

BETWEEN THE SPECIES

Bentham and the “Famous Footnote”

ABSTRACT

It is the contention of this paper that animal liberationists have misconstrued and misused Bentham’s “famous footnote” as an advocacy of species equivalency of interests, as though he were an incipient opponent of what has come to be known as “speciesism.” The context of Bentham’s footnote was of mistreatment of others that are capable of feeling pain. He was advocating in the footnote for laws that would end what he viewed as instances of cruelty toward animals. He was not advocating for vegetarianism or an end to killing animals where they can be of benefit to human beings, where “we are the better for it.” Humans are not “the better” for wanton cruelty or tormenting others for “sport.” We should treat others with the respect they deserve. That also includes how we handle others’ views, written or spoken.

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Footnotes are often important, but rarely are they famous. Journalist Kenneth Woodward, having lamented the demise of the footnote in much of modern publishing in a 1996 *Newsweek* article, accented their import: “Footnotes are reminders that scholarship is an intrinsically communal enterprise—building on, revising or replacing the work of predecessors.” While footnotes, he admits, can sometimes be a “mere display of intellectual vanity,” “the well-wrought note . . . is specific, allowing the reader to check up on authorial claims. In short, source notes are the opposite of elitist: anyone can use them to ‘out’ the author who misuses or misconstrues another’s work” (Woodward 1996).

There is certainly no more famous footnote in all of animal studies literature, if not in literature as a whole, than that cited from Jeremy Bentham so often it has come to be known as “the famous footnote”: “The question is not, Can they reason? Nor, Can they talk? But, Can they suffer?” The citation is part of a lengthy footnote at the very end of Bentham’s *Introduction to Principles of Morals and Legislation* (1789), a work intended as a preface to a complete penal code in which he argues that the proper purpose of government is the happiness of the community and in which he outlines his theory of punishment and offers a detailed classification of offenses. None of this would seem to be a sourcebook for the most widely quoted sentence in animal studies, however, which has led some to question whether it is not only “over-quoted,” but “taken out of context” (Johnson 2012). Given that “there is a tendency to attribute to the ‘authenticity Bentham’ [sic] views he did not hold, and could not have held” (Schofield 2009, 23), it seems appropriate to delve into this more deeply. This paper will maintain that the use of the “famous footnote” in animal studies does fall

prey to that tendency to attribute to Bentham views he did not hold and could not have held.

The Context of Bentham's Work

Bentham was trained as a lawyer and, though admitted to the bar, practiced little. Instead, he focused his efforts on what he felt was his “genius for legislation.” His first major work was the *Introduction to Principles of Morals and Legislation*, printed in 1780 but not published till 1789 when concerns about the “inordinate length of some of the chapters, the apparent uselessness of others, and the dry and metaphysical tone of the whole” were overcome by the practical reality of acknowledging a work that had already gotten out into the public and was being cited by others. While he admitted he did not expect there to be many readers of it, he shares in the Preface of 1789 areas in which the work does not meet with his matured views. “In addition to its analysis of the extensive ideas signified by the terms ‘pleasure’, ‘pain’, ‘motive’, and ‘disposition’, a similar analysis [is needed] of the equally extensive though much less determinate ideas annexed to the terms ‘emotion’, ‘passion’, ‘appetite’, ‘virtue’, ‘vice’, and some others, including the names of the particular virtues and vices,” along with “certain axioms of what we may call mental pathology, expressing the ways in which the feelings of the people concerned are related to the various classes of incidents that the operations of government either call for or produce” (Bentham 1823, 2). All of this, of course, has to do with human beings, as is further evidenced in chapters on “human actions in general,” “intentionality,” “consciousness,” “motives,” “human dispositions,” and the consequences of harmful acts and the appropriate means of punishment.

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The work opens with what Schofield deems “the most frequently quoted paragraph in all of Bentham’s corpus,” that having to do with the “principle of utility”:

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. They alone point out what we ought to do and determine what we shall do; the standard of right and wrong, and the chain of causes and effects, are both fastened to their throne. They govern us in all we do, all we say, all we think; every effort we can make to throw off our subjection to pain and pleasure will only serve to demonstrate and confirm it (Bentham 1823, 6).

For Bentham, pain and pleasure lie at the root of all human action, as well as that of other sentient creatures, though he does not mention them till the end of the work in the “famous footnote.” Simply put, the good is found in pleasure and evil in pain or loss of pleasure. All action is motivated by the desire for the good of pleasure or avoidance of pain. That is the interest the individual is said to have in performing an action. That desire is coupled with the power to pursue what the mind wills through understanding, which is knowledge and judgment, to obtain pleasure. That pleasure must not be merely for self as would be natural, but for the greatest number. For this to occur, legislation is necessary to provide the motives of pain and pleasure, i.e., rewards and punishments.

Bentham offered in the *Introduction* and his theory of utilitarianism a secular vision in which law and rights were not found in God, nature, or the individual, but were derived from government. “He offered a secular vision of society, where the standard of rectitude would be founded not in theology, or nat-

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ural law, or right reason, or precedent, or sheer prejudice, but on observation and analysis of experienced facts” (Schofield 2009, 15). Bentham’s primary concerns were with eliminating the idea of natural rights, which he lampooned as “nonsense on stilts” from outside the legislative process, and with replacing a corrupt, incomplete and arbitrary English Common Law with a system of law and a penal code that was orderly, dependable, equitable, and understandable. At a time in which there were over two hundred offenses for which someone could be hanged, in which judges made law and in which only the rich could afford to enforce their legal rights by means of lawyers whom Bentham characterized as “liars for hire,” the notion that everyone was equal under law was a manifest and cruel absurdity he aimed to rectify.

There is little reference to *animals* in Bentham’s *Introduction*; in fact, there are about as many references to animals in the concluding “famous footnote” as there are combined in the totality of the preceding work. In Chapter 2, “The Principle of Utility,” he speaks of the ability to see one’s opponent as an enemy and a criminal as “one of the ways in which the human race is distinguished—not much indeed to its advantage—from the lower animals” (Bentham 1823, 18). In Chapter 5, “The Kinds of Pleasure and Pain,” he notes that there are objects of benevolence and malevolence, which include the Supreme Being among the former, with “human beings and other animals” in both categories. Among the list of pleasures he delineates are “pleasures of the imagination,” namely “the idea of the innocence and happiness of the birds, sheep, cattle, dogs, and other gentle or domestic animals” (Bentham 1823, 29). In addition to mention of “animal generation,” i.e. procreation, he speaks of “harm done by noxious animals, such as beasts of prey, locusts”; these are calamities which affect

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person and property in his classification of offenses in chapter 16 (Bentham 1823, 120). That is the sum of the references to animals till one gets to the next and last chapter, entitled “The Boundary around Penal Jurisprudence.”

In that last chapter he defines ethics as “the art of directing men’s actions to the production of the greatest possible quantity of happiness for those whose interests are in view.” Those who may be affected by our actions are “other human beings” (i.e., “persons”) and “other animals which—because their interests were neglected by the insensibility of the ancient jurists—are downgraded into the class of things.” He then begins a long footnote on this, the last part of which has come to have extraordinary influence in the animal liberation movement. The “famous footnote” begins with his acknowledgement that the interests of animals have received some attention in Hinduism and Islam, but he wonders why animal concerns haven’t received more attention, which he attributes rather cryptically to “mutual fear, a feeling which the less rational animals haven’t had the same means as man has for turning to account.” This may be his opaque way of broaching the issue of their not being able to reason or speak for themselves.

Bentham clearly harbors no concern about killing animals for food or in self-defense. The reason he gives is simply that of human enjoyment and betterment, to which he also adds distinctions in human rational capability and the minimization of animal suffering at the hands of humans compared to that found in nature:

There is very good reason why we should be allowed to eat such non-human animals as we like to eat: we are the better for it, and they are never the worse. They have none of those long-

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protracted anticipations of future misery that we have; and the death they suffer at our hands usually is and always could be speedier and thus less painful than what would await them in the inevitable course of nature. There is also very good reason why we should be allowed to kill ones that attack us: we would be the worse for their living, and they are not the worse of being dead.

Bentham's primary concern in the footnote then follows and is clearly indicated. He is concerned with animal cruelty: "is there any reason why we should be allowed to torment them?" His answer: "None that I can see."

The day may come when the non-human part of the animal creation will acquire the rights that never could have been withheld from them except by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the whims of a tormentor. Perhaps it will some day be recognised that the number of legs, the hairiness of the skin, or the possession of a tail, are equally insufficient reasons for abandoning to the same fate a creature that can feel? What else could be used to draw the line? Is it the faculty of reason or the possession of language? But a full-grown horse or dog is incomparably more rational and conversable than an infant of a day, or a week, or even a month old. Even if that were not so, what difference would that make? The question is not Can they reason? or Can they talk? but Can they suffer?

The last sentence has been called "the Great Sentence" for its thematic significance for the animal liberation movement. In its context, it stands as a clarion call for consideration of the interests of animals against cruelty based on the recogni-

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tion that they feel and suffer. Just as the French had recognized at the time of this writing, when slavery was still in effect in Britain and its colonies, that slaves were human and should be treated as such, so animals too should be treated with due dignity as sentient creatures, as creatures that feel. Such consideration, he maintains, has nothing to do with rational or linguistic capability, but rather with the capacity to suffer.

It is hard to find much to disagree with here, since caring for other creatures regardless of their abilities or intelligence would seem to be an innate general sensibility. This was a time, however, in which the mechanistic view of both the human and animal body, typically associated with Descartes but generally widespread well into the Enlightenment (and even into the present), was coming under review. Additionally, there were growing concerns arising from the use and abuse of animal vivisection, such as Robert Boyle's "infamous experiments on live animals on an air pump" which consisted of "registering how animals responded to increasingly rarefied air Public demonstrations of this experiment would become very popular in the eighteenth century, although it bore more of an entertaining, rather than educational, nature" (Franco 2013, 245). In his classic study of Bentham's life and work, Atkinson says, "Bentham insisted that acts of *cruelty to animals* must be classed among crimes or offences cognisable by law."

In Bentham's view, men must be allowed to kill, or inflict pain on, animals with a determinate object, if that object be beneficial to mankind and there is a reasonable prospect of its accomplishment; but no man should be suffered to torment them (Atkinson 1905, 146).

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Law should protect animals from all willful cruelty, including that involved in “sports” such as cock-fighting, bull-baiting, fox hunting, perhaps even shooting or fishing. Atkinson adds in summary, “If, moreover, humanity toward animals—the sentiment of benevolence—were inculcated in the minds of children, would it not tend towards the prevention of crimes of violence?” (Atkinson 1905, 146). It is worthy of note that, for all the criticism of Thomas Aquinas as having baptized Aristotelian distinctions between the human and non-human based on rationality, this was also why Thomas had condemned cruelty to animals (Franco 2013, 239).

While a bill before the House of Commons on June 15, 1809 failed which would have made it a crime to maliciously wound horses, cattle, sheep or swine, help and hope for animals was on the horizon. On June 16, 1824 a meeting was convened in London by Rev. Arthur Broome (1779-1837) and a group of fellow Christians, along with one influential Jewish activist, for the purpose of creating what Broome called a Society for the Prevention of Cruelty to Animals (SPCA). Johnson believes it is worth noting the religious motivation here:

It is important to keep in perspective the fact that the impetus for organising the SPCA came from a group of people whose shared values about protecting animals sprang from a monotheistic understanding of life. . . . The creation of the SPCA was not undertaken by a band of influential reformers gathered together around Jeremy Bentham’s (1748-1832) utilitarian ethics (Johnson 2012).

Given the extraordinary force of the “famous footnote” in contemporary animal studies, it is indeed curious that Ben-

tham's "friend and admirer, the great reformer William Wilberforce" (Schultz 2017, 85), a member of Broome's group, did not enlist Bentham in this effort against animal cruelty.

The Animal Liberation Reading of Bentham

Peter Singer is almost certainly the impetus for the present appropriation of Bentham's "famous footnote," as he himself acknowledges. Through a small circle of Oxford vegetarians, he was introduced to Richard Ryder's leaflet *Speciesism* in 1970 in which Ryder pointed out that it was selfish of human beings to inflict misery on other animals for their own benefit. The alleviation of pain and suffering should be a clear moral criterion, regardless of species membership, Singer avers:

This view fitted well within my own broadly utilitarian ethical framework. After all, Jeremy Bentham, the founder of utilitarianism, had written, with regard to animals 'The question is not, Can they reason? Nor, Can they talk? But, Can they suffer?' (This is now often referred to as Bentham's 'famous footnote' but in 1970, it was not famous at all—it was substantially overlooked in philosophical discussions of Bentham's work.) How could suffering be less morally significant simply because it was the suffering of a being who is not a member of our species? (Singer, 2011, iv-v).

Singer here seems to blend Ryder's idea of speciesism with Bentham's quote, though there is no indication in Bentham of any species indifference or moral congruity between human and non-human animals.

Singer expanded on this in his monumental *Animal Liberation* (1975). There, in the opening chapter tendentiously en-

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titled “All Animals are Equal,” we are informed that Bentham’s dictum, “each to count for one and none more than one,” means that “the taking into account of the interests of the being, whatever those interests may be—must, according to the principle of equality, be extended to all beings, black or white, masculine or feminine, human or nonhuman” (Singer 2009, 5). This is said, though there is no indication whatsoever that Bentham intended his dictum to span the species. Henry Sidgwick (1838-1900), whom Singer there quotes in favor of his equal interests criterion, makes it clear that the principle of equality pertains to human beings: “Bentham’s dictum may be understood merely as making the conception of the ultimate end precise – laying down that one person’s happiness is to be counted for as much as another’s (supposed equal in degree) as an element of the general happiness – not as directly prescribing the rules of conduct by which this end will be attained” (cited by Guidi 2008, para. 49).

Equality is not the beginning and end of Bentham’s utilitarianism, but rather a means of best providing for the best standard of right and wrong. There are actually four “sub-ends” to utility: subsistence, abundance, security and equality. Subsistence and abundance have to do with the minimum resources needed for survival, abundance with maximal resources, security with their protection, and equality with fairness, not with leveling of distinctions between, say, the rich and poor, lest the security of the rich be jeopardized by violent onslaughts of the poor. Thus Schofield asserts, “The principle of equality gives significant weight to equality, as we have seen, but Bentham, for instance, argues that for the legislator to aim at equality as his primary end would be both unfeasible and disastrous” (2009, 68). The idea that we should treat all sentient beings the same appears to be incongruous with what we have already

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seen in Bentham, specifically with the ideas involved in utility. He is concerned with a theory of moral rectitude which brings about the greatest happiness of the community through fair and equitable government, not with leveling species distinctions. Schultz rather dryly states that Bentham's priorities differed from those of Singer (2017, 58).

Singer thus seems, rather anachronistically, to characterize Bentham as an opponent of speciesism, what Singer calls a prejudice or attitude of bias in favor of the interests of members of one's own species and against those of members of other species. There is, however, no reason to think Bentham viewed species distinctions as a prejudice or as an insufficient basis for giving moral consideration to humans over animals. He himself said in the footnote that it is acceptable to kill animals for the sake of human beings, whether for food or self-defense. Specifically, he said it was acceptable to kill animals "as we like to eat," according to our preference for them as food. Human preference for animals as food thus appears to be determinative. Further, "we are the better for it"; in other words, human improvement appears to be more important, allowing that animal pain is minimized in the process. Bentham was also not opposed to hunting, provided the rules of the hunt were fair and followed. In a time long before anesthesia, Bentham says that the way in which humans killed animals was less painful than what they would likely experience in nature. Bentham's perspective here is also quite in opposition to Regan's concerns about harms done to animals in depriving them of life, regardless of the "humaneness" of how they might be killed (Regan 1983, 99).

"The principle of utility," Bentham had said in the opening of the *Introduction*, makes the subjection of "mankind" to

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pain and pleasure “the basis of a system that aims to have the edifice of happiness built by the hands of reason and of law.” In the footnote, he admits the question is not whether animals can reason, presumably because in his view they could not. It is not, then, that animals have any basis for a system of utility “built by the hands of reason and of law,” for they do not.

Bentham felt that representative democracy (the only kind possible in all but the simplest societies) was likely to make the actual end and the proper end of government coincide. Bentham did not extend these ideas to nonhuman animals—and there is no reason to think that he thought that nonhuman species should somehow participate in democratic government! (Shanks 2002).

Indeed, “an action then may be said to conform to the principle of utility . . . when its tendency to increase the happiness of the community is greater than any tendency it has to lessen it. And the same holds for measures of government, which are merely one kind of action performed by one or more particular persons” (Bentham 1823, 7). The principle of utility is based on reason, law, and government, all of which pertain to human beings and not to animals. That animals should be given due consideration by human reason, law, and government, as feeling beings, Bentham would surely assert. That they are somehow equal in consideration with human beings in terms of interests would appear to be unfathomable to him.

If, as Shanks has admitted, “Bentham did not extend these ideas to nonhuman animals,” is it legitimate to intimate that Bentham “pointed out” an argument against “speciesism”? “As Bentham pointed out, if the racist cannot make a case for different treatment simply by pointing to the color of the skin,

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so the speciesist (one who discriminates on the basis of species membership) ought not to be able to make a case simply on the basis of membership of a nonhuman species” (Shanks 2002). Bentham knew nothing of speciesism! He speaks of “lower animals” and distinguishes humans from them on the basis of all of the elements of his utilitarianism and jurisprudential theory, namely, consciousness, intentionality, motivation, reason, and government.

Singer seems to have initiated this association of Bentham with opposition to speciesism. “Many philosophers and other writers have proposed the principle of equal consideration of interests, in some form or other, as a basic moral principle; but not many of them have recognized that this principle applies to members of other species as well as to our own. Jeremy Bentham was one of the few who did realize this,” after which he cites the “famous footnote” (Singer 2009, 6-7). Singer thus says that Bentham made his principle of equal interests apply to other species, but how could Bentham be said to “realize this” when he had no idea of evolutionary development or a purported continuum in which human and non-human animals differ not in kind, but only in degree?

Bentham, writing in 1780, would have had no idea of evolutionary development. During this period, “gradation of faculties was expressed in the idiom of ‘development’: higher forms were more developed. But for most that term carried no implication of species transmutation over historical time—that is, ‘evolution’ in the modern sense—being rather a plan of Creation pre-ordained in the Divine Mind, unfolding by divine law” (Porter 1997, 253). While Porter mentions Erasmus Darwin (1731-1802) in Britain and Jan Baptiste Lamarck (1744-1829) as turning “the ‘stages’ model of the hierarchy of

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organized powers into full-blown biological transformationism” (Porter 1997, 253), it was not till Charles Darwin’s *On the Origin of the Species* (1859) that the idea of development over long periods through natural selection was introduced.

Writing nearly a hundred years after Bentham’s *Introduction*, Darwin spoke in *The Descent of Man, and Selection in Relation to Sex* (1871) of moral actions as those performed by a moral being, by humans.

A moral being is one who is capable of comparing his past and future actions or motives, and of approving or disapproving of them. We have no reason to suppose that any of the lower animals have this capacity. . . . In the case of man, who alone can with certainty be ranked as a moral being, actions of a certain class are called moral, whether performed deliberately, after a struggle with opposing motives, or impulsively through instinct, or from the effects of slowly-gained habit (Darwin 2004, 135).

Moral qualities having arisen more through reason and religion than natural selection, Darwin concluded his work by saying, “Man may be excused for feeling some pride at having arisen, though not through his own exertions, to the very summit of the organic scale” (Darwin 2004, 689). Hence, while Darwin did speak of animals as “brethren,” he himself did not view human and non-human animals as equals. Rather, he maintained the unique status of humans as self-conscious, moral, religious, and as having risen to the highest rank on the organic scale. For Darwin, too, animals could be hunted, eaten, and, yes, even used in vivisection for the greater good of humanity, however distasteful that might sometimes be. As evolutionary biologist James Mallet emphasizes, Darwin “nev-

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er intended the message, now widely believed to be Darwin's goal by latter-day readers, that *all* species blended together in a chaos of varying links" (Mallet 2013). Darwin can hardly be called upon as an opponent of "speciesism," introduced a hundred years after *The Descent of Man*, and Bentham can hardly have had a notion of evolution, which appeared well after he died. To think otherwise is anachronistic, linking Bentham to ideas he could not have had.

Ethics and the Use of Quotation

Animal studies is an inherently ethically-oriented discipline. It is concerned with the ethical treatment of animals. As such, those who seek to demonstrate and defend its propositions should do so with an ethical orientation in mind. That includes the use of others' words, as is standard in ideas pertaining to academic integrity.

That Bentham, in what has become known as the "famous footnote," is not making any claims of species congruity or equivalency with regard to animal rights has been demonstrated. Indeed, for him there are no natural rights, but only those conferred by government. He has spoken of "lower animals," already admitted the legitimacy of killing animals for human food and in self-defense, "as we like" and because "we are the better for it." It seems undeniable that Bentham gives human considerations greater weight than those of animals, that he is in fact engaging in the very "prejudice" that Singer and other proponents of animal rights cite him as opposing! He most certainly does not have in mind a flattening out of distinctions between human and non-human animals or any idea of an equality of interests between species. Thus, animal liberationists may be guilty of misapplying Bentham's "famous footnote,"

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since it was certainly not Bentham's intention to suggest a radical continuity between human and non-human animals.

Reading and research entail an ethic, an effort to ascertain what an author is trying to say. What are the author's intentions, his goals in writing? An author's intended meaning is the goal of interpretation, the norm of interpretation, and also the ethical requirement for the understanding and use of language. "A text cannot be interpreted from a perspective different from the original author's. Meaning is understood from the perspective that lends existence to meaning. Any other procedure is not interpretation but authorship" (Hirsch 1976, 49). In other words, citing Bentham as is commonly done by animal liberationists for its argument against so-called speciesism may be an ethical violation of the use of language, for it seems clear Bentham never intended what he is said to support in this quotation. He was advocating in the "famous footnote" for an end to cruelty toward animals and laws to protect them as sentient beings. Having died well before Darwin's revolutionary insights, he could not have had any idea of a developmental continuum between species. Writing in 1780, he also could hardly have been prescient to Ryder's notion of "speciesism" in 1970, almost two hundred years hence. He cannot be fairly cited in support of either idea.

Ethics involves for Bentham the analysis of human action so as to promote the greatest happiness for humans and animals, but there is no intimation that humans and animals are for him of equal value in terms of interests or preferences. Humans are allowed to kill animals for food "as we like to eat" and human preference prevails, provided animal pain is minimized: "we are the better for it, and they are never the worse." Bentham's "famous footnote" has thus indeed been taken out of context

and misapplied by advocates of animal rights and liberation. However important Bentham's footnote is or has been deemed to be for the movement, Bentham's intent and the context in which the footnote occurs must be more clearly considered.

Conclusion

Kenneth Woodward reminds us that footnotes allow the reader to check up on authorial claims, to see if someone has misused or misconstrued another's work. It is the contention of this paper that animal liberationists have indeed misconstrued and misused Bentham's "famous footnote" as an advocacy of species equivalency of interests, as though he were an incipient opponent of what has come to be known as "speciesism." The context of Bentham's footnote was of mistreatment of others that are capable of feeling pain. He was advocating in the footnote for laws that would end what he viewed as instances of cruelty toward animals. He was not advocating for vegetarianism or an end to killing animals where they can be of benefit to human beings, where "we are the better for it." Humans are not "the better" for wanton cruelty or tormenting others for "sport." We should treat others with the respect they deserve. That also includes how we handle others' views, written or spoken.

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