

# Bentham on Animal Welfare

Johannes Kniess ([jkniess@princeton.edu](mailto:jkniess@princeton.edu))

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**ABSTRACT.** Jeremy Bentham is often thought to have set the groundwork for the modern ‘animal liberation’ movement, but in fact he wrote little on the subject. A full examination of his work reveals a less radical position than that commonly attributed to him. Bentham was the first Western philosopher to grant animals equal consideration from within a comprehensive, non-religious moral theory, and he was a staunch defender of animal welfare laws. But he also approved of killing and using animals, as long as pointless cruelty could be avoided. The nuances of his position are best brought out by comparing it to that of Peter Singer, who draws considerably more radical practical conclusions. This is not primarily explained by competing formulations of utilitarianism, however, but by different empirical background assumptions about the lives of animals.

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## I.

Jeremy Bentham is widely considered the first Western philosopher to argue that non-human animals (henceforth animals) deserve equal moral consideration. His impassioned plea against animal maltreatment has earned him a reputation as an early proponent of animal rights. Though it is a label he would have most likely rejected—for reasons that mirror his famous dismissal of human rights as ‘nonsense upon stilts’—his views on animal welfare have unquestionably exerted a huge influence on modern debates around animal ethics. Perhaps most obviously, a direct link can be traced from Bentham’s concern for animal suffering to Peter Singer’s well-known work on ‘animal liberation’ in the 1970s (*Animal Liberation; Practical Ethics*). Separated by two centuries, both thinkers display clear similarities in moral method and motivation.

Yet despite his prominence in contemporary discussions on animal ethics, Bentham actually wrote very little on the subject. His reputation seems to be founded on a single footnote—indeed, part of a footnote—in his major work, *An Introduction to the Principles of Morals and Legislation (IPML)*. In it, Bentham draws an analogy between the treatment of slaves and that of animals:

The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law

exactly upon the same footing as, in England for example, the inferior races of animals are still. The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor.<sup>1</sup> It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they *reason*? Nor, Can they *talk*? But, Can they *suffer*? (IPML, 282–83n)

The passage has often been quoted approvingly by leading animal ethicists, (Singer, *Practical Ethics*, 56; Regan, *Case for Animal Rights*, 95) and some have identified here a ‘sharp departure from a cultural tradition that had never before regarded animals as other than things devoid of morally significant interests’ (Francione, ‘Animals – Property or Persons,’ 112). However, few have bothered to present a full account of Bentham’s position on animal ethics.<sup>2</sup> When we take into view some of his other, lesser-known writings, a more nuanced and less radical position is revealed.

In the first part of this paper, I attempt to reconstruct Bentham’s views on the permissible treatment of animals. Far from challenging their subordination, Bentham approved of killing and using animals in the name of human welfare. Moreover, his support for laws against animal maltreatment was based, to an important degree, on their effect on human welfare. Bentham’s proposals were not extraordinary for his time – though the utilitarian rationale that underpinned them was.

In the second part of the paper, I examine this theoretical foundation closer. Bentham puts forward two arguments that allow him to reconcile the utilitarian consideration of animal interests with their inferior treatment. The first maintains that animals fare worse in their natural environments; the second that they lack the mental capacities to suffer from domestication. In this context, I compare Bentham’s views to those of Singer, who famously defends a more restrictive stance on using and killing animals. The difference between the two thinkers is not chiefly explained by theoretical differences in the formulation of utilitarianism, however, but rather by diverging empirical assumptions about the lives of animals.

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<sup>1</sup> Bentham here references Louis XIV’s Code Noir, issued in March 1685, which regulated the status of slaves in the French West Indies. It gave slaves rights against maltreatment, and prohibited their killing. It also provided that slaves freed in the West Indies should become French citizens.

<sup>2</sup> There are some exceptions, in particular Boralevi, *Bentham and the Oppressed*; Boddice, *A History of Attitudes and Behaviours toward Animals in Eighteenth-And Nineteenth-Century Britain*; and Lee, *Bentham on the Moral and Legal Status of Animals*.

## II.

Bentham's interest in animal welfare was no doubt influenced by his personal fondness for animals. In an unpublished manuscript, Bentham recalls an early childhood experience that may have triggered a life-long concern for other species:

I was about 4 or 5 years old when one evening I took it into my head to amuse myself with putting ear-wigs in the candle. I had no malice to the poor insects: for my disgust at them if I had conceived any would have led me rather to have avoided them than to have handled them in that matter. But the writhings of their bodies, added to the little explosions made by the moisture of their juices contained in them composed a scene which amused my curiosity. A servant who had the charge of me, asked me what I thought the ear-wigs must suffer, and what I could have to say for myself if any one that was stronger than I should serve me in the same manner. I was struck with remorse. I looked at the deed with horror: and now from that time I have been nearly as attentive to the feelings of the brute as of the human part of the creation.

(*University College London collection of Bentham manuscripts* [henceforth *UC*], XXVII. 26.)

As is well documented, this attentiveness would often manifest itself in peculiar ways. Through his own recollections, and those of his friend and executor John Bowring, we learn about Bentham's affectionate behaviour towards animals. The reader is treated to stories of a 'beautiful pig at Hendon, which I used to rub with my stick,' memories of 'a young ass of great symmetry and beauty, to which I was much attached, and which grew much attached to me' and details about a colony of mice which 'used to run up my legs, and eat crumbs from my lap.' There was a cat, John Langborn by name, that was regularly invited to eat macaroni at Bentham's table. The cat was knighted, installed as a Reverend, and even conferred a doctor's degree by the eccentric philosopher. 'When I knew him, in his declining days' Bowring remarks drily, 'he bore no other name than the Reverend Doctor John Langborn (...) Great respect was invariably shown his reverence: and it was supposed he was not far off from a mitre, when old age interfered with his hopes and honours.' As Bentham himself realised: 'my fondness for animals exposed me to many jokes' (all quotes in Bentham, 'Memoirs,' 80-1).

But Bentham's views on animal welfare were not merely a product of his personal fondness; they were derived logically from his philosophy. Best known as the founding father of classical utilitarianism, Bentham advanced the idea that the rightness of actions is determined by whether they promote overall happiness. As he puts it in the famous opening passages of *IPML*, 'nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do' (*IPML*, 4). And Bentham also provides us with a method to determine the latter: in the so-called felicific calculus, the total amounts of pleasure and pain caused by an action are weighed up, taking into consideration factors such as the duration and intensity of the respective sensations.

As the above quote suggests, Bentham develops his method primarily with an eye to *human* pleasure and pain. He typically speaks of men, persons, or individuals. Yet the inherent logic of the approach implies that the felicific calculus is not limited to human beings. What matters is the ability to experience pleasure and pain: since all sentient creatures possess this

ability, their welfare must also partly determine the rightness of actions. This universal scope in the consideration of interests is what leads Bentham to reach conclusions that are often remarkably inclusive for his time. This is true, for instance, with regard to women, homosexuals and non-Europeans (Boralevi, *Bentham and the Oppressed*). And it is equally true when it comes to the consideration of the interests of animals.

Now, to be sure, animals do not experience the same pleasures and pains as human beings. After introducing the felicific calculus in *IPML*, Bentham offers a complex taxonomy of what he calls ‘interesting perceptions.’ (*IPML*, Ch. V) His list includes items such as the pleasures of wealth and the pleasures of having a good name, as well as the pains of awkwardness and the pains of enmity. Many of these ‘perceptions’ cannot be experienced by animals. But at least with regard to what Bentham calls the pleasures and pains of the senses—that is, sensations like hunger, bodily pain, sexual gratification, and so on—it seems clear that animals are no less sentient than human beings. To the extent that this is the case, it is plausible to include animals in the felicific calculus.

This, indeed, is what Bentham suggests whenever he considers animals. In the aforementioned footnote, he asks why the interests of animals ought not to be given as much attention as those of human creatures, ‘allowance made for the difference in point of sensibility.’ And he himself provides the answer: ‘No reason can be given.’ (*IPML*, 282n). So even though Bentham focuses on human beings—partly in view of the complex issues raised by specifically human pleasure and pain—there is little doubt that the method is universal in scope and egalitarian in character. Since all sentient beings can experience at least some forms of pleasure and pain, non-human animals enter the felicific calculus. They deserve equal moral consideration.

It would be a mistake to conclude, however, that equal treatment follows from equal consideration. Contrary to the position that is often attributed to him, Bentham never argues that the suffering of animals cannot be justified (let alone that they ought to be accorded the same rights as slaves, as his reference to the French law may be thought to imply). A full rendering of the footnote in *IPML* makes this clear. The passage that immediately precedes the one quoted above, though often ignored, suggests a more complex view regarding the permissible treatment of animals:

If the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. [...] If the being killed were all, there is very good reason why we should be suffered to kill such as molest us: we should be the worse for their living, and they are never the worse for being dead. But is there any reason why we should be suffered to torment them? Not any that I can see (*IPML*, 282–83n).

It becomes obvious here that Bentham is opposed to the maltreatment of animals, but not necessarily to their being used or killed. At this point in the footnote, he references an unpublished manuscript entitled ‘Cruelty to Animals,’ which he had written around the same time as *IPML*, and which was intended to form part of his Penal Code. Although in it he proposes to make animal cruelty punishable by law,<sup>3</sup> the overall picture that emerges is one

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<sup>3</sup> It is a separate question—one about which there is some confusion—whether Bentham thought that animals

in which animals are clearly ‘subservient to the necessities’ or even just the ‘conveniences of man.’ Animal suffering is justified whenever it serves a useful purpose, ‘for example in the way of food, physic, cloathing, conveyance or manufacture’, as part of experiments ‘to promote medical or other useful knowledge’, ‘as way of chastisement’, or to ‘defend any person or thing from being hurt or annoy’d.’ Remarkably, Bentham does not specify a limit to the suffering that may be inflicted on animals in these ways, save for the caveat that it shall not be inflicted *wantonly*, that is, ‘performed deliberately for the sake of seeing the animal suffer, and not for any useful purpose’ (*UC*, LXXII. 214).<sup>4</sup>

Elsewhere, Bentham is happy to assume that animals may be used and killed seemingly without giving any consideration to their welfare at all. The *Theory of Legislation*, for example, contains a long discussion of hunting (165-7). Though Bentham lists a variety of reasons to limit the right of chase, none of these revolve around the animals themselves. Similarly, his recently published writings on sex contain arguments for the toleration of bestiality that carefully consider its effects on human welfare, but make no mention whatsoever of animal interests. (Bentham, ‘Sex’). In short, Bentham generally assumes that any form of animal use that increases human welfare is permissible, as long as it is not wanton. This is a position that he holds with remarkable consistency throughout his life, as evidenced by a letter written in 1825 to the editor of the *Morning Chronicle*, a paper well-known for its scathing attacks on animal welfare legislation:

Sir—I never have seen, nor ever can see, any objection to the putting of dogs and other inferior animals to pain, in the way of medical experiment, when that experiment has a determinate object, beneficial to mankind, accompanied with a fair prospect of the accomplishment of it. But I have a decided and insuperable objection to the putting of them to pain without any such view.<sup>5</sup>

What exactly is the nature of that ‘insuperable objection’? In order to understand Bentham’s position, let us now turn to the reasons he provides in support of animal welfare legislation. We have already touched upon one, namely that the pleasure and pain of any sentient being are to be considered in the felicific calculus: ‘[w]hat makes the condition of any creature an object of concern to a benevolent mind is the circumstance of *sensibility*: and not the circumstance of having a black skin instead of a white one, or four legs instead of two’ (*UC*, LXXII. 214). Sensibility here refers simply to the ability to experience pleasure or pain (Cf. *IPML*, Ch. VI). Because all sentient beings possess this ability—albeit, as we saw, in different

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ought to be accorded legal rights. In *IPML*, he bemoans ‘the insensibility of the ancient jurists’ who had degraded them ‘into the class of things.’ (*IPML*, 282). Yet in a manuscript composed much later, in 1826, Bentham seems to adopt precisely this view: ‘the only possible possessor of a right is a person: to speak of a thing as possessing a right is absurdity and nonsense. In a large sense animals endued with sensation are termed things: and [...] in a legal sense no such thing can be said to have a right: at any rate a right exercisable by himself: though by any man in quality of its guardian a right may be exercised on behalf of the thing.’ (*UC*, XXX.080)

<sup>4</sup> Note that Bentham does mention that chastisement ought to be moderate, but the context makes it clear that he deems hard forms of punishment to lack a useful purpose.

<sup>5</sup> The *Chronicle*, in those days an important London newspaper, had printed a series of articles mocking the Irish MP and animal welfare campaigner Richard Martin (1754–1834), who, after successfully sponsoring the Cruel Treatment of Cattle Act of 1822, was involved in efforts to pass a bill against live vivisection.

forms and to different degrees—they deserve moral consideration. Like human beings, animals are direct objects of moral concern. Modern observers are therefore right to emphasise that Bentham saw an *intrinsic* worth in avoiding animal cruelty. (See e.g. Francione, ‘Animals - Property or Persons,’ 112).

What is seldom noted, however, is that this intrinsic argument is only one of several. Indeed, if it were the only one, Bentham’s blanket approval of such a wide range of animal uses would be rather puzzling. For we should then expect, as part of the felicific calculus, a more nuanced balancing of animal pain and human gain for each of the activities involved. But Bentham also offers two further rationales, both of which focus on the effects of animal maltreatment on human welfare. For one thing there is the potential damage that tormented animals can inflict on other people or things: ‘considerable mischief is sometimes done by cats and other domestic animals when worried by the cruelty of children, but more particularly in large towns by horned cattle driven to madness by the cruelty of their drivers’ (*UC*, LXXII. 214).

More importantly, Bentham is worried about the psychological effects that acts of cruelty can have on those who commit them. Legislation against animal maltreatment is thus important to prevent the

giving way to habits of cruelty or insensibility, which when indulged are apt to lead men into the worst of crimes. He who has no feeling for brutes, will have but little for his fellow creatures. In this point of view, an act of direct legislation against cruelties to animals is an act of indirect legislation against Personal Injuries, Murder and Incendiarism; and in short against all crimes which have malice for their source (*UC*, LXXII. 214).

In this passage, ‘insensibility’ does not simply denote the opposite of sensibility, i.e. the capacity to experience pleasure and pain. Rather, Bentham uses it as a description of character.<sup>6</sup> When people become insensible in this latter sense, they exhibit a lack of concern for the welfare of others: first animals, and then humans. Call this the Cruel Habits argument. This indirect, primarily human-centred reason against animal maltreatment is the one that figures most prominently in Bentham’s letter to the editor of the *Morning Chronicle*. ‘I am unable to comprehend’, Bentham writes, ‘how it should be,—that to him, to whom it is a matter of amusement to see a dog or a horse suffer, it should not be a matter of like amusement to see a man suffer.’ Perhaps the prominence he accords to this argument could be explained by the fact that John Black, the editor of the *Morning Chronicle*, had previously attacked animal protection laws as a form of tyranny towards drovers, coachmen and other workers who handle animals. (See *The London Magazine, Appendix to the Black Book*, 458). By focusing on the beneficial effects on people and society, Bentham might have been trying to present a particularly convincing case to Black, whose newspaper was an important forum for progressive and utilitarian ideas.

But Bentham was not merely being strategic. There is little doubt that he saw animal

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<sup>6</sup> Cf. *IPML*, Ch. VI, where ‘antipathetic sensibility’— ‘the propensity that a man has to derive pain from the happiness, and pleasure from the unhappiness, of other sensitive beings’—is introduced as one of the factors that influence sensibility in the more general sense.

cruelty as a stepping stone to what he considered considerably more serious crimes against human beings. He approvingly cites a series of engravings by William Hogarth entitled ‘The Progress of Cruelty’ (1751), which depict successive stages in the life of a fictional figure called Tom Nero. Torturing dogs and other animals in his youth, Nero goes on to a life of theft and murder, and finally ends up hanged and publicly dissected. The cycle of violence comes full circle. For Bentham, this is ‘[o]ne of the best moral lessons that ever were composed’ (*UC*, LXXII. 214).

And indeed, it is only when we consider this the core of his case against animal maltreatment that we can begin to understand why he draws the line between permissible and impermissible animal treatment the way he does. Bentham never suggests that we ought to determine, for any given act, whether human gain outweighs animal pain – he simply assumes that that is generally the case. And so the permissibility of the act hinges first and foremost on whether it is *wanton*, and therefore likely to promote insensibility and cruelty which will undermine human welfare in the long term.<sup>7</sup>

In short, not only does Bentham not object to the killing and using of animals; his justification for animal welfare legislation is also based to a significant degree on its likely effects on human welfare. Judged by the standards of today’s animal liberation movement, this is not a radical position. Yet it would not have been considered particularly outlandish even by the standards of his own time. By the middle of the 18<sup>th</sup> century, the maltreatment of animals had become a serious object of moral concern. It was common for clergymen to lament man’s cruelty towards the so-called brute creation; compassion with animals was also a popular theme among poets such as Cowper, Pope, Shelley or Blake. These sentiments were increasingly adopted by the middle and upper classes. By the end of the century, they were no longer considered eccentric (Turner, *Reckoning with the Beast*; Thomas, *Man and the Natural World*; Boddice, *History of Attitudes*, Ch. 4).

The Cruel Habits argument, in particular, had a long pedigree, dating back at least to Aquinas. It was also invoked by philosophers with an otherwise more Cartesian outlook on the moral status of animals, such as Kant. In Bentham’s day, it was so popular that the moral lesson it conveyed was the subject of the very first children’s books published in English (Turner, *Reckoning with the Beast*, p. 12). Even the intrinsic argument—concerning the badness of pain in any sentient creature—was not a uniquely Benthamite notion. A concern for pain and suffering, both in humans and in animals, had already begun to take hold long before the publication of *IPML*. In 1776, for example, a certain Reverend Humphrey Primatt had argued that:

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<sup>7</sup> Further evidence for this reading can be found in the *Theory of Legislation*. In the aforementioned passage on hunting, Bentham discusses foxes as animals ‘whose value does not compensate the damage they do,’ so that ‘far from preserving them, it is an object to destroy them’ (167). Yet later on, he singles out ‘the chase of the hare and the fox’ (428) as an activity that ought to be banned. The only way to square these statements is to consider the context of the latter, which occurs in a discussion about the incitement of cruelty. Hence hunting for ‘amusement or the gratification of gluttony’ (*ibid.*) is to be banned, whereas useful hunting is not.

Note further that Bentham is assuming that wanton infliction of animal pain will inevitably lead to cruel habits, while animal suffering inflicted for a useful purpose will not. Both assumptions can be challenged. With regard to the latter, for example, it is sometimes suggested that slaughterhouse workers have a higher-than-average propensity for aggression. Indeed, that butchers had cruel dispositions was also widely held in Bentham’s day. See Thomas, *Man and the Natural World*, 295.

Superiority of rank or station exempts no creature from the sensibility of pain, nor does inferiority render the feelings thereof the less exquisite. Pain is pain, whether it be inflicted on man or beast; and the creature that suffers it, whether man or beast, being sensible of the misery of it while it lasts, suffers Evil. (*Dissertation on the Duty of Mercy*, 7).

Rather than representing a sharp departure from the prevailing opinions of the time, then, Bentham was one voice in a chorus of protest sweeping the late 18<sup>th</sup> century. His position on the permissible treatment of animals, though not yet commonplace and often publicly ridiculed, was rather representative of a certain section of the educated classes. What distinguishes Bentham from the other writers of the time, however, is his attempt to provide a foundation for this position in a systematic and non-religious philosophical framework. The equal moral consideration of all sentient beings is the radical premise of the new utilitarian doctrine. But how, having started from this radical premise, does Bentham arrive at a fairly conventional position regarding the permissible treatment of animals?

### III.

To answer this question, we now must take a closer look at the structure of Bentham's moral theory. Throughout his writings on the subject, we find two arguments that enable him to reconcile the idea of equal moral consideration with the subordination of animals. The first revolves around the contrast between killing and natural death. The death that animals experience at our hands, Bentham argues, is usually less painful than the one they might have had in their natural environments. Hence killing animals does not increase the total suffering in the world, but rather decreases it (*IPML*, 282–3n; *Theory of Legislation*, 66). In fact, in this regard there is little difference between humans and animals: 'what the man himself suffer'd who is killed [...] is commonly less than he would have suffer'd by a natural death.' (*UC*, LXXII. 214). This view seems to assume some version of Epicurus' classic argument that death is not a harm to the person who dies. We cannot suffer once we cease to exist, because existence is a precondition for having interests. Hence the only suffering that matters is that which we experience before and while we die.

But between humans and animals, Bentham sees a crucial difference, and here is where the second argument comes into play. While human beings possess the mental capacities to project their lives into the future, animals 'have none of those long-protracted anticipations of future misery which we have.' (*IPML*, 282–83n). In a passage explaining the importance of expectations of security in *Theory of Legislation*, Bentham stresses the contrast:

We must consider that man is not like the animals, limited to the present, whether as respects suffering or enjoyment; but that he is susceptible of pains and pleasures by anticipation; and that it is not enough to secure him from loss, but it is necessary to guarantee him, as far as possible, against future loss (110).

In other words, a general presumption against human killing may be derived from the painful anticipation of the future that we would experience if our security were not guaranteed. But this argument can evidently only apply to beings with the mental capacities to consider the



future, and to infer from the killing of others a risk to their own life. Because animals purportedly lack these capacities, they suffer no harm by becoming aware that other animals are killed. Nor are the animals whose lives we take harmed, since, as per Bentham's first argument, being killed is better than dying a natural death. Both arguments taken together establish that we may deprive animals of their lives because 'we are the better for it, and they are never the worse' (*IPML*, 282–83n).

Note, then, that the superior mental capacities of humans do play an important role in Bentham's theory. Despite the famous line in *IPML* that places the ability to suffer above the abilities to speak and reason, self-consciousness and rationality matter rather a lot. Giving the interests of all sentient beings equal moral consideration means taking into account the ways in which higher mental capacities enable different (and stronger) kinds of pleasure and pain. And once we do take this into account, Bentham maintains, there can be no objection to killing and using 'inferior' animals in the name of human welfare.

At this point, we should step back to evaluate the coherence and plausibility of the theory as a whole. We have seen that Bentham's views on treating animals are less radical than they initially appear – or, at any rate, more complex than the views commonly attributed to him. But it is not clear whether his permissive stance on killing and using animals is consistent with the arguments he provides to support it. In this context, it is helpful to contrast Bentham's views to those of Peter Singer, who has not only provided the founding philosophical statement of the modern animal liberation movement, but who in doing so has also drawn most clearly on the Benthamite tradition.

Like Bentham, Singer derives his concern for animal welfare from a utilitarian moral framework. There are, of course, some important differences in the formulation of the theory. Whereas the classical (hedonistic) utilitarianism espoused by Bentham puts pleasure and pain centre-stage, Singer advances a preference theory of value. From this latter point of view, what ought to be promoted is the satisfaction of preferences, rather than merely pleasure as such. Despite this and other differences, both approaches clearly overlap with regard to our subject-matter.<sup>8</sup> Singer considers an animal's ability to experience pain a necessary and sufficient condition for it to have preferences: at a minimum, a preference not to be subjected to pain. Both approaches are also egalitarian in the sense that they give equal moral consideration to the welfare of all sentient creatures. Yet in spite of these theoretical similarities, Singer draws considerably more far-reaching practical inferences:

Once nonhuman animals are recognized as coming within the sphere of equal consideration of interests, it is immediately clear that we must stop treating hens as machines for turning grain into eggs, rats as living toxicology testing kits, and whales as floating reservoirs of oil and blubber. All these practices and the list could be continued for a long time are based on treating animals as things to be used for our advantage, without any thought being given to the interests of the animals themselves. The inclusion of animals within the sphere of equal consideration could

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<sup>8</sup> For a more general comparison of Bentham's and Singer's philosophies, see Dardenne, 'From Bentham to Singer.' Note that I shall not consider in this paper Singer's more recent move toward hedonistic utilitarianism in De Lazari-Radek and Singer, *Point of View*, primarily because he has not yet addressed the question of animal welfare explicitly from this perspective. For an account of what his new position may imply for animal welfare, see Paez, 'Posséder des intérêts.'

not leave such practices intact. (*Animal Liberation or Animal Rights*, 5)

This generates a puzzle. If the theoretical starting points of both thinkers are so similar, why do they end up reaching such different conclusions regarding the permissible treatment of animals? The answer, I believe, is that Bentham's views contain at their core a tension that can only be resolved by making highly idealised, if not outright implausible, empirical assumptions about the lives of animals. To understand this tension, recall that Bentham never seriously considers the possibility that for a given useful (as opposed to wanton) act, animal pain may outweigh human pleasure. This position may seem surprising, for one can easily imagine practices which, though useful, provide only a modest increase in human welfare (think, for example, of the practice of force-feeding ducks to make foie gras. While foie gras may taste better than regular liver, and thus increase human pleasure, it is not clear that this gain in welfare outweighs the suffering of the ducks).

Now, to be sure, what I have been calling 'Bentham's position on the permissible treatment of animals' is not a *fundamental* philosophical position, but rather a rule of thumb, a general sketch that can form the basis of sensible legislation. It is grounded in calculations that may be subject to change. But in order to maintain this position, it must be true that animal suffering, taken by itself, is usually not sufficiently weighty to rule out an act that generates human utility.<sup>9</sup> Only when we throw human suffering into the equation—through the causal mechanism outlined by the Cruel Habits argument—is the balance of the felicific calculus tipped. Yet this presupposes rather implausible assumptions regarding the (intrinsic) suffering involved in using and killing animals. The comparison with Singer illustrates the point.

Consider first the question of killing animals. Both Bentham and Singer accept that killing human beings is generally worse than killing animals, for reasons to do with their mental capacities. As we have seen before, Bentham objects to murder on account of the terror that we would experience if we knew that we could be killed. Animals, on the other hand, cannot experience this kind of anxiety: 'to make amends for their inferiority in other respects other animals have the privilege of not knowing that they are to die. Killing other animals therefore is nothing' (*UC*, LXXII. 214).

Singer's case against killing humans is similar. From a preference utilitarian point of view, what matters is the fact of self-consciousness. Murder would frustrate the most basic interest that a self-conscious being can have: the interest in continuing to exist. Because non-self-conscious animals do not have this interest, killing them may be justified when they are killed painlessly, and their death does not cause suffering to other animals.<sup>10</sup> Hence like

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<sup>9</sup> The issue is compounded by the fact that Bentham measures pleasure and pain on a single metric for all sentient creatures. J.S. Mill's *qualitative* hedonism—the idea that it is better to be Socrates dissatisfied than a pig satisfied—may perhaps offer a way to attach greater weights to human pleasure, but it is not one available to Bentham. He must instead assume that animal suffering is small in universal terms.

<sup>10</sup> Singer adds a further condition, namely that 'the killing of one animal makes possible its replacement by another who would not have otherwise lived.' (Singer, *Practical Ethics*, p. 104). Bentham never considers this idea, even though his theory seems to require it: by killing an animal we decrease the total amount of happiness in the world, making it necessary to counter-balance this killing by bringing into existence a similarly happy being. But since rearing animals for human use typically involves their replacement, Bentham's failure to consider this condition does little to explain the difference between his and Singer's stance on the permissible treatment of (domesticated) animals.

Bentham, Singer relies on a distinction between beings with higher and lower mental capacities, with the killing of the latter being permissible under certain conditions.

Despite the resemblance in the theoretical outlook of both thinkers, their accounts rely on drastically different empirical assumptions about the mental lives of sentient beings. The disagreement is not about whether *human beings* can lack the mental capacities required to fear death: Bentham held more permissive views than Singer with regard to the killing of new-born infants, for example.<sup>11</sup> But Bentham never seems to entertain the possibility that some *animals* possess higher mental capacities. Singer, in contrast, has emphasised the degree to which some animals may be persons, that is, self-conscious beings with a sense of the past and the future. Apes, whales and dolphins are obvious candidates, and Singer cites plenty of studies to this effect. (*Practical Ethics*, Ch. 5). Future research may end up expanding the community of persons to an even wider range of animals, including pigs, monkeys, birds or octopuses.

Whether Bentham would have disapproved of killing these animals, had he been familiar with the research that is available to us now, is a matter of speculation. In any case, his own notion of higher mental capacities is less demanding than Singer's, since it requires only the ability to experience pain or anxiety when faced with the prospect of being killed. Bentham may have been right to assume that the *abstract* idea of death is no source of distress to most animals. As the journalist Michael Pollan once put it, 'in a bovine brain the concept of nonexistence is blissfully absent.' (Pollan, 'An Animal's Place'). Be that as it may, it does not follow that animals cannot experience distress when faced with the *concrete* prospect of being killed. Bentham seems to assume that animals are killed suddenly and painlessly, but then as today, this is far removed from the reality of commercial meat production. The process of being driven to a slaughterhouse to be killed may take several days, during which the animal in question undoubtedly experiences stress and anxiety. The animal's inferior intelligence may perhaps be a cause of even *greater* anxiety than that of a rational being cognisant of its predicament, because it involves more uncertainty and confusion.

Bentham also assumes that the only potential harm that a being can experience when others are killed is fear for its own life. This again oversimplifies matters greatly. The fact that some animals have social interests, much like humans, cannot go unnoticed by even the most casual observer. In the wild, young animals can be harmed when their mothers are killed, often condemning them to a slow and painful death. And many domesticated animals, including for instance cows, are often visibly distressed (and even appear to grieve) when their young are killed. These are rather obvious observations, even in the absence of the scientific evidence that is available to us today, but they are ignored by Bentham.

When we turn to the question of using (as opposed to killing) animals, his empirical assumptions seem equally questionable. As we have seen, Bentham allows while Singer generally rejects the use of animals for food, clothing, or medical research. It is tempting to assume that Bentham did not know what we know today, namely the extent to which using animals inflicts pain on them. For example, he could not have anticipated the practices involved in mass factory farming, which the modern animal liberation movement has so

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<sup>11</sup> 'It possesses not yet any faculty as that of reflection: it has no anticipation of the future: it has no recollection of the past: scarcely can it be said to be possessed of so much as the faculty of consciousness. [...] Of a hundred thousand new-born infants, the existence might be exterminated without a quantity of suffering equal to that which is commonly produced by the drawing of one tooth.' See Jeremy Bentham, 'Sex', 52.

vigorously denounced. But as Singer points out, even in Bentham's time rearing and slaughtering animals for human use inevitably involved great suffering. Contrary to what one might assume, it was probably an 'even more horrific affair than it is today' (*Animal Liberation*, 213). Sheep were often skinned while they were still conscious. Oxen were driven for days on bleeding stumps, and stunned by being hit repeatedly with a poleaxe. Horses were literally beaten and ridden to death; the streets of London were filled with 'horse-boilers' waiting to lay claim to the carcasses of the collapsed animals (See E.S. Turner, *All Heaven in a Rage*, 143-6). In light of these circumstances, Singer concludes that Bentham chose to 'turn [his] gaze away from the ugly reality' and 'lower [his] normal standard of argument.' (*Animal Liberation*, 213).

How might Bentham's position be redeemed? The key to any plausible defence lies in his first argument for killing and eating animals, namely the claim that they would have fared worse in their natural environments. Bentham insists that the 'death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature' (*IPML*, pp. 282-83n). The same rationale that applies to *killing* can also be generalised to the *use* of animals. Because living in the wild inevitably involves suffering—hunger, fear of predators, lack of veterinary care, and so on—Bentham might simply be assuming that domestication is bound to improve the felicific calculus. Hence any animal use would be justified as long as it involves less pain than the state of nature.

In order to work, the argument must rest on two premises. The first is a theoretical commitment to an interpretation of utilitarianism that is not maximising in the standard sense. Maximising utilitarianism holds that an act is right if there is no alternative act that produces more welfare. Despite having coined the term 'maximising,' Bentham is generally thought to endorse a less demanding version of utilitarianism, according to which an act is right if it improves welfare, or if it improves it compared to a situation in which the act is not performed.<sup>12</sup> Applied to the question of animal welfare, then, Bentham might hold that our treatment of animals is permissible if it produces a positive balance of pleasure over pain, or if it constitutes an improvement against a counterfactual baseline. The act would still be right *even if* there were alternative ways of treating animals that inflicted less pain on them (for instance, more humane ways to rear or kill cattle).

Of course, Bentham must also make an empirical assumption, namely that most of the existing practices of domestication represent a comparative improvement in utility over life in the wild. He is mostly happy to assume this without argument, echoing the prevailing view of the time.<sup>13</sup> And in an idealised form this is not an implausible assumption: recent research suggests that wild animals experience more stress than their domesticated counterparts, provided the latter are well cared for (Wilcox, 'Bambi or Bessie'). But that they were well cared for could hardly be taken for granted in Bentham's day. Factory farming, for

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<sup>12</sup> The former, satisficing interpretation is most widely attributed to Bentham, although there is also evidence for the latter interpretation. For a recent discussion, see Gustafsson, 'Bentham's Binary Form.'

<sup>13</sup> 'In the 18<sup>th</sup> century', Keith Thomas points out, 'it was widely urged that domestication was *good* for animals; it civilized them and increased their numbers' (*Man and the Natural World*, 20). However, there is one passage in Bentham's body of work where he seems to express doubts. In the *Theory of Legislation*, he observes that '[a]rtificial death may be rendered less painful than natural death by simple processes, well worth the trouble of being studied, and of becoming an object of police' (10). This suggests an awareness that some of practices of the time could not be considered a comparative improvement over the natural counterfactual.

instance, dates back to the Elizabethan period, where pigs were kept in such close room that they were forced to lie on their bellies without being able to move. As a contemporary observer noted: ‘they feed in pain, lie in pain, and sleep in pain’ (Thomas, *Man and the Natural World*, 94). Given the brutal character of animal husbandry in the 18<sup>th</sup> century, Bentham must have set the comparative baseline very low for his argument to go through.

Here as elsewhere, Bentham invokes rather implausible empirical assumptions about the lives of animals. Had his analysis been more nuanced in this regard, it would have been difficult to avoid the conclusion that animal pain carries sufficient intrinsic weight to play a much larger role in the felicific calculus, even when it does not—as per the Cruel Habits argument—entail human pain. This would have called for more radical restrictions on the use and killing of animals, as the criterion for the permissibility of these acts could no longer rest primarily on whether they are wanton.

#### IV.

Bentham’s views on animal welfare are more ambiguous than generally assumed. He was a tireless advocate of animal welfare laws, and he was the first Western philosopher to provide a systematic, non-religious philosophical framework that gave equal moral consideration to all species. The key to Bentham’s position is the universal experience of pleasure and pain: ‘the poor worm you tread on in corporal sufferance feels a fancy as great as when a hero dies’ (UC, LXXII. 214).<sup>14</sup> Or, in the more succinct words of Humphrey Primatt and Peter Singer, ‘pain is pain.’ (Primatt, *A Dissertation on the Duty*, 18; Singer, *Animal Liberation*, 18). But Bentham never argued that animals ought to be given the same protections as people, nor would he have supported most of the demands of the modern animal liberation movement. On the contrary, he believed that animals may be killed and used in the name of human welfare.

A distinction between higher and lower mental capacities explains his insistence that animals may be deprived of their lives without harming them. Singer employs a similar distinction to explain the wrongness of killing self-conscious beings. But unlike Singer, and despite his affection for ‘intellectual’ cats, Bentham never seems to entertain the possibility that other species may possess the mental capacities that make killing humans such a serious wrong. And again unlike Singer, Bentham assumes that animals may be used for most purposes without making them worse off. Because he sets the counterfactual threshold for permissible animal suffering low, namely to reflect what he believes to be the harsh reality of animal life in the wild, nearly all animal uses can be justified. His only concession seems to be the insistence on banning pointless cruelty.

As I have argued, this position can only be maintained at the cost of rather implausible views about the suffering involved in using and killing animals. It is not clear why Bentham held these views. Was he, a self-professed hermit from a privileged social class, unaware of the harsh conditions in which animals were kept in his time? Did he deliberately turn his gaze away from the ‘ugly reality,’ as Singer has suggested? Or was he unwilling to draw more radical practical conclusions for fear of discrediting the utilitarian movement in

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<sup>14</sup> Bentham is here presumably referencing William Shakespeare’s *Measure to Measure* (III.i.85): ‘And the poor beetle, that we tread upon/ In corporal sufferance finds a pang as great/ As when a giant dies.’

the eyes of others? We do not know. Although his views do not live up to the radical potential of his moral theory, Bentham nevertheless deserves his place in the history of animal ethics. For the fact that these views no longer strike us as radical is owed, at least in some degree, to the ideas that he helped to set in motion.

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