

In Defence of Animal Sentience: A Critique of Cochrane's Liberty Thesis

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In a recent article in *Political Studies*, Alasdair Cochrane argues that animals have an instrumental, but not – unlike humans – an intrinsic, interest in liberty. This, he argues, has important implications for our treatment of animals because it denies the argument, made by some animal rights ethicists and activists, that all uses of animals ought to be abolished. This response critiques Cochrane in two ways. Firstly, his perfunctory dismissal of the argument from marginal cases underestimates the counter-intuitive character of the conclusions that derive from attempting to show that marginal humans, like animals, do not have an intrinsic interest in liberty and, by extrapolation, life. Secondly, it is argued that even if we accept that animals do not have an intrinsic interest in liberty, there are important elements of the use of animals (as experimental subjects and as sources of food in particular) that cannot exist, or exist very easily, without the infliction of suffering. An ethic based on sentience therefore can go a long way, in practice, towards achieving the goals of the animal rights movement.

Alasdair Cochrane's (2009) article in this journal engages with an important distinction in the animal rights debate. On the one hand, there is the argument that it is wrong to use animals, however they are treated (what I would call the 'use position'). On the other is the argument that what is wrong is not the use of animals but the way they are treated while being used (what I would call the 'sentience position'). The former is based on the view that to use animals is to deprive autonomous beings of their liberty (and possibly lives). The latter is based on the view that what is wrong with our treatment of animals is the infliction of suffering on them.

Cochrane's thesis is a critique of the position that it is wrong to use animals, irrespective of the way they are treated. He asserts that because most animals lack autonomy (defined in terms of a being's ability to frame, revise and pursue their own conceptions of the good), their interest in liberty is only instrumental, whereas for humans, as autonomous beings, it is intrinsic. As a result, humans have an interest in liberty 'irrespective of its contribution to the achievement of other goods, such as the avoidance of frustration' (Cochrane, 2009, p. 660). For animals, on the other hand, liberty is valuable because of the goods (such as avoiding suffering) that derive from it. This, he argues further, has important implications for our treatment of animals because it challenges the view, held by some animal ethicists, that any deprivation of an animal's liberty is morally illegitimate. As a result, Cochrane rejects the argument that the keeping of animals – say, for food production and experimental purposes – should be abolished irrespective of the circumstances in which they are kept.

This article puts forward two major responses to Cochrane's contribution to the debate about the moral status of animals. In the first place, it is argued that he has not shown

entirely satisfactorily that it is possible to distinguish morally between humans and animals on the grounds of autonomy, and that, as a result, the 'use position' held by many animal rights philosophers may still have some theoretical mileage. This claim is based on applying the so-called 'argument from marginal cases' (a device common in the animal ethics literature), whereby the attempt to distinguish morally between humans and animals on the grounds that the former are autonomous and the latter are not falls foul of the fact that not all humans are autonomous. Cochrane recognises the force of the argument from marginal cases and suggests that it is justifiable morally to treat 'marginal' humans as beings with less interest in liberty (and, by extrapolation, life) than 'normal' adult humans. It is argued in this response, however, that such a conclusion fails to take into account what I take to be the counter-intuitive implications of treating marginal humans in a similar way to animals.

The second response consists of the argument that Cochrane's critique of the 'use position', even if established, is not fatal to a viable and effective theory of animal rights. There are two main reasons for this. Firstly, as Cochrane himself recognises, denying animals' autonomy does not undermine their interest in not suffering. This important insight can then be used to challenge the conventional critique of the animal rights position, a task that Cochrane does not address. Secondly, applying the principle that animals have an interest in not suffering, translated as a right against those who would inflict suffering on them, can go a long way, in practice, towards achieving the abolitionist goals of those holding the 'animal use' position. Thus, a great deal of the goals of the animal rights movement can be achieved even if we accept the argument that animals do not have an interest in liberty or in life. This is because there are important elements of the use of animals (as experimental subjects and as sources of food in particular) that cannot exist, or exist very easily, without the infliction of suffering. This conclusion therefore challenges the political relevance of Cochrane's analysis and, indeed, of the animal use position itself. This conclusion is reinforced by the fact that the campaigns of the animal rights movement have been based more on opposing the suffering of animals than their lack of freedom, or indeed the fact that they are killed.

The Argument from Marginal Cases

The first response to Cochrane's article is a challenge to his claim that it is possible to distinguish morally between humans and animals on the grounds that the former are autonomous in the relevant way and the latter are not. Such a claim has been a common one in the animal ethics literature, although, as we shall see below, Cochrane draws significantly different conclusions from it. This challenge takes two main forms. In the first place, there are strong grounds for suggesting that at least some animals *are* autonomous. Cochrane recognises this might be the case (2009, p. 668) and suggests that although we cannot be sure about the cognitive abilities, for example, of the great apes and cetaceans, we should adopt a precautionary principle in the case of members of these species and assume that they are autonomous. As a result, we should regard these animals as having an intrinsic interest in liberty.

The recognition that a small number of animals may well be autonomous does not represent a serious difficulty for Cochrane's thesis. As he himself recognises, all it does is to

create another moral boundary, above which are humans and the more cognitively able animals, and below which are the vast majority of animals. Thus, the common animal rights response to the autonomy argument – that some animals are autonomous and therefore, according to Cochrane’s interpretation, also have an intrinsic interest in liberty – is a weak argument in defence of moral egalitarianism because it still leaves most (even the vast majority) of non-human animals without the moral advantages provided by autonomy.

Here, it should be noted that most pro-animal philosophers accept that ordinary adult humans have greater cognitive abilities than all animals, and that this is significant morally. The leading animal rights advocate Tom Regan (1984, pp. 94–9), for instance, argues that animals are ‘subjects of a life’ with inherent value, since beings whose lives are characterised by beliefs and desires and who are thus capable of acting intentionally to satisfy their preferences have lives worth living. Nevertheless, he only wants to attach this status to mammals of one year or over (therefore excluding many animals in the process). Moreover, Regan (2004, p. 50) recognises that the autonomy possessed by animals is of a lower standard than that applied to normal adult humans, and that, as a result, he needs an additional argument to justify according to the former a moral status equivalent to the latter.

This additional argument is that not all humans are autonomous. Thus, in the so-called argument from marginal cases (AMC), it is asked if we persist in justifying treating animals differently on the grounds that they are cognitively less able than humans, then what should we do with those humans – the seriously mentally disabled in particular – who do not themselves have the same degree of autonomy as normal adult humans. Consistency would seem to demand that we regard human mental defectives as morally equivalent to animals (see Dombrowski, 1997). Cochrane touches upon the AMC. He adopts the so-called ‘biconditional’ version, which holds that *if* marginal humans are regarded as having maximum moral significance, then so have those animals with equivalent levels of cognitive capacity (Pluhar, 1995, pp. 63–4). This can be contrasted with the ‘categorical’ version, which holds that *because* marginal humans (or human non-persons) are deemed to have maximum moral significance then consistency demands that animals with an equivalent cognitive capacity are accorded the same moral status. The difference between the two versions is that the former can be used to justify excluding *both* animals and marginal humans from maximum moral significance. This is precisely what Cochrane does in suggesting that it is morally legitimate to regard marginal humans as beings who do not have an intrinsic interest in liberty.

It is the contention of this article that Cochrane dismisses the impact of the AMC on his overall thesis a little too readily. By adopting the biconditional version of the AMC, he is logically committed to the conclusion that marginal humans, as well as animals, have no intrinsic interest in liberty. Such a conclusion, however, has counter-intuitive elements to it. Moreover, similar arguments used by Cochrane to deny animals and marginal humans an intrinsic interest in liberty can be used to show that they also have less interest in continued life than normal adult humans. Such a conclusion is also counter-intuitive, at least in some instances. If this argument is sound, then two options are open to Cochrane. The first is to challenge the validity of the AMC, and to justify the differential treatment of animals and marginal humans. This he does not attempt to do. Alternatively, without effectively

challenging the AMC, he would be logically committed to the proposition that since it is counter-intuitive to treat the lives and liberties of marginal humans in the ways that we routinely treat those of animals then it is not morally justifiably to treat animals in these ways either.

All of this assumes, of course, that it *is* counter-intuitive to treat marginal humans as if they had no intrinsic interest in liberty and life. However, it is not counter-intuitive to suggest that marginal humans ought to be deprived of an interest in liberty *if* by that is meant greater interference in their lives so that their interest (in not harming themselves) is upheld. However, there are cases where this happens in practice in a non-controversial way. The denial of an interest in liberty for animals, though, means much more than this. It means that we regard it as legitimate to keep them in captivity, regarding them as our property and depriving them of self-ownership. Crucially, too, we do this not in their interests but for a variety of human benefits, some more detrimental to the interests of animals than others. Put more starkly, if it is unproblematic morally to regard animals as our property and to treat them as our slaves (on the grounds that they do not possess an intrinsic interest in liberty) then why is it any different for marginal humans?

Similar arguments in support of denying animals and marginal humans an intrinsic interest in liberty can be, and have been, utilised to deny animals an interest in continued life. Indeed, it is common within the animal ethics literature to deny this interest for non-autonomous beings, or at least to claim that an animal's (and, by extrapolation, a marginal human's) interest in life is less significant morally than a normal adult human's. The reason for the greater value placed on human life relates to the harm caused by death. There are two distinct ways in which harm might be caused by death. The first, what David DeGrazia (1996, pp. 59–61) calls the 'desire-based account', postulates that death causes harm because it denies a desire to stay alive. DeGrazia is probably right to assert here that no animals, except perhaps the higher mammals, even understand the concept of staying alive, let alone the desire to do so. As a result, death is not a harm for animals according to this account of the harm caused by death. Normal adult humans, on the other hand, clearly do possess the concept of death and most do have a desire to stay alive. 'To take the lives' of such self-conscious beings, as Peter Singer (1993, p. 90) points out, 'is to thwart their desires for the future. Killing a snail or a day-old infant does not thwart any desires of this kind, because snails and newborn infants are incapable of having such desires'.

DeGrazia (1996, p. 61) also identifies an 'opportunities-based' account of the harm caused by death. Unlike the desire-based account, this view does not depend upon an individual's awareness of the opportunities lost by death. Rather, 'death is an instrumental harm in so far as it forecloses the valuable opportunities that continued life would afford'. The nature of this thwarting of desires, then, is not about individuals feeling frustrated, angry or unfulfilled, since they will not be alive to feel such things. Clearly, though, it is important to recognise that great anxiety is likely to be caused by a fear of death, a feeling that will not be present in a being that has no conception of its own future. But assuming the death was instantaneous and unexpected, it is the lost opportunities that are thwarted. In other words, there are harms of deprivation. So, labouring the point somewhat, it is wrong to

claim that painless death causes no harm because we are not aware of it. We can clearly be harmed even though we are unaware of the fact.

For a being with autonomy, then, death means that a future is taken away, consisting of ‘a constellation of experiences, beliefs, desires, goals, projects, activities, and various other things’ (Rowlands, 2002, p. 76). If the life is taken of a being that does not have this ‘constellation of experiences’ (a being, in Cochrane’s words, who does not have an ability to frame, revise and pursue their own conceptions of the good) or has them to a lesser degree, it is difficult to see that such a being can be harmed to the same extent, providing the death is painless. As Steve Sapontzis (1987, p. 218) remarks, ‘thanks to our superior intellect, we are capable of appreciating fine art, conceptual matters, moral fulfilment, flights of imagination, remembrance and anticipation, and so on in addition to what animals can experience’. In Singer’s (1990, p. 21) words:

to take the life of a being who has been hoping, planning and working for some future goal is to deprive that being of the fulfilment of all those efforts; to take the life of a being with a mental capacity below the level needed to grasp that one is a being with a future – much less make plans for the future – cannot involve this particular kind of loss.

All of this suggests that human lives are of greater moral importance than animal lives precisely because of the autonomous characteristics they possess. If this is the case, then, by accepting the biconditional version of the AMC, Cochrane is logically committed to the conclusion that not only do marginal humans have no intrinsic interest in liberty but they also have less interest in continued life than normal adult humans, or even no interest at all. This, too, I would argue has counter-intuitive implications. Now of course it is true that in some severe cases (the brain dead, the severely cognitively impaired) we do regard a marginal human’s interest in continued life as less than normal adults. But even in these very severe cases – and many marginal humans are not in this category – we agonise over the right thing to do, and sometimes the courts are required to adjudicate in life and death decisions. Human life, of all qualities, is regarded with respect. This, of course, is very different from the throwaway attitude we have towards animal lives, where animals are killed for every conceivable human purpose. Since animal lives are regarded as dispensable on the grounds that their lives are worth less than humans, does not consistency demand that we either treat marginal humans in a similar way, as beings whose lives are regarded as superfluous, or we treat animal lives with the respect that is given to those of marginal humans?

Cochrane chooses to adopt the so-called ‘biconditional’ version of the argument from marginal cases which, I have argued, requires him to adopt conclusions regarding the treatment of marginal humans that are largely counter-intuitive. This raises the valid question of whether counter-intuitive arguments are necessarily negative; that the very purpose of ethical analysis is to challenge common assumptions about our attitudes, such as on the value of human life (see, for instance, Singer, 1995). Such a question is beyond the scope of this article. The key point to make here, though, is that Cochrane avoids having to confront this issue by failing to draw out the full implications of depriving marginal humans of an intrinsic interest in liberty and, by default, an interest in continued life.

The argument from marginal cases has not played as decisive a role in the ethical debate about animals as its logic perhaps warrants. Part of the reason for this is that, as we have seen, it is widely recognised that we often do treat marginal humans in a different way from ‘normal’ humans. Ultimately, though, the argument from marginal cases has not had the impact it perhaps deserves because one interpretation of it challenges the powerful moral intuition that we should protect those humans with severe disadvantages. It is, of course, this very sentiment that exponents employ to generate sympathy for the plight of animals, but the importance of the species barrier persists. Here, Cochrane’s consideration of how we ought to treat marginal humans who may lack interest in life and liberty is of great value in not only guiding our treatment of marginal humans but also, potentially at least, providing us with the opportunity to develop a model for treating animals better than we currently do. The rest of this article builds upon the framework created by Cochrane by considering the role that sentience can play in this model. In other words, we now move from seeking to justify a rights-based discourse based on autonomy to one based on sentience.

The Political Implications of Sentience

The first step in seeking to justify a discourse based on sentience is to note that Cochrane makes the claim that denying to animals an interest in liberty does not undermine their interest in avoiding suffering. Here he is on stronger ground. Indeed, this claim has important implications for the theory and practice of animal protection. There are two related steps here. In the first place, Cochrane rejects the claim that animals’ lack of autonomy also reduces the moral importance of their interest in not suffering. While he is surely correct here, he underestimates the significance of this rejection. What he does not state explicitly is that it is common for philosophers seeking to justify the moral inferiority of animals, enshrined in the principle of animal welfare, to make exactly this claim. As a result of correctly defending the moral importance of animal suffering, however, Cochrane, secondly, also underestimates its capacity to justify a great deal, albeit not all, of the abolitionist animal rights agenda of those adopting the ‘use position’. However correct his main claim is – that animals only have an intrinsic, rather than an instrumental, interest in liberty – it is, therefore, of less practical import than it seems at first sight.

At least until the work of philosophers such as Singer and Regan challenged it, the philosophical and political orthodoxy regarding animals was that, while we owe some obligations to them on the grounds that they can be harmed directly, it is morally justifiable for humans to exploit them provided that humans benefit significantly in the process. According to this – animal welfare – position then, animals have moral standing, but less moral status or significance than humans. Following Kenneth Goodpaster (1978), the former I take to mean the existence of *any* degree of direct moral considerability; the latter I take to mean the *degree* of moral worth, so that, as Robin Attfield (2003, p. 43) clarifies, ‘moral standing ... is compatible with different degrees of moral significance’.

According to this animal welfare principle, then, it is not suffering per se that is illegitimate morally but suffering that is unnecessary. What is and is not ‘unnecessary’ in this context is

by no means clear, and this is why there is a politics of animal welfare, irrespective of the claims of animal rights. Crucially, what is regarded as unnecessary in the context of animal welfare is not static or objective. Indeed, over the past few decades what is regarded as ‘unnecessary’ suffering has expanded to reflect a growing awareness of the different ways animals can suffer, changes in cultural norms, and technological developments that have made it possible to use alternatives. Thirty years ago or so, for example, the wearing of fur and the testing of cosmetics on animals was regarded as acceptable. Now, many people in the Western world frown upon both practices. In Britain, fur farming has been prohibited and no licences are now given for cosmetic testing on animals. Similarly, many aspects of factory farming – such as the debeaking of poultry, the use of veal crates, pig stalls and tethers, and the battery cage – were regarded as morally acceptable 30 years ago, but are now being seriously challenged throughout Europe.

It is common for moral philosophers to justify the legitimacy of the animal welfare position, and the differential treatment of humans and animals, by invoking the moral importance of autonomy. Autonomy is often regarded as a key characteristic of personhood. Another way of stating Cochrane’s argument therefore is to say that humans, unlike animals, are persons. For many moral philosophers, the establishment of this claim is enough to drive a huge wedge between the moral status of humans and animals. The argument of Aubrey Townsend (1976) is a representative example (see also McCloskey, 1979, pp. 23–54). Postulating that humans are autonomous and animals are sentient, Townsend argues, allows us to distinguish between two sorts of moral consideration. The first, applicable to animals, is based on welfare and requires us to act so as to do what is conducive to the living of a pain-free happy life. The second, applicable to humans only, is based on a respect for autonomy – for what an individual wants or values. Thus our approach to other humans should be based upon the presumption that they should be allowed to pursue their lives with as little interference as possible and that the duty to help others is subordinate to our duty not to harm others, even if the consequence of helping others results in less harm than would otherwise have occurred. This approach is only applicable, Townsend argues, to autonomous beings, since only beings with beliefs, thoughts and intentions can be harmed by interference that does not involve the infliction of pain. Because animals are only sentient, however, they have an inferior moral status and the interests of autonomous beings take precedence. Thus we are entitled to sacrifice the interests of animals to further human interests, whereas we are not entitled to treat humans in the same way – as part of a cost–benefit analysis. As Townsend (1976, p. 92) points out, then, ‘The orthodox morality thus assigns only an intermediate status to the other animals; from a moral point of view they count for more than mere things but less than persons’. This rules out inflicting unwarranted suffering on animals; suffering, that is, which does not result in any significant human benefit.

Interestingly enough, Cochrane does not seek to defend such a huge gulf between the moral status of humans and animals on the grounds of animals’ lack of personhood. He is right here. To see that this is so we should start by emphasising that identifying characteristics that humans possess and animals do not is only relevant in this context if they are morally significant. Thus it needs to be demonstrated why it is that the possession of

autonomy entitles us to distinguish between moral rules that apply to animals and those which apply to humans. Now, the possession of autonomy does seem to justify differential treatment, the classic example being, as we saw, the respective value of human and animal lives. However, it is not clear why, as the animal welfare principle suggests, it is a greater wrong to inflict pain on a human than on an animal merely by dint of the fact that humans are autonomous and animals are not. For surely, if we assume that animals have an interest in not suffering (pain, for instance) then this capacity, in the absence of any reasons to the contrary, is as great as a human's capacity to suffer pain and should be treated equally. Not to hold this position would seem to be speciesist, in the sense that the reason why the pain inflicted on humans is a greater wrong than the pain inflicted on animals is simply because they belong to a different species. We could, of course, adopt a utilitarian position that allows a moral cost–benefit analysis. However, if we are to adopt such a position, and we accept (as I think we must) that the pain inflicted on animals is equivalent to the pain inflicted on humans, then we must also include animal and human pain equally in the utilitarian calculation – as Singer (1990) does. But this, of course, is precisely what the moral orthodoxy is not prepared to allow.

The animal welfare principle, then, is mistaken because it assumes that the identification of one characteristic that humans possess and animals do not is sufficient for the claim that *all* human interests are morally superior to *all* animal interests. As James Rachels (1983, pp. 275–8) rightly points out in the context of rights, 'That is far less plausible than to think that the characteristics one must have in order to have a right vary with the rights themselves'. Thus to have the right to freedom of worship it is necessary to possess the characteristics – the ability to understand religious beliefs – required for worship to have some meaning. To have a right not to be tortured, on the other hand, is justified on the grounds that it hurts. 'It is the capacity for suffering', then, 'and not the possession of sophisticated concepts, that underlies the wrongness of torture'.

Cochrane would, I think, accept this argument. But he does not recognise explicitly that it undermines the justification commonly given for the moral inferiority of animals that is enshrined in the animal welfare position. For if we accept the view that animals possess interests that ought to be treated equally with like human interests, then radical implications follow. That is, it enables us to challenge the animal welfare orthodoxy in fundamental ways without having to prove anything more than that animals are sentient, a characteristic that is widely accepted.

Cochrane is right to say that if animals' interest in liberty is intrinsic, their exploitation, for food or medical research, becomes illegitimate morally, irrespective of the circumstances in which they are held in captivity. As a corollary, if animals' interest in life is similarly regarded, as some animal ethicists have held, then killing them, even humanely, becomes equally illegitimate morally. It is true, as Cochrane points out, that many animal ethicists do hold this 'use position'. For example, Regan (1984), as we have seen, bases his claim that at least some animals have a right to life and liberty on the fact that they are beings whose lives are characterised by beliefs and desires and who are thus capable of acting intentionally to satisfy their preferences. Likewise, the American legal scholar Gary Francione (1995) argues that the exploitation of animals is wrong, not merely because they are sentient, but because

it entails treating them as property, and their status as property is incompatible with being bearer of a right to life and liberty. Therefore only ending their use by humans will suffice since it is ethically undesirable to do so however they are treated, in addition to being practically difficult for them to avoid suffering while remaining the property of humans.

The position of Singer, however, is rather different. As a utilitarian, he does base moral considerability on the fact that animals are sentient. 'Surely Bentham was right', he writes, to say that 'if a being suffers, there can be no moral justification for refusing to take that suffering into consideration, and, indeed, to count it equally with the like suffering (if rough comparisons can be made) of any other being' (Singer, 1996, p. 9). Two additional arguments need to be made here. In the first place, Singer does recognise that basing an animal ethic on their sentience means that it is not, without additional arguments, wrong to kill animals painlessly; neither is it wrong to deprive them of their liberty providing this does not result in their suffering. In this respect, Singer's argument does approximate toward the sentience position that I am seeking to defend in this article.

The second argument is that Singer, of course, is also a utilitarian and, as such, is committed to engaging in a cost-benefit analysis whereby the preferences of animals (in not suffering) must be balanced against the preferences of those who gain from inflicting suffering on animals. Singer's critics are correct to cast doubt on the validity of his conclusion that his, non-speciesist, version of utilitarianism does justify the abolition, say, of animal agriculture (see, for instance, Frey, 1983, pp. 197-206). At the very least, it is a contingent matter. For the purposes of this article, however, it is important to note that this doubt arises from Singer's utilitarianism, and not from the moral weight he places on sentience.

The question to ask therefore is how far the abolitionist demands of the animal rights movement can be achieved if we adopt a position that animals have a right not to have suffering inflicted upon them, but do not have an intrinsic right to liberty and life. Such a position accords with the essence of much animal rights campaigning, which tends to be based on eliminating suffering rather than seeking to protect animal lives and liberty. At a theoretical level, too, Cochrane recognises that 'a substantive account of our obligations to animals does not make itself readily available from the sole claim that animals have no intrinsic interest in liberty' (Cochrane, 2009, p. 673). In fact, the author seriously underestimates, it seems to me, the practical impact of ruling out as morally illegitimate those practices that cause animals to suffer. Indeed, a great deal of the abolitionist animal rights agenda can be achieved through seeking to end the suffering of animals, as opposed to their captivity (or, indeed, furnishing them with a right to life). To see that this is so, it is necessary to establish what follows from establishing that animals' interest in not suffering is upheld.

The animal protection movement has focused its attention on institutional forms of animal exploitation, most notably in the laboratory and on the farm. This has occurred for two reasons. The first is that these practices, particularly the rearing of animals for food, involve unimaginably high numbers of animals. In the United States alone it is estimated that some 103 million pigs, 38 million cows and calves and a staggering 9 billion broiler chickens are slaughtered each year. This amounts to about 27 million animals slaughtered per day and more than a million every hour (Regan, 2004, p. 96). The second is that the treatment of

animals in laboratories and on farms is particularly associated with the infliction of suffering. Animals are used in the laboratory for a wide variety of purposes – from toxicity testing to fundamental physiological research. Cochrane is technically right to argue that the keeping of animals in research laboratories is not wrong ‘in and of itself’. But this is of little practical importance when it is considered that the reason that they are there is – in the case of many, if not most, animals – to have suffering inflicted on them.

A situation in which animals would not suffer in the laboratory can be envisaged. Imagine that environmental enrichment was such that animals did not suffer from boredom, and that procedures were carried out under anaesthetic with the animal killed before it regained consciousness. This would clearly meet Cochrane’s ethical requirements and, indeed, I would find relatively little to object to here either. The problem is that this is very far from the reality of animal experimentation where, for many procedures, the animal must remain conscious in order for the results of the procedure to be validated. A ‘no pain’ principle then would have the effect of ending many, if not most, procedures on laboratory animals. It is the infliction of suffering in general, and pain in particular, that exercises not only the animal protection movement but also public concern on this issue. It is for this reason, we can strongly speculate, that the animal rights movement publishes images of animals being vivisected often without making it clear whether or not the animal is conscious. Therefore, it is consciousness, and the thought that an animal is suffering, which is the bone of contention in the debate about animal experimentation rather more than the captivity of an animal or even the fact that it may lose its life.

It is feasible to imagine a form of farm animal husbandry that reduced significantly the suffering of animals. At present, the dominant model is the industrialised rearing system commonly known as factory farming. As Cochrane points out, captivity in factory farms is more often than not inextricably linked with animal suffering, such as the battery cage system for producing eggs and the use of high-intensity sheds for producing poultry and pigs. The fact that animals suffer as a consequence of modern intensive agriculture should be taken as a given (Singer and Mason, 2008). Regan (2004, pp. 89–90) eloquently sums it up with little exaggeration:

The vast majority of these animals, literally *billions* of them, suffer every waking minute they are alive. Physically, they are sick, plagued by chronic, debilitating diseases. Psychologically, they are ill, weighed down by the cumulative effects of disorientation and depression (emphasis in original).

The fact that the general public in many countries would be prosecuted for keeping animals in some of the ways they are commonly kept by farmers illustrates the point that suffering can be taken for granted. In Britain, to give one example, to keep a bird in a cage in which it cannot spread its wings is illegal. But this is precisely what is allowed in the battery cage. The difference, then, must be in the degree to which this suffering is necessary in the sense that it serves significant human purposes.

Genuine ‘free range’ husbandry systems do reduce much of the suffering evident in factory farming. However, even assuming that genuine ‘free range’ enterprises are able to satisfy animals’ interests in not suffering (and it should be noted that *all* husbandry and slaught-

tering systems must involve the infliction of at least some suffering), they are few and far between. There is a good reason for this. Factory farming was created in the first place in order to mass produce animal products at the lowest price possible. It is clear that alternative free range systems could not produce animal products for consumption in anything like the amount required or the price desired. To insist they become the norm would, then, have radical implications involving the dismantling of the present dominant structure of factory farming, and the consequent reduction in supply, and increase in price, of meat and associated animal products. At present, such an eventuality would be given a positive welcome by most animal rights activists.

In the case of other uses of animals – for example, as companions, or in zoos and circuses – the issue of suffering is not, at least in the former two cases perhaps, such a big issue, and this explains why they do not receive the same degree of attention from the animal protection movement. To the extent that they do, almost always the concern raised is about the suffering caused by captivity rather than captivity itself. Thus, the issues dominant in the debate about companion animals centre on the infliction of gratuitous suffering or neglect. Likewise, circuses and zoos are criticised mainly because of the consequences for animals of captivity. The shackling of animals for long periods of time in the former, and the failure to provide adequate environments for some species in the latter, are the usual targets for the animal protection movement. It is unlikely that circuses can ever provide an environment that will meet the interest in not suffering of many, particularly large wild, animals. Many, perhaps most, animal-based circuses and zoos therefore are illegitimate morally if the principle that animals ought not to suffer at human hands is adopted. This abolitionist agenda is quite consistent with regarding animals' interest in liberty as instrumental rather than intrinsic.

Conclusion

The purpose of this article has been to challenge Alasdair Cochrane's account of the moral worth of animals on two major grounds. In the first place, his perfunctory dismissal of the argument from marginal cases underestimates the counter-intuitive character of the conclusions that derive from attempting to show that marginal humans, like animals, do not have an intrinsic interest in liberty and, by extrapolation, life. As a result, the 'use position' held by many animal rights advocates – which holds that our use of animals, irrespective of their treatment, is illegitimate morally – is not as badly damaged as might at first be thought. What the application of the argument from marginal cases does is to throw light on the discrepancy between the way we treat marginal humans on the one hand and animals on the other. Given that, intuitively, we would not want marginal humans to be treated in the way animals currently are, there seems little ethical justification, if we accept the logic of the argument from marginal cases, for treating animals in this way.

Cochrane provides a valuable service in drawing attention to the importance of the non-liberty (and, by extrapolation non-life) interests of animals. The second part of this article builds upon this by exploring the ethical importance of sentience. It was shown that, even if we accept that animals have no intrinsic interest in life and liberty, an animal rights

ethic based on sentience can achieve many of the objectives of those who hold the use position. Thus, by accepting that animals' interest in liberty derives from their interest in not suffering, and by demonstrating that their lack of autonomy does not undermine their interest in not suffering, Cochrane's approach does not rule out the legitimacy of radical steps to end, or significantly curtail, most of the ways in which we currently exploit animals. The implication here is that the use of animals, as research subjects or as sources of food in particular, is not illegitimate morally per se but will depend upon the degree of suffering these practices inflict on animals. It is the contention of this article that many of the ways animals are currently treated do not pass the suffering test and ought therefore to be ended.

This is not to deny that there is a significant difference between the animal suffering position and the abolitionist use position. The former does not satisfy the demand that *all* uses of animals, as experimental subjects and sources of food in particular, end without further consideration. It is conceivable, as was shown, that animal agriculture and animal research could, in theory at least, be reformed to eliminate the most obvious and severe cases of suffering. Nevertheless, the difference between the two positions in practice is less than has previously been thought. This is important given that it has been animals' interest in not suffering which has been at the centre of the political debate, rather than their interest in liberty and life. Moreover, focusing on sentience avoids the difficulties, demonstrated admirably by Cochrane, associated with maintaining that it is the use of animals, rather than their treatment, which is ethically problematic.

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