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Animal Rights Theory and Utilitarianism: Relative Normative Guidance

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I. Introduction

In **Practical Ethics**, Peter Singer rejects the notion that ethics is "an ideal system which is all very noble in theory but no good in practice." [2] Singer identifies deontological approaches to ethics, such as rights theories, as impractical and as having to "rescue" themselves from their inapplicability to moral issues in the real world through the introduction of "complexities" such as formulating very detailed rules or establishing ranking structures for rules. He argues that utilitarianism does not start with rules but with goals, and thus has greater normative specificity because actions are prescribed or proscribed based on "the extent to which they further these goals." [3] Utilitarianism, Singer argues, is "untouched by the complexities" required to make deontological moral theories--including rights theory--applicable in concrete moral situations.[4] According to Singer, "[t]he classical utilitarian regards an action as right if it produces as much or more of an increase in the happiness of all affected by it than any alternative action, and wrong if it does not." [5]

Singer's views about the nature of rights theory have had a profound impact on the animal rights movement. In the past five or so years, an increasing number of animal advocates have eschewed rights theory for precisely the reason that rights theory is supposedly incapable of providing determinate normative guidance. The concern articulated by these animal advocates is that rights theory demands the immediate *abolition* of animal exploitation, and that immediate abolition is simply unrealistic. Instead, these animal advocates support the pursuit of incremental *animal welfare* reform as a "realistic" means of reducing suffering and eventually achieving abolition. The animal welfare approach requires that we treat animals in a more "humane" way, and that we prohibit "unnecessary" suffering. For example, Ingrid Newkirk of People for the Ethical Treatment of Animals (PETA) ostensibly endorses a rights position and ultimately seeks the abolition of animal exploitation, but she argues that "total victory, like checkmate, cannot be achieved in one move" and that we must endorse the moral

orthodoxy of animal welfare as involving necessary "steps in the direction" of animal rights. [6]Newkirk argues that animal welfare facilitates a "springboard into animal rights."[7] Similarly, animal advocate Henry Spira maintains that animal rights theory requires an "all or nothing" approach, and that "'[i]f you push for all or nothing, what you get is nothing.'" [8] I refer to this position as "new welfarism," and its proponents, as the "new welfarists." [9] Animal welfare theory is very much like utilitarianism in that both permit all animal interests to be traded away if the consequences of doing so will "outweigh" the consequences of protecting animal interests. [10]

At least some scholars have come to the same conclusion as have some advocates about the supposedly unrealistic nature of animal rights theory--and the supposedly realistic nature of animal welfare reforms. For example, philosopher Bernard Rollin believes that incremental change is the only realistic approach, and that incremental change *means* welfarist reform. Rollin claims that in the United States, "we have never had a social and moral revolution that was not incremental." [11]In the context of discussing animal experimentation, he argues that although he endorses the rights view, that view is "utopian and socially and psychologically impossible in our culture." [12] As a result, Rollin endorses incremental change based on welfarist reform that would ensure that the benefit to humans of exploiting animals "*clearly outweighs the pain and suffering experienced by the experimental animals*." [13] Political scientist Robert Garner claims to be "more convinced by the protection afforded to both humans and animals by rights" than alternative views, but endorses a welfarist view because his book "is primarily a book about *practical* politics." [14] Garner argues throughout his book that incremental welfarist reform is the only "practical" way to achieve greater protection for animals.

In this essay, I want to explore Singer's views about the relative normative guidance provided by utilitarian and deontological approaches to the human/animal relationship. Parts II and III examine Singer's utilitarian theory and the theory of rights presented by Tom Regan in **The Case for Animal Rights**. Part IV discusses the notion of nonhuman personhood, a notion central to animal rights theory. Part V presents a discussion concerning three components of moral theory and concludes that whatever indeterminacy may exist with respect to the application of rights theory as a general matter, rights theory provides clear normative guidance concerning the human/animal relationship, and that this guidance is far more determinate that provided by Singer's utilitarian approach.

II. Singer's Utilitarian Theory

Singer is an act utilitarian, who believes that it is the consequences of the contemplated act that matter, and not the consequences of following a more generalized rule. There are, of course, differing views of what consequences are relevant. For classical utilitarians, such as Jeremy

Bentham and John Stuart Mill, pleasure alone was intrinsically valuable and pain alone was intrinsically not valuable. Singer, however, claims to subscribe to a modified form of utilitarianism, known as "preference" or "interest" utilitarianism, which provides that the morally appropriate act in any particular situation is the one that will "maximise the interests of those affected." [15] These interests include the desires and preferences of those who are affected. Pleasure and pain matter because they are part of what humans and nonhumans desire or prefer or seek to avoid. In **Animal Liberation**, Singer argues that in assessing the consequences of our actions--including those actions affecting animals--it is necessary to take the interests of animals seriously and to weigh any adverse affect on those interests from human actions as part of the consequences of those actions. Humans have failed to do this, Singer argues, because of a species bias, or *speciesism*, that results in a systematic devaluation of animal interests. Singer claims that speciesism is no more morally defensible than racism, sexism, or other forms of discrimination that arbitrarily exclude humans from the scope of moral concern. [16] When people seek to justify the horrific way in which animals are treated, they invariably point to supposed animal "defects," such as the inability of animals to use human language or to reason as intricately as do humans. But there are severely retarded humans who cannot speak or reason (or, at least, can do so no better than many nonhumans), and most of us would be appalled at the thought that such humans would be used in experiments, or for food or clothing. Singer maintains that the only way to justify our present level of animal exploitation is to maintain that species differences *alone* justify that exploitation. But that is no different, Singer argues, from saying that differences in race or sex *alone* justify the differential treatment of otherwise similarly situated humans.

Singer's approach is clearly more favorable toward animals than classical animal welfare, which accorded little weight to animal interests. It is important, however, to understand that Singer's theory is not a theory of animal *rights*. For Singer, the rightness or wrongness of conduct is determined by consequences, and not by any appeal to right. If violating a rightholder's right in a particular case will produce more desirable consequences than respecting that right, then Singer is committed to violating the right. For example, although Singer opposes *most* animal experimentation, he does so because he thinks that most animal experiments do not produce benefits that are sufficient to justify the animal suffering that results. But he does not--and cannot--oppose *all* animal experimentation because if a particular animal use would, for example, really lead directly to a cure for a disease that affected many humans, Singer would be committed to approving that animal use. Indeed, Singer has acknowledged that under some circumstances, it would be permissible

to use nonconsenting *humans* in experiments if the benefits for all affected outweighed the detriment to the humans used in the experiment. [17] Singer's theory does not concern rights as Singer does not believe that animals *or* humans have rights. Indeed, Singer himself refers to his theory as one of "animal liberation" and states that claims of right are "irrelevant." "The language of rights is a convenient political shorthand. It is even more valuable in the era of thirty-second TV news clips." [18] It is easy to understand why Singer rejects rights in light of his view that only the consequences (understood in terms of the preference satisfaction of those affected) of acts matter. A right is generally regarded as "a moral trump card that cannot be disputed." [19] A right serves as a type of protection that cannot be sacrificed *even if* the consequences of doing so would be very desirable. Rights, or at least most rights, are not thought to be absolute, but at least some rights provide strong *prima facie* protection, and cannot be compromised without the most compelling reasons. For example, overall social happiness might be increased if I were used without my consent in an experiment, the goal and likely outcome of which would result in a cure for cancer. Nevertheless, I have a moral and legal right not to have my interests in my life or liberty traded away in order to secure that admittedly desirable result.

In determining the consequences of actions, Singer argues that we must accord equal consideration to equal interests. Singer's notion of equal consideration does not mean that animals receive equal treatment, and it does not preclude the morality of a decision to exploit a human or nonhuman. As long as an animal's interests receive equitable consideration (consideration untainted by the speciesism that discounts animal interests simply *because* they are the interests of a supposed "inferior") Singer's equality principle is satisfied. But this notion of equality is consistent with exploiting animals if the consequences justify that exploitation and as long as the decision to exploit is not based on species discrimination. Indeed, Singer acknowledges that he "would never deny that we are justified in using animals for human goals, because as a consequentialist, [he] must also hold that in appropriate circumstances we are justified in using humans to achieve human goals (or the goal of assisting animals)." Singer claims not to be "the kind of moral absolutist who holds that the end can never justify the means" and he denies arguing that "*no* animal experimentation is ever of use to humans" or that "*all* animal experimentation involves suffering." [20] Garner has noted that Singer does "talk as if the killing of animals for food and their use for experimental purposes should be morally condemned *per se* because the infliction of pain means that they lead miserable lives" and that "[s]uch a view could be taken to mean that [Singer] thinks they have a right not to have pain inflicted on them[,] [but] Singer is clear . . . that he is not an advocate of rights." [21]

An interesting example of the difference between Singer's view and the rights position is provided by Singer himself in the second edition of **Animal Liberation**. The rights position rejects the use of animals for food. Singer argues that many nonhumans, and this class apparently includes food animals, are not capable of "having desires for the future" or a "continuous mental existence." [22] These cognitive characteristics assume "an understanding of what it is to exist over a period of time" and Singer doubts that most animals used for food have such an understanding. [23] This supposed lack of future desire or continuous mental existence is generally irrelevant when the issue involves pain or suffering alone (although I will argue later that Singer appears to contradict himself on this point and allows for individual capacities to affect assessments of pain and suffering). Singer believes that these characteristics become relevant, however, when the issue involves killing an animal in a painless or relatively painless manner. Singer expresses "doubts" on the issue, but he concludes that "it is not easy to explain why the loss to the animal killed is not, from an impartial point of view, made good by the creation of a new animal who will lead an equally pleasant life." [24] Singer maintains that it may be morally justified to continue "to eat free-range animals (of a species incapable of having desires for the future), who have a pleasant existence in a social group suited to their behavioral needs, and are then killed quickly and without pain." [25] Singer states that he "can respect conscientious people who take care to eat only meat that comes from such animals." [26] I do not plan to discuss the various criticisms that have been made of Singer's theory; however, there is one aspect of his utilitarianism that requires comment. There is no doubt that: (1) Singer regards *most* animal experimentation as without merit; (2) Singer regards factory farming as morally problematic; and (3) Singer believes that we ought for the most part to be vegetarians because although it may be morally permissible to eat animals, as a practical matter, the circumstances surrounding their rearing and killing will morally preclude eating them. These views, however, are based on Singer's empirical assessments of what the consequences of particular acts are in light of his theory that individual acts ought to further the interests or preferences of those affected. Like all such empirical assessments, the consequences of the acts may be evaluated differently by different people. For example, Singer thinks that the negative consequences for the animals involved of factory farming outweigh its benefits, but, as Regan points out, "[t]he animal industry is big business" and although "[i]t is uncertain exactly how many people are involved in it, directly or indirectly, . . . the number must easily run into the many tens of thousands." Those involved in animal agriculture "have a stake in the animal industry as rudimentary and important as having a job, feeding a family, or laying aside money for their children's education or their own retirement." [27]

Similarly, philosopher R.G. Frey, a utilitarian who is critical of Singer's utilitarian theory *and* of rights theory as well, presents a lengthy list of practical considerations that must be taken into account in evaluating Singer's claim that animal agriculture, and especially the practices involved in intensive agriculture, are not justifiable under utilitarianism. This list includes negative consequences that would befall those directly involved in the raising and killing of animals, such as farmers and slaughtering operations, those involved indirectly in the food business, such as food retailers, those involved in the dairy industry, those involved in various industries such as fast-food restaurants, the pet food industry, the pharmaceutical industry, and the leather goods and wool industries, those involved in agricultural and veterinary research incidental to agriculture, those involved in publishing books about animal agriculture, and those involved in advertising the products of animal agriculture, and so forth. [28] It is clear that Frey is correct that the collapse of factory farming would have a profound impact on the international economy. This is not to say that these negative consequences would outweigh the interests of the animals involved in not experiencing the pain and suffering incidental to intensive agriculture; it is only to say that if the issue hinges on the aggregation of consequences, it is not clear whether it would be morally right under Singer's view to abolish factory farming. What is clear is that given Singer's view that the rightness or wrongness of action is determined by the consequences it has for the interests of all affected, he simply "cannot say that the interests of those humans involved in [factory farming], those whose quality of life presently is bound up in it, are irrelevant." [29] The problem is that once the preference satisfaction of *everyone* involved in factory farming (humans and nonhumans) is deemed relevant, and counted equitably, Singer's claim that factory farming cannot be justified under utilitarian theory appears to be much more controversial than he allows.

III. Rights Theory

In **The Case for Animal Rights**, Tom Regan argues that the rights position regards as morally unacceptable any institutionalized exploitation of nonhumans. Regan unambiguously and without equivocation condemns the use of animals for food, hunting, trapping, education, testing, and research. Regan believes that humans and nonhumans are subjects-of-a-life that have equal inherent value. That is, agents and patients are consciousness, possess a complex awareness and a psychophysical identity over time. Agents and patients may be harmed or benefited and have a welfare in that their experiential life fares well or ill for them, independent of the utility that

they have for others or the interest that others have in them. Regan argues that the individual has a distinct moral value--inherent value--that is separate from the value that the individual may have to others, and that the attribution of equal inherent value to both moral agents and relevantly similar moral patients is required because both agents and patients are subjects-of-a-life.

Regan argues further that the respect principle requires that we treat those individuals who have inherent value in ways that respect their inherent value. The respect principle states simply that no individual with inherent value may be treated *solely* as a means to an end in order to maximize the aggregate of desirable consequences. Regan's respect principle shares important theoretical similarities and differences with the notion articulated by Immanuel Kant that we treat other persons as ends in themselves and never merely as means to ends. Rational agents, Kant argued, have value in themselves independent of their value to others. Regan's contribution here is his use of the subject-of-a-life criterion to identify in a nonarbitrary and intelligible way a similarity that holds between moral agents and patients and that gives rise to a direct duty to the latter. [30] Being a subject-of-a-life is a sufficient condition for having inherent value, but is also a criterion that allows for the intelligible and nonarbitrary attribution of equal inherent value to agents and patients, including nonhuman animals. Regan stresses that there is no nonarbitrary way to separate moral agents from moral patients, and that there is no way to differentiate human moral patients from nonhuman moral patients without relying on some form of speciesism. Regan argues that institutionalized animal exploitation (i.e., the use of animals for food, experiments, clothing, entertainment) violates the respect principle by treating all animal interests as tradable based on the aggregation of consequences.

Although Regan's theory represents a important contribution that differs qualitatively from Singer's theory of animal liberation, there is a sense in which *any* coherent and non-speciesist theory of animal *rights* must rule out *all* forms of institutional exploitation. As Henry Shue has argued in the context of human rights, there is a logical distinction between what Shue calls "basic" rights and "non-basic" rights. According to Shue, a basic right is not a right that is "more valuable or intrinsically more satisfying to enjoy than some other rights." [31] Rather, a right is a basic right when "any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself." [32] Shue states that "non-basic rights may be sacrificed, if necessary, in order to secure the basic right. But the protection of a basic right may not be sacrificed in order to secure the enjoyment of a non-basic right." [33] The reason for this is that a basic right "cannot be sacrificed successfully. If the right sacrificed is indeed basic, then no right for which it might be sacrificed can actually be enjoyed in the absence of the basic right. The

sacrifice would have proven self-defeating." [34] Shue emphasizes that basic rights are a prerequisite to the enjoyment and exercise of non-basic rights, and that the possession of non-basic rights in the absence of basic rights is nothing more than the possession of rights "in some merely legalistic or otherwise abstract sense compatible with being unable to make any use of the substance of the right." [35]

Although Shue identifies several basic rights, the most important of these is the "basic right to physical security"--a negative right "not to be subjected to murder, torture, mayhem, rape, or assault." [36] While acknowledging that it is not unusual in a given society that some members of at least one ethnic group receive less physical protection than others, Shue argues that "few, if any, people would be prepared to defend in principle the contention that anyone lacks a basic right to physical security." [37] If a human does not enjoy the basic right to security, and may be murdered at will by any other human, then it is difficult to understand what *other* rights that human might enjoy. Most of the time, discussions about rights occur in the context of discussion of human rights, and these discussions do not concern whether we should be able to kill and eat *humans*, or whether we should be able to use *humans* in experiments to which they have not given their informed consent, or whether we should be able to use *humans* in rodeos, or exhibit *humans* in zoos. It is assumed--at least under the law of most countries and at least in the moral views of most people--that people have certain rights, or, at least, that they have certain interests that cannot be compromised irrespective of consequence.

Shue is most certainly correct to note that we always assume that humans have basic rights to physical security, whether or not there are social differences in terms of the actual distribution of the right. In order words, recognition of the basic right of physical security is a right *as a matter of law* irrespective of whether the state enforces this right in an even-handed manner. In the case of animals, however, the situation is precisely the opposite. We talk informally about the rights of animals, but animals do not have the basic legal right of physical security and they cannot possess it *as a matter of law*. Because animals are regarded as the property of their human owners, animals can be killed for food, used in experiments, and exploited in numerous other ways for no other reason than that the owner of the animal regards it as a "benefit" to do so. If animals are to have any rights at all (other than merely legalistic or abstract ones to which Shue refers), they must have a basic right of physical security that would necessarily protect them from being used as food or clothing sources, or as experimental animals. [38]

IV. Animal Rights and Personhood

Our treatment of nonhuman animals reflects a distinction that *we* make between humans, whom we regard as *persons*, and nonhumans, whom we regard as *things*. Although we may regard some animals as having certain "interests," we regard *all* of those interests to be tradable, dependent on our judgment that the sacrifice of the interest(s) will benefit us. This trade is generally permissible even when the animal interest involved is significant and the human interest is admittedly trivial, as is the case of the use of animals for "entertainment" purposes such as pigeon shoots, rodeos, or circuses. Animals are not persons in either moral theory or under the law: they are *property* in that they exist solely as means to human ends. [39] They have no interests that cannot be sacrificed, even when the "benefit" to be gained by humans is mere amusement at the cost of great pain or death to the animal. That is precisely what it means to *be* property.

"Persons" are those beings who have interests that *cannot* be traded merely for consequential reasons alone. Some of these persons, such as corporations, are *de jure* persons alone in that their personhood exists solely because they are creations of a legal system. But what is common to *every* person is that persons have at least some interests, although not necessarily all the same interests, that are protected (by moral theory or law or both) even if trading away those interests will produce consequences that are deemed to be desirable. All "persons" *must* have at least one interest that is protected from being sacrificed merely for consequential purposes: the interest in continued existence, without which all other interests would be meaningless. This is Shue's concept of the basic right of physical security.

Animal rights theory seeks to move at least some nonhumans from the "thing" side of the "person/thing" dualism over to the "person" side. There are at least two reasons to offer in favor of this move. First, there is no characteristic or set of characteristics that is possessed by all humans (whom we regard as persons) that is not possessed by at least some animals. To put the matter a different way, those who support animal exploitation argue that animals are *qualitatively* different from humans and so animals can be kept on the "thing" side of the "person/thing" dualism; animal rights advocates argue that there is no such difference because at least some nonhumans will possess the supposedly "exclusive" characteristic while some humans will not possess the characteristic. Nor is it enough to argue that species difference is itself morally relevant; after all, to rely on species *alone* as morally relevant is to assume what needs to be proved by those who hold such a view, and is morally indistinguishable from using race, sex, sexual orientation, or ability to determine membership in the moral community of persons. In other words, there is no reason to exclude animals from a progressive concept of personhood. [40]

There is another related, more "positive" reason to view animals as persons. Although there will undoubtedly be borderline cases, it is clear that at least

some animals possess the characteristics that we normally associate with personhood. For example, in **The Case for Animal Rights**, Tom Regan argues that theoretical and empirical considerations indicate that at least some animals (normal mammals of at least one year of age) possess beliefs, desires, memory, perception, intention, self-consciousness, and a sense of the future. The attribution of at least several of these mental states reveals that it is perfectly sensible to regard certain nonhumans as psychophysical individuals who "fare well or ill during the course of their life, and the life of some animals is, on balance, experientially better than the life of others." [41] Because animals have desires, beliefs, and the ability to act in pursuit of their goals, they may also be said to have preference autonomy, an important characteristic for the attribution of rights. [42]

A common misconception is that animal advocates argue that animals should have the *same* rights as humans. As far as I am aware, *no* rights advocate maintains this view. Moreover, the criticism itself indicates a fundamental confusion about rights theory. In many ways, animal rights theory is about the *inclusion* of nonhumans on the "person" side of the "person/thing" dualism. This matter of inclusion is to be distinguished from the matter of the *scope* of any rights that animals may have once we move them from one side to the other. I have elsewhere used the example of human slavery to illustrate this point. [43] Although human slaves in the United States were regarded under the law as "persons" for purposes of criminal liability, they were, for virtually all other purposes, both *de jure* and *de facto* "things." This status as a "thing" is a *logical* consequence of the institution of human slavery which treated all slave interests--including the slave's fundamental interest in physical security--as tradable as long as there were perceived benefits for slaveowners. Slaves had no rights of association; slave families were routinely broken up, and slaves could be killed or tortured for what was essentially the pleasure or amusement of slave owners.

To include slaves in the class of persons--moving them from the "thing" side of the "person/thing" dualism to the "person" side--is not necessarily to say anything about the *scope* of particular rights that the liberated slaves may have. Indeed, the move entails the exclusion of only one sort of exploitation: the institutionalized commoditization of human beings in which their basic right of physical security, the prerequisite for their having rights *at all*, can be violated by others for consequential reasons. Other considerations will govern the *scope* of rights that these "new" persons may have. For example, the abolition of human slavery only began, and did not end, a discussion about what additional rights--other than the right not to be slaves--should be accorded to former slaves.

Similarly, when we move at least some nonhumans from the "thing" side over to the "person" side, we have said nothing about the *scope* of rights that they will have. All we have done--through the *inclusion* of animals on

the "person" side--is to recognize that species *alone* is an insufficient justification for treating nonhumans as "things." Species may be significant when we determine the *scope* of rights. For example, it would be absurd to discuss the rights of animals to drive or to vote or the right of an animal to get a scholarship to attend college. But the inability of nonhumans to adhere to rules of the road, choose intelligently among political rivals, or do calculus are all *irrelevant* to the basic notion of personhood: after all, we accept that some adult humans will be unable to perform basic functions but we still do not place them on the "thing" side of the "person/thing" distinction. We may very legitimately award a math scholarship to Jane rather than Simon based on Jane's better ability to do mathematics. As long as Simon has had a fair opportunity to develop his mathematical abilities, using Jane's "intelligence" as a criterion for determining the distribution of the particular resource in question (educational benefits) is fair. But Jane's greater intelligence does not justify Jane's treating Simon as her slave or otherwise placing Simon on the "thing" side of the equation.

There is, however, one sense in which including animals as members of the class of "persons" is very different from including additional humans within that class. If we acknowledge that Simon is not a "thing," the protection that we have given to Simon is at the same time quite significant (after all, the basic right to physical security is a prerequisite to all other rights), but also the very bare minimum that is needed to distinguish Simon from being a thing. Saying that Simon is included in the class of persons says nothing about the scope of rights that he may have other than to say that we will protect Simon's right to be a person in that we will at least recognize *de jure* that Simon's basic right to physical security will be protected from being traded away for consequential reasons.

If, however, we recognize that animals are not "things," i.e., that their basic right to physical security cannot be sacrificed merely because we think the consequences justify the sacrifice, then we can no longer justify the institutionalized exploitation of animals for food, experiments, clothing, or entertainment. These forms of institutionalized exploitation necessarily assume that animals are things whose interests are contingent on human desires. Once we recognize that animals are not "things," we can no longer justify the use of animals in experiments any more than we can justify using humans. We have at least *de jure* ruled out the institutional use of coerced humans in biomedical experiments. Although many people will tolerate the payment of low wages to workers, few would similarly tolerate human slavery.

A primary result of according personhood status to at least some nonhumans would be to require the abolition of institutionalized exploitation of those nonhumans. Once we recognize that animals are no longer "things," then we can no longer treat them as beings whose fundamental interests in their own life may be sacrificed because we enjoy

the taste of meat, or because we enjoy shooting pigeons or because we enjoy the feel or look of fur or leather. That is, according personhood status to animals does not mean that we simply get more serious about whether a particular form of slaughter to produce meat is more "humane," or that we take animal interests more seriously in determining whether a particular experiment involving animals is "necessary." It means that we recognize that the use of animals for food or science or entertainment or clothing represents forms of institutionalized exploitation that are *logically* inconsistent with the personhood of animals.

V. The Three Components of Moral Theory

To evaluate Singer's claims about the normative indeterminacy of rights theory, I will identify three separate normative components or levels of moral theory and explore the relative normative guidance of the utilitarian and deontological approaches with respect to each component.

The first component is what the theory *ideally* seeks, or the state of affairs ultimately sought to be achieved all other things being equal. The second component provides normative guidance to the individual about what the individual moral agent ought to do on a *personal* level to achieve the ideal state of affairs. I will use the term, "micro level" when dealing with this component of moral theory. The third aspect involves the question whether these theories, which propose ideal moral states, contains prescriptions for how to effect *incremental* legal or social change in order to achieve the ideal state of affairs. I will use the term "macro level" when dealing with this component of moral theory.

An example may help to put this in perspective. Assume that my overall goal is to achieve a completely pacifist world in which there is no violence. On the ideal level, my theory requires that there be no (or substantially no) acts of violence. On a micro level, this theory may require that I personally not respond violently to others irrespective of provocation. On a macro level, the theory may prescribe that I try to implement the ideal state of affairs (a peaceful world) through legislation that eliminates various forms of violence (i.e., a law that forbids the manufacture of guns). These are three very different aspects of moral theory.

A. Relative Normative Guidance: The Ideal and Micro Components of Moral Theory

The first component of moral theory--the ideal level--requires that we ask what the theory envisions as the ideal state that would be achieved if the theory under consideration were accepted. For Regan, the answer is quite clear; Regan's theory requires the *abolition*, and not the regulation, of institutionalized animal exploitation. Regan objects to the treatment of animals exclusively as means to ends; or, to put the matter in legal terms,

Regan objects to the property status of animals that allows all of their interests, including their basic interest in physical security that is a prerequisite to the meaningful recognition of other interests, to be bargained away as long as there is some sort of human "benefit" involved. This would necessitate the complete abolition of those forms of animal exploitation that are dependent upon the status of animals as human property. These activities would include using animals for food, experiments or product testing, clothing, entertainment, or in any other way that fails to respect the inherent value of the animal.

Similarly, rights theory is reasonably clear concerning the micro component of moral theory. Just as rights theory condemns the institutionalized exploitation of nonhumans as a matter of social practice, it similarly condemns *at least* the direct participation in animal exploitation. After all, if a person advocates the abolition of human slavery because the institution of slavery is unjust, that person would presumably also conclude that *his* ownership of human slaves was also violative of the rights of that owner's slaves since slaves can only be subjected to the institution of slavery through being owned by someone. Similarly, the individual participates directly in the exploitative institutions by eating meat or dairy products, or wearing animals, or using them in experiments. These institutions do not exist except by virtue of individual moral agents who choose to participate directly in the institutionalized exploitation.

This is not to say that there will not be difficult moral questions remaining. It is impossible to avoid participation in institutionalized animal exploitation completely in light of the fact that virtually every aspect of our lives is involved in some way or another with the institutionalized exploitation of some animal or another. So, the rights advocate is faced with decisions, for example, as to whether to use a drug that has been tested on an animal, just as the opponent of human slavery or racial discrimination is faced with the decision to travel upon roads in the southern United States, many of which were laid originally with slave labor. But that does not mean that the rejection of institutionalized animal exploitation does not resolve *many* of the moral questions concerning how we should resolve moral issues that confront us. If animal rights means anything, it means that, as a society *and as individuals*, we can no longer countenance the institutionalized killing of animals for food as a matter of individual moral choice, any more than we can justify performing animal experiments, or wearing clothing made from animal skins or pelts. [44]

Singer's long-term goal is not the achievement of animal rights, or necessarily even the abolition of all animal exploitation. Singer's theory of animal liberation requires that we reject speciesism, which would, for example, prevent the use of animals in experiments in those situations in which we would not use humans who had the same interests at stake. But beyond this rejection of species bias, and his theory of act utilitarianism,

Singer's theory of animal liberation provides little concrete normative guidance concerning issues of animal suffering or the killing of animals. On one level, *both* Singer's equal-consideration theory and Regan's rights theory can be said to represent an "all or nothing" approach in that both theories describe ideal states that are far removed from the present reality of the human/animal relationship. Neither ideal state will be realized without a profound change in the current state of affairs, and that change is most unlikely to happen overnight. On the level of "ideal" theory, then, both theories describe "utopian" states that are far removed from the world in which we presently live.

On another level, however, Regan's theory provides a rather vivid description of the ideal state of affairs whereas Singer's does not. The clarity of the ideal state is important because that clarity will help to inform a more definite theory about how the individual ought to behave on the micro and micro levels of moral decision. It is easy to identify the practices to which Regan objects given that his target is the institutionalized exploitation of animals. To the extent that there is any lack of clarity, Regan's overall prescription that we stop using animals exclusively as means to human ends, and that we recognize that at least some animals are subjects of-a-life, would eliminate the overwhelming portion of what Regan regards as activity that violates the rights of animals. There may, of course, be some "hard cases," but under Regan's theory, institutionalized animal exploitation can *never* be justified irrespective of consequences, just as human slavery is rejected as morally repulsive by most people, irrespective of any beneficial consequences (for slaveowners) that would occur were we to enslave humans.

Singer's utilitarian theory is different from traditional animal welfare in that Singer regards the long-term goal as animal "liberation," which is Singer's shorthand for a state of affairs that would accord equal consideration to the equal interest of animals. So, in this sense, Singer's long-term goal is arguably more progressive than the traditional welfarist approach as long as everyone is agreed as to how to describe competing interests, and are also agreed as to how to weigh those interests in light of the assessment of consequences--and agreement about such matters is not easy to achieve. But Singer's theory is similar to animal welfare because it requires that we balance the interests of humans against the interests of animals under circumstances that threaten to compromise the assessment of animal interests in any event.

There are at least six aspects of Singer's theory that portend great normative uncertainty at any level of application. For present purposes, however, I am concerned primarily with the ideal and micro levels of moral theory. It is my view that certain aspects of Singer's theory not only render his view at the ideal level far more unclear than that offered by Regan, but provide very little guidance on the micro level to assist the individual in resolving

those human/animal conflicts that are presented to the individual as part of everyday life in a society in which certain sentient beings are treated as the property of others. I stress that the purpose of this discussion is not to present and analyze critiques of utilitarianism in general, or even Singer's utilitarian theory of animal liberation in particular. Rather, I am responding to Singer's claim that rights theory is incapable of providing concrete normative guidance *relative* to the supposed clarity that Singer claims for his view over rights theory.

First, as I mentioned above, Singer's utilitarian theory requires some sort of empirical description of the consequences of acts. But it is often difficult to predict these consequences under the best of circumstances. For example, Singer's long-term goal is to ensure that equal human and nonhuman interests receive equal consideration in a balancing process that is as free of speciesism as is possible. Even if animal interests were taken seriously, as they would be in Singer's ideal framework, assessments of consequences of actions--especially actions that purport to effect systemic changes, such as legislation--are very difficult to assess before or after the fact.

Second, Singer's theory requires that we make inter-species comparisons of pain and suffering. That is, in order to maintain that the equal interests of animals and humans ought to be treated equally, Singer's theory needs some notion of how we can measure (however imprecisely) inter-species experience. For example, he observes correctly that a slap that would cause virtually no pain to a horse may very well cause considerable pain to a human infant. "But there must be some kind of blow--I don't know exactly what it would be, but perhaps a blow with a heavy stick--that would cause the horse as much pain as we cause a baby by slapping it with our hand." [45] The difficulties with making such assessments are obvious: it is difficult to compare pain intensity when we are concerned only with humans who can give detailed verbal reports of the sensation that they are experiencing--it becomes virtually impossible to make even imprecise assessments when animals are involved.

Third, and related to the problem of inter-species comparisons of pain and suffering, is the problem that although Singer's analytic framework requires that we reject speciesism, he acknowledges that species differences may very well affect our assessment of these various interests. [46] In some instances, these differences will be obvious and their use will not be controversial. For example, no one (as far as I know) maintains that because of differences in the type of intelligence that exists between a human and a dog, scholarships for higher education ought to be given to dogs. But in many cases in which there is a purported conflict between animal and human interests, the differences may not be as obvious and their use may be far more controversial. For example, even if we can ascertain what type of blow, when delivered to a horse, will cause the same amount of pain as a sharp slap will cause an adult human, the question remains as

to whose interest in avoiding the pain should be sacrificed in the case of conflict when suffering or distress are also considered. Singer claims that pain is pain irrespective of "whatever other capacities, beyond the capacity to feel pain, the being may have," but those capacities may very well be relevant to an assessment of suffering and to the ultimate determination as to whose interests should be protected in the case of conflict. So, there can be considerable controversy as to whether the horse's mental capacities will result in more overall suffering by the horse (who may be terrified to a considerable degree for a short period of time as the result of the blow), or whether the human, (who may not only experience the pain, but who may experience anxiety over a longer period of time, or who, as a result of different mental capacities, may anticipate another blow or be more distressed by the blow because of memories of physical abuse suffered earlier), will suffer more. Singer could, of course, reply that any interest balancing requires that competing interests be characterized as accurately as possible and that accurate characterization requires taking account of individual characteristics. This is, of course, one reason why utilitarianism is such a difficult theory to apply in the real world, even when animal interests are not included in the calculus. When they are included, there is a tendency, as Singer's own work shows, to evaluate the characteristics of individuals by reference to species differences. This approach both invites and facilitates introduction of humanocentric notions about animal consciousness. In any event, even if the individual characteristics and capacities of particular animals or species could be ascertained with some degree of empirical certainty, it would still be virtually impossible ever to apply this framework in concrete circumstances given the inexhaustible differences among individuals.

Fourth, when Singer turns from pain and suffering to the morality of killing animals, he again explicitly allows for consideration of individual capacities. He concludes that "a rejection of speciesism does not imply that all lives are of equal worth" because "[w]hile self-awareness, the capacity to think ahead and have hopes and aspirations for the future, the capacity for meaningful relations with others and so on are not relevant to the question of inflicting pain--since pain is pain, whatever other capacities, beyond the capacity to feel pain, the being may have--these capacities are relevant to the question of taking life." [47] It is precisely this view that leads Singer to conclude that it may very well be morally acceptable to eat animals who have been not been raised under intensive-agricultural conditions, as long as they are slaughtered humanely.[48] Once again, Singer's rejection of speciesism is tempered by his competing view that there are species differences concerning such matters as self-awareness, that most animals used for food purposes "cannot grasp that [they have] 'a life' in the sense that requires an understanding of what it is to exit over a

period of time," and that these capacity-differences in capacity *are* relevant to moral assessments about killing.

Fifth, there is a serious tension in Singer's theory involving his rejection of speciesism and his utilitarian theory. Philosophers Lawrence Finsen and Susan Finsen note that although Singer defends a utilitarian theory, he "presents an important objection to the current treatment of animals that is not based on a utilitarian calculation but expressed in terms of demanding that we avoid speciesism." [49] That is, Singer argues both that we ought to avoid speciesism irrespective of consequences *and* that the rightness or wrongness of particular acts is dependent *only* on the consequences of actions.

To the extent that Singer accepts a non-consequential element--the rejection of speciesism irrespective of consequences--in his theory, there is an inevitable tension with his overall view that even speciesism can be morally acceptable if the aggregation of consequences so indicates. This confusion and uncertainty, and the resultant tension between rejecting speciesism but purporting to judge the morality of acts based solely on consequences, makes Singer's theory even more difficult to understand and to apply.

Sixth, although Singer is an act utilitarian, it is not even clear whether on the micro level of moral decisionmaking, Singer requires an application of his utilitarian theory--or whether he argues for something else. For example, it is not clear that Singer believes that the individual moral agent should on a personal level pursue that action that will have the best overall consequential effect, or whether he requires only that the agent seek to reduce suffering and minimize pain without necessarily pursuing that action that will be most effective in reducing pain and suffering. Although it would seem that as a utilitarian, Singer is committed to the latter, Singer is not entirely clear about this, as I will argue below.

In sum, Singer's principle of equal consideration for equal interests may sound simple, but it is not at all clear what it requires at the ideal level, and practical application on the micro level is almost impossible because of uncertainty and controversy surrounding the assessment of consequences, the characterization of competing interests, and the weighing of those interests. But even if the uncertainty were reduced, and the controversy diminished, the question of animal use would still have to be evaluated on a case-by-case basis. And herein lies what is perhaps the most important difference between rights theory and welfare theory for purposes of applying either to concrete situations. Singer may be correct to say that rights theory in general can become complicated in light of complex rule formulations and ranking structures to govern rights conflicts, but Regan's rights theory provides relatively clear and unambiguous normative direction at the long-term level and on the level of personal moral choice as that choice involves the institutionalized exploitation of animals. Regan

argues that his long-term goal is the abolition of the institutionalized exploitation of animals, and he argues that if we accept that animals have at least the basic right not to be treated exclusively as means to human ends, then certain animal uses, such as the eating of animals, or the use of animals in experiments to which the animal cannot consent, or the killing of animals to make clothes, etc. must be regarded as morally unjustifiable. This is not to say that rights theory does not leave many questions unresolved, even at the level of long-term theory. For example, even if we assume that animals have the rights that Regan attributes to them, there may very well be a conflict between human and animal rights, such as when humans seek to build housing for other humans that will displace nonhumans. In such cases, rights theory may become more complicated because criteria would need to be devised to decide what to do when rights conflict. But, for the most part, the overwhelming instances of animal exploitation are ruled *out* from the start in Regan's theory, where, under Singer's view, they are all ruled *in* unless Singer can demonstrate that the aggregation of consequences indicates otherwise. Even if we started with the presumption that most animal exploitation will also be ruled out under Singer's theory as a *prima facie* or initial matter, whether particular types of animal exploitation should be allowed (i.e., the animal use maximizes overall utility) is still open to discussion. As an act utilitarian, he is precluded from arguing that institutionalized exploitation is *always* wrong because it violates the interest of an animal in not being regarded as property. There may be times when the aggregation of consequences within a utilitarian framework *requires* that we behave in a speciesist manner.

B. Relative Normative Guidance: The Macro Component of Moral Theory

There is one more level of moral theory remaining against which we must assess the claim that animal rights theory is "utopian," "unrealistic," or "absolutist." That inquiry requires that we examine the macro aspects of these various theories in order to determine what each prescribes for an advocate to achieve the ideal state of affairs for animals. The macro aspect of a theory seeks to identify morally desirable *incremental* social or legal change leading to the ideal state sought by the theory. Such incremental measures may include legislative or judicial changes designed to make animal use and treatment more "humane," but can include other measures as well, such as educational efforts, protests, boycotts, demonstrations, civil disobedience, and other forms of direct action.

the macro component of rights theory: I have been unable to find a single instance in which animal rights advocates accept or support the "utopian" idea that we will be able to effect the immediate abolition of all institutionalized animal exploitation. Rights advocates *necessarily* accept some theory of incremental change if they are going to pursue social and

legal change that impels motion toward the ideal state of the abolition of institutionalized exploitation. They have no choice but to do so.

In identifying incremental change on the macro level that is consistent with rights theory, I have relied on only two aspects of rights theory in order to keep matters relatively simple and as uncontroversial as possible. The first aspect on which I focus is that rights theory seeks the abolition of the institutionalized exploitation of animal subjects-of-a-life which involves treating animals exclusively as means to ends. Put in legal language, rights theory seeks the eradication of the property status of nonhumans. This aspect of rights theory reflects that animals have interests other than merely being protected from pain and suffering, and that animals have an interest in not being part of institutionalized exploitation that causes that pain and suffering in the first place. The second aspect is that, in seeking this long-term goal, the rights advocate cannot endorse the sacrifice of fundamental interests of some animals today in the hope that some animals tomorrow will no longer be treated as the property of human owners. All subjects-of-a-life have equal inherent value, and it violates the respect principle to ignore the inherent value of any such being because some other beings would "benefit" from ignoring that value. Indeed, such a trade-off is a defining characteristic of the utilitarianism that Regan rejects.

There are compelling reasons for the rights advocate to avoid incremental change through legislative or judicial means because of the structural defects of animal welfare and the legal and political institutions that enforce some version of animal welfare based on the property status of animals. Animal welfare reforms necessarily assume the legitimacy of the property status of animals. Moreover, laws that seek the better or more "humane" treatment of animal property simply do not provide much protection to animals, and have not historically ever led to the abolition of any significant institutionalized animal exploitation. As I have discussed elsewhere, there are many reasons for the failure of animal welfare. [50] For example, judicial or legislative change requires some sort of "insider" status as discussed by political scientist Garner. Once an animal advocacy group decides to pursue activity other than public education, or, more precisely, once the group decides that it wants to have an affect on legislation or regulatory policy, it becomes necessary to decide whether to seek "insider status" in order to "achieve access to government" and "to influence policy makers." [51] Garner states that it "is easy to see why insider status is regarded so highly. Access to government gives groups an opportunity to influence policy development at the formulation stage, thereby avoiding the difficult and often fruitless task of reacting against government proposals" which "are unlikely to change fundamentally" once they are formulated. [52] Garner recognizes that this "insider" status may be used to marginalize animal advocates through, for example, the creation of government advisory bodies that do little, if anything, but that give the

mistaken impression that animal concerns are being taken seriously. Nevertheless, Garner holds to the view that "insider status can allow pressure groups to have a significant input into the formulation of public policy. This insider status, however, is largely dependent upon a group being perceived by government as moderate and respectable." [53] Garner observes that although moderation and respectability are relative terms, "it is clear that the radical demands of the 'rights' faction of the animal protection movement are not regarded as acceptable enough" to give rights advocates "insider" status. [54] He argues that insider status is necessary for animal advocates to be effective, yet states explicitly and repeatedly that despite the fact that moderate animal welfarists have enjoyed insider status, "the animal protection movement has made relatively little progress in influencing decision makers." [55]

There is nothing in rights theory that necessarily precludes the animal advocate from pursuing incremental legislative or judicial change, but I do not think that we can speak meaningfully of legal rights for animals as long as animals are regarded as property and the effort is directed toward ensuring that we treat animal property more "humanely." To put the matter in the context of my earlier discussion of basic rights, as long as animals are property, then their basic rights, or those rights that are a prerequisite for the enjoyment of other, non-basic rights, can be sacrificed as long as some socially recognized "benefit" is found to exist. As long as we can kill animals for food, or use them in experiments, or imprison them for their entire lives in cages so that we can be amused at zoos, or maim them for our amusement in rodeos, or shoot them for fun at yearly pigeon shoots, then, to say that animals have rights is, as Shue observed, using "rights" "in some merely legalistic or otherwise abstract sense compatible with being unable to make any use of the substance of the right." [56] Basic rights are a prerequisite to the enjoyment of non-basic-rights, and the possession of non-basic-rights in the absence of basic rights is meaningless.

My critics will respond that every movement achieves rights incrementally. For example, Henry Spira "notes that in social movements, progress is made incrementally, through continual reform. 'If you push for all or nothing, what you get is nothing.'" [57] Spira attempts to compare incremental progress made in other social movements to incremental progress made toward the abolition of animal exploitation. Spira's comparison is inapposite for the reason that no other situation--with the exception of slavery--is comparable with respect to the baseline protection afforded to animals. When we talk about incremental progress made in other social movements, we are talking about *rightholders* who seek greater rights protection. A "reform" in another area--improved labor conditions for factory workers, for example, operates in the context of actors who already have basic rights that are sought to be extended. Put simply, we do not arbitrarily kill and eat factory workers. Although interests may be

balanced, some interests, such as the right of the worker not to be arbitrarily killed by the boss, cannot be traded away because those interests simply are not on the table. But because animal interests are treated in a *completely* instrumental manner, and all animal interests may be sacrificed if animal owners decide that there is a benefit in doing so, then the animal will virtually always lose any balance between human and animal interests because we will always, at least, presume that property owners are the best judge of whether a particular use of their animal property will be a "benefit" to them.

To put the matter another way, once we have persons who are at least holders of basic rights, it makes sense to talk about making incremental reforms in rights. But the basic right not to be treated as property is a right that does not and cannot admit of degrees at least in this sense. Indeed, the issue is not whether we achieve animal rights incrementally, but whether we can incrementally eradicate the property status of animals because, in a sense, we are really only taking about *one* right--the right not to be treated any longer as property. A recognition of the validity of that one right would compel the conclusion that institutionalized animal exploitation violates principles of fundamental justice and can be tolerated only as long as animals are regarded as property. It is this property status of animals that gives humans license to ignore the basic similarities between humans and nonhumans that are relevant for attribution of the status of being a subject-of-a-life. But rights theory does not really concern the particular rights that animals have; rather, it asks whether animals should be in the class of rightholders as an initial matter. Answering this question in the affirmative does not commit the rights advocate to particular animal rights beyond the right to respectful treatment, which precludes institutionalized exploitation, but does not address much beyond that basic right not to be regarded as property, or, put in Regan's language, not to be treated *exclusively* as a means to an end.

As a general matter, the rights advocate will probably achieve more success by seeking incremental social change through boycotts or demonstrations or educational efforts designed to increase the number of humans who accept that animal exploitation should be abolished and who eschew animal exploitation in their personal lives. To the extent that the rights advocate does seek change on the macro level through judicial or legislative means, it is important to understand that the only type of incremental legislative or judicial change that is even arguably consistent with rights theory is that which represents a *prohibition* of some significant form of institutionalized exploitation. [58] A prohibition recognizes that nonhumans have at least some interests apart from those interests, such as interests in food and water, that are needed to exploit the animals and that those interests cannot be traded away irrespective of the consequences for human beings. For example, a law that prohibited the use of nonhumans for particular types of

experiments (e.g., drug addiction experiments) *irrespective* of any expected benefit for humans would qualify as a prohibition that represented that animals had interests that went beyond their status as property, and that these interests could not be traded away irrespective of the expected consequences for humans. Although animals would still otherwise be regarded as "things" with no right of physical security, they would at least enjoy *some* deontological protection for interests that are themselves part of that basic right. This sort of protection is certainly more significant than a norm that prohibits nothing but "inhumane" treatment understood primarily as that conduct that exceeds what is necessary to ensure the economically efficient exploitation of the animal in light of the type of institutionalized exploitation that is involved. Assuming that these prohibitions are forms of incremental change that are consistent with rights theory, it is important that animal advocates not suggest or support alternative, and supposedly more "humane" forms of exploitation as "substitutes" for the exploitation to which the advocates object in the first instance. To do so would be to endorse the position that it is morally acceptable to exploit animals in the more "humane" way.

the macro component of Singer's utilitarian theory: Singer's view of incremental change is ostensibly more simple but again, this simplicity is deceptive. Singer argues that animal advocates should support "any measure that reduces the suffering of animals or enables them to meet their needs more fully."[59] The problem is that no one, *including the animal exploiters themselves,* disagrees with the view that we ought to minimize or reduce suffering. I have also elsewhere argued that as a direct result of confusion on this point, animal advocates frequently find themselves in the position of supporting the same proposals that are advocated by institutional animal exploiters. For example, in recent years, animal "rights" advocates have joined with the American Meat Institute to promote guidelines for more "humane" slaughter.[60]

Singer would, of course, object and argue that *he* has a very definite understanding of what sorts of action will "reduce" or "minimize" suffering. But that is precisely the problem. Without any sort of theoretical criteria to delimit what incremental changes that supposedly "minimize" or "reduce" suffering are desirable, the welfarists are incapable of distinguishing their program for strategic change from that of the exploiters themselves, all of whom agree that animals ought to be treated "humanely." [61]

The problem can be illustrated clearly with the following example. Assume that animal advocates criticize experiments in which animals are burned at a high degree of temperature without the benefit of anesthesia for five minutes. In response to the protest, the experimenter proposes a "compromise" under which the experiment will be conducted, but will be limited in duration to four minutes and fifty-nine seconds instead of five

minutes. There is arguably a reduction of suffering. There is even more arguably a reduction of suffering if the proposed compromise duration is four minutes and thirty seconds. I would suspect that Singer (and most animal advocates) would not find this as an acceptable position despite endorsing the view that "any" measure that reduces suffering is acceptable. Singer desires as a long-term goal the treatment of animals that would be dictated by a theory of act utilitarianism informed by the principle of equal consideration for equal interests. That is, if Singer were able to construct his ideal moral world for animals, animals would be treated in such a way that their treatment would maximize the pleasure and preference satisfaction for all beings who are affected. In making these determinations, animal interests would receive as much consideration as the equal interests of human beings. Putting aside the problems that I identified about knowing how such a principle would translate in real-world terms, we can identify two separate elements that constitute Singer's position: (1) endorsement of the principle of act utility, according to which individual acts (and not classes of acts) are to be tested against the principle of utility; and (2) endorsement of the principle of equality, according to which the equal interests of beings are accorded equal consideration without reference to considerations of race, sex, *or species*.

It is difficult to understand how Singer relates these notions to his view that animal advocates ought to support *any* measure that they think will reduce suffering. *Both* aspects of Singer's theory are conspicuously absent. Singer does not seem to subject any particular incremental measure to any analysis using either aspect. He does not, for example, require that any particular incremental measure reduce suffering *more* than possible alternatives. He does not even urge that as a proactive measure, animal advocates should assess the competing options and pick the one that will reduce suffering the most. Part of the problem is related to the fact that it is difficult to know what the consequences of various options will be if the primary or sole concern is the reduction of animal suffering. After all, whether the federal Animal Welfare Act reduces animal suffering is anyone's guess, and the consequences of that law in terms of reducing animal suffering could be debated forever. Recognizing these problems, Singer urges that we simply support "any" measure that "reduces suffering." But that is the same as providing no guidance on incremental measures, or at least no guidance that serves to differentiate the incremental measures that should be supported by animal advocates from the welfarist reforms that are supported by animal exploiters.

Similarly, although Singer's major contribution is his argument against speciesism, or in favor of according equal interest to equal considerations without species bias, he nowhere requires that this portion of his theory be applied to incremental change on a macro level. Singer does not maintain that incremental changes have to be those that are untainted by species

bias--and, if he is going to support "any" measure that he thinks will "reduce" animal suffering, he *cannot* use the criterion. For example, many new welfarists regarded the 1985 amendments to the Animal Welfare Act as representing incremental change in the direction of animal rights. [62] But those amendments explicitly assumed that it was morally acceptable to use animals in experiments under conditions in which similarly situated humans could not be so used. There was, however, no consideration of this by the new welfarists; nor, as far as I am aware, was any such consideration urged by Singer.

VI. Conclusion

Singer argues that as a general matter, rights theory possesses weak normative force and is incapable (or more incapable than utilitarianism) of proving specific normative guidance in concrete situations. This is incorrect. Rights theory requires the abolition of institutionalized animal exploitation and, in practical terms, this would mean that we would no longer eat animals, or use them in experiments, for clothing, or for entertainment. Whether humans or other nonhumans would benefit from the institutionalized exploitation of animals is not relevant because the respect principle simply rules such considerations out as a result of the equal inherent value possessed by all rightholders. For Singer, whether institutionalized exploitation would be abolished or modified, and if the latter, in what ways, would be open to question on a case-by-case basis because Singer, as an act utilitarian, is committed to applying the principle of utility on a case-by-case basis. Although he rejects speciesism, and requires that equal interests be given equal consideration, we saw that such a principle provides very little normative guidance as to how animals (or anyone else) ought to be treated.

Moreover, the clear normative guidance provided by rights theory concerning the abolition of institutionalized exploitation provides concrete normative guidance on the level of individual moral choice. And on the third level of theory--the macro level--rights theory allows for incremental change. Such change, however, should not be regarded as the incremental achievement of rights as a general matter. Part of the confusion that plagues the modern animal protection movement is connected to the failure to realize that rights theory has at its core the rejection of the property status of animals. In this light, the issue of incremental change is understood as the incremental eradication of this property status.

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from Anna Charlton, Priscilla Cohn, and Drucilla Cornell. This essay is respectfully dedicated to my nonhuman friend, Emma, whose personhood is completely clear in my mind.

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[2] Peter Singer, **Practical Ethics**, 2d ed. (Cambridge: Cambridge University Press, 1993), 2.

[3] *Id*. at 3.

[4] *Id*.

[5] *Id*.

[6] Ingrid Newkirk, "Total Victory, Like Checkmate, Cannot Be Achieved in One Move," **Animals' Agenda**, January/February 1992, at 44.

[7]*Id*. at 45.

[8] Mark Harris, "The Threat From Within," **Vegetarian Times**, February 1995, at 70 (quoting Henry Spira).

[9] See generally Gary L. Francione, **Rain Without Thunder: The Ideology of the Animal Rights Movement** (Philadelphia, PA:Temple University Press, 1996).

[10] For an discussion of the relationship between Singer's utilitarianism and animal welfare theory, see *id*. at 54-62. Singer, as a utilitarian, may respond that as a utilitarian, he believes that all human interests are similarly able to be traded away for consequential reasons alone. Even if Singer would maintain this position, the humanocentric evaluation of consequences is likely to be evaluated differently when nonhumans are involved.

[11]Bernard E. Rollin, **Animal Rights and Human Morality**, rev. ed. (Buffalo, NY: Prometheus Books, 1992), 12.

[12] *Id*. at 137.

[13] *Id*. at 140 (emphasis in original).

[14] Robert Garner, **Animals, Politics and Morality** (Manchester & New York: Manchester University Press, 1993), 34. (emphasis supplied).

[15]Singer, **Practical Ethics**, *supra* note 1, at 13.

[16] See generally Peter Singer, **Animal Liberation**, 2d ed. (New York: New York Review of Books, 1990), 1-23. The term "speciesism" was first coined by British psychologist Richard Ryder. [17] See Peter Singer, "Ethics and Animals," 13 **Behavioral & Brain Sci.** 45 (1990).

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[18] Singer, Animal Liberation, *supra* note 15, at 8.

[19] James M. Jasper & Dorothy Nelkin, **The Animal Rights Crusade** (New York: The Free Press, 1992), 5.

[20] Singer, "Ethics and Animals," *supra* note 16, at 46 (emphasis in original).

[21] Garner, **Animals, Politics and Morality**, *supra* note 13, at 27.

[22] Singer, **Animal Liberation**, *supra* note 15, at 228.

[23]*Id*. at 229.

[24] *Id.*The context of Singer's comments involve an examination of the argument that meat eaters actually do animals a favor by causing them (directly or through consumption demand) to come into existence in the first place. Singer acknowledges that although in the first edition of **Animal Liberation**, he rejected this view as "nonsense," *id*. at 228, he is now uncertain about its validity and concludes that it is difficult to deny that bringing a being into the world confers a benefit on that being as long as the being has a pleasant life. This leads him to the view that it may be morally permissible to eat animals who have been raised and slaughtered humanely.

[25] *Id*. at 229-230.

[26] *Id*. at 230. It should be noted that Singer argues that if a being does have desires for the future or a continuous mental existence, then it would be wrong to kill that being even if the killing were painless. The problem with this view is that it is inconsistent with Singer's utilitarian theory. The fact that x may have future desires may count against killing x because the frustration of x's future desires is a negative consequence for a preference utilitarian like Singer. But Singer cannot maintain that there is any absolute rule against killing such a being because the aggregation of consequences may militate in favor of such killing.

[27] Tom Regan, **The Case for Animal Rights** (Berkeley & Los Angeles: University of California Press, 1983), 221.

[28] See R.G. Frey, **Rights, Killing, and Suffering** (Oxford: Basil Blackwell, 1983), 197-203.

[29] Regan, The Case for Animal Rights, *supra* note 26, at 222.

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[30]The respect principle is a type of Kantian "transcendental" principle that Kant regarded as unifying moral judgments.

[31] Henry Shue, **Basic Rights**, 2d ed. (Princeton, N.J.: Princeton University Press, 1996), 20.

[32] *Id*. at 19.

[33] *Id*.

[34] *Id.*

[35] *Id*. at 20.

[36]*Id*.

[37] *Id*. at 21.

[38] I do not wish to give the impression that Shue argues that animals ought to have basic rights as his book does not even address the question of animal rights.

[39] For a discussion of the status of animals as property, see Gary L. Francione, **Animals, Property, and the Law** (Philadelphia, PA: Temple University Press, 1995).

[40] This is essentially the approach employed in James Rachels, **Created from Animals: The Moral Implications of Darwinism** (Oxford: Oxford University Press, 1990).

[41] Regan, **The Case for Animal Rights**, *supra* note 26, at 82.

[42] It is my position that sentience alone is sufficient for moral status, and that no cognitive function beyond sentience is needed to possess the right not to be a thing. See Gary L. Francione,

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An Introduction to Animal Rights: Your Child or the Dog? (forthcoming from Temple University Press, 1998).

[43] See Francione, **Rain Without Thunder: The Ideology of the Animal Rights Movement**, *supra* note 8, at 179-180; **Animals, Property, and the Law**, *supra* note 38, at 110-112.

[44] It is often argued that clothing made of nonanimal products, such as synthetics, may have unintended, but nevertheless serious, consequences for humans and animals alike. That may very well be, but there would be no difference in that circumstance from other situations in which unintended harm occurs. Although our use of synthetics may have deleterious but completely unintended consequences for the environment that adversely impact humans, this would not support the view that there is no difference between pollution that indirectly kills five people, and killing five people at random in order to use their skin to make clothing for other humans.

[45]Singer, **Animal Liberation**, *supra* note 15, at 15.

[46] Some scholars have accused Regan of the same problem based on his discussion of the following hypothetical: five survivors--four normal adults and one normal dog--are on a lifeboat. There is room in the boat only for four, and one of the occupants must be thrown overboard. Regan maintains that his rights theory provides an answer to the problem. Although death is a harm for the dog, Regan argues, death would be a qualitatively greater loss, and, accordingly, a greater harm, for any of the humans: "To throw any one of the humans overboard, to face certain death, would be to make that individual worse-off (i.e., would cause that individual a greater harm) than the harm that would be done to the dog if the animal was thrown overboard." Regan, **The Case for Animal Rights**, *supra* note 26, at 324 (emphasis in original). It would, on Regan's view, be morally obligatory to kill the dog. Further, Regan claims even if the choice is between a million dogs and one person, it would still be obligatory under rights theory to throw the dogs overboard. For a criticism of this view, see S. F. Sapontzis, **Morals, Reason, and Animals** (Philadelphia, PA: Temple University Press, 1987), 219. Ironically, one of Regan's most vocal critics on this point is Singer, who claims that a "theory that tells us that all subjects-of-a-life (including dogs) have equal inherent value [cannot] be reconciled with the intuition that it is the dog that must be sacrificed." Peter Singer, "Ten Years of Animal Liberation," **The New York Review of Books**, January 17, 1985, at 49.
To the extent that Regan allows for the resolution of this hypothetical problem by appealing to certain characteristics of the dog that Regan disallowed when he argued that all subjects-of-a-life have equal inherent value, then his resolution is inconsistent with his general theory. But Regan's discussion of the lifeboat example is irrelevant to his general theory that animals ought not to be regarded exclusively as means to human ends, and, even if Regan is incorrect, the error does not affect his general theory. The lifeboat example explicitly assumes the absence of any

institutionalized exploitation and the example can, therefore, not be used to support the view that rights theory could provide support for using animals to, say, find a cure for cancer. Moreover, the lifeboat hypothetical deals explicitly with a "post-rights" situation; that is, the hypothetical concerns the content of rights that animals would have were they no longer regarded as the property of humans. As such, the hypothetical does not concern Regan's theory of basic rights. See Gary L. Francione, "Comparable Harm and Equal Inherent Value: The Problem of the Dog in the Lifeboat," 11 **Between the Species** 81 (Summer/Fall 1995).

[47] Singer, **Animal Liberation**, *supra* note 15, at 20.

[48] See *supra* note 23 and accompanying text.

[49] Lawrence Finsen & Susan Finsen, **The Animal Rights Movement in America: From Compassion to Respect** (New York: Twayne Publishers, 1994), 186.

[50] For a discussion of the problems of animal welfare theory, and what I call "legal welfarism," or the legal and political institutions that enforce animal welfare, see Francione, **Animals, Property, and the Law**, *supra* note 38.

[51] Garner, **Animals, Politics and Morality**, *supra* note 13, at 193.

[52] *Id*

[53] *Id*. at 207-208.

[54]*Id*. at 208

[55]*Id*. at 211.

[56]Shue, **Basic Rights**, *supra* note 30, at 20.

[57]Spira is quoted in Harris, "The Threat from Within," *supra* note 7, at 70.

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[58]For a general discussion of rights theory and prohibitions, see Francione, **Rain Without Thunder: The Ideology of the Animal Rights Movement**, *supra* note 8, at 177-219.

[59] Kim W. Stallwood, "A Conversation with Peter Singer," **Animals' Agenda**, vol. 14, no. 2, (1994) at 25.

[60] For a discussion of how the position of some animal advocates is indistinguishable from the position of some animal exploiters, see Francione, **Rain Without Thunder: The Ideology of the Animal Rights Movement**, *supra* note 8.

[61] For example, Kenneth Shapiro, an animal welfarist who was has served as president of **Animals' Agenda**, and as editor of the **Journal of Applied Animal Welfare Science**, promotes the use of a six-step "pain scale" to be used by experimenters to evaluate the invasiveness of their research. The scale contains six steps. At the lower end of the scale, level 2, which represents "laboratory experiments and field studies involving mild pain/distress and no long-term harm," includes "frequent blood sampling," "intramuscular injection, skin scraping," "negative reinforcement" such as "mild electric shock" and "brief cold water immersion," "food deprivations" that do not result in more than a 10% weight loss," "water deprivation slightly exceeding particular species' requirements (e.g., deprivation in rats of less than 18 hours), and "[p]rocedures involving anesthetized animals with mild post-operative pain/distress and no long-term harm." Kenneth J. Shapiro & Peter B. Field, "A New Invasiveness Scale: Its Role in Reducing Animal Distress," 2 **Humane Innovations and Alternatives in Animal Experimentation** 43 (1988).

[62] For a discussion of the 1985 Amendments to the Animal Welfare Act, see Francione**, Animals, Property, and the Law,** *supra* note 38, at 195-99. For a general discussion of the Animal welfare Act, see *id*., at 185-207.