

On the Virtue of Solidarity: Animal Rights, Animal Welfarism and Animals' Rights to Wellbeing

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It is sometimes useful to know a little about the history of things, so I shall mention how I came to write this essay and the motivation behind it. In April 2011 I attended an Association of Lawyers for Animal Welfare (ALAW) event in London¹. The speakers were Antoine Goetschel (a lawyer), Joy Lee (WSPA) and Alexandra Hammond (RSPCA). Goetschel's words prompted my comment from the floor on unity in the animal protection movement. Afterwards Jill Williams, the editor of ALAW's Journal of Animal Welfare Law, suggested I write an article based on this. Goetschel served as the animal advocate for the Swiss canton of Zurich. His style, perhaps befitting

of a lawyer, was eloquent and his arguments persuasive about animal protection strategy. Goetschel talked about the differences between ethics and law. Ethics, a system of human values, is often expressed in ideals but law must be based on realism. Although ethics is important as a system of people's values, in law a public prosecutor has a duty to enforce these values. He mentioned that in democratic societies changes in law are ordinarily based on majority opinion. Goetschel for instance argued that since vegetarians and vegans constitute only a minority of the population, it is unrealistic to expect these values to be imposed on the wider population². This situation holds no matter how cogent the ethical arguments might be for these dietary practices. Furthermore, he suggested that if the constituency of vegans/vegetarians reached a majority, since food choice is considered a human right, vegetarianism would still not become law. Goetschel was, in essence, talking about the problem of a pluralism of reasonable values in society and the problem of how to adjudicate between them³. Importantly, he reminded us that

many politicians are lawyers and it helps to explain issues to them in a legal way. Finally, he advised of the importance of an evidence base for legislation and policy.

Solidarity and the virtue of a unified message

*Coming together is a beginning.
Keeping together is progress.
Working together is success.*
Henry Ford

Few would doubt the benefits of collective, coordinated activity. The coordination of a group can bring greater results than the sum of its parts. There is a synergy—as opposed to a mere addition—of output. Whether in military organisation, politics, business or social reform movements, working together can be a virtue. Sports are perhaps the paradigmatic illustration of the of coordinated group action. Consider the Great British rowing duo of Steve Redgrave and Matthew Pinsent. Without coordination between them of mind and muscle, world-beating

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¹ The protection of animals from cruelty – a global perspective, on 7 April 2011. Doughty Street Chambers, London.

² Of course, many vegetarians/vegans do not advocate that others follow their dietary habits.

³ John Rawls, 1971, *A Theory Of Justice*, Harvard University Press.

success would have been out of their reach⁴. Team-working is a form of solidarity and the creation of a unified message has been critical in the success of social movements. Consider the progress that could be achieved in the animal protection movement with the unity of mind and resource of an Olympic rowing team. The animal rights movement and the related animal welfare movements can be framed to have different ideologies and ultimate aims. Currently there is no joined-up, unified message of the animal protection movement to publics and governments around the world. This essay explores the differences and similarities of the animal rights and animal welfarism doctrines, and argues for a unified, pragmatic position with elements taken from both.

Bringing together the animal protection movement

The animal protection movement⁵ (APM) is an umbrella term that includes actors and institutions concerned to promote the interests of non-human animals⁶. The group includes a large number of sub-groups including, firstly, academics⁷; secondly, the professions⁸; thirdly, NGOs (non-governmental organisations) and charities⁹; fourthly, commercial organisations¹⁰; fifthly elected representatives and government civil

servants¹¹: This list, of course, is not exhaustive and serves simply to demonstrate the scope of sub-groups that can be classified within the animal protection movement. The diverse groups also reveal the benefit of having a defined aim of the APM. Finally, listing these actors and institutions shows that the APM includes both ‘animal rightists’ as well as ‘animal welfarists’.

On solidarity with animals

By the words ‘solidarity with animals’ I do not mean to make some ethical prescription that we *ought* to have solidarity with animals. Rather, I am making the descriptive proposition that we *do* have solidarity with animals¹². The extent and diversity of the animal protection movement suggests solidarity with fellow animals¹³. More importantly, we know that citizens at large are disposed to solidarity towards animals¹⁴. The disposition to treat animals well probably follows from what David

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Hume called our moral sentiments¹⁵. The purpose here is to highlight the major positive for the animal protection movement. No matter how badly animals might be treated, the raw material for improving this state of affairs is abundant and widespread. Our moral sentiment—a disposition towards treating animals well—is ubiquitous and, since these feelings are part of human nature, they are here to stay. This is fundamentally important because, as Goetschel rightly pointed out, we need majority opinions to make matters better in law¹⁶.

Solidarity: moral sentiment and democratic transparency

If moral sentiments are widespread, and it is true that animals are not currently treated well, *how did we arrive at the position that we are now in and why does it persist?* Human solidarity towards animals is based on moral sentiments that dispose us to treat animals well. However, a condition for these moral sentiments is a real exposure to the lives of these animals as they are experiencing it¹⁷. Much of the treatment of animals that is of concern to actors within the animal protection movement is not

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⁴ Sir Steven Redgrave and Sir Matthew Pinsent together have won the Olympic Coxless Pair gold medal three times.

⁵ See also Robert Garner, 1998, *Political Animals: Animal Protection Politics in Britain and The United States*, Macmillan Press Ltd.

⁶ The animals that are the subject of this article are *non-human animals*.

⁷ Natural scientists, arts and humanities scholars, social sciences scholars, legal scholars, etc.

⁸ E.g. the veterinary profession, the legal profession (e.g. prosecuting animal cruelty cases), and other relevant professions.

⁹ RSPCA, WSPA, CIWF, Soil Association, BUAV, Animal Aid, the Vegetarian Society, etc.

¹⁰ E.g. some supermarkets with progressive animal protection policies.

¹¹ Members of Parliament (e.g. APGAW – the Associate Parliamentary Group for Animal Welfare), UK government departments e.g. Defra (Department for the Environment, Food and Rural Affairs) and the Home Office.

¹² Edward O. Wilson, 1984, *Biophilia*, Harvard University Press.

¹³ I have made the reasonable assumption that these

actors and institutions are motivated by moral feelings towards animals.

¹⁴ See e.g. *Eurobarometer 2007*. Also consider the huge number of pets kept in family households.

¹⁵ David Hume, 1739 [1978], *A Treatise of Human Nature*, Oxford University Press.

¹⁶ See footnote 1.

¹⁷ Also see Siobhan O’ Sullivan, 2011, *Animals, Equality and Democracy*, Palgrave Macmillan.

directly amenable to human experience. Of course, reasons such as biosecurity, human security and commercial secrecy are used as justification for this barrier between animals and the public. However, this separation means that the moral sentiments cannot be activated, which has facilitated an environment in which treatment of animals has become the norm that would have otherwise been judged ethically unacceptable. In intellectual language this state of affairs constitutes an *alienation* of democratic citizens from the animals about which it is their civic duty to make informed decisions about the justice of their treatment. The importance of the ability of citizens to make experience-informed decisions on the just treatment of animals in society far outweighs any reasons that prevent this. Indeed, the issues of biosecurity, human security and commercial secrecy are premised upon the justified continuation of these practices in the first place.

Alienation (separation) cuts off the oxygen source of morality, starving the potential for justice towards animals at its source. Up until now, a general message of the animal protection movement has been ‘society should treat animals much better than we currently do’. This is perfectly correct and could be called the major *content-message* of the movement. However, there is a gap in this message which does not explain the why of the story. This is a formal-message most effectively presented as

the question: *Why in a democratic society are the public separated from sentient animals about which they care how they are treated?*

Animal welfare/wellbeing and animal welfarism

The concept of animal welfare is a state of the animal and is not directly concerned with how we ought to treat animals. The notion of welfare in animals is equivalent to the notion of wellbeing in people¹⁸. The words ‘welfare’ and ‘wellbeing’ can always be substituted when considering animal welfare¹⁹. Precisely why we tend to use the term welfare instead of wellbeing I do not know. Haynes has written²⁰ that the phrase was first used by Henry Salt²¹ and that Charles Hume²² revived the term.

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In veterinary schools and other institutions, natural scientists study the science of animal welfare. This began in earnest after the publication of the Brambell report in 1965²³, which made a recommendation that

animal welfare be studied scientifically. The concept of animal welfare has been discussed extensively and a detailed exploration is not needed for this article. A simple overview is that some authors have considered animal welfare to be constitutive of an animal’s physical state and how it functions²⁴, others have defined it in terms of feelings²⁵, and others have defined it in terms of the naturalness of the animal’s environment²⁶. These concepts have been combined to form an integrative definition of animal welfare, which includes physical/functional, feelings-based and naturalness aspects²⁷. The important point here is that animal welfare as a science is precisely that: it is a discipline that attempts to gain truth about empirical issues (namely the welfare of the animal).

In contrast, the concept of *animal welfarism* is categorically different. Animal welfarism is an ethical or political doctrine that goes way beyond descriptive, scientific, or empirical issues. Animal welfarism as a doctrine can be described in terms of its main tenets. The underlying presumption is that humans are morally justified in using animals for the purpose of human benefit. The second major idea is that any suffering caused to animals must be ‘necessary’. Thirdly, any suffering caused to animals must be minimised as far as possible. In effect animal welfarism prioritises human interests over animal interests. This legitimises the instrumental use of animals for

¹⁸This is despite wellbeing in people and welfare in animals not being determined by the same causes. For instance consider reading a novel and human wellbeing, and wallowing in a muddy pool and pig welfare.

¹⁹In the USA ‘welfare’ principally means state benefits, so the term as applied to animals is less common.

²⁰Richard Haynes, 2010, *Animal Welfare: Competing Conception and Their Ethical Implications*, Springer p. xiii footnote 12.

²¹Henry Salt, 1894 [1980] *Animals’ Rights Considered in Relation to Social Progress*, p. 34 “the welfare of certain animals”, The Society for Animal Rights.

²²Major Charles Hume, founder of UFAW (Universities Federation of Animal Welfare).

²³F. W. Rogers Brambell (Chairman), 1965, *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*, London, Her Majesty’s Stationary Office.

²⁴E. J. McGlone, 1993, What is animal welfare? *Journal of Agricultural and Environmental Ethics* 6, Supplement 2: 26-36

²⁵E.g. Ian Duncan, 1993, Welfare is to do with what Animals Feel, *Journal of Agricultural and Environmental Ethics* 6, Supplement 2, p. 8-14.

²⁶E.g. Bernard Rollin, 1993, Animal welfare, science, and value. *Journal of Agricultural and Environmental Ethics* 6, Supplement 2, p. 44-50.

²⁷David Fraser et al, 1997, A Scientific Conception of Animal Welfare that Reflects Ethical Concerns, *Animal Welfare* 6, p. 187-205, UFAW. The latter ‘mixed’ conception of animal welfare was formulated due to the belief that a single reductive-type definition of animal welfare was not sufficient to fully explain the concept.

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human purposes, even if it causes those animals to suffer. Any suffering caused to animals must be deemed to be necessary. This condition in effect acts as a moral and legal²⁸ constraint on the subjugation of animals interests to human interests. These ideas are perhaps most fully expounded in terms of Banner's principles, although it could be argued that his first principle goes beyond animal welfarism²⁹. Banner's principles are as follows:

- (i) Harms of a certain degree and kind ought under no circumstances to be inflicted on an animal.
- (ii) Any harm to an animal, even if not absolutely impermissible, nonetheless requires justification and must be outweighed by the good which is realistically sought in so treating it.
- (iii) Any harm which is justified by the second principle ought, however, to be minimised as far as is reasonably possible.³⁰

The Farm Animal Welfare Council (now Committee) is an independent advisory body to the government. In its 2009 report *Farm Animal Welfare in Great Britain: Past, Present and Future* FAWC write: 'FAWC believes that the Banner principles should apply to livestock farming'³¹.

Animal welfarism has been analysed by Robert Garner³², who concludes that the concept as a doctrine is

intellectually flawed but pragmatically useful. His claim that the doctrine is flawed is in part based on the idea that it doesn't take seriously enough the interests of individual animals. The claim that animal welfarism is pragmatically useful is based on how the unnecessary suffering principle has brought about real improvements in animal welfare. The fluidity of the animal welfarism doctrine can also be seen to be progressive, since what society deems to be necessary at one time it may deem unnecessary at a later stage³³. The vagueness and flexibility of animal welfarism contribute to different perceptions of it. If animal welfarism is sold as a doctrine that justifies the use of animals for (truly) necessary human purposes whilst maximising the welfare of the animals used, then a great majority are animal welfarists³⁴. Conversely, if animal welfarism is considered in a more realist sense, then many see the doctrine as deficient³⁵. This is the sense in which we are currently living in an animal welfarism paradigm. In short, the animal welfarism ethic has the potential to be radical but also the potential to be misinterpreted and abused. We can say—uncontroversially I think—that the authentic paradigm of animal

welfarism currently constitutes not a reality so much as an *ideal* to aim for³⁶.

There is another issue at hand here that relates to the fluidity of the animal welfarism doctrine. To my knowledge, the ethic of animal welfarism has not been rigorously defended. In contrast, consider the many texts defending a thesis broadly outlining the animal rights position³⁷. The animal welfarism doctrine doesn't have an obvious intellectual theorist to champion it. Of course, there are many eminent animal welfare scientists, but there is no single person who has systematized the animal welfarist position. I bring this point up because I think it highlights something about animal welfarism. Animal welfarism is a doctrine rather than an ideology because it is a syncretism. Firstly, the foundation of animal welfarism is the justification of animal use for human benefit. This aspect is based on the Judaeo-Christian tradition of western society. It posits a clear

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²⁸Animal Welfare Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/45/contents>

²⁹Animal welfarism is a syncretism and has not been clearly defined. This is discussed later in the essay.

³⁰Michael Banner, 1995. *Report of the committee to consider the ethical implications of the emerging technologies in the breeding of farm animals*. HMSO, London.

³¹Farm Animal Welfare Council, 2009, *Farm Animal Welfare in Great Britain: Past, Present and Future*, p. 13. Available at: <http://www.fawc.org.uk/pdf/ppf-report091012.pdf>.

³²Robert Garner, 2009, *Animal Welfare: Strengths and*

Weaknesses, *AWSELVA Journal Vol. 13 No. 3*, Animal Welfare Science, Ethics and Law Veterinary Association.

³³E.g. housing layer hens in battery cages.

³⁴Such an animal welfarism would be radically progressive with respect to the status quo. Played out in society the implications are massively reduced consumption of animal products, at least a large reduction in animals used for biomedical experimentation, radical changes to the practices of pet keeping, etc.

³⁵This is because of the widespread misuse of the word 'necessary': overconsumption of animal products

leading to overproduction of animals in ethically unacceptable systems, toxicity testing for unnecessary products, biomedical experimentation for lifestyle diseases, breeding of pedigree dogs highly predisposed to genetic and conformational diseases, etc.

³⁶I intend to convey the optimistic meaning of ideal, i.e. a vision, something to aim for, *which is attainable*. I clarify this because of the presence of a pervasive realism-idealism dualism within animal welfare circles that sees idealism in a pejorative sense and realism as some higher level of understanding of the economic, political and social realities of the world.

³⁷E.g. Tom Regan 1983, Steve Sapontzis 1987, Evelyn Pluhar 1995, Gary Francione 1996.

separation between rational man in the image of God and irrational beast³⁸. Secondly, the aspect of animal welfarism that brings animals' interests into focus is based on the radical utilitarian philosophy. I deliberately stress the radical nature of utilitarianism here, because it has not been fully understood within animal welfare circles. The meaning of the term seems to have been turned round to justify just about any treatment of animals that creates *some* utility for humans. This unfortunate misuse of the term arises because of two different senses of the word utilitarian. It can first mean 'pertaining to the doctrine of utilitarianism'³⁹. In this sense, any genuine application of utilitarian philosophy would render radically progressive treatments for animals in society⁴⁰. Utilitarianism counts each as one and none for more than one. Even if we allow for humans counting for a little more than one, to satisfy the traditional Judeo-Christian strand of animal welfarism, utilitarianism prescribes that we take seriously the interests of sentient animals⁴¹. Despite this, it is a derivative, secondary meaning of utilitarianism that has come to be influential in animal welfare discourse. This is the sense of the word utilitarian meaning to have 'utility or usefulness to humans'⁴². Hence, one often hears of the

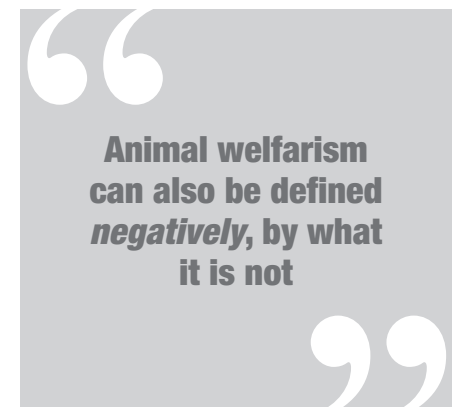
utilitarian justification of animal use, with the emphasis very much on the human utility gained⁴³.

Moral rights as valid claims

Above I have described the doctrine of animal welfarism. In a simple way it can be described as the doctrine of justified use of animals for human benefit, as long any suffering caused is for a necessary purpose, and that this suffering is minimised. Banner's first principle, which arguably has been absorbed by the doctrine of animal welfarism⁴⁴, goes as far as to prohibit harms of a certain degree, no matter what the benefit. This is a *positive* description of the doctrine of animal welfarism. Animal welfarism can also be defined *negatively*, by what it is not. Animal welfarism can be considered to be bound on either side by alternative doctrines. On one side is the conservative⁴⁵ doctrine of human dominion of animals, perhaps allowing for some indirect duties towards animals⁴⁶. On the liberal or progressive side is the ideology of animal rights. There are no doubt some advantages of defining oneself as a part of a group and delineating a group from others. In some ways it seems a natural part of human nature to do this, both on an individual and a group level. Despite this, I would like to consider whether there is any

genuine conceptual distinct boundary between animal welfarism and the 'animal rights' position. I contend that there is no obvious place to draw a line between animal welfarism and an animal rights doctrines. I will furthermore claim that the only way to construct and perpetuate two mutually exclusive groups is to warp the meaning of concepts, repeat defunct arguments and mischaracterise personal doctrinal beliefs.

First let us deal with the concept of a right. Above we made the distinction between animal welfare as a state of wellbeing and the doctrine of animal welfarism. Similarly with rights, we can understand the *concept* of a right without committing ourselves to a belief that some individual (human or animal) has a substantive right (e.g. the right to life). A moral right is most simply defined as a *valid claim*



³⁸I do not intend to argue these points further here and I understand there are other grounds for this central plank of animal welfarism. My only aim here is to demonstrate that animal welfarism is a syncretic doctrine.⁴⁸ As contained in EC Regulation 338/1997, Art. 2(w)

³⁹Oxford Compact English Dictionary 1996.

⁴⁰Peter Singer is well known for his book *Animal Liberation*. Although there is no doubt widespread respect for Singer in animal welfare circles, his main claims do not appear to have been taken seriously. Singer claims that we ought to widen the moral sphere by treating sentient animals based on the principle of equal consideration of interests. Consistent with the radical nature of utilitarian theory, Singer's conclusion is radical reform of animal use industries, albeit not necessarily prohibition. It is perhaps surprising that Singer's conclusions are watered down so much by the

animal welfarist movement. Indeed, his views are criticised (Regan 1983) for being moderate by animal rightists, despite him being viewed as a radical within animal welfarism. It is surprising that Singer is not more of a champion for the animal welfare movement. This could be in part because of the equivocation of the use of the word 'utilitarian'.

⁴¹Sentient animals consciously experience feelings such as pleasure and pain. They can therefore live a good life or alternatively experience suffering.

⁴²Oxford Compact English Dictionary 1996.

⁴³The word 'utilitarian' has also come to mean being a realistic and pragmatic person. The idea is that a utilitarian realist can trade human and animal values and offer pragmatic solutions. In contrast, the animal rights idealist is portrayed as being weighed down by conflicting absolute rights.

⁴⁴FAWC recommend Banner's principles. There are also other animal welfarist actors that advocate absolute prohibitions of certain practices (e.g. CIWF on husbandry systems such as battery cages for layers, gestation crates for sows and veal crates for pigs, although it can also be argued that these practices are not 'necessary').

⁴⁵I use conservative here in a loose sense to describe boundaries around animal welfarism. I believe progressive animal protection policies can be defended cogently from most if not all places on the political spectrum, including political conservatism.

⁴⁶Indirect duties towards animals are duties towards animals ultimately for the benefit of people, for example, Kant's example of killing a retired dog that has served its master well. Such action will affect the character of the human master.

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to some sort of treatment by others. Such treatments might be defined negatively (e.g. the right *not* to be tortured), or positively (e.g. the right *to* access to fresh water). Therefore, to say that someone has a right not to be tortured is to say that person has a valid claim not to be tortured. Similarly, to say that a person has a right to fresh water is to say that person has a valid claim to access to fresh water. By *valid* we mean in some sense a justified reason. By claim we mean an entitlement, such that the person can legitimately put their case to others if the right *from* (torture) or *to* (water) is withheld. Therefore, we say an individual has a moral right to access to fresh water for the justified reason that fresh water is vital to health and wellbeing. The individual has a right not to be tortured by others because torture causes pain and immense suffering, which can cause lasting harm to an individual's physical and mental wellbeing.

Now, I should like to mention two ways that the meaning of the concept of rights has been warped, which helps magnify any difference between animal welfarism and animal rights doctrine. The first is that rights are often mistakenly considered to be necessarily absolute. It is true that rights are more concrete and inviolable than the interests indiscriminately weighed up in utilitarian calculations of the overall good. This, indeed, is the purpose and function of rights; they are an individual's tangible protection against the impersonal maximisation of the utilitarian

calculus. The major moral criticism⁴⁷ of utilitarianism is that it does not respect the separateness of persons⁴⁸. Rights are intended as insurance against this, to protect the vital and important interests of individuals. Despite this, it is well known that rights may sometimes conflict. For instance, the right to freedom of speech can conflict with the right against physical violence, for example in the case of verbal incitement to violence towards others⁴⁹. Some rights must therefore ultimately be traded against one another. More important rights 'trump' less important rights. Context may allow what are more important rights in some circumstances to become less important rights in others⁵⁰. Therefore, rights theory has a degree of sophistication and flexibility that is often not appreciated in the polarised debate between animal welfarism and animal rights. To repeat, a moral right is simply a valid claim to some form of treatment, but not necessarily an absolute claim.

The second warping of the meaning of a moral right involves confusing it as a strictly formal concept and imbuing it with substance at the outset. So, rather than basing the discussion about the just treatment of animals on foundational ideas about whether an animal ought to be protected by *any rights*, there is a

short-circuit to the specific question of whether an animal has a right to life. Since the right to life of animals would involve unimaginable and perhaps unintuitive changes in the way that we treat animals, the notion of animal rights is discarded as impossible. Thus the more vague idea of animal welfarism is ascribed to, and animal welfarism defines itself in opposition to an extreme, idealistic, categorically different animal rights movement.

Parallel to this is the element of doubt induced by the strange but bizarrely still influential notion that an animal cannot have rights because it does not have duties⁵¹. As I understand, there are two sources of this confusion. The first is a logical fallacy predicated on the proposition that moral rights are correlative. This property of moral rights means that for every right there is a corresponding duty. For example, a child has the right to be educated and society has a duty to educate the child. However, notice that the right and the duty do not adhere in the same individual; the child has the right and society has the duty (the

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⁴⁷As opposed to practical criticisms, such as the problem that in many circumstances it is not possible for an agent to weigh up the good and bad consequences of an individual act.

⁴⁸See e.g. John Rawls 1971.

⁴⁹This example is a current problem in the UK. The UK Government resolved the problem by enacting legislation against freedom of speech in such situations.

⁵⁰For example, in war-time many individual rights (freedom of speech, freedom of choice in food rationing, freedom of personal wellbeing in conscription etc) are overridden by other rights concerned with the wartime effort.

⁵¹In moral philosophy duties are considered to be a general category that includes obligations and responsibilities. For our purpose here any of the

words duties, responsibilities or obligations could be used. The phrase 'rights and responsibilities come together' is most often heard (as opposed to rights and duties or rights and obligations) but I have used the word duty in the main text to provide continuity with the word duties in the remainder of the essay.

state represents society and delivers the education).

The second source of this doubt about the possibility of animals having rights lies in a different conception of rights to the one I have outlined above. I have described an interest-based conception of rights, following thinkers such as Feinberg⁵² and Rachels⁵³. In such a conception of rights, it is the interests of the individual that grounds the rights. For instance, an individual has a right to access to fresh water because fresh water is essential for his/her interest in wellbeing. There is a second conception of rights that some rights theorists ascribe to. This is that a right-holder requires being able to make a *choice* between two goods for that individual to genuinely have a right. On this interpretation, it is argued, animals do not have the capacity to choose between options in the way that being a rights-holder demands. It is not my intention here to evaluate the merits of *interest-based* and *choice-based* conceptions of rights. Rather, I want to examine these ideas about moral rights in the light of the doctrine of animal welfarism. I have suggested earlier in the essay that animal welfarists in part define their doctrine in opposition to animal rights. Let us assume that animal rights proponents base their doctrine on an interest-based conception of rights. That is, it is the *interests* that animals have which grounds the belief that animals have a right to be treated in certain ways. Since we are investigating the doctrinal differences between animal welfarism and

animal rightsism (examining the boundary between the two), let us ask the following simple but revealing question: why do animal welfarists not believe in animals' rights? Let us suppose that an animal welfarist replies that animal rights implies that an animal has a right to life⁵⁴, and that to prohibit killing animals would

“an individual has a right to access to fresh water because fresh water is essential for his/her interest in wellbeing”

lead to intuitively absurd and unrealistic conclusions. To this, I reply: 'very well, but I am not asking about an animal's right to life, but an *animal's right to wellbeing* during the period that it lives'. A reply to this more precise question might be that the animal welfarist is wedded to the idea of consequentialist ethics. For example, Jeremy Bentham famously wrote that rights are 'nonsense on stilts'⁵⁵. This answer is a reasonable one, but only in so far as arguments can be provided in support of the assertion. By this I mean that it might be expected that some individuals simply think in terms of consequences and genuinely believe that the notions of rights are spurious⁵⁶. If this route was taken, such an individual would have to bite the bullet and also criticise the notion

of moral rights as applied to human beings. Alternatively, if an animal welfarist supported the concept of moral rights as applied to human beings but not as applied to animals, then again good reasons would have to be given to support this. It is at this point, I believe, where one begins to see that animal welfarists and animal rights proponents ought not necessarily to differ with respect to openness to the general concept of moral rights for animals. In the case of the animal welfarist who supports the concept of human rights but not the concept of animals' rights, this position would presumably have to be grounded in a choice-based conception of rights. Such a conception of rights is based on choice as a rational discernment between different options being necessary to qualify for a right. When the idea of choice-based rights is unpacked, it seems very unlikely that an animal welfarist would have this conception of moral rights. This is because the animal welfarist position is fundamentally grounded in animals having interests as sentient beings⁵⁷. It is this progressive element of the doctrine of animal welfarism that defines it negatively from a conservative morality based on a distinction between human rationality and animal irrationality. Therefore, the animal welfarist who does not accept the concept of rights as applied to animals is forced either to reject the widely accepted notion of human rights or to abandon a sentience-based ethics which their own welfarist position is grounded in. The first horn of this dilemma is a rejection of what is commonly held

⁵²Joel Feinberg, 1980, *The Rights of Animals and Future Generations*, in: *Rights, Justice and the Bounds of Liberty*, Princeton University Press.

⁵³James Rachels, 1997, *Do Animals Have Rights?*, in: *Can Ethics Provide Answers? And Other Essays in Moral Philosophy*, Rowman and Littlefield Publishers.

⁵⁴This is a reasonable reply because it can be argued

that wellbeing is premised on continued existence, i.e. life. This is consistent with the intuition that the right to live in humans is a fundamental one.

⁵⁵Jeremy Bentham, 1879, *An Introduction to the Principles of Morals and Legislation*, Clarendon Press, Oxford.

⁵⁶Bentham was criticising rights in part from an atheist

stance that there was no such thing as God-given rights that could justify natural inequalities in nineteenth century British society.

⁵⁷A position given legal standing in the UK (Animal Welfare Act 2006) and the EU (Treaty of Amsterdam 1997).

to be a leap forward for humanity in the twentieth century⁵⁸. The second horn appears to contradict the very basis of the animal welfarist position—the primacy of sentience above such things as rationality and language⁵⁹.

The right to wellbeing as a reasonable, unified and pragmatic animal ethics

In essence I want to make two claims about animal welfarism and moral rights. The negative claim is that there is no theoretical reason why the doctrine of animal welfarism is incompatible with animals' moral rights. The positive claim is that animal welfarism becomes a stronger and more cogent doctrine when it utilises the concept of rights. The positive claim I have only begun to make and I will provide further support for below. It is evident from reading animal welfare literature and attending conferences and symposia within animal welfare circles that animal welfarism is an evolving entity. For instance, during my final years at veterinary school, animal welfare scientists⁶⁰ would talk very positively about utilitarian theory. Today, there is more suspicion of utilitarianism as a basis for the human animal relationship. A good

illustration of the evolution of animal welfarist thinking is found in the Farm Animal Welfare Council (FAWC⁶¹) *Farm Animal Welfare in Great Britain: Past, Present and Future* report of 2009⁶². The report includes a review of animal welfare policy, an assessment of the current situation, and recommendations for the future. It includes a criticism of what it judges to be an undue focus on negative welfare and suffering, for example implicit in the Five Freedoms⁶³ ⁶⁴. An important point I want to highlight is the increasing use of deontological language being used. This is consistent with a general feeling of moving away from the dominance of utilitarianism that I have described above⁶⁵. The FAWC proposes that all farm animals in Great Britain should have a life worth living, and an increasing number should have a good life⁶⁶. It also recommends that government assume guardianship (a duty) of animal welfare, as a public good⁶⁷. In an annex on ethical principles, entitled *How can we decide what is right and wrong in the treatment of animals?*, FAWC concludes 'the most useful way forward is to look both at the consequences of any proposed course of action and at any possible relevant intrinsic considerations before reaching an ethical conclusion'⁶⁸. In the paragraph prior to this, FAWC



describes 'intrinsic principles' as normally 'concerned with rights and duties'⁶⁹. Finally, FAWC notes that rights and duties are correlative⁷⁰, as I have described earlier. Taken together, FAWC's mixed ethical approach, together with the correlative nature of rights and duties, suggests that FAWC's prescription is very close to a recommendation of moral rights for farm animals⁷¹. I do not intend to convey here that FAWC has what might be called an 'animal rights' agenda⁷². On the contrary, FAWC has done all it can to avoid the language of rights, by talking about intrinsic value, dignity, duties etc. The claim I am making is that once one moves away from a purely consequentialist-based animal welfarism⁷³ (and animal welfarism was never a pure concept), if one uses the language of duties and if

⁵⁸The Universal Declaration of Human Rights was signed after the atrocities of the Second World War.

⁵⁹Bentham's dictum: 'the question is not can they talk, nor can they reason, but can they suffer?'

⁶⁰A small amount of ethics was taught by animal welfare scientists.

⁶¹FAWC was renamed the Farm Animal Welfare Committee in 2011.

⁶²FAWC, 2009. FAWC (now the Farm Animal Welfare Committee) is an independent advisory body to the government. Its current Chair is Christopher Wathes. It normally includes an ethicist, the current one being Michael Reiss.

⁶³See *ibid* p. 2. The Five Freedoms are: Freedom from hunger and thirst, by ready access to water and a diet to maintain health and vigour; Freedom from discomfort, by providing an appropriate environment;

Freedom from pain, injury and disease, by prevention or rapid diagnosis and treatment; Freedom to express normal behaviour, by providing sufficient space, proper facilities and appropriate company of the animal's own kind; and Freedom from fear and distress, by ensuring conditions and treatment, which avoid mental suffering.

⁶⁴See Steven McCulloch (in press) for a critique of this position.

⁶⁵This observation I cannot substantiate here, but I believe it is supported by the increased deontological discourse. Moral philosophers classify ethical theories as consequentialist (e.g. utilitarianism) or non-consequentialist (e.g. deontological). Therefore more deontological discourse implies less emphasis on consequentialist (utilitarian) theory.

⁶⁶p. 17.

⁶⁷p. 30.

⁶⁸p. 56.

⁶⁹p. 55.

⁷⁰FAWC 2009 p. 56 'If A has a right, then it relies on something else (e.g. B) having a corresponding duty.'

⁷¹FAWC's position does not entail animals' rights. Rights and duties are correlative: for every right there must be a duty. However, for every duty there is not necessarily a right. See Joseph Raz, 1984, *On the Nature of Rights*, *Mind*, 93; p. 194–214. I have written that FAWC's position is very close to recommending moral rights because arguably in this context the duty appears to imply a right.

⁷²I am using the FAWC report here as illustrative of the evolution of animal welfarist doctrine generally.

⁷³I.e. animal welfarism based on utilitarianism.

one admits the correlative nature of rights and duties, then one comes very close to a position of *accepting the concept* of certain rights for animals.

Building on this, we can ask whether anything is gained by using the concept of moral rights about animals. The relevant part of the animal welfarist arguments goes something like ‘we have a duty to respect animal welfare because sentient animals have interests that are important to them.’⁷⁴ To be sure, this proposition is cogent, but placed under a microscope there is a short leap from the animal’s interests (an empirical concept) to the human’s duties (a moral concept). We should try and explain the gap as much as possible, and although we cannot completely fill this gap⁷⁵, we can make it smaller. As the proposition stands, the question is: why do animals’ interests confer human duties (to respect those interests)? The most obvious answer is that the animals possess moral rights⁷⁶, as valid claims (which are justified reasons, grounded in *their* interests).

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Finally, we can examine whether the relationship between moral rights and legal rights sheds any light on the issue. FAWC’s policy recommendation⁷⁷ is cast in legal terms: ‘We propose that the minimum legal standard should be set at the test of whether a farm animal has had a life worth living’⁷⁸. The precise relation between moral and legal rights is contended by moral and political philosophers and legal jurists. One explanation is that legal rights are grounded in moral rights. In this way, one can make sense of moral rights that are not codified as legal rights, in an imperfect legal system⁷⁹. Similarly, a legal right can be described as codification of more basic moral rights. In this respect, using the potentially greater explanatory power of rights as well as duties, FAWC’s policy proposal could be interpreted in the following way: first, animals have interest-based moral rights to a life worth living (i.e. net positive life wellbeing⁸⁰); second, humans therefore have moral duties to respect these rights (as valid claims); third, government, as guardian of the public good, should act as guardian of animal welfare as a public good⁸¹; fourth, government, as guardian of animal welfare, should codify the duties of citizens to respect the interest-based moral rights of animals

as the legal rights of animals to a life worth living. I repeat that I do not mean that FAWC actually proposes that animals have either moral or legal rights. As I have written above, FAWC’s official reports are a good example of how proponents of animal welfarism tend not to use rights discourse, despite using the language of duties. The purpose here is to illustrate that using rights discourse together with the language of duties gives the narrative greater explanatory power: In the analysis of FAWC’s policy recommendation, it is the animals’ moral rights that grounds society’s correlative duties and it is government’s duty as guardian to enforce the rule of law. The moral right here is simply a tangible representation of the animal’s interest to have that interest protected. The next question then is why animal welfarism proponents do avoid rights-based language. It is to this question that I now turn.

Up to this point I have been using observations and philosophical analysis to argue that the doctrines of animal welfarism and animal rights are not mutually exclusive. Why do some consider these doctrines to be different in the first place? The first reply to this is simply that they are perhaps not in fact considered to be so different by a majority of people. Amongst the general public ‘animal rights’ is a term often used to describe the general social movement to protect animals⁸². It could be argued that the public has conflated two separate

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⁷⁴E.g. see FAWC 2009 p. 12 on the *Brambell Report* and p. 13 on Parliament’s judgement going back to the early twentieth century.

⁷⁵This is Hume’s guillotine: the notorious philosophical problem of deriving an *ought* from an *is*.

⁷⁶It is reasonable to ask what precisely such rights might consist in at this point. This is a fair question and alludes to another reason that Bentham considered rights to be ‘nonsense on stilts’. The metaphysical nature of rights is beyond the scope of this essay.

⁷⁷FAWC’s remit is the welfare of farm animals on agricultural land, at animal gatherings, in transit and at the place of slaughter, in Great Britain.

⁷⁸p.15.

⁷⁹John Stuart Mill [Ed. Mary Warnock], *Utilitarianism*, 1861 [1962] p. 298.

⁸⁰‘Wellbeing’ here corresponds to what has prudential value for the animal.

⁸¹FAWC’s proposal of government as guardian of animal

welfare, by invoking the concept of the public good, actually implies indirect duties to animals. Despite this, elsewhere FAWC is clearly discussing direct duties towards animals grounded in their sentient interests.

⁸²Paul Waldau, 2011, *Animal Rights: What Everybody Needs to Know*. Note that Waldau is writing for an American perspective. However, ‘animal rights’ is used similarly as an umbrella term in the UK and elsewhere.

movements (rights and welfarism). Despite this, the public may sometimes have a collective intelligence that we should not discount; as I have argued, rights are moral and political concepts that are not easily replaced. The concept of animal rights is not only compatible with animal welfarism but augments the cogency and explanatory power of the doctrine as a theoretical proposition. Nevertheless, why might animal welfarist proponents define themselves in opposition to animal rights? The first answer might be concerned with animal rights being a more extreme ideological position than animal welfarism. I have discussed at length above the issue of confusing the *substantive* right of a right to life with the more basic idea of the formal possibility of an animal having any moral right (e.g. the right to wellbeing).

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Nevertheless, we must examine this point because it is important from the point of view of the boundary between animal welfarists and animal rights proponents. Let us

grant that animal welfarists and animal rightists are categorically different. Animal welfarists believe we are morally justified to use animals for certain purposes under certain constraints. In contrast, animal rightists believe that animals' moral rights preclude morally justified use of animals for the same purposes⁸³. Let us agree that both claims are reasonable beliefs based on a Rawlsian interpretation of a plurality of values in society⁸⁴. As the two are different in content of beliefs, when the two are deliberately contrasted, it is relatively easy to make the mistake that the animal welfarism position is in fact an anti-moral rights position. This is facilitated by the name of the animal rights position: 'animal rights'. By this I mean that the name of the animal rights position might contribute to the impression that a doctrine that is opposed in some ways must be opposed in all ways that concern moral rights. This is an equivocation of the formal possibility of recognising animals' moral rights (e.g. a right to wellbeing) with the attribution of specified rights (e.g. the right to life⁸⁵) on the part of the welfarist doctrine. Similarly, animal rights discourse can be polarised by opposition to the legitimate promotion of animal welfare⁸⁶. In animal rights discourse, the promotion of animal welfare is often criticised on the basis that humans should not be using animals in the first instance. The fact that the animal welfarist doctrine, by name,

is a 'welfare'-ism⁸⁷, I believe similarly has the potential to polarise the animal rights doctrine towards opposition to any improvements in animal welfare⁸⁸.

Let us briefly engage in a thought experiment about these common characterisations of proponents in the two groups. An animal rights person is characterised as having absolute beliefs prohibiting any instrumental use of animals and the premature killing of them. In contrast, the animal welfarist is characterised to have far more conservative beliefs about the instrumental use of animals, and permits them to be killed so long as their suffering is minimised. It is these simplified characterisations that I urge need to be problematised. Imagine that we are set the task of describing these groups to someone with no prior knowledge of the subject. Would it be more accurate to describe animal welfarists and animal rights proponents as two separate groups or as different elements of the same group? Let us imagine that a number of animal welfarists and a number of animal rights proponents are consulted and asked the following question about their aspirations for the treatment of animals. Consider for example this question:

Would you be satisfied if, within your lifetime, society came to judge through its institutions that all animals⁸⁹ have a legal right to access⁹⁰ to a life worth living (based on the moral right to wellbeing)?

⁸³It might be claimed that the difference is that animal rightists do not believe that animals should be used for any human purposes. While no doubt this is true of some animal rightists, the purpose here is simply to contrast the two positions for the sake of the argument I am making. If the animal rights characterisation is written in this absolute sense, it will not be logically the negation of the animal welfarist position.

⁸⁴John Rawls, 1971, *A Theory of Justice*, Harvard University Press.

⁸⁵Another moral right commonly claimed by the animal

rights doctrine is the right not to be treated as a means to an end, i.e. instrumentally for human benefit.

⁸⁶E.g. see Gary Francione's position in Francione and Garner, 2010, *The Animal Right Debate: Abolition or Regulation*, Columbia.

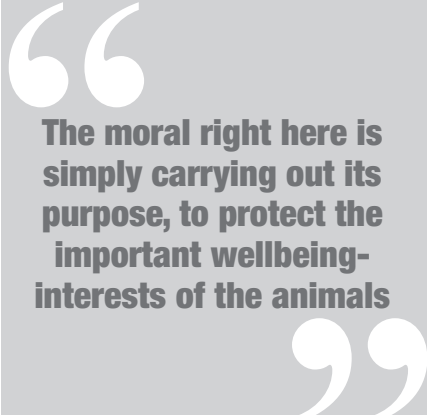
⁸⁷This is despite animal welfarism being a prescriptive moral doctrine and animal welfare an empirical descriptive state-of-the-world.

⁸⁸Of course, this would be difficult if not impossible to substantiate empirically. Despite this I believe there is

something in the fact that the two doctrines have in a sense come to the point where they are named in opposition to each other.

⁸⁹Animals used for human purposes, i.e. mostly domestic animals. Here 'animals' does not therefore include wild animals.

⁹⁰This avoids the problem that some animals won't achieve a life worth living no matter what provisions are made for them, due to uncontrollable and inevitable factors such as disease and accidents.



The moral right here is simply carrying out its purpose, to protect the important wellbeing-interests of the animals

Consider the animal welfarist first. Is it likely that the welfarist will object to this proposition based on an ideological dislike of the concept of rights? I very much doubt that this would be the case. The moral right here is simply carrying out its purpose, to protect the important wellbeing-interests of the animals, which the welfarist is primarily concerned about. In our current social, political and economic circumstances, any welfarist not satisfied with this situation within their lifetime would need to give very strong reasons to support their case⁹¹. Returning to Antoine Goetschel's advice, we should also remember that many legislators are trained lawyers and we should speak to them in language that will be understood. It goes without saying that lawyers understand the language of rights.

Let us now consider the position of the animal rights proponent. Would an animal rights proponent be satisfied within their lifetime if all animals have a legal right to a life worth living (based on a moral right to wellbeing)? Again, animal rights proponents should be satisfied with this proposition. A dissatisfied animal rights proponent must have expectations about the medium-term treatment of animals that do not seriously take account of current social, political and economic circumstances. John Dewey was an American thinker who based his moral philosophy on pragmatism⁹² and the link between ethics and pragmatism is highlighted well by this hypothetical question. The question that we are asking the animal welfarists and animal rights proponents, as members of the animal protection movement, is one about the real world in our own

lifetimes. The consensus answer to this question should impact on the strategy of the animal protection movement. If this proposition is one that many in the animal protection movement accept, then a case can be made for it to become an overriding goal of a unified movement. Since there does not appear to be any single, unified and well-defined goal of the animal protection movement at the current time, I suggest that the following one can be used:

Society and its institutions ought to respect the principle that every animal used for human purposes should have a legal right to a life worth living (based on the moral right to wellbeing).

The animal protection movement will benefit from a coordinated strategy based on an overarching but realistic aim. This aim should combine important elements of the animal rights and animal welfarism doctrines. It should have a reasonable amount of idealism that reflects the natural moral sentiments of human beings, and utilise moral and legal concepts that policy makers and democratic citizens understand. The prescription that all animals should have a legal right to a life worth living, based on a moral right to wellbeing, can be used as a starting point to explore these ideas further.

Acknowledgements

The author is grateful to Christopher Wathes and Michael Reiss for helpful comments on this essay.

⁹¹I cannot think of any.

⁹²John McDermott [Ed.], 1981, *The Philosophy of John Dewey*, University of Chicago Press.