A Living Will Clause for Supporters of Animal Experimentation

DAVID SZTYBEL

ABSTRACT Many people assume that invasive research on animals is justified because of its supposed benefits and because of the supposed mental inferiority of animals. However probably most people would be unwilling to sign a living will which consigns themselves to live biomedical experimentation if they ever, through misfortune, end up with a mental capacity equivalent to a laboratory animal. The benefits would be greater by far for medical science if living will signatories were to be used, and also the mental superiority boast would no longer apply. Ultimately, it is argued that invasive biomedical experiments would be unacceptable in a democratic society whose members are philosophically self-consistent.

A simple dedication to eliminating easily avoidable suffering and death is enough to eliminate most of the ways we use animals. For example, clothes can be made from plants or synthetics, and entertainment can be arranged without using or harming animals. Even meat, though perhaps less easy to give up for some, is avoidable without undue hardship on our part. We do not need to eat meat in order to be healthy — or even healthier. However there is one way that we use animals that may not be so easy to give up: many people believe we cannot afford to stop using animals for biomedical research.

Abolishing animal experimentation may often be seen as the very last thing that society might ever concede to animal rightists — and indeed to animals. Many would assert that we need to be healthy, and that it is indispensable to investigate cures for diseases and debilities by using animal research subjects. It is commonly assumed that from nonhuman animal models of human health problems, we can learn and enhance medical practice for humans. Indeed, it is widely feared that without biomedical animal experimentation we could not make as much medical progress, or that it would be delayed, of an inferior nature, or even lost. As a result, it might be assumed that opposition to animal research is much lower than opposition to using animals for food. Oddly enough, this is not the case.

On the contrary, the Eurobarometer Program sponsored a study that was administered by International Research Associates in the fall of 1992, out of a total European sample size of 13,024, with approximately 1,000 in-person interviews conducted in each nation. In France, 68% of the population either strongly disagreed or disagreed with the statement that animals should be used in scientific research. High levels of opposition were exhibited in most of the European Community, with over 50% of the population being opposed to animal research in West Germany, Belgium, East Germany, Italy, Great Britain, Ireland, Denmark, and Spain. In a comparable study in the U.S., only 14% strongly disagreed with animal research, although another 28%
disagreed. In Canada, 20% of respondents strongly disagreed with animal research, although another 29% disagreed.\(^3\) In social terms, it is surprising that a majority of citizens in a modern-day society could possibly favour the abolition of animal experimentation. However, I would emphasize that animal rightists have historically had the most difficulty in justifying a ban on animal research. In sociological terms, however, there seems to be more opposition to animal experimentation than to meat-eating, indicating that people are swayed by a concern for animals but have a strong attachment to eating animal products.

The single greatest argument in favour of using animals for biomedical experiments is utilitarian, or else nonutilitarian, but likewise appealing to the consequences of refusing to engage in such harmful studies. That is, although the animals suffer, are confined, and typically lose their lives from such research, it may be thought that the resulting information which allegedly saves any number of humans, and assists human quality of life, *outweighs* any harm caused to the animals, and justifies overriding rights or duties of care towards the animals in question. It is seen as a choice of ‘the lesser of two evils’. In light of such reasoning, biomedical animal experimentation is often called a ‘necessary harm’. Indeed, the most serious human diseases are inherently very harmful, and so it becomes an overriding research priority to duplicate these severest of harms in the lives of animals. Thus, animals are subject to surgery without anaesthetics, drowning, cramping, crowding, freezing, burning, crushing, car-crashing, starving, inducing aggression or passivity, compression, radiation, weapons impacts, disease infections, and more. The case for such dire treatment, based in an appeal to supposed benefits, is a seductive argument, and many people have ‘signed up for experiments’ countless animals as a direct result.

A classic case of a utilitarian — even a self-labelled animal liberationist — who supports some (even harmful) animal experimentation is Peter Singer. Singer claims that we should equally favour equivalent interests, no matter the species of the interest-holder, and always promote those consequences that are best overall. So, for example, severe pain would always be more important than mild discomfort, no matter who experiences these states. Consider humans who are quite senile, deranged, comatose, or mentally challenged. Singer plausibly assumes that since we would not treat such humans with limited mental abilities\(^6\) cruelly, or without equally considering their suffering, so we must never be tempted to treat animals (who are said to have limited cognitive abilities) cruelly or with disregard either. Nevertheless, Singer explicitly defends certain forms of animal experiments:

The knowledge gained from some experiments on animals does save lives and reduce suffering. Hence, the benefits of animal experimentation exceed the benefits of eating animals and the former stands a better chance of being justifiable than the latter; but this applies only when an experiment on an animal fulfils strict conditions relating to the significance of the knowledge to be gained, the unavailability of alternative techniques not involving animals, and the care taken to avoid pain. Under these conditions the death of an animal in an experiment can be defended.\(^7\)

We should note here that although the author of *Animal Liberation* does not advocate liberating all animals from experimentation, Singer is highly critical of callousness towards suffering, and of experiments that do not seem useful or promising, or that
are merely repetitive. An important condition of Singer’s argument is that if human subjects who have the mental capacities of nonhuman animals are available, and since they would be more suitable for medical research concerning humans and the results more valid, they too should be used for experiments.® Singer thus articulates the traditional argument from marginal cases (an argument distinct from the special form of that argument which I develop in this essay).

Non-utilitarians sometimes use utilitarian-like arguments to defend harmful uses of animals in medical research. For example, some rights views may adjudicate conflicts between rights using utilitarian-like criteria. Utilitarianism and rights are the most popular forms of ethics in, for example, legal, business, engineering, biomedical, and environmental ethics courses. Utilitarian-style adjudication between rights violations is common, because in certain situations, one cannot avoid breaching the rights of some, and because the rights in conflict cannot themselves help us to decide which rights to abrogate, people often ask themselves whose rights would be least harmful (or perhaps most beneficial) to override, in a given context. For example, again, it is often urged that either we kill animals to save humans, or in letting the animals live, accept responsibility for human deaths.® The feminist ethic of care may be thought to face the same ‘lesser-of-two evils’ dilemma, and may well care to favour what seems the most ‘caring’ alternative (in versions of care ethics which avoid speciesism; speciesist feminists — and there are many — may not even debate the issue with much seriousness). A virtue ethic whose goal it is to treat humans and animals well or with excellence on the part of the agent might also face such a supposed dilemma. Even Albert Schweitzer, despite his ‘reverence for life’ doctrine, held that biomedical experimentation on animals is a necessary evil.®

The Living Will Argument

I, _______________, being a supporter of animal experiments who is of sound mind and body, do hereby consent to being utilized in biomedical research, as a ‘special volunteer’,
WHEREAS my mental capacity, through accident, injury, or developmental problems, will have become equivalent to that of a nonhuman animal;
WHEREAS such research could be defended on grounds of possible benefits;
WHEREAS such research is comparable to such research now conducted on animals;
and
WHEREAS said research will be approved by the National Research Board.

In signing this document, I take no special notice of any heroism on my part, but am simply doing my expected duty, which any conscientious citizen rightly ought to undertake.

Date: Signature:

Philosophers who sign animals up for research against the animals’ wills however, may not fully realize the position to which their own reasoning logically commits them.
In logic, supporting biomedical animal experimentation on the grounds that it is the least harmful choice, also commits you to agreeing that you ‘should’ sign the living will outlined above. If you have agreed equally to favour equivalent interests, such that you will grant that humans who through misfortune have been reduced to a mental life equivalent to that of an animal in a laboratory are not beings superior to animals and you agree that experiments on humans would provide superior benefits to humanity, then using such humans in research would be the choice more productive of utility. Since you yourself may some day be such a brain-damaged human, then you should sign the document that submits yourself for such experiments in the event such a misfortune occurs.

Of course, I do not support such a living will clause myself. I think such a living will clause is a moral absurdity. I am merely arguing that utilitarian defenders of biomedical animal experimentation such as Singer are logically committed to signing such a document. If living wills were signed, greater utility would result. Overall, the number of lives saved through science will eventually outnumber the lives of living will signatories lost to experiments. The harms would be comparable between experimenting on animals and experimenting on humans who are cognitively equivalent, and there would be much greater benefit in using the humans. Yet most utilitarians or utilitarian-like thinkers would not volunteer themselves for such experiments, or so I would have to guess based on current social practices.

However the utilitarian who favours experimenting on animals but refuses to offer himself or herself for such research under the conditions stated is betraying their utilitarian principles. If this refuser claims to be acting according to utilitarian principles, then he or she is implying that even using humans is not ‘good enough’ to satisfy the utilitarian formula of acting for the maximum good. In that case, the even lesser good of using animals cannot be ‘good enough’ either.

Suppose that some utilitarians — probably a minority — were to sign the living will. The consensus today is that humans should not be used for invasive medical research, at least not without their consent; such usage is against the law. Not all humans are capable of giving consent, and no one would presume to give it on their behalf when it comes to invasive research; arguably the same should be true in the case of animals. A hypothetical person who agreed to very harmful or painful forms of research might not be allowed to consent, or might not be thought sane enough to be capable of consent. However if it is not ‘good enough’ to use people in such research, by force of law, then it cannot be good enough to use animals, who are of less utility-value in the context of such research. Nor could signatories of the living will morally compel a majority of others to submit to invasive research, regardless of whether the others are human or nonhuman. For I venture that it is an accepted moral principle, whether on deontological or consequentialist grounds, that a minority of people cannot force others to submit to harms or risks that the majority is unwilling to undertake themselves. Such coercion would disrespect the autonomy of individuals.11

This reasoning turns the utilitarian case for biomedical animal experimentation on its head, undermining the ‘common sense’ idea that such research is morally required, let alone acceptable. Utilitarian and utilitarian-like arguments for biomedical animal experimentation collapse on themselves, thus putting the proposition that we should abolish animal exploitation on an ever firmer philosophical footing. It would be speciesist for utilitarians to refuse to submit themselves to invasive experimentation for which
they would readily ‘volunteer’ other animals. Indeed, if utilitarians were truly consistent, they would not require any living will at all. They would simply force humans who become cognitively equivalent to animals in laboratories to be invasively experimented on — for that is exactly what is seen as justified in the case of animals.

The supposedly impartial utilitarian(-like) reasoning in favour of biomedical animal experimentation is thus shown to be deceptive, and what is really in play in such arguments is just a speciesist determination to use animals as instruments, without any — or at least equally — serious regard for their interests. Yet if we dismiss the animals’ interests of animals in order to use them, then we should also dismiss our own interests should we become mentally equivalent to nonhuman animals. Utilitarian(-like) supporters of biomedical animal experimentation must put humans first in the line of fire for the invasive quest for cures — and of course avoiding using humans is what the entire practice of biomedical animal experimentation is designed to do. It follows, then, that people commonly use utilitarian(-like) justifications of biomedical animal experimentation as an impartial-sounding foil for their own speciesism. For many ‘altruistic’ ethicists, it seems that invasive experiments are acceptable — so long as they are never done to them, nor to others of their species.

The living will argument, in addition to a fair consideration of suffering, also depends on a rejection of ethical egoism, which utilitarians standardly reject. The view that ‘anything goes’ in ethics (ethical nihilism) would also reject the claim that to sign a living will is morally obligatory. But ethical nihilism is not an ethic that can be publicly adopted without the worst sort of anarchy ensuing. An ethic based on everyone protecting his or her own self-interest may result in agreeing to mutually beneficial rules against hurting one another, however being selfish is not usually thought of as ethical behaviour, but rather prudent at best, or unethical at worst. A standard objection to ethical egoism is that egoists do not take others seriously, but act as if they have some morally special property that justifies special treatment. Such less popular alternative views cannot simply be dismissed, but they can be deferred. I am now considering — at a theoretical level — more altruistically committed forms of ethics at a theoretical level. At a practical level, nihilists and egoists are supposed to be in the minority; the majority may be said to be committed to some substantive form of impartiality, or a condemnation of selfishness as immoral. Since the legality of animal experimentation is a political issue, the minority status of egoists and nihilists becomes salient, and it becomes democratically imperative to ban such experimentation even over howls of protest from any nihilist-egoist coalition.

The Greater Utility of Experimenting on Humans for Human Medicine

As part of the living will argument, I have made the uncontroversial claim that it is much more useful to study humans than nonhuman animals. I do not know anyone who would dispute such a statement, but it is often highly underappreciated how much more useful to science using humans would be. I would go so far as to state that logically, it is a category mistake to study nonhuman physiology in an attempt to learn about the anatomy or functioning of human bodies, and the same goes for the study of psychology. As the feminist thinker, Joan Dunayer, wrote:
To what extent do particular findings in mice, dogs, or other nonhumans apply to humans? No one can know without comparing the nonhuman-animal data to the corresponding human data. But if the human data are available, the nonhuman data are superfluous. In lieu of human data, nonhuman-animal data are dangerously unreliable. Eighty percent of drugs fail human trials after passing nonhuman-animal tests. In humans the drugs prove ineffective or harmful.\(^\text{12}\)

*In no case are drugs ever approved for human use without human clinical trials.* If animal studies really indicated what is safe and effective for humans, such trials would be superfluous, and yet they are deemed absolutely essential.\(^\text{13}\) If anything animal studies may be used to help persuade humans to undergo clinical trials.

Regardless of whether animal models are or are not accurate approximations of human conditions, however, I have yet to find any scientist who would disagree with the thesis that human studies are many times more scientifically reliable for human medicine. It is often said that medical scientists ‘need’ animals to experiment on. Yet it can readily be replied that we ‘need’ human subjects even more on similar, purely scientific grounds.

It has elsewhere been estimated that 95% of drugs found safe and effective on nonhuman animal tests are rejected as harmful or useless during human clinical trials.\(^\text{14}\) In one 25-year study, 40,000 species of plants were tested for anti-tumour activity on animals by the United States National Cancer Institute. Of those substances found safe and effective on nonhuman animals, not one usable and safe agent survived human tests.\(^\text{15}\) The sleeping agent, thalidomide, caused 10,000 human babies to be born with flippers instead of arms.\(^\text{16}\) Tuberkulin cures tuberculosis in guinea pigs but causes it in humans.\(^\text{17}\) The arthritis medicine, oraflex, was safe and effective on animals but kills humans, and indeed guinea pigs can safely eat strychnine,\(^\text{18}\) while sheep can consume large quantities of arsenic.\(^\text{19}\) Digitalis, a cardiac drug that has saved millions of human lives, was delayed in its release because it dangerously elevates blood pressure in dogs.\(^\text{20}\) The discoverers of penicillin are grateful that no guinea pigs were available for testing, for it kills these small animals.\(^\text{21}\) Morphine causes mania in cats and mice, and dogs have twenty times the tolerance for it that humans do.\(^\text{22}\) Cases such as these abound. Nonhuman animals make very poor models for predicting results for human beings, and it is doubtful whether they help us to predict at all even when the humans and nonhumans are similarly affected by treatments: we just do not know *in advance*, in any given case. And allowing us to know in advance is supposed to be the whole point of animal experimentation.

### The Living Will Argument and the Traditional Argument from Marginal Cases

The living will argument is a specific variety of the argument from marginal cases. Yet it is a special form of the argument and differs from the usual application of the argument from marginal cases to animal experimentation. In the latter case it is often argued that if we are willing to carry out harmful research on other animals, then we ought also to be willing to submit for study those humans who are cognitively equivalent...
to animals, as well. We noted that Singer uses this form of argument. The living will argument, however, involves putting oneself at risk for very harmful research. This special adaptation of the argument from marginal cases has advantages over the traditional form.

The first advantage is that the living will argument does not presuppose that nonhuman animals are at the mental level of (almost brain-dead) humans who are unable to remember, predict, are barely — if at all — aware of what is occurring around them, and who may not be able fully to feel, form preferences, let alone desire anything. Animals are not normally the mental equivalents of those derisively referred to as ‘human vegetables’. Rats, for example, the most common of all laboratory animals, are exquisitely sensitive, both cognitively and emotionally, each with his or her own personality. If one were reduced to the cognitive level of a rat, one would still retain a very considerable capacity for awareness, suffering, and relating to others socially. The animals may even be able to communicate in basic ways, so humans who are equivalent to animals in laboratories need not lose all communication skills. The vast majority of animals in laboratories are not comatose, insane, catatonic, deranged, lacking feeling or perception because of brain damage or congenital problems. Unfortunately, however, the usual form of the argument from marginal cases has the effect of making animals seem like the functional equivalents of televisions perpetually on the blink — or almost totally dysfunctional. The typical comparison with so-called ‘marginal humans’ has the unintended effect of making animals seem like ‘marginal animals’.

We owe the animals at least an accurate portrayal of their real mental capabilities, without distortion by false or misleading comparisons. This is a delicate matter, for our understanding of the mental lives both of cognitively disadvantaged humans and of animals is very limited. Normal animals held captive in laboratories are lucidly and continuously aware, with memories, well defined desires or sets of preferences, and fearful anticipations when handled (unless, for example, they are heavily drugged — although that same precaution can be taken with human beings). Indeed, I would assume that these animals have desires, pleasures and pains quite as much as normal humans. It is not clear how extensive their memories are nor how insightful their anticipations might be, although these also appear to be quite substantial. Animals in laboratories actively try to avoid being harmed, and give all evidence of ability to suffer. They are not in any kind of ‘vegetative’ state, but are fully — not marginally — suffering animals. Under the living will clause, we too would most likely be fully suffering human animals should we come to be used.

The living will argument stipulates that humans who are more truly mentally equivalent to normal, mammalian animals are to be used, whereas the traditional so-called argument from marginal cases or ‘human vegetables’ stresses no relationship of cognitive equivalence with laboratory animals. The argument from marginal cases typically stresses lack of cognition especially to emphasize that it is undeniable that other animals sometimes well exceed some humans’ cognitive capabilities. Of course, claims to human superiority or ‘richness of life’ cannot save us from signing the living will, for the case contemplated systematically erases that superiority or richness as a matter of fact.

Animals have no abstract language. But they can and do communicate behaviourally that they wish to avoid suffering and pain. Animals do not need words or other abstract symbols in order that their being harmed have significance to them: the harm itself means suffering for them, which they would rather avoid. Abstract symbols are
chiefly useful for communicating one’s experiences to others. It does not inform oneself, at any rate, if one is in agony, to say to oneself, ‘I am hurting!’ If cognitively disadvantaged humans may be given the benefit of the doubt that they have a hidden, rich mental life of which they can give no evidence, why should animals not be given a similar benefit of the doubt? It may be supposed that humans with reduced capacities can still think, unlike animals, but this may not be at all evident, or these humans may not be able to think in ways beyond symbolic images, as animals might (since it is not in dispute that even rats show evidence of intelligent responses, or thinking, which surpasses many cognitively impaired humans with respect to simple problem-solving). The point is entirely irrelevant, in any case, since most people would not consent to invasive experimentation even if they were hardly able to think, but could still greatly suffer. Thus, if utilitarians are consistent in their treatment, then all suffering beings, human or not, would be exempt from invasive experiments, regardless of ability to think, reason, or use language.

A second major advantage of the living will argument over the more traditional argument from marginal cases also presents itself. The moral significance of animal experimentation is brought more clearly into focus because, typically, the argument from marginal cases does not invariably offer (or at least emphasize) the strong point that one might oneself end up, some day, at the cognitive level of a nonhuman animal, and therefore will seem ‘fit’ to study invasively on utilitarian grounds. Thus, R. G. Frey is able to agree that both animals and cognitively disadvantaged humans should be made available for invasive experiments, but it is questionable whether anyone would leave oneself so open.

The living will case is not a wildly hypothetical example, but a matter of everyday practical concern. Humans can be reduced to the level of nonhuman animals in many ways, including brain damage from car accidents, biking accidents, falls, concussions from falling debris or attackers, exposure to toxic chemicals, near-drowning or suffocation, genetic defects, strokes, or senile dementia, to name just a few. True, someone with limited faculties who was born that way will not figure into the living will argument, however, congenital problems are addressed by the traditional form of the argument from marginal cases. The living will argument, in turn, makes the traditional argument from marginal cases stronger because it forces us to take those with cognitive limitations seriously. So the living will argument and the common argument from marginal cases are mutually reinforcing in a way that is felicitous for both humans and other animals.

Unfortunately, when considering whether to experiment on animals or on cognitively disadvantaged humans, these beings too often appear simply as others who are ‘out there’, and it is oneself and other privileged persons who will decide what to do with ‘them’. The living will, by contrast, makes it a personal matter, even a question of self-interest, to decide what must be done in relegating individuals to invasive research. It is no longer a sealed-off segment of the general population that can be ‘sacrificed’ for medical progress in a way that we can ‘live with’ — we ourselves may lose our very lives. There is no abyss between us, the superior beings, and them, the inferior beings, because we may become so-called ‘inferior’ at any time. ‘Us versus them’ suddenly becomes ‘me’ in an important part of our reasoning about harmful medical research.

It could well be argued that the traditional argument from marginal cases risks, or even produces, a failure of empathy with the contemplated victims of invasive experi-
ments, or at least an insensitivity to others who, after all, may seem very different and
distant from oneself. The living will proposal forces us to think about invasive research
at some length, making it of the most personal significance. The living will does not
present some abstract situation that some anonymous being undergoes, as part of what
is unimaginatively referred to as ‘an invasive experiment’. Nor is the living will scenario
a purely hypothetical case of the wild kind dreamed up by philosophers, which will
never happen, or perhaps only in an ‘alternate world’. Such an outcome could actually
happen to oneself. The benefits and harms at stake cease to be merely abstract, or to
be regarded lightly. One presumably considers all harm seriously if one considers being
the recipient. The living will argument can lead one to imagine an intolerable fate: for
oneself to be invasively experimented on while yet fully sensitive — an outcome that
most would — and do — prefer to avoid.
This thought experiment, then, is simply a means of enforcing the Golden Rule, that
we should treat others as we would be treated, love our neighbours as ourselves, or
refrain from doing what is hurtful to others which we would wish not be done to
ourselves. It also relates to the Kantian idea of universalizability: we should be willing
to suffer what we propose to do to others. People who are prepared boldly to sacrifice
animals will not be so brave when they find themselves subject to the same fate. The
argument escapes the common objection to opposing harmful animal experimenta-
tion, ‘Would you volunteer instead of the animals?’ by confronting this possibility directly
from the moral point of view. Utilitarian supporters of biomedical animal experimenta-
tion, and others of their ilk, are indeed obliged to volunteer to at least sign the living
will. If they balk, as they probably will — or even if a minority of utilitarians sign —
then suddenly the utilitarian(-like) ‘need’ to hurt beings in a desperate search for cures
evaporates.

Objections and Replies

Objection A: Some utilitarians\textsuperscript{26} might actually sign the living will.

Reply to A: The signing should be taken seriously, as an act which may result in
subjecting oneself to being given serious diseases and debilitating conditions that most
demand our study. Moreover, one might be utilized for such studies any time soon.
Anyone is welcome to sign — or seriously hesitate over doing so — although I believe
that few actually would do so. False claims that one would sign do nothing to refute
the argument, and in fact such an evasion betrays an inability to defeat the argument
on a philosophical level. Also, one could not sign in the confidence that one would
only be a ‘human vegetable’, anyway, since being equivalent to a normal animal in a
laboratory is far more than that. One cannot deflate this argument with a mere stroke
of a pen. The fact that many conscientious people would not sign, probably the vast
majority, should create a majority of altruists opposed to biomedical experiments on
any animal on their very own reasoning. Perhaps animal liberationist utilitarian, Peter
Singer, and anti-animal-liberationist utilitarian, R. G. Frey, would solemnly sign the
living will, since both indicate that if animals are to be used for invasive experiments,
then so must human beings who are cognitively comparable to animals. They would
have to concede that humans are, after all, scientifically much preferable as suitable

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objects of study. Nor could they reason that their contributions to utilitarian theory are too valuable to allow them to volunteer, for they would not be able to offer any further contributions in the event of forms of debility which are addressed by the living will.

Suppose that somebody does sign the living will. Realistically, anyone who would sign up for invasive experiments, knowing that he or she will remain truly sensitive to harms, may well be viewed as lacking self-respect, or perhaps even as pathologically masochistic. The signatory may also be reckoned a potentially dangerous, fanatical crank in favour of invasive experimentation, since in all consistency, he or she may well demand that everyone else must sign up as well, on the same utilitarian grounds which guide the zealot’s own decision. Not to insist on this would be a failure of utilitarian resolve for a supposedly vital cause. Indeed, if perfect consistency were enforced, such utilitarian cranks might demand that humans who become cognitively equivalent to animals in laboratories be forced into such research without consent, or in spite of resistance, even as animals are according to the lights of utilitarianism.

**Objection B:** Utilitarianism must take account of all consequences flowing from the possibility of living wills, such as the dread or outrage that people would feel at the prospect of being used for invasive research, and the outrage their relatives and friends might feel. We do not feel the same outrage about animals. Once we take account of this upset, we will protect humans from being used but still allow animals to be used.

**Reply to B:** We may commonly fail to feel outrage at animals being harmfully experimented upon, but if we would feel that way about humans, perhaps we should be similarly upset about such a fate for nonhumans who are cognitively equivalent. Also, there are people who feel dread and outrage about animals in labs, as we have seen in a majority of democratic countries that reject animal experimentation. We should also not underestimate the dread that animals experience in laboratories, who exhibit fear and trembling before being picked up and subjected to forcible procedures. And if one’s capacities fail, one would experience no more distress than captive animals in laboratories (which may be very considerable), so that would also be a moot point. The animals experience things as dreadful as we might in laboratories, or even worse, so we should equally have dread or at least moral concern for them.

It is true that relatives of special volunteers would be extremely upset, but that is not usually thought to matter decisively when it comes to, for example, going to war. Relatives might rather honour the special volunteers. Ultimately, it is the living will signatory who must make the decision, however distressed relatives or anyone else might be.

Utilitarianism that rejects speciesism should favour moral sentiments, or feelings that affect moral decisions, that are not speciesist in nature; it should definitely discourage speciesist attitudes or, at least, acting upon them. The ideal of utilitarianism must mean not simply acting on whatever moral feelings we happen to have, but must claim to offer an enlightened substitute for chance feelings. After all, spontaneous feelings might be radically contrary to utilitarian reasoning, or people would be free to act just as they ‘feel like’, and such a do-as-you wish-principle would make the utilitarian ethic practically irrelevant. This is a tricky subject, because utilitarianism is committed to taking account of existing feelings and preferences (including those of oppressors). However, it is in favour of seeking the best outcomes, and it can be argued in general that oppressive outcomes would result in avoidable suffering that clearly outweighs any
benefit in indulging the whims of oppressors. If it were otherwise, utilitarianism would be useless in condemning racism or sexism in very bigoted societies, and that would be an absurd consequence.

Since we are speaking of human beings and animals who are equivalent in strictly utilitarian terms, it would be irrational and immoral to favour one over the other on the basis of species-differences alone. Indeed, utilitarianism should strive to abolish all racist and sexist sentiments, as well. Otherwise, if speciesism or racism is tacitly encouraged, this would go against the impartial utilitarian commitment, ‘Each to count for one, and none for more than one’. Licensing speciesist practices against animals more generally would result, which is inconsistent with maximizing happiness and minimizing suffering in the world. Animals would end up enduring more than the minimum of suffering, and humans would have their units of pleasure or negation of displeasure count for more than those units pertaining to animals. One will not treat nonhuman suffering equally if one is allowed to remain indifferent to it or treats it as an inferior concern. That would be unjust, according to utilitarianism.27 If people are stubborn in their speciesism, then utilitarians must insist on a massive moral re-education, if it is quite serious. The education would have to be ongoing, perhaps. The best time to start reforming attitudes is possibly now, especially with such an urgent cause as medical progress supposedly being at stake. A nonspeciesist society might equally be morally shocked to use nonhuman animals as humans with the same utilitarian potential, or perhaps more horrified because such experiments are so much less likely to be useful. And dread of mentally incompetent humans or animals being harmed ought to be equal to the dread of oneself being harmed if utilitarianism is as altruistic as it claims — a framework that exactly counts equivalent interests equally. A morally sensitive and committed utilitarian will be concerned with extreme suffering wherever and in whomever it occurs, and seek to compensate in cases where irrational feelings or prejudices become a problem. Volunteers to sign the living will can be comforted and honoured appropriately, or at least assured that they are doing their ‘duty’ as supporters of medical research. Any grief at submitting people to harmful experimentation must also be balanced against the joys that these procedures will supposedly bring in helping millions of people in years to come.

*Objection C:* People might be deliberately harmed in order to generate experimental subjects.

*Reply to C:* People might indeed be attacked and turned into cognitively disadvantaged humans to garner enough numbers for scientific results, fuel careers, or even as revenge against certain individuals. However this would be a rare occurrence. In utilitarian terms, the great benefits to be derived from the research might outweigh any minor risks posed by psychopathic experimenters (who would be condemned by utilitarianism, of course). As defenders of animal experimentation regularly assure us, the experimenters themselves are not sadists or otherwise mentally disturbed, at least not to any significant degree. Moreover, regulatory bodies and criminal investigations can be carried on to police these practices, and to monitor any suspicious circumstances. Only top-flight scientists, under peer scrutiny, and who are publicly accountable, would be permitted to work on special volunteers in any case and any other research would be rejected. Experiments on special volunteers by those who are not properly affiliated or
accredited would immediately provoke routine criminal investigations, especially if they tried to publish their results. If publishing results is not the aim of the research, then the living will is an irrelevant nicety even now to mad scientists who would kidnap people and invasively operate on them in order to further their research objectives.

We should ask rather if it would be speciesist to prevent humans from being forced into research when animals are physically forced at every turn to ‘participate’ in invasive experiments. But the benefits of competent adults signing the living will clause in question are considerable, both for public perception purposes, and also legal facilitation. If we outlaw such wills, for fear of forcible treatments, we equally ought to ban organ transplants, because at present, especially in the so-called Third World, people are indeed abducted and victimized for their organs, by force or by fraud. Yet the utilitarian benefits of organ transplants are often considered beyond question.28

Objection D: People cannot give informed consent to future invasive experiments, since they might not know exactly what the experiments involve.

Reply to D: First, animals are not given this option either, so it would be inconsistent to be too fussy about informed consent, especially once someone has become cognitively equivalent to a nonhuman animal, which is the only time they would be subject to invasive experiments in any case. The consent of a competent special volunteer would of course overrule any protests by the volunteer once he or she is in a reduced state, just as the protests of animal subjects are routinely ignored. Second, signatories would be aware of general risks involved in signing. The nature of experimentation itself means that not all details can be known in advance, and unforeseen harms may result. Similarly, in warfare, recruits give consent to facing unknown variables. If it is worried that scientists cannot be trusted to carry out justifiable experiments on humans, then one should worry even more whether experiments of defensible utilitarian value can be conducted on nonhuman animals. Third, there is no reason why at least some special volunteers cannot be targeted to specific experimental protocols far in advance, or at least dedicate themselves to chosen areas of research, or to the work of certain scientists or institutions.

Objection E: There may be insufficient numbers of special volunteers to ‘replace’ animals.

Reply to E: This objection cannot rule out the use of special volunteers, but merely highlights them as all the more ‘special’. Strictly speaking, there can be no nonhuman animal models of human disease, per se, except perhaps in a crude or even metaphorical sense. Certainly there is no strict analogy between human and nonhuman bodily systems that science can rely on. Any number of humans would be important subjects even for smaller studies that could prove quite usefully suggestive. Medical journals deem it relevant to publish articles on single case studies of humans who present unusual or otherwise interesting symptoms, responses to treatments, and so on. Or special volunteers could be housed and saved in order to accumulate larger numbers of research subjects for certain targeted studies. It is also possible that cognitively reduced humans, who still have a vivid awareness and a normal nervous system, and primitive modes of communication, like normal animals in laboratories, might be far more numerous than the severe forms of marginal cases usually referred to in the animal
ethics literature. Moreover, once genetic engineering is sufficiently advanced, it may come to pass that clones, test tube babies, and surrogate mothers could result in entire armies of bioengineered humans who are mentally as capable as animals. Until such a future time as such a modest proposal is undertaken, however, signatories of the living will would provide a vital resource for laboratory undertakings. Indeed, as scientific models, the special volunteers would not be mere ‘replacements’ of animals, but much better subjects, making the language of this objection in fact misleading. The number of available subjects will depend, in large part, on the relative success in promoting this living will program to the general public. It is predictable that some relatives of signatories will try to conceal the reduction in cognitive capacities of potential experimental subjects, or else hide the relatives themselves, but the proper authorities may yet learn of such signatories, and they may still enter the system. These volunteers can be subjected to clinical trials separately over time, and then results can be cumulative and comparative. So there need not be many subjects available all at exactly the same time.

**Objection F:** If we subscribe to rule utilitarianism then we can set a rule that prohibits invasive research on humans, and this principle would be for the greatest good overall.

**Reply to F:** Any rule applying to humans who have the mental limitations of animals should equally apply to the animals, or else an unfair prejudice is at work, which we may choose to dub ‘speciesist’. Fairness is a non-negotiable component of morality. If a rule against killing or avoidably harming is invoked, we should even prefer to protect the animals instead of the special volunteers, on utilitarian grounds, given the greater usefulness of research on humans, and the fact that more harm would be prevented in the long run. That is a far cry from upholding a rule protecting special volunteers and leaving animals vulnerable.

**Objection G:** Utilitarians who refuse to sign the living will because they are weak-willed, and so unable to carry out their own utilitarian morality, can argue that animals should be used for medical experimentation, since this at least approximates what is ‘best’, although ‘weak-willed’ human subjects might not be used.

**Reply to G:** The moral defensibility of courses of action cannot be made good by appealing to weakness of will. Anything short of optimal utility is morally wrong, according to utilitarianism. If utilitarianism is to offer, above all, an equal consideration of interests, it will not treat animals so differently from humans. Indeed, those humans who are born with cognitive impairments could still be used, if animals are also used, because other humans would decide the fate of congenitally disadvantaged humans, and weakness of will would not arise for the reason that one cannot submit oneself to so horrible a fate. Society would consider it intolerable that some people can refuse to submit themselves for experiments while other humans with the same cognitive level are forced into such experimentation. The arbitrariness would be no less obtuse if animals were used while humans with a ‘weak will’ are allowed to be exempt. If humans are to be spared for reasons of mercy, then so must others be saved in all fairness, and out of a mercy that respects an equal consideration of interests. A majority of humans refusing to offer themselves even though maximal utility supposedly
demands it would prove the impracticability of utilitarianism, which is a very serious objection to any so-called ‘practical ethic’. If animals are to be forced into invasive research, then some humans should also be so forced, regardless of any possible option of signing a living will.

Conclusion

The absurdity of the living will argument is sufficient to justify a political ban on biomedical animal experimentation, or at least that involving mammals including mice and rats. We might also give the benefit of the doubt that even frogs and insects can suffer, if we are sincere about even possibly causing harm, but that is a separate subject for debate. However, medical research for humans on frogs and insects is far less likely to be useful than that on mammals. The living will argument can be adapted to the question of xenotransplants, or using animals as involuntary organ donors, in a way that parallels the case of harmful research on animals (including, by the way, research that is designed to facilitate xenotransplantation procedures). Again, it would be necessary, on the same utilitarian grounds, to use humans who become cognitively equivalent to the donor animals; there would be vastly more utility in using humans whose organs would be less likely to be rejected by the recipients’ immune systems, would not threaten infection with retro-viruses, and would afford specifically human kinds of organ functionality.

The living will argument does not directly apply to bioengineered animals, since no humans can volunteer to be reborn as genetic mutations. However, we can extend the thoughts that the living will idea inspires, and wish no subject avoidable death and suffering, for highly dubious benefits, that we would not consent to ourselves. I do not wish to over-rely on the living will argument, but rather to turn the tables on what is supposed to be one of the strongest arguments against a thoroughgoing, abolitionist animal rights stance. Altruistic ethical theorists who support biomedical animal experimentation will have second thoughts when they contemplate signing the living will clause. ‘The lesser of two evils’ argument for harmful animal experiments was once thought to close the wagons around those who support the practice. However, the living will argument exactly reverses that situation: it is the lesser harm more than any other alternative to prefer to use humans, and even to require their use, or to prefer to use only such humans instead of other animals because using other animals is so misleading.

If utilitarian proponents of biomedical animal experimentation are reluctant to sign the living will here offered, they should either give up on such research, or else surrender their utilitarianism. Certainly I would not sign, nor recommend that anyone else do so. Animals should not be compelled to suffer and die in order to construct essentially flawed models of human disease. Animals are no more a model of human disease than they can be models of human health and functioning.

The chain around the neck for utilitarians and other ethicists remains: are they willing to be subject to what we now do in laboratories to animals? We are all in it together, and there, but for the terms of the living will’s being enforced, go I — or at least those altruists who would be obliged to sign such a document. The living will argument shows how truly selfish people can be, willing to abuse others, who are weaker, in ways that they would never consent to themselves, in violation of the Golden Rule. That
seems a sure indication of bias towards ego. Yet humans need not reason so. The living will argument erects a ‘human shield’ against using animals for biomedical experimentation. Yet no one is held hostage: people should freely sign the living will if they believe animals should be used for biomedical experiments.

There is no more classic test case for utilitarian theory than a willingness to be invasively experimented on for the greater good, and no more impressive a call for rights than the right of the individual never to be subjected to such treatment. Anti-animal rights has now been put on the defensive, with their inability — or a questionable minority capacity — to sign a one-way ticket to laboratory Hell. However, an independent, theoretical defence of animal rights is also required, in my view. In the absence of a sound animal rights framework, we are not theoretically immune to utilitarian fanatics who rationalize invasively using others in laboratories because it is deemed somehow ‘worth it’, and individuals might be considered ‘selfish’ if they do not submit to grievous harm in experiments, in doubtful hopes of discovering any useful information. In rights terms, utilitarianism opens the door to rationalizing the abuse not only of animals, but of humans as well. Individual rights are not ‘selfish’, but simply respectful of all individual rights-holders.

Regardless, the political results of these deliberations, summarized below, do not hinge on accepting philosophically based rights for animals, and should render animals and humans practically immune from invasive experiments. These results can be summarized in the following table:

<table>
<thead>
<tr>
<th>Ethical Perspective</th>
<th>Relevant Political Reasoning</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abolitionist rights for animals</td>
<td>Animals ought not to be enslaved for any purpose</td>
<td>Ban animal experimentation</td>
</tr>
<tr>
<td>Utilitarianism or utilitarian-like deciding of the invasive research so-called ‘dilemma’ (unwilling to sign living will)</td>
<td>If unwilling to offer oneself for invasive studies when and if cognitively equivalent to animals, we should not use animals either who are of even lesser utility</td>
<td>Ban animal experimentation</td>
</tr>
<tr>
<td>Utilitarianism or utilitarian-like deciding of invasive research ‘dilemma’ (willing to sign living will)</td>
<td>Would be in a minority, judging from the current socio-legal consensus, and one cannot force on others grievous harm for which only very few would volunteer; also to be outvoted by majority, who would disallow any invasive studies on humans</td>
<td>Ban animal experimentation</td>
</tr>
<tr>
<td>Ethical egoism or ethical nihilism</td>
<td>Does not care about living will or fairness, but outnumbered by people who profess fairness and justice in law and public policy</td>
<td>Ban animal experimentation</td>
</tr>
</tbody>
</table>
The results of this study are conclusively in favour of banning animal experimentation, both on logical-moral and democratic-political grounds. It is a practice that can only be sustained because animals are regarded as expendable slaves, and because their suffering is not fairly considered. The fact that utilitarians are in a minority does not show that they are morally wrong. However, this study shows that a defence of a rights view’s approach to medical experimentation, as against utilitarianism, is as much needed to protect humans as it is needed to protect other animals.

David Sztybel, 371 Sunnyside Avenue, Toronto, Ontario, M6R 2R9, Canada. sztybeld@post.queensu.ca

NOTES

1 For a completely mainstream, collective professional viewpoint that people can thrive on strict vegetarian diets, see American Dietetic Association ‘Position of the American Dietetic Association: vegetarian diets’, Journal of the American Dietetic Association 93 (1993): 1317–19. The ADA has updated their position to acknowledge many benefits of vegetarianism for offsetting degenerative diseases such as coronary heart disease, obesity, and many types of cancers. For a copy of this paper, see the website of the Vegetarian Resource Group, last updated August 2000, at http://www.vrg.org/nutrition/adapaper.htm.

2 For extensively documented scientific evidence for this assertion, which draws upon peer-reviewed medical journals and double-blind nutritional studies, see J. Robbins, Diet for a New America (Walpole, NH: Stillpoint Publishing, 1987).


4 Ibid.

5 Ibid.

6 Humans with compromised cognitive abilities are commonly referred to as ‘marginal cases’ of human beings. I do not favour this usage, and instead prefer, say, ‘cognitively disadvantaged humans’. These humans are not at the ‘margins’ of being considered human, as though there could be any doubt, and ought not to be treated with marginal ethical concern either. It is insulting to call them ‘flawed’ or ‘deficient’, as if they should be more than they are, or are partial contents of a full container called ‘humanity’. There is something wrong with saying there are things wrong with them, when in fact they are merely different. It implies a lack of acceptance or a stigma to translate having certain problems (which may or may not be ameliorable) with things being wrong with one as a person. We should accept people as they are. We can judge things going rightly or wrongly for persons given the kinds of beings they in fact are, not judge people by some hollow, abstract ideal of humanity, which is only real in our minds. All natural differences should be accepted, rather, with humility and equanimity: all variations are equally included in the variability of existence. Cognitively disadvantaged humans may at times be marginalized, but that does not make them ‘marginal cases’ in any inherent sense. Calling them ‘disadvantaged’ seems realistic, for it may help prompt us to mobilize resources to compensate for real challenges faced by such people. It would be a disservice not to acknowledge the disadvantages such persons face relative to others — not just in the job market, if that even applies, but in the general struggle to lead a decent quality of life.


8 Ibid.

9 Some would suggest that rights views using utilitarian-like reasoning are ‘really’ forms of utilitarianism. However, I doubt that is true. First, a utilitarian accepts that maximal utility applies as a guideline in all situations, not just dilemmas, and rights theorists would not accept that premise. Second, even in dilemmas, thinkers such as Regan emphasize that he considers one individual at a time, rather than aggregating all interests together, as in utilitarianism.

11 Indeed, S. F. Sapontzis argues that animals should not be experimented on altogether without their consent, which they cannot provide, although we can infer their unwillingness from their non-verbally communicated preferences not to participate: cries of distress, struggles to escape, and so on. See S. F. Sapontzis, *Morals, Reason, and Animals* (Philadelphia: Temple University Press, 1987), pp. 209–16.


13 A point inspired by correspondence with Michael Allen Fox, in September, 2003.


15 Sharpe op. cit., p. 78.


23 This responds to S. F. Sapontzis’ objection to the argument from marginal cases, that it is degrading to compare nonhuman animals, or their cognition, to that of humans who can barely function. That is, many nonhuman animals, he claims, are incomparably more cognitively and emotionally functional than many human beings who are mentally disfunctional, and it insults the mental life of nonhuman animals to class all such beings together. See S. F. Sapontzis, ‘Speciesism’, *Between the Species* 4 (Spring) (1988): 98. I agree with Sapontzis to a point, because some humans are indeed much less aware than some nonhumans, but I think he is mistaken in inferring that we should (over) generalize from this point, and thus miss the opportunity to compare humans and animals who truly do or might have comparable cognitive capacities. The living will argument depends solely on such justified comparisons.


26 For the sake of felicity, I use ‘utilitarian’ in these objections and replies, when ‘utilitarian-like thinkers’ will be equally relevant as well.

27 Upholding the equality principle, at least in the long run, would be, in a practical sense, ‘no matter what the consequences’, which might at first seem contrary to consequentialism (which utilitarianism upholds, and means judging what is morally right or wrong solely with reference to consequences). However, the equality principle is part of aiming for a certain set of consequences, namely optimal utility. One needs to account for units of utility, equitably, as a prerequisite for reckoning the maximum good, which after all aspires to exact quantification as much as possible.

28 Some advocates of alternative medicine disagree, and maintain that organ-transplants may result in lesser longevity and well-being than other, less invasive treatments, at least in certain cases.

29 In Jonathan Swift’s famous essay, ‘A modest proposal’, the satirist ‘justifies’ fighting famine by eating poor children, thus treating them like nonhuman animals on the basis of utilitarian reasoning.

30 Also, we can use the Rawlsian device of contemplating rules of justice for those who might be incarnated as bioengineered beings, who mostly die painful deaths soon after birth. A Rawlsian in an ‘original position’ may not choose to be incarnated as a miserable creature from birth. True, Rawls does not consider being born into a different species than humanity, but that has been criticized as a defect of his argument in T. Regan, *The Case for Animal Rights* (Los Angeles: University of California Press, 1983) p. 173. We do not need to incorporate Rawls’ dictum that everyone in the original position is selfish. Rawls claims, in *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 13, that rational agents in the original position are ‘not conceived as taking an interest in one another’s interests’. Indeed, one might favour Rawls’ procedure as a thought experiment just because it helps to force us to frame principles of justice in unselfish ways. Rawls’ veil of ignorance can be used by altruists to abstain from harmful discrimination when formulating principles of justice. However, Rawls’ thought experiment must be used in conjunction with a specific moral theory, since such a procedure does not entail any one theory with logical validity.

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