killed or seek assistance in ending their own lives. Of course, some argue that it is always wrong for anyone to intentionally kill an innocent human being; in response, some argue that we realize this isn't true or appropriate for how we treat animals, so it isn't true or an appropriate ethical guideline how how we always treat human beings.

cases of vulnerable human beings: the same is true for fully general moral theories. So, *ignoring* vulnerable human beings in our moral theorizing is offensive, but *excluding* them is offensive and unwise also.

2.3.2.3. An Unsound Argument?

Elizabeth Anderson claims an argument like the "argument from species overlap" is "the central argument" in support of pro-animal moral views.[23] *If* the claim is that a version of the argument is most often *directly* appealed to in cases for animal rights, that is doubtful: some arguments for animals are from species-neutral moral principles; other arguments are from human beings "in general"; others argue from a general moral theory; others argue in defense of one species by appealing to intuitions and arguments about other species: for example, it's wrong to harm cows since it's wrong to harm cats and dogs; and there are other strategies also.

Perhaps the claim is that the argument is "central" in that, ultimately, in trying to justify moral principles that have positive implications for animals, we will inevitably have think about these principles' implications for vulnerable human beings and, on that and other bases, decide whether to accept the principles. If that is what's meant, this is correct: moral principles are usually judging in light of *all* their implications for cases, actual and hypothetical, and this includes implications for vulnerable human beings. And that's not a problem.

Nevertheless, some argue that the "Argument from Species Overlap" is unsound. Recall the core premise:

> *If human beings, in all their varieties, stages and ways of existing have rights, then some animals have rights.*

[23] Anderson, E. Animal rights and the values of nonhuman life, In Sunstein, C. and Nussbaum, M. (eds.) Animal Rights: Current Debates and New Directions.Oxford University Press, 2004. She argues that, "Moral considerability is not an intrinsic property of any creature, nor is it supervenient on only its intrinsic properties, such as its capacities. It depends, deeply, on the kind of relations they can have with us (p. 289). For discussion and critical doubts that "Moral considerability" is ultimately a relational property, see my comments below as well as Dombrowski DA. Is the argument from marginal cases obtuse?. Journal of Applied Philosophy. 2006 May;23(2):223-32 and Gruen L. Ethics and animals: An introduction. Cambridge University Press; 2011 Feb 3, 65-75.

Critics deny this premise by arguing that the ultimate reason *why* human beings have rights, in particular, the varieties of *vulnerable* human beings, do not apply to animals. So, it is argued that vulnerable humans have rights *not* because they are sentient, but because of one or some combination of these reasons:

(a) they are cared about by other human beings[24];

(b) they are biologically human, or are biologically human organisms, or are of the human species;

(c) they have a genetic code that, when functioning properly, would bring about moral agency[25];

(d) they have the *potential* for high rationality and related abilities, for example, moral agency and reciprocity;

(e) human beings "normally" have high rationality and the rights that result from rationality, and should be treated *as if* they were "normal,"[26] especially since not doing so will likely lead us to deny rights for "normal" human beings[27];

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[24] For discussion in favor of a position like this, see Kittay EF. The personal is philosophical is political: A philosopher and mother of a cognitively disabled person sends notes from the battlefield. Metaphilosophy. 2009 Jul;40(3-4):606-27. For discussion, see Gruen L. Ethics and animals: An introduction. Cambridge University Press; 2011 Feb 3, 65-75. In quick reply, while we don't want to denigrate the value of care and relationships, we can pose a Euthyphro-like dilema to such views: should someone cared for *because* of what they are like *in themselves*, which includes being valuable and worthy, or is someone valuable and worthy *because* they are cared for? The first option is arguably better and so it might be that views that appeal to caring and relationships ultimately depend on views that claim more "intrinsic" properties are what ultimately make for rights.

[25] See Liao SM. The basis of human moral status. Journal of Moral Philosophy. 2010 Feb 1;7(2):159-79.

[26] For discussion of the various sources of this argument, see Wilson S. The species-norm account of moral status. Between the Species. 2005;13(5):1.

[27] For discussion of the various sources of this argument, see Tanner JK. The argument from marginal cases and the slippery slope objection. Environmental Values. 2009 Feb 1:51-66.

(f) all human beings *would* have some specific abilities or capacities, related to high rationality, were it not for their age or "disability," and should be treated as if they actually had these capacities;

(g) all human beings are a "kind" of being, or have a certain "essence" or "nature," that is defined by high rationality[28];

(h) it is *possible* that all vulnerable human beings become, or had been, *persons with high rationality*, and that possibility is more "natural" or "realistic" than any possibilities for any animals becoming persons, in this sense of "person"[29];

(i) they are sentient *and* biologically human, or cared for, or are of a particular "kind," or have some other characteristics that *only* human beings have.

There are other ways to try to explain why, morally, *all* human beings have rights, but animals don't, or their moral statuses are drastically different.[30] If any of these explanations why vulnerable human beings have rights is better than the simpler explanation that they have rights because they are sentient then the "argument from species overlap" fails: we can't appeal to moral facts about human beings to justify analogous moral claims for animals.

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[28] Proposals like these are developed both by some critics of animal rights, as well as some thinkers who argue that abortion is wrong by appealing to a certain "metaphysics" of human beings. For discussion, see Nobis N. Tom Regan on Kind Arguments against Animal Rights and for Human Rights. In Engel, M. and Comstock, G. (eds). The Moral Rights of Animals. Lexington Books; 2016 Mar 16; and Nobis, N. Reply to Christopher Tollefsen on Abortion. In Fischer, B. Ethics: Left and Right. Oxford University Press, 2019.

[29] This is roughly a concept "modal personhood" developed by Shelly Kagan. See Kagan S. What's Wrong with Speciesism? (Society for Applied Philosophy Annual Lecture 2015). Journal of Applied Philosophy. 2016 Feb;33(1):1-21. For immediate responses, see Singer P. Why Speciesism is Wrong: A Response to Kagan. Journal of Applied Philosophy. 2016 Feb;33(1):31-5, McMahan J. On 'Modal Personism'. Journal of Applied Philosophy. 2016 Feb;33(1):26-30 , DeGrazia D. Modal personhood and moral status: A reply to Kagan's proposal. Journal of Applied Philosophy. 2016 Feb;33(1):22-5 and more recent critical discussions of modal personhood.

[30] One way is by appealing to various "contractarian" or "contractualist" theories of morality that see morality as like a "contract" that individuals agree to for mutual benefit. A persistent challenge for such views is how to account for the moral status of human beings who lack the abilities to understand and agree to any such contract. Another concern about such views is that if the contract is intended to promote benefits, then it seems that benefits, or well-being, is what really matters, and so that should be the ultimate concern, not whether anyone can agree to any actual or hypothetical contract.

Some respond that some of these principles indeed apply to animals: perhaps some animals are or could be loved by some human beings as strongly and as profoundly as they love other human beings and so proposal (a) would justify rights for *those* animals. And there are ways to argue that nothing really prevents us from thinking that animals *are* the same "kind" of being as human beings and that we have the same essence or nature and so (g) is false. Some might even propose that *maybe* animals do have a kind "high rationality" that would be expressed if it weren't for some blockage that they are experiencing and so proposal (f) can be adapted to argue for animal rights.

Responses like these *might* be a stretch though, and so we should likely focus on why these proposals are doubtful for securing human beings' rights.

First, if having rights depends on whether anyone *cares* about that someone, as (a) suggests, that is a shaky foundation: that "care" could be lost, but that someone's rights aren't lost because of it. And individuals are cared about *because* of what they are like, so, *those* characteristics would determine rights, not that they are cared about. And this proposal might suggest that literally *anything* cared about would have rights, a seemingly mistaken implication.[31]

Biological theories, like (b) and (c), are potentially problematic in that they might entail that human embryos and fetuses, or even just random human cells and tissues, have rights: the same is true about (d) - (h). They might also have false end-of-life implications, for example, for permanently comatose individuals. While some accept these implications, others are reluctant to believe that to *successfully* argue that vulnerable born human beings have rights, one *must* also believe that abortion, embryo research, and voluntary euthanasia are likely wrong.

Biological theories also seem to propose the wrong features to account for rights. Why do we have, say, the right to life? In part, because losing our lives is *bad* for us, and that's because of our psychologies, not our biologies, especially since it's clear that not everything biologically human has rights: e.g., random cells, tissues, and organs.

Some may argue that proposals like (b) and (c) are "speciesist": unjustified discrimination in favor of our own species. That objection is more convincingly made by observing that *just because* something is biologically human, that doesn't amount to much, or

[31] For discussion of proposals like this, see Harman E. Sacred mountains and beloved fetuses: can loving or worshipping something give it moral status?. Philosophical studies. 2007 Mar 1;133(1):55-81.

maybe even anything: again, *random* biologically human cells have no moral status whatsoever. So, discrimination in favor of beings that have a characteristic that is, in itself, morally irrelevant, is unjustified.

Proposals (d)-(h) have the vice of being potentially offensive: they all seem to propose that vulnerable human beings have rights because of their relations to what is presented as "ideal" human beings, namely, those with high rationality. This is offensive: it's like proposing that women have rights *because* they are similar to men. Vulnerable human beings have rights because of what they are like in themselves, *not* because there are relations between them and human beings with "high rationality."[32] These types of explanation are offensive and false.

Proposals (d)-(h) also might assume a potentially offensive, and perhaps false or, at least, *indeterminate*, "metaphysics" of classification: for example, proposal (f) seems to assume that vulnerable human beings are faulty or interior instances of a general *type*; proposal (e) sees them as not-normal, relative to norm set by other human beings. But why not see them, why aren't they, perfectly *normal* instances of *their own* type, kind or group? Why not understand them as what they are, which is to not see them as "inferior" or "faulty" examples of something else?[33]

And we should wonder about the rational viability of proposals (d)-(g). Some seem *ad hoc*, in the sense that the principles are developed and proposed for this sole purpose, but would be seen as unsound in any other context: for example, suppose someone had the DNA that *would* or *could* make them a great athlete, were things quite different in their lives: should we treat them now *as if* they are great athlete, even though they are not? No. Suppose someone who is *normally* able to drive is given some responsibilities because of that ability; they can't drive now, but they *normally* can, so they should still have those responsibilities? No: individuals should be treated in terms of what they are actually like, not what they could or would "normally" be.

The point is that if these principles are generalized and analogous proposals developed, we see that these analogous proposals are either false or doubtful, which suggests the initial

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[32] This is an expression of James Rachels' idea of "moral individualism," that individuals should morally evaluated in light of "their own" properties, not what groups they are members of. Explaining this idea in a satisfactory way is challenging since one's group memberships and relations to others *are* one of "one's own" properties. We might attempt characterizing these properties as intrinsic and extrinsic but that might not be an ideal categorization either. Rachels J. Created from animals. The Moral Implications of Darwinism. Oxford University Press. 1990.

[33] See Wilson S. The species-norm account of moral status. Between the Species. 2005;13(5):1.

principles are either false or, at best, supported by little reason beyond they fit for this sole occasion and nothing else. This type of intellectual gerrymandering is inappropriate, especially if the motivation is to avoid accepting a simpler, sentience-based theory of rights and its positive implications for animals, and human beings.

Finally, complex proposals like (i) suggest that consciousness and sentience are the basis of moral rights, but *only* in combination with some properties that only human beings, and no animals, have. So, on this proposal, sentience is insufficient for rights and so animals lack rights. However, sentient human beings have rights *because* they *also* have properties like (a)-(h). Since (a)-(h), however, were, at best, dubious bases for rights, it's unclear how adding them to a plausible, simpler basis for rights would improve that theory: what exactly was the "problem" with thinking that *anyone* who is sentient has rights, other than, according to some, this supporting animal rights?

Complex proposal (i) might eliminate any even *potential* for misuse and abuse of the "argument from species overlap" against vulnerable human beings. But all versions of this proposal come at a high theoretical and practical costs to animals. And some versions of it can likely be shown to be false, at least with some imaginative arguments: for example, if some non-human space aliens existed, who were cognitively comparable in every way to human beings, some versions of (i) might suggest either that these aliens have no rights or that human beings' interests should *always* come before these alien beings' interests. But these are arbitrary and unjustified implications since these two kinds of beings are the same in every morally-relevant way, so (i) is again doubtful.

In conclusion, some of the principles (a)-(i) might be hard to evaluate: some might rest on core intuitions that are harder to refute *or* defend. Proposals like these are sometimes used, however, to support a common sense that there is something "special" about human beings, especially vulnerable human beings, that sometimes gives them a kind of moral priority over all animals. I share and understand that intuition, and I suspect most animal advocates ultimately agree: with all due respect to animals, no vulnerable human being, whatever their mental life is like, should be treated "like an animal," say by being put to bed, naked, in a dog bed, crate or in a barn. That a conscious being is *of our species* does provide *some* guidelines for how that being

must be treated. Acknowledging this, however, does not require denigrating or disrespecting animals.

3. Moral Epistemologies for Human Beings

Our discussion of moral epistemologies for claims about basic rights for human beings, and their implications or suggestions for animals, can move more swiftly: the issues are generally simpler, more familiar and build on prior discussion.

3.1. "Intuition"

For some people, it's just *obvious* that human beings, *all* human beings, have rights: they know this by "intuition." They might think that asking *why* this so, what *makes* human beings have rights, is perhaps interesting, but in no way not necessary for justified beliefs about these matters. And they might sometimes be right.

3.2. Arguments from Non-Species-Specific Principles

Beyond intuition, some argue that human beings have rights, ultimately, because we are sentient. Our being minded beings allows for us being harmed and benefited, which rights ultimately protect: rights make certain harms wrong and make providing certain benefit obligatory.

This broad theory of rights, of course, has positive implications for sentient animals. And the strategy is wise: we begin with what we are most confident in, namely, that we have rights, ask why this is so, and observe that better explanations have positive implications for many animals.

3.3. Rationality-Requiring Theories of Rights

Some argue that human beings have rights *not* because we are sentient, but because we are rational, or autonomous, or are moral agents or have other characteristics resulting from "high rationality." Such a theory of rights might be developed to try to avoid the pro-animal implications of a sentience-based theory. Or it might be developed out of a basic sense that

rationality is what gives us rights: they ask *why* we have rights and this type of answer seems best to them.

Such a theory would seem best, however, only to those who consider a limited set of human beings. Ignoring human babies, severely cognitively and emotionally-challenged human beings, human beings with certain disabilities, and vulnerable human beings generally is best for believing this theory. Once these human beings are acknowledged, they serve as major counterexamples. This moral data must either be accepted or rejected and the theory re-affirmed, rejected, or modified.

3.4. Theories of Rights based on Relations to (Rational) Human Beings

In response to these concerns, those who argue for rights for human beings may augment their proposal that *actual* rationality is needed for rights to proposals that *if* someone is *cared* for, or has certain *biological properties*, or has certain *potentials* or there are certain *possibilities* for that individual, is of a certain *kind*, would "normally" be a certain way *had things been different*, has some specific *essence* or *nature*, or has some other qualities extrinsic to that individual's own mental life, or some combination of these characteristics, *then* that individual has rights. So, someone can either be rational, *or* be like any of this, and have rights.

These proposals were *briefly* evaluated earlier, however, and found wanting, as explanations for why vulnerable human beings have rights. These criteria typically do not *prevent* animals having rights, however, since they only offer *sufficient* conditions for rights, not *necessary* ones. These theoretical justifications for human rights provide no support for animal rights, however.

3.5. *From* Animal Rights to Human Rights

We might argue for human rights on the basis of our similarities to animals. This begins with positive views about animals: given what many animals are like, in all their cognitive, emotional, relational, and social abilities and capacities, they are due respect and have rights. From here, we might observe that many human beings are *like* animals in many comparable ways, so they too are due respect and rights.

This is *a* way someone could come to believe, or believe more strongly, that human beings, including vulnerable human beings, have rights. Reflecting on everything we know, morally, generally produces more consistent and coherent moral outlooks, regardless of where that reflection begins.

3.6. Other Arguments

Finally, among other options, one might argue that human beings have rights from a moral theory. Some theories will be immediately positive, at least "in theory," for vulnerable human beings *and* animals: for example, utilitarianism and many of its descendants. Other theories, for example, Kantianism in Kant's own words, will have poor implications for many vulnerable human beings and likely all animals. These theories can often be modified to accommodate vulnerable human beings, and the more obvious modifications typically have pro-animal implications. When these implications are resisted, that often gives rise to the concerns of the "argument from species overlap," discussed above.

4. Conclusions: What Should We Think? What Should We Do?

In conclusion, there is the broad issue of animal rights, and the broad issue of rights for human beings, especially vulnerable human beings. What should everyone here, from each starting point of the issues, think, and do?

4.1. Animal Advocates

First, animal-rights advocates should be human-rights advocates, which they often are.[34] Could they often do this better? Yes. Acknowledging animal rights does not, in itself, make anyone a morally better person, or improve moral judgment, in any other areas of life. Since better theoretical bases for animal rights are *confirmed* by positive moral implications for human

[34] What an "advocate" is is an important question. Advocacy involves more than having certain beliefs about an issue, but what else? And how much more, and what types, of efforts are needed to make an *advocate* out of *someone who sometimes engages in some advocacy*? However these questions are best answered, I suspect that most people who believe that human beings and/or animals have rights sometimes engage in *some* advocacy, even if that is merely sometimes saying *something* to others about these issues with the intent to inform, engage or persuade.

beings in all their varieties, the main challenges here are practical and motivational – seeing this clearly and putting it into consistent practice – not theoretical.[35]

4.2. Human-Rights Advocates

Second, advocates for the rights of human beings should be advocates for the rights of *all* human beings, not just those with high rationality, if they are not already. For some, this requires overcoming prejudices and biases against certain types of human beings.

These human-rights advocates also likely should be animal advocates, since the arguably best reasons for acknowledging human rights suggest animal rights.

Unfortunately, human-rights advocates usually resist and reject animal rights.[36] Too often, otherwise well-meaning and reflective people, including so-called "liberals" and "progressives," who *claim* to oppose racism, sexism, ableism, ageism, homophobia, transphobia, and support environmental and social-justice concerns, give blatantly irrational, apathetic and irresponsible responses at even the mere *suggestion* that, *maybe*, there are good moral reasons to choose something vegan from the menu they are looking at and avoid the meat, dairy and eggs sections of the supermarket, much less well-developed moral positions on the treatment of animals.

We have focused on feelings of offense had by some human-rights advocates, but animal advocates surely also sometimes feel offended by these common apathetic and irresponsible attitudes about animal issues.[37] It is rare for any human-rights advocate to sees human oppression in terms of oppression generally and so notice the oppression of animals: the more typical reaction is ridicule and resistance, but hopefully this is changing.

This resistance to animal rights is sometimes due to having an unreflective and likely false or indefensible explanation for why human beings have rights: they may accept a theory

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[35] Animal advocates also must judge whether more of their efforts are better spent advocating for animal issues, human issues or both. This is a complex judgment that includes factors such as the severity of the harms and wrongdoing, the number of advocates, and the likelihood of success or positive impact on the issues.

[36] For discussion, see Kymlicka W, Donaldson S. Animal rights, multiculturalism, and the left. Journal of Social Philosophy. 2014 Mar;45(1):116-35 and Kymlicka W. Human rights without human supremacism. Canadian Journal of Philosophy. 2018 Nov 2;48(6):763-92.

[37] Animal advocates are also sometimes discriminated against because of their well-justified moral views. That means that some people who have *unjustified* moral views about animals engaged in *unjustified* discrimination, and other wrongdoing and offenses, against those who have *justified* moral views: that's offensive. For discussion, see Horta O. Discrimination Against Vegans. Res Publica. 2018 Aug 15;24(3):359-73.

that has poor implications for both vulnerable human beings and animals. Since human rights advocates are rarely challenged on their claim that human beings have rights or asked *why* we have rights, it's not surprising that some people would advocate for human rights in a less-informed and reflective way.

This resistance is also based on other reasons that tend to be no good and pressures that are morally suspect. For some people, it is easier to "resist" human oppressions since doing this often does not require *doing* much, especially on a daily basis, beyond having particular attitudes, voting, and occasionally engaging in some protests. To many, believing in animal rights demands more: it affects one's daily food and clothing choices, at least. Given these demands, resistance is unsurprising, although lamentable.

Nevertheless, *if* the arguments for animal rights, broadly understood, are better than those against, then human-rights advocates should accept them since *everyone* should accept them. Human-rights advocates often have no incentive, beyond what some see as the profound incentive of moral and intellectual integrity, to acknowledge animal rights: animal rights-related insights provide few theoretical, practical or persuasive resources necessary for human-rights advocacy. Questions about the *ultimate* foundations of rights *for anyone* needn't be raised to argue against sex slavery, brutal punishments, unjustified imprisonments, genital mutilations or any other human-rights violations. So, animal-rights issues would likely distract human-rights advocates whatever advocacy goals they have for human beings.

Human-rights advocates accepting animal rights and acting on that acceptance presents greater challenges than any challenges animal-rights advocates face in recognizing and advocating for human rights.

4.3. Foes of Human and Animal Rights

Finally, there are people who genuinely disbelieve in human rights, and reject any serious general moral obligations towards other human beings: for example, racists, sexists, nationalists and more. These people *tend* to vehemently reject animal rights also: extreme callousness towards human beings is rarely coupled with consistent respect for animals.

For any of *these* people who could come to accept better moral outlooks, should we begin the discussions with human rights or with animal rights?[38] If human rights, should we begin with thinking about the rights of various vulnerable human beings, or should we begin by thinking about so-called "normal" adult human beings? Or could there sometimes be value, even with these audiences, in starting with animals? For people who majorly lack empathy, it might be best for them to start thinking about their own rights, why they have them, and whether and why they would retain their rights if various changes happened to them. But research is needed here to determine what would make the greatest moral changes for most people.

4.4. Advocacy

In making a case for animal rights, should anyone appeal to vulnerable human beings and why they have rights? It depends: it depends on who they are, who the audience is, their relationship, and much more.[39] If someone does this in a callous and alienating way, then no. But some people do this in sensitive, illuminating and persuasive ways, sometimes from their own or personal experiences.[40] And if any ethical discussion leads to questions about the ultimate basis of rights for *anyone*, we will inevitably examine and reflect on a wide range of cases, human and non-human, and consider any potentially relevant logical and explanatory relations among them.

One suggestion is that we begin with the question of human rights, and even our own rights, try to establish that, and then reason from that more familiar starting point to animals. In that way, most people are potentially like Tom Regan, who confessed:

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[38] I do not naively assume that *arguments*, or arguments alone, can or will always, or even often, change people's hearts and minds for the better in how we view other beings, human or non-human. (For discussion, of this claim that more *data* won't lessen racism or speciesism, see Ko, S. Emphasizing similarities does nothing for the oppressed. In Ko A, Ko S. Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters. Lantern Books; 2017. Her hypothesis that speciesism is a consequence of "Eurocentric, white-supremacist ways of thinking," however, is dubious, given that animals are used, abused and disrespected globally, by all races of people). If arguments had that impact, that world would likely *already* be a much better place, given that there are no good arguments in favor, and ample good arguments against, the many abusive and disrespectful actions and attitudes of this world. Nevertheless, whatever forms of persuasion are best (for particular audiences, in particular contexts), people should be persuaded towards whatever beliefs, feelings and attitudes that can be supported with the best arguments. Which arguments are best has, of course, been our focus here, and this type of argument analysis is necessary, but not sufficient, for moral progress.

[39] For insightful discussion, see Sebo, S. Multi-Issue Food Activism. In The Oxford Handbook of Food Ethics. Edited by Barnhill, A. Budolfson, M., and Doggett, T. Oxford University Press. 2018.

[40] For an moving and vivid example of this advocacy, again, see Taylor S. Beasts of burden: Animal and disability liberation. The New Press; 2017 Mar 7.

> I would never have become an animal rights advocate if I had not first been a human rights advocate, especially for those humans (the very young and the very old, for example) who lack the understanding or power to assert their rights for themselves.[41]

But there is no one best route to the reasonable acceptance of rights for human beings *or* animals. And there's no one best way to persuade, although we should seek empirical generalizations on these matters. For some, the discussion might best begin, for epistemic or persuasive purposes, with vulnerable beings, human *or* animal, who many of us are actually most confident in our moral views about, despite any of the philosophical controversies discussed here.[42]

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[41] Regan T. Empty cages: Facing the challenge of animal rights. Rowman & Littlefield; 2004, prologue.

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