

FARMING OUT OUR RESPONSIBILITIES FOR ANIMAL WELFARE:  
DOES THE NEW ZEALAND ANIMAL WELFARE ACT MEET  
OUR OBLIGATIONS TO ANIMALS?

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I certify that this dissertation does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

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## ABSTRACT

What, if any, moral obligations we have to animals is a matter of intense debate. Views in moral and political philosophy vary from those that give animals no moral status in themselves, to those that give animals a fundamental moral status equal to humans. These theories are reviewed and critiqued. Despite the disagreement among these theories, common moral judgments concerning animals are found. These are that: animals have direct moral status (or should be treated as if they do); and animal suffering is a moral concern. These lead to two obligations: a negative *prima facie* duty to avoid harming animals; and a positive *prima facie* duty to improve the welfare of animals that are suffering. The New Zealand Animal Welfare Act (1999) is reviewed and critiqued in light of these moral judgments. It is found that the provisions in the Act and related policy are insufficient to satisfy both duties in significant respects. In particular, monitoring and enforcement of the Act is largely funded through public charity, which is unsatisfactory. The duties are developed further, their normative implications are examined, and objections are addressed.

For Casper.

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## GENERAL INTRODUCTION

There are great disputes about what, if any, obligations humans have to other humans. That we have negative duties not to harm each other can generally be agreed upon. Positive duties of beneficence and the extent we ought to be committed, and in particular required by law, to contribute to the welfare interests of other humans is mired in controversy. We are unable to agree upon what morality requires we do for each other, but this disagreement is nothing compared to the divergence in beliefs about what our moral duties to animals are.

This dissertation is an analysis of our moral obligations to animals and the ways these are manifested in the legal obligations we have to animal welfare in New Zealand. In this work, I trace the origins of the notion that animals have moral status by examining the scholarship of a number of moral and political theorists. I then outline the legal status of animals in New Zealand and compare the moral status with the legal status. This analysis demonstrates that although the moral status of animals clearly motivates the law, this is, in significant respects, not reflected in the obligations we have under the law, and in the manner in which the law is enacted.

In the dissertation I will regard the term “morality” as synonymous with “ethics”, and use the two terms and their derivatives interchangeably throughout. The same applies to my use of the terms “duty” and “obligation”. Also, explained in the next chapter, despite the fact that humans are animals, I will use the term “animals” conventionally to refer to any animals belonging to a species other than *Homo sapiens*, which I refer to as “humans”.

The issue of animal welfare is very much in the media. Moral outrage by New Zealand comedian Mike King at sow crates (NZPA 2009), grisly descriptions of the Wellsford dog killing (Dicky and Francis 2010), and the yearly cull of Kaimanawa horses (Palmer 2009), all raise the question of what it is reasonable for people to do to animals as well as what is reasonable punishment for apparent transgression of our duties to animals. The media stories are often shocking and brutal.

In April, 2009, a five-week-old puppy in a bag was thrown from the window of a moving car in the main street of Kaitaia; surprising, the puppy was uninjured, and was re-homed (RNZSPCA 2009). In the same month, a man was prosecuted on cruelty and dog-fighting charges after he stole “Lincoln”, an elderly dog which he used as bait for dog-fighting (RNZSPCA 2009). The dog was traumatised and suffered bite wounds, but received treatment and was returned to his owner. In July, 2009, a woman was prosecuted for having left her dog chained up for so long that the chain was embedded in the animal’s neck; the dog was treated and re-homed (RNZSPCA 2009). In August, 2009, a cat was found on a roadside. Evidence indicated that it had been tied to a vehicle and dragged along the road until it died (RNZSPCA 2009).

Other cases of cruelty or neglect occur on farms. A recent case involves 22 farms belonging to a single owner, on which welfare officials discovered that inadequate care was being given to many of the approximately 30,000 animals farmed (NZPA 2009; Ministry of Agriculture and Forestry 2009a). This included approximately 100 calves that were allegedly starving because they had not been taught how to drink from their trough (NZPA 2009). It is yet to be announced whether charges are being laid against the owner. Another example is the conviction of a poultry farmer for welfare offences which required the relocation of 5,000 layer hens, and the killing of more than 5,100 layer hens, broiler chickens and ducks to alleviate their suffering (Ministry of Agriculture and Forestry 2010). Among his punishments, the farmer received a prison sentence of one year, the eleventh time in New Zealand’s history that a prison sentence was given for an animal welfare offence (Parliamentary Debates (HANSARD) 2010; Ministry of Agriculture and Forestry 2010).

Over 14,000 complaints of suspected animal welfare abuses were made in New Zealand in 2009 (Parliamentary Debates (HANSARD) 2010). Given that New Zealand has a total population of approximately 100 million animals, ensuring that they are all kept in a reasonable state of welfare – as is currently required under the Animal Welfare Act (1999) – is a massive task. However, we were not always so concerned about the welfare of animals. There have been (and in fact continue to be) serious views considering the welfare of animals as unimportant, either because animals do not suffer in the way humans do, or because their suffering is not something we need to be concerned about morally.

In the first chapter of this dissertation, I will review the most significant philosophical views concerning the moral status of animals, from ancient through to contemporary philosophy. These views will be critiqued and examined in order to discern common normative aspects of them. The purpose of this is to develop a moral framework that is substantially free of dependence on any particular ethical or political theory. The aim of this is to avoid objections based on purely theoretical differences, while establishing moral norms that are widely compatible among ethical and philosophical theories. This broad compatibility among moral and political theories raises the confidence that we can have in the accuracy and reasonableness of the moral framework. Thus, in a highly contentious area of moral philosophy, it will provide a moral framework that can serve as a firm, reliable, and broadly acceptable basis for determining the moral status of animals, and what our moral obligations to animals are.

In the second chapter I will review current animal welfare policy and legislation in New Zealand, and critique it using the moral framework established in the first chapter. The chapter will focus on the main piece of legislation that pertains to animal welfare in New Zealand, which is the Animal Welfare Act (1999). I will examine aspects in which it differs from the Animals Protection Act (1960), which it replaced, and discuss the role of the Ministerial advisory committees it established. The implications of the legal obligations contained in the Act for welfare inspectors, veterinarians and the public are then critically discussed.

In the final chapter I will develop the moral framework from Chapter 1 further, determining and examining more clearly the positive and negative duties that it comprises. In particular, the potentially demanding nature of the positive duty it contains is addressed, and practical ways of managing this are proposed. More generally, I discuss ways that we may, on an individual and national basis satisfy our moral obligations to animals, and respond to objections that may arise.

## CHAPTER 1: THE STATUS OF ANIMALS IN MORAL AND POLITICAL PHILOSOPHY

Animals have, directly or indirectly, been a subject of philosophical thought for about as long as there have been philosophical thinkers. The amount of attention animals have received in the last hundred years of Western philosophy exceeds the previous thousand. Charles Darwin's theory of evolution had a huge effect on the supposed relationship between humans and animals, prompting much of this thought.

Prior to Darwin, it was possible to argue that animals and humans were different biological kinds. This distinction accorded with influential theological thought and common sense at the time. There was a hierarchy between animals and humans, with humans being at the top. Acceptance of Darwinian evolution renders the idea of humans and animals as poles apart impossible. This in turn challenges the assumption of human superiority, and, indeed, the role of theology in ethics (Rachels 1991). The biological difference between animal species is one of degree; humans are merely one species of animals amongst many. Thus modern moral philosophy in the area often uses the slightly cumbersome, but correct, terms "human animals" and "non-human animals" instead of "humans" and "animals", or qualifies their usage of the latter accordingly. For convenience, I will use the latter, but this should be taken to refer to human and non-human animals, unless stated otherwise.

The moral implications of Darwinism are profound (Rachels 1991). The idea that humans and animals exist on a biological continuum made it much more difficult to make universal claims about the relative moral statuses of humans and animals. Darwin's evolutionary theory therefore marks a dividing line between early treatments of ethics relating to animals and more recent work, which must accommodate this more complex moral landscape. This discussion is accordingly divided into pre and post-Darwinian (contemporary) Western thought.

In the following section I will present a brief (necessarily so, given space constraints, but sufficient for present purposes) overview of the main moral and political

considerations of animals. In the following section, I will critique these, and seek common ground between them.

*Pre-Darwinian Western thought – From Aristotle to Bentham, via Descartes, Hobbes, Locke, Hume and Kant.*

According to Aristotle (384BC-322BC), the natural world is essentially hierarchical, starting with inanimate objects, then plants (which possess life), followed by animals (which possess both life and sensation), and, above all, humans, which are endowed with life, sensation, and the ability to reason. This is an empirical claim, but for Aristotle it also displays a natural moral order: it is right that those higher up the hierarchy rule, and make use of, those that are lower (Aristotle 1981, 78-79). Humans can, and ought, to use animals for their purposes – in fact, animals were created in order to be instrumentally useful to humans, he claims (Aristotle 1981, 79, 394).

For Aristotle, the fundamental distinction, both empirical and moral, between animals and humans was capacity for reason. The fact of rationality gives rise to moral status. There could be no proper kinship between the irrational animals and rational humans, and therefore animals were not part of the moral community, and had no direct moral value (they are not of moral value in and of themselves) (Taylor 2003, 33-35).

Aristotle's position is an early version of the type of argument that was repeated and reformulated until the time of Darwin (and after, in some significant cases). In its generic form, it runs thus:

- (i) Only creatures possessing quality X have direct moral value
  - (ii) All animals lack quality X
- Therefore,
- (iii) All animals have no direct moral value

For Aristotle and many others (e.g. Thomas Aquinas, and later Immanuel Kant and Thomas Hobbes) rationality is the morally relevant quality that animals lack, i.e.

- (i) Only rational creatures have direct moral value
- (ii) Animals do not possess rationality

- Therefore,
- (iii) Animals have no direct moral value

This is summed up by Aquinas who claimed that “charity does not extend to irrational creatures” (Rachels 1991, 129).

However, prior to Kant and Hobbes, René Descartes formulated the same argument based on a different quality of moral importance – consciousness. Descartes (1596-1650) claimed (somewhat controversially, given Catholic beliefs at the time) that humans and animals were similar in one important respect: biologically - human and animal bodies were both machine-like biological systems (Rachels 1991, 130-131). According to Cartesian dualist philosophy what distinguished humans from animals was the fact that humans possessed a material, machine-like body, but also an immaterial mind, which consciously controlled the body and imbued it with thought and sensation (Taylor 2003, 35-40). Animals, on the other hand, did not have minds, and were therefore merely biological machines (automata). This meant animals had no thoughts or experiences, such as desires and preferences, or pleasure and pain.<sup>1</sup> Any evidence to the contrary, such as behaviour by animals seemingly indicative of experiences such as suffering, could be explained as the reaction of a machine, like the noise a clock might make when a cog or spring is touched.

There were three implications of Cartesian dualism that, collectively, had pernicious consequences for animals. First, acceptance of Cartesian dualism meant that the human body was a proper subject for scientific study (it had hitherto been regarded as mysterious and sacred, under the influence of Catholic beliefs). Second, it licensed inferences to be made about the function of human biology based on scientific observations made on animals. Third, it allowed experimental work with animals to proceed without concern that any harm or injury caused to the animal would cause it to suffer. Taken together, this meant a vast amount of invasive experimental work

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<sup>1</sup> There is some evidence that this commonly accepted characterisation of Descartes’ philosophy regarding animals may be based on a misunderstanding of his work. According to Cottingham (1978) and Harrison (1992), Descartes was not so unambiguous about the non-existence of animal consciousness and sensation, and he may in fact have been agnostic about whether this was the case for animals. There appears to be some validity to this (minority) interpretation of Descartes, however it was not an interpretation widely held at the time his work was most influential, and is not an unreasonable one still.

carried out on animals without any form of pain management, or other consideration of what the animal may be experiencing and the moral implications this might have for the conduct of experimenters. Descartes wrote that his view “is not so much cruel to animals as indulgent to men [...] since it absolves them from the suspicion of crime when they eat or kill animals” (Rachels 1991, 130).

Thomas Hobbes (1588-1679) agreed that animals lack rationality, and for him this was sufficient to exclude them from the moral community. Hobbes’ ethical theory was contractarianism. What allows rational individuals rise above a lawless, amoral “state of nature” – where life is “solitary, poor, nasty, brutish and short” (Hobbes 1998, 84) – is their ability to negotiate, accept and adhere to contractual agreements with other rational, self-interested contractors (Hobbes 1983). For Hobbesian contractarianism, non-rational creatures such as animals are not contractors, they cannot accept any principles of justice and behave accordingly, or enter into reciprocal relations with humans on this basis (Hobbes 1983). This means that there is no reason for humans to include animals in their concepts of justice, and they do no wrong by behaving brutishly to animals, since animals, by their natures, cannot be other than brutish themselves.

Immanuel Kant (1724-1804) also denied animals intrinsic moral value on the basis of their irrationality, but for different reasons. For Kant, it was the quality of being rational and therefore self-governing (autonomous) that endowed persons with intrinsic moral worth. By being rational, one can understand and obey the moral law, choosing between different courses of action. In being able to do this, persons are moral agents, and therefore what Kant describes as ends-in-themselves; because of this, their autonomy ought to be respected by other moral agents. Therefore one formulation of Kant’s categorical imperative (the Humanity formulation) states that we must never act so that we treat humanity, either in ourselves or others, as a means only but always as an end in itself (Brodie and Pybus 1974). This quality distinguishes humanity from non-rational creatures, which are not ends-in-themselves, but mere things. They are not capable of understanding the moral law or governing themselves accordingly, therefore they are of no intrinsic moral value, and moral agents do no wrong to animals by using them as means to their own ends (Brodie and Pybus 1974).

Kant did not deny that animals could experience suffering, but argued that this suffering was of no moral importance in itself since they are irrational (Taylor 2003). However, Kant did claim that cruelty to animals ought to be avoided. Given that his position is that animals are things, and therefore cannot be the object of any direct duties, he argues *indirectly* against cruel treatment of animals based on the direct duty we have to persons. Kant's position is that we do nothing wrong to the animal itself when we treat it cruelly, but our treatment of animals is likely to affect our treatment of persons – if we are cruel to animals, we are more likely to become cruel in our dealings with people (Brodie and Pybus 1974; Taylor 2003, 45). Moreover, when we treat animals as more than mere means to our ends, say by rewarding a cat for their companionship, we are indirectly doing our duty toward humanity, since this cultivates the sort of behaviour toward humans required by the categorical imperative (Brodie and Pybus 1974).

Unlike the rather dichotomous views of Aristotle, Descartes, Hobbes, and Kant, who assume that animals and humans are quite radically different, Locke and Hume are much more prepared to admit similarities between humans and animals.<sup>2</sup> However, they, too, find reason to exclude animals from the moral community.

John Locke (1632-1704) distinguished between plants and animals (including humans) on the basis of conscious perception. Plants, he argued, react to stimuli in a purely mechanistic way, whereas he attributed perception, and memory, to animals in varying degrees (Locke 1997, 145-146). However, he denied that animals possess the ability to engage in abstract thought and reasoning, based partly on their lack of language use. This, he claimed, distinguished humans from lower animals. Humans have the capacity for language, and therefore abstract thought as well as conscious perception and memory. Animals are intermediate between humans and plants. They lack the capacity for abstract thought, but react to stimuli because it is consciously perceived and experienced, not merely as a result of unconscious mechanism like plants. In this respect, Locke's view may be summed up as “Brutes abstract not”, but “are not bare machines” (Locke 1997, 156). This can be contrasted with the Cartesian

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<sup>2</sup> It should be noted that discussion of Kant before Locke and Hume is a departure from strict chronological order within the section. This is done in order to show the intellectual progression of these ideas more clearly.

view as discussed, which claimed that animals lack the capacity for abstract thought because they are bare machines (automata).

Despite his attribution of perception to animals, Locke adopted a similar position to Kant on the moral status and treatment of animals. He claimed that cruelty to animals should be avoided, since it can make one more likely to act cruelly toward humans (Locke 1996, 90). Also in common with Kant was Locke's denial of moral status on the basis that animals lack rationality. However, Locke and Kant fundamentally diverged in their approaches to the foundations of moral and political authority.

Locke's moral and political theory is one of natural law and natural rights (Tuckness 2008). These laws are discoverable in nature through the use of abstract reason, which humans alone are capable of. Humans, because they are created (by God) with the same faculties, belong to one "community of nature", and because of this we are not to treat one-another as mere resources. That, according to Locke, would be to treat an equal like humans may properly treat "inferior creatures" such as animals (Locke 2003, 271), which are the common property of humanity (Locke 2003, 287).

David Hume (1711-1776) anticipated Darwin to some extent by noting the similarities between humans and animals in terms of neuroanatomy, physiology, and behaviour. Like Locke, Hume attributed mental faculties to animals in degrees, but he goes further, by claiming that: "Animals undoubtedly feel, think, love, hate, will, and even reason", although in a "more imperfect manner" than humans (Hume 2007, 147). Despite this, he also found animals sufficiently different to deprive them of moral status. Hume argued that, despite our similarities, animals nevertheless were notably mentally deficient when compared to humans, in morally important respects. Their ability to reason, and consequently their moral sentiments, never equal those of humans (Pitson 1993; Wolloch 2006). Because of this inescapable inequality, there is no reason for humans to treat animals with strict justice. Justice, according to Hume is a principle that applies among moral equals for common benefit – this excludes animals from the sphere of just relations (Taylor 2003, 43; Wolloch 2006). However, Hume claimed that our humanity required us to give "gentle usage" to animals (Taylor 2003, 44; Wolloch 2006).

Jeremy Bentham's (1748-1832) position on the moral status of animals is encapsulated in a strikingly significant and influential footnote in *An Introduction to the Principles of Morals and Legislation* (Bentham 1996). It is worth quoting, since it is not lengthy and lays out an important part of the ethical framework that would later be developed by Peter Singer:

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 blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognised 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 conversible 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*? (Bentham 1996, 283)

Unlike the philosophers discussed so far who acknowledged that animals experienced these sensations, yet excluded them from the moral community on the basis of other characteristics that animals lack (rationality of the requisite level, morality etc.), Bentham's utilitarianism was radically egalitarian. Pleasure and pain were basic moral data to be counted equally, regardless of the characteristics of the individual (or creature) experiencing it. This firmly included animals in the moral community, on an equal basis with humans as far as pleasure and pain are concerned. Because of the similarities between this position and that of Peter Singer, it will be explored in more detail later.

The radicalism of Bentham's footnote was to be toned-down by John Stuart Mill (1806-1873), who harmonised this aspect of utilitarianism with the widely-held

intuition that, despite the fact that animals and humans both experience pleasure and pain, the experiences of humans are more morally weighty than the like experiences of animals. Mill argued the experiences of humans were of a richer quality than those of animals, famously stating: “It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied.” (Mill 2008, 140) So, while the pleasure and pain of animals is still morally relevant, it should not be counted equal to human pleasure and pain; in fact, some human pain may be judged morally superior to animal pleasure.

During Mill’s life, the work of Charles Darwin (1809-1882) consistently, and controversially, opposed the idea that a difference of kind separates humans and animals. His theory of natural selection provided a mechanism by which humans could arise as part of the multitude of animal life on earth. Darwin showed that humans *are* animals – specifically, primates (Taylor 2003, 50). As such, Darwin argued that animals and humans shared many characteristics, and he consistently refused to draw a sharp line between the qualities of humans and those of animals. He claimed that animals shared with humans a complex mental life, including sensations, emotions (including jealousy, gratitude, magnanimity), behaviours such as deceit and revenge, qualities and abilities such as humour and wonder, deliberation, imagination, association of ideas, and reason (Darwin 1890, 79). In attributing these qualities to animals Darwin certainly seems vulnerable to the accusation of anthropomorphising. However, Rachels argues that, particularly at the time Darwin was writing, judgments of similarity between humans and animals were heavily biased against animals resembling humans in these qualities (Rachels 1991). He claims that Darwin’s point was to address this bias by forcefully emphasising the large inheritance that humans have received from animals.

One of the main moral implications from Darwin’s work is a challenge to the entrenched idea that humans are intrinsically morally special or privileged. By placing humans firmly within the animal kingdom, Darwin levelled the moral playing field and made it much more difficult to make broad moral distinctions between humans and animals. This set the foundations for the next phase of thought about the ethics of human-animal relations.

## *Contemporary Western thought – Singer, Regan and Carruthers*

The two most influential contemporary accounts of the moral status of animals are the utilitarianism of Peter Singer (Singer 2002), and the rights approach of Tom Regan (Regan 2004). Other significant approaches include the contractarianism of Peter Carruthers (Carruthers 1992), the feminist-influenced work of Mary Midgley (Midgley 1984, 1995), the coherence theorizing of David DeGrazia (DeGrazia 1996), the work of R.G. Frey (Frey 1980, 1983), James Rachels (Rachels 1991), and Bernard Rollin (Rollin 1981, 1989, 1995). Of the current theorists writing about animal ethics, the most complete and plausible accounts are those of Singer, Regan and Carruthers. Space constraints necessitate focusing primarily on these three, but I will employ the scholarship of the others as needed to provide support or objections.

As indicated earlier, Singer's utilitarianism echoes, in many ways, that of its founder, Bentham. Utilitarianism holds that the right action is that which creates the greatest surplus of good over bad, compared to any alternative action. Different forms of utilitarianism rely on different things that they count as basic goods. Singer is regarded as a preference utilitarian, which means that his basic good is the satisfaction of preferences, and the frustration of preferences is of basic disvalue (Singer 1993, 126-129; Regan 2004, 142-143). A preference is a desire or goal. A preference need not be the same as an interest, for example I could have an interest in completing my dissertation, but may prefer to do something entirely more slothful with my evenings. Although much can be made of the difference between interest and preference utilitarianism, Singer uses the terms somewhat interchangeably. Indeed it may even seem more plausible to attribute an interest to an animal, say in reproducing, displaying species type, or eating the right food, than it does to deem it a preference. However, it is not the role of this dissertation to correct this ambiguity and the substance of Singer's arguments remain foundational in the current debate regardless of what type of utilitarian theorist he is seen as.

For Singer, the interest or preference that does the moral work is the desire to experience pleasure and to avoid pain. Like Bentham, Singer finds no moral difference between the value of pleasure and pain if it is experienced by humans or other animals – all animals are equal in this respect (Singer 1993; Singer 2002).

This moral equality does not mean that humans and animals must be treated identically – punching a child will cause more pain than the same punch given to a whale. But, according to Singer, the same amount of pain, whether it is experienced by a whale or a child, should be counted equally when we consider the morality of an action. If we give the human experience of pain more weight compared to an equal amount of animal pain, we are showing unjustified moral bias in favour of our own species. Singer accepts that there may be different capacities to experience pleasure and pain among animal species (Singer 1993, 60). Humans may anticipate pain, or have added fear associated with it that other animals may not experience (e.g. worrying that the pain is indicative of a worse health problem), which can add to the overall suffering experienced. However, these same mental faculties may do the reverse, such as when short term pain is made bearable because of the understanding that long term benefits will result, while no such consolation is possible for the animal.

Mental capacity also varies among individuals within a species. This was noted by Bentham – that a full-grown dog or horse is more rational than a human infant. Many animals may have equal or greater interests compared to some humans, yet it is common to prefer to frustrate those of the animal. This is the problem of marginal cases (see Dombrowski 1997). In defining the boundaries of the moral community after Darwin, it is extremely difficult to include all humans without also (on pain of inconsistency) including relevantly similar animals. Or, conversely, it is difficult to deny all animals moral worth without denying moral worth to some humans. The easiest example of this is a severely mentally retarded orphaned infant – the interests of this human will be fewer, less diverse and less acute than many animals. If we count interests equally, and wish to minimise their frustration, there will be situations where the interests of this infant should be sacrificed in preference to those of an animal. For many, this is one of the most difficult implications of Singer's and Bentham's utilitarian equality.

This equality has important implications for our treatment of animals. In order to be morally justified, any uses of animals must produce greater balances of interest satisfaction over interest frustration compared to alternatives; and, this calculation of

utility must include equally the like interest of the animals along with the interests of humans. Perhaps the most wide-ranging implication of this is for the farming of animals to provide meat for human consumption. Many farming systems routinely frustrate significant interests of animals (say, through weaning at an earlier stage than would normally occur), which is stressful for both the parent and offspring. Singer argues that, since the benefits of agriculture (food, income etc.) could be gained using alternative means (such as vegetarianism and horticulture) which frustrate fewer interests of animals, the harms of the former practice should be reduced, if it is not ceased altogether, and the latter pursued (Singer 1993, 64-65).

Adopting rights theory, Tom Regan has also developed a highly influential case for better treatment of animals. Regan's rights approach has theoretical ties to Kantianism. However, unlike Kant, who thought the moral community consists only of rational moral agents (autonomous creatures), Regan argues that the moral community consists of both moral agents and moral "patients". Moral patients are creatures that deserve moral consideration for reasons other than the possession of full-blown agency. According to Regan, animals have inherent moral worth because they are "subjects-of-a-life" (Regan 2004, 243-248). By this, he means that animals:

... have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychological identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others, and logically independently of their being the object of anyone else's interests. Those who satisfy the subject-of-a-life criterion themselves have a distinctive kind of value – inherent value ... (Regan 2004, 243)

Collectively, these qualities mean that it matters *to the individual animal* how it is treated, and Regan uses this to ground his claim that subjects-of-a-life are of inherent moral value, and therefore the object of direct obligations on the part of moral agents. These may be summarised broadly by stating that subjects-of-a-life must be treated

with respect – they should not be treated as mere things, and have a prima facie right<sup>3</sup> to respect and freedom from harm (Regan 2004, 248-263, 330-331).

Regan's rights theory requires the prohibition of any practices that involve the use of animals in ways that are incompatible with this basic right. Agriculture is based on the use of animals as a resource that produces items such as meat, fibre, milk, as well as further animals for use. These uses often conflict with the preferences and interests of the animals, with the result that the interests of the animal are often frustrated, and the animal harmed as a result. This is incompatible with Regan's normative claim that animals have a right to freedom from harm, and such practices must be abandoned (Regan 2004, 330-349). The same is the case for any practice that inflicts harm on animals or otherwise fails to treat them with appropriate respect, regardless of the benefit that may be gained by undertaking the practice, such as may be the case for some animal research (Regan 2004, 382-392).

Almost all of the modern treatments of the moral status of animals accord animals (some degree of) direct moral consideration (Cavalieri 2004; DeGrazia 1996; LaFollette and Shanks 1996; Midgley 1984; Rachels 1991; Regan 2004; Rollin 1981; Singer 1993; Singer 2002). However, a prominent counter-example to this is the contractarianism of Peter Carruthers (Carruthers 1992). Carruthers adopts the position characteristic of Hobbes. Carruthers claims that animals are denied direct moral status because they lack sufficient rationality to create and adhere to a contract governing their conduct. Carruthers' contractarian view accords animals indirect moral consideration, insofar as their interests are tied to the interests of moral contractors. With regard to specific animals, this could be by being a much-loved dog, or valuable property. However, Carruthers echoes Kant (and to some extent Hume and Locke), in arguing that we nevertheless should behave *as if* animals had direct moral status, since this cultivates a kindly character, which will encourage ethical treatment of other humans, who do have moral status (Carruthers, In Press).

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<sup>3</sup> It is a prima facie right because situations may arise, for example, in which multiple individual's rights conflict, and some right(s) must be overridden to resolve the conflict. Regan has developed principles to apply in these and other situations (Regan 2004, 301-312), but, they are not discussed further here for reasons of space.

The implications of Carruthers' contractarianism for current uses of animals are somewhat unclear, in that they are dependent on what contracting agents agree too, which is in part dependent on the psychosocial characteristics of their society (Carruthers In Press). In a society in which kindness is agreed to as a virtue of great value to be cultivated *and* it is the case that performing harmful acts on animals is antagonistic to the cultivation of this virtue, then a contractarian like Carruthers ought to condemn such harmful acts. Suppose it were shown that routine harms occurring in farming (say, from tooth clipping or docking of piglets prior to weaning) were to have a detrimental effect on the character of the farmer, making her less kindly to fellow humans, and that kindness to one's human peers was agreed to be valuable. In this case, Carruthers ought to condemn the practices and seek alternatives that do not have this negative consequence for virtue. This may involve simply changing the farming practice. However, it could, in principle, require that farming be abandoned if it were shown that this negative effect on virtue was an inescapable consequence of agriculture. Alternatively, harm to animals would be permissible for the contractarian if, *ceteris paribus*, it were shown that it did not become a generalised behaviour toward humans. Or, if it were shown that interpersonal frustrations were alleviated by beating agricultural livestock, making one more kindly to family and neighbours, such acts of cruelty to animals might even be deemed morally praiseworthy.

### *Finding common ground*

The different theoretical approaches discussed here differ quite significantly on many issues relating to animals. This is not surprising, since many aspects of morality relating to animals are not the kinds of things that we can be said to have "considered judgements" on. A considered judgment is a view that we have great confidence in after seriously reflecting on it, such as "torture is *prima facie* wrong" (DeGrazia 1996, 20). While considered judgements may be incorrect, or in need of revision, it is generally considered desirable for an ethical theory to account for these judgments. Where it does not, a theoretical burden ought to be shouldered by the theory in order to justify its contradiction of these considered judgments.

There are many aspects of morality relating to animals that are not certain enough about to have considered judgments. One of these is killing of animals. While many find this distasteful, and would not want to be directly involved in it, the vast majority of Western society accepts that it is not wrong for animals to be killed. Killing of animals to alleviate their suffering is generally accepted and the same can be said for quick slaughter in order to provide meat. The morality of animal killing is complex, and cannot be dealt with in adequate detail here, so brief comment must suffice.<sup>4</sup>

No theory considered here prohibits the killing of healthy animals, although many impose strong conditions for its justification for most animals (e.g. Singer, Regan, DeGrazia). The basic reason for objecting morally to the killing of animals is the harm that death can cause to them, through the denial of interests they may have that are dependent on continued life for their fulfilment. In part because of this, DeGrazia (1996, 280) posits that *unnecessary* killing of sentient animals is wrong, which he finds to be a broadly acceptable principle. However intuitively plausible this conclusion may be, it lacks significant content, and borders on the tautological. Justifiable conditions of necessity must be established, and this is where agreement is most difficult.

Surer footing can be achieved with more conservative moral judgments, however even these can have quite radical implications. The two I shall focus on are: (1) that animals have direct moral status, and (2) that animal suffering counts morally.

That animals can suffer is a common sense judgment or intuition. However, the example provided by Descartes shows that views to the contrary can nevertheless gain significant traction, particularly if they have beneficial implications for those who attempt to adopt them (Descartes' suggestion that it is a view "indulgent to men" is relevant here). Despite the common sense implausibility of the Cartesian animal automaton, it is still being promulgated by at least one Neocartesian on the basis of

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<sup>4</sup> The complexity alluded to here springs from the complex moral nature of death and killing, which can be dependent on the mental capacities and status of the creature dying (which varies hugely, and by degree, among non-sentient, sentient, and self-conscious living creatures), moral considerations extrinsic to the creature dying (the moral status of other creatures in the situation, what benefits or harms may be derived by third parties from the death), and so on, which can be regarded rather differently depending on the theoretical framework employed. A thorough treatment of the ethics of killing is provided by McMahan (2002).

neuroanatomical differences between animals and humans (Bermond 2003). However, the weight of evidence is against this position, as shown most recently by DeGrazia's compelling cumulative argument that animals can suffer, as well as have other mental experiences (DeGrazia 1996, 97-257).

Aside from Descartes' dualism, every theory discussed here accepts that animals can experience pleasure and pain. Carruthers attempted scepticism about this (somewhat tentatively) in his earlier work (Carruthers 1992), but his later work accepts animal suffering as a basic moral assumption (Carruthers In Press) and has defended the existence of this and further mental functions in many animals (Carruthers 2006, 65-149). The existence of conscious mental experiences in many animals (especially vertebrates) should therefore be deemed to be a considered judgment.

More contentious is the issue of the moral importance of this suffering. Among the theories, there are those that claim that animal suffering is not of moral importance in itself – that animals suffering terribly unbeknownst to, and of no practical consequence to, any human is not an ethical matter. Arguably, Aristotle, Kant, Hobbes, Locke, Hume, and Carruthers' earlier work fall into this camp. These views suffer when applied to marginal cases, such as an orphan child with mental faculties (*mutatis mutandis* for the different theories, e.g. autonomy for Kant, abstract thought for Locke etc.) equal to, or even poorer than, an animal. They must either bite the bullet and claim – implausibly – that the child's suffering is also of no importance, or they must find a morally relevant criterion distinguishing the two creatures, and according moral disvalue to the child's suffering, but not that of the animal. This is, I believe, impossible to do defensibly and consistently across marginal cases.

Avoiding the difficult consequences of marginal cases would require according moral consideration to a creature regardless of its particular individual characteristics, but based on some other criterion. There are various attempts to confer or deny moral status based on morally relevant qualities that are not intrinsic properties of the creature being considered. The general approach is to appeal to relational properties – these are properties of the (however defined) group to which the creature belongs – arguing that it is membership of this group that determines moral status, regardless of the qualities of the individual itself (DeGrazia 1996, 53-74; McMahan 2005). This

would save us from difficult marginal cases, because the margins of moral groups would be clearly defined. There would be no possibility of a human being born that did not possess the same moral status as every other human, since it is the very fact of *being human* that provides this (Cohen 1986; McMahan 2005, 209-228).

These are fundamentally communitarian positions, in that they accord moral status on the basis of community membership (as opposed to the mostly liberal positions discussed so far). Examples are those of Cohen (1986), Midgley (1984) and Diamond (1981). The main disadvantage of these approaches is that they can be used to sanction an implausibly callous disregard for those outside the “community of moral equals” for anything purporting to be taken seriously as a moral theory. To avoid this problem, Cohen, Midgley and Diamond all appeal to general considerations of justice that require us to take animal welfare seriously (in Midgley’s case, more seriously than we often do). They maintain their communitarian stance by claiming higher moral obligations exist among (and only among) other communities (e.g. humanity). This communitarianism can still be shown to be morally arbitrary, but that is not a matter that we need be concerned with here (DeGrazia 1996, 53-74; McMahan 2005; Singer 1993, 53-82; Rachels 1991, 173-223).

However, it is important to note that, for many cases, the practical implications of theories that deny animals direct moral status are similar to those that accord them direct status. Kant, Locke, Hume and Carruthers all use indirect arguments to restrain our dealings with animals to those that are “kindly” or “gentle”. While there are situations in which their indirect arguments will permit actions that would be prohibited under a theory considering animals directly, these would be the minority of cases (e.g. the last man on earth with a chimp as a companion, or the society in which beating animals improves one’s character and fails to trouble others). So, from a practical point of view, these views based on indirect moral status of animals can cash out in substantial part *as if* they were views giving animals direct moral status.<sup>5</sup>

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<sup>5</sup> Carruthers (In Press) is a very good example of this, and seems to represent, in part, an attempt to save contractarianism from counterintuitive implications for our treatment of animals.

## *Conclusion*

The view of Bentham, Mill, Singer, Regan and, to some extent, the later Carruthers' work is in accord with the widely held basic intuitions that animal suffering counts morally in and of itself, and this motivates direct duties on our part towards animals. Thus, when an animal is being harmed a moral wrong is being committed to the animal itself. Therefore: (a) we have a *prima facie* duty not to cause harm to animals; and (b) we have a *prima facie* duty to improve the welfare of an animal in a harmed state. While there is a great deal more debate to be had about what these duties entail and how they compare to other duties we may have, arriving at a firm judgment that animals are part of the moral community, and, at a minimum, their welfare is a matter of direct moral concern is a significant step. This will have significant implications for public policy regarding the use and treatment of animals, and I will now turn to this policy as it exists in New Zealand.

## CHAPTER 2: THE NEW ZEALAND ANIMAL WELFARE ACT (1999) AND RELATED POLICY

The main instrument regulating animal welfare in New Zealand is the Animal Welfare Act (*Animal Welfare Act* 1999 - hereafter referred to as the Act). The application of this legislation and development of animal welfare policy from it is largely facilitated and conducted by the Animal Welfare Directorate within the Ministry of Agriculture and Forestry (MAF). This involves dedicated committees, such as the National Animal Welfare Advisory Committee and the National Animal Ethics Committee, who develop specific policy determining standards of welfare and conduct that must be adhered to by those with animals under their care. The monitoring and enforcement of the legislation and policy is conducted by organizations approved by the Minister of Agriculture and Forestry as meeting the relevant criteria specified in the Act (s 122), such as the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA).

The Animal Welfare Act replaced the Animals Protection Act (1960) which had been amended four times, with the last amendment in 1978. The 1999 Act is large and complex, hence I will discuss those aspects of it that are of greatest relevance for this project. These are: the requirements of the Act; the ethics underpinning these requirements; and the roles played by the various governmental and non-governmental groups in implementing the requirements of the Act. These will be critiqued in light of the moral views of animals discussed in the Chapter 1, particularly the common moral judgments determined in that chapter.

### *Animals covered by the Act*

The 1999 Act (s 2[1]) broadened the definition of animal (which would fall under the scope of the Act) to include any animal that is, on the basis of current research, capable of experiencing pain. The 1999 Act (s 2[1]) includes wild animals, and, unlike the 1960 Act, many prenatal animals after half-way in their prenatal development. Animals such as shellfish and insects are excluded on the basis that there is insufficient evidence that they are capable of experiencing pain (Ministry of

Agriculture and Forestry 1999, 1), a conclusion that is borne out by empirical data (DeGrazia 1996, 111-112).

The emphasis in the legislation on animal welfare is evidenced by the scope of the act. It is ability to feel pain that defines an animal for the purposes of the 1999 Act. Only a creature capable of experiencing pain is classified as an animal under New Zealand law. Moreover, suffering and distress are criteria of relevance for defining ill-treatment, and ill-treatment is subject to legal penalties. It is the actual harm to the animals that incurs approbation, not the fact this may lead to cruelty to humans or that the correct character traits of the human in question are not being cultivated. Inflicting pain or damaging animal welfare is wrongful under our law. The capacity to experience pain, and therefore to suffer, is, as Bentham, and later Singer, noted, a requirement for an animal having interests in a morally relevant sense (Singer 1993, 57). In this respect, the 1999 Act is consistent with ethical approaches that accord animal interests moral significance.

### *Care of, and conduct towards animals.*

Parts One and Two (respectively) of the nine-part 1999 Act concern care of and conduct towards animals. The legislation introduces greater emphasis on the positive duties we have towards animals, rather than simply enforcing negative duties. A positive duty can be understood as an obligation to do something for someone while a negative duty is an obligation to refrain from doing something. Positive duties are generally more burdensome and often involve providing some benefit or good, whereas a negative duty or duty of non-interference or non-maleficence is less demanding.

In Act, negative duties such as refraining from acting cruelly towards animals are enshrined, as are positive duties or duties of beneficence or welfare-enhancement. People who own or are in charge of animals are required under the act to maintain the welfare of these animals. A recent case where a couple were found to have kept eight dogs in surroundings contaminated by excrement with inadequate food, water and exercise is a failure of positive duties to provide for the care and welfare of these

animals (Ministry of Agriculture and Forestry 2009b). A case in which a cat was found dead, hanging by string from a street sign with three paws and its tail severed and a nail pushed into its head is an example of failure of the negative duty to refrain from harm (RNZSPCA 2009). As it happens, many examples of animal welfare issues receiving media coverage often contain elements of dereliction of both positive and negative duties. When welfare is ignored for so long, we often regard the omissions as evidence of cruelty.

The Act states that people responsible for animals have welfare obligations towards them and must “take all reasonable steps to ensure that the physical, health, and behavioural needs of the animals are met in accordance with both good practice and scientific knowledge” (The Act s 9[2(a)]; Ministry of Agriculture and Forestry 1999, 3). Of course, best practice and scientific knowledge are always evolving. Currently, the framework used to define the physical, health, and behavioural needs of animals is known as “The Five Freedoms” framework. This approach was developed by the British Farm Animal Welfare Council in 1979 (Farm Animal Welfare Committee 2009). In the Act (s 2[4]), these are stated in the form of needs of the animal for:

- (a) proper and sufficient food and water
- (b) adequate shelter
- (c) opportunity to display normal patterns of behaviour
- (d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress
- (e) protection from, and rapid diagnosis of, any significant injury or disease

Ill-treatment of an animal is defined under the Act (s 2[1]) as the causation, by act or omission, of unreasonable or unnecessary animal suffering in the form of pain or distress. The qualifiers *unreasonable* and *unnecessary* are significant. On the one hand, they are required in order to allow care for animals, which can itself be the cause of some pain (e.g. postoperative pain, distress from immobilisation of broken bones, etc.). On the other hand, the interpretation of unreasonable and unnecessary could be broader, and take into account ends unrelated to the welfare of the animal, such as suffering that is necessary in order for an agricultural production system to benefit economically, or to maintain practicality. Another is where the welfare of an animal is compromised in order for expression of cultural norms and practices. The

Act allows exemptions to welfare requirements to be made in these cases (s 73 [3]-[4]).

This balancing of the welfare of animals against the interests of humans is a contentious issue that we shall see also arises in the use of animals in research. Many argue that the broad-scale welfare compromise that is accepted under this clause of the Act (e.g. for battery farming of chickens or intensive rearing of pigs) is unacceptable because of the disregard it shows for the animals so farmed (Parliamentary Debates [HANSARD] 2010; Morris 2006; Weaver and Morris 2004). A strong case can be made for this view, as shown in Chapter 1.

However, these more radical egalitarian positions have demanding implications for the largely omnivorous New Zealand society (and Western society generally), such as moral vegetarianism, which would be impractical, and likely prove rather unpalatable to the general public. The unacceptability of systematic welfare compromise can instead be argued by appealing to the more modest conclusions reached in Chapter 1. These were that animals had direct moral status (or should be treated as if they do) and their suffering was a matter of moral concern; we therefore have *a prima facie* reason not to harm animals, and to improve their welfare if they are in a harmed state. These are compatible with the emphasis on positive obligations of care under the Act. They do not require that the interests of animals to be given equal consideration (e.g. Singer), or that all animals have equal moral status as subjects-of-a-life (e.g. Regan). However, if they are taken seriously, any exemption to the Act that constituted continued, systematic frustration of the significant interests of a large number of animals – harming animals, or keeping them in a harmed state – would require strong moral justification, both in terms of significant benefits to humans or other animals, and the unavailability of better alternatives. It is a matter of contention as to whether some of the exemptions granted satisfy these requirements (for further discussion, see Parliamentary Debates [HANSARD] 2010; Morris 2006; Weaver and Morris 2004).

The Act (s 11[1]) also requires that any ill or injured animal have any unreasonable or unnecessary pain or distress that it is suffering alleviated. Notably, however, the Act does not require that an animal in this state be kept alive, providing it is killed humanely (s 11[2(b)]). Humane killing of an animal under one's care for reasons

other than to alleviate their suffering, is also not an offence under the Act (s 12). The issues associated with animal killing have been commented on in Chapter 1. Here it will suffice to note that the Act accepts humane animal killing as legally permissible. This does not mean that it is not a moral wrong, merely that, if it is so, it is not a wrong requiring coercive legislative powers to prevent it. Given the complexity of this issue, the position of the Act seems reasonable.

Part Two of the Act covers conduct towards animals, prohibiting acts of cruelty and ill-treatment. A 2010 Bill amending the Animal Welfare Act (Carter 2010) has had its second reading in parliament, and proposes that the scope of this part of the Act be broadened. If accepted, this amendment will introduce reckless ill-treatment of animals alongside the current standard, which requires that ill-treatment must be shown to be wilful (Carter 2010, s 5). It also proposes lowering the criteria that constitute ill-treatment (Carter 2010, s 5). This part of the Act (including relevant part of the amendment Bill) enforces negative duties that we have towards animals. Unlike Part One of the Act, a relationship of care or ownership is not required for the obligations of this act to apply (Ministry of Agriculture and Forestry 1999, 3). This emphasis on ownership is a significant ethical element of the Act, the implications of which will be discussed in a later section (see *The role of the public*).

### *Use of animals in research, teaching, and testing*

The use of animals in research, teaching, and testing is also dealt with in the Act. Broadly, the Act adopts what is widely known as the Three R's to reduce harms to animal welfare, as well as the five freedoms and duty of care that underpins Part One of the Act (Ministry of Agriculture and Forestry 1999, 16).

The Act also supports the use of animals in research, teaching, and testing, which can be harmful to the welfare of the animal. In order to do this, it appeals to utilitarian considerations (Ministry of Agriculture and Forestry 1999, 15). It accepts benefits rather less critically than a utilitarian like Singer, for example accepting benefits to the "production and productivity of animals" (s 80[1(iv)]). As discussed in Chapter 1, Singer argues that this is often detrimental to significant interests of the animals

produced or whose production is increased. Moreover it satisfies either relatively insignificant interests of humans (such as the interest in having cheaper animal products), or significant interests (such as nutrition for oneself and others, or a livelihood) which could be satisfied through means that are not detrimental to the welfare of animals. However, the Act requires that the anticipated benefits of the research, teaching, or testing (either in itself, or in combination with other research) outweigh the harms to the animals involved. This formal requirement must be articulated further in order to be fully understood – it is unclear how the basic components of harms and benefits are weighted, and what may affect this weighting. However, further investigation of this aspect of Act is beyond what can be adequately covered in this dissertation.

While endorsing animal research, the Act clearly takes animal welfare seriously as a moral issue, and it does so by using the Three R's. Proposed by Russell and Burch (1959), these accept that animals may be used to further the aims of experimental research, and seek to maximise the welfare of the animals so used. They propose three means of doing this: *replace* animals with non-sentient alternatives, say through computer modelling or *in vitro* techniques; *reduce* the number of animals used in research that has negative consequences for welfare to the minimum required to achieve the statistical aims of the research; *refine* any experimental techniques involving animals to reduce the negative impact that they may have on animal welfare (e.g. through use of anaesthesia etc.) (1959). The Act also requires the establishment of Animal Ethics Committees to ensure that any research teaching and testing undertaken meets these welfare requirements.

### *The role of Ministerial Advisory Committees*

The Act establishes two Ministerial advisory committees: the National Animal Welfare Advisory Committee (NAWAC), and the National Animal Ethics Advisory Committee (NAEAC). The purpose of NAEAC is to provide advice to the Minister and Animal Ethics Committees on ethical matters relating to animals (The Act s 63). This includes the creation of ethical Codes of Conduct according to the requirements within the Act, which are applied by Animal Ethics Committees in their judgment of

research proposals submitted to them for approval. The purpose of NAWAC is to provide advice to the Minister on matters of animal welfare and related research, and to develop codes of welfare, which provide practical, minimal standards for animal care that are to guide those who own or are in charge of animals (The Act s 57; Ministry of Agriculture and Forestry 1999, 11). Examples of these are the codes of welfare for pigs (National Animal Welfare Advisory Committee 2004), rodeos (National Animal Welfare Advisory Committee 2004), companion cats (National Animal Welfare Advisory Committee 2007), zoos (National Animal Welfare Advisory Committee 2005), and so forth.

### *Monitoring and enforcement*

The Act (Part 7) establishes animal welfare inspectors and “auxiliary officers” (who have lesser powers than inspectors), whose function is to assess and remedy any potential breaches of the Act. Some of the powers of inspectors are also accorded to veterinarians (Ministry of Agriculture and Forestry 1999, 21). Where they have reason to believe a breach may have occurred, inspectors are empowered (among other things) to enter the areas in which animals are being kept, alleviate the suffering of any animals (which can include destruction of the animal), serve an enforcement order requiring compliance with the Act, or to seize animals and sell them.

Inspectors have two sources: they may be state-sector employees (generally staff of MAF, however police officers are also considered inspectors under the Act); and individuals appointed by an organisation approved to do this under the Act (Ministry of Agriculture and Forestry 1999, 19). Within MAF, inspectors are part of the Animal Welfare Enforcement Directorate, and there are currently five full-time equivalents operating in this capacity within MAF (*Animal Welfare Amendment Bill – Appendix 1 - Overview of MAF Animal welfare activities* 2010, 2). Other sources of inspectors are the RNZSPCA, and, to a limited degree, the New Zealand Food Standards Authority Verification Agency (NZFSA Verification Agency) (*Animal Welfare Amendment Bill – Appendix 1 - Overview of MAF Animal welfare activities* 2010, 3).

Prosecutions can be made under the Act, and MAF has a 5 person prosecution team to perform this work, along with biosecurity and other prosecutions that MAF may undertake (*Animal Welfare Amendment Bill – Appendix 1 - Overview of MAF Animal welfare activities* 2010, 2). Prosecutions comprise a relatively small amount of the MAF Animal Welfare Directorate's workload, totalling \$192,000 of its \$3,200,000 budget (*Animal Welfare Amendment Bill – Appendix 1 - Overview of MAF Animal welfare activities* 2010, 3).

### *The role of the RNZSPCA*

The RNZSPCA is deemed an approved organisation under the Act, meaning that it has powers under the Act to train and appoint welfare inspectors to perform enforcement duties. It is a registered charity comprising 48 branches and member societies throughout New Zealand (RNZSPCA). Because of its large structure, the details of its overall workings and finances are difficult to determine, however currently the organisation has some 120 animal welfare inspectors, 60 auxiliary officers (RNZPCA, personal communication 2010), and a large number of other staff, 60% of whom volunteer their labour (Parliamentary Debates [HANSARD] 2010, 1142). It works closely with the Animal Welfare Directorate from MAF, yet receives approximately 2% of its funding through provisions from MAF (RNZSPCA), much of which is tagged for specific purposes (e.g. training inspectors and rural inspection work [*Animal Welfare Amendment Bill – Appendix 1 - Overview of MAF Animal welfare activities* 2010]). The remainder of its funding is achieved through their own fund-raising, and bequests and donations from the public (RNZSPCA).

The RNZSPCA (at either a national or district level of the organisation) provides welfare inspector training and public education on animal welfare, sits on Animal Ethics Committees, investigates and prosecutes instances of welfare breaches under the Act, provides shelter for animals that require it (it is statutorily obliged to provide at least seven days shelter for unclaimed animals), re-homes animals, and humanely kills animals when required (RNZSPCA). Given that an estimated 92% of complaints about animal welfare are made to the SPCA (Parliamentary Debates [HANSARD] 2010, 11420), its contribution to the welfare services required under the Act should

not be underestimated. It is an essential component of the animal welfare apparatus established under the Act – a charity that provides essential agents of the state far that dwarf the number provided by the state itself.

### *The role of veterinarians*

Like the RNZSPCA, the public profile of veterinarians means they are another common port-of-call when animal welfare services are needed. Veterinarians (like welfare inspectors) have legal power under the Act (s 138) to humanely kill any animals they find to have severely compromised welfare that will not respond to reasonable treatment, or will experience an unreasonable amount of suffering if treated. Registered veterinarians are also bound by the Veterinary Council of New Zealand's code of professional conduct (Veterinary Council of New Zealand 2007). This states that veterinarians “have a special responsibility for animal welfare”, and requires that they “promote a standard of care that ensures that the needs of animals are met by themselves and those in charge ... of the care of animals, in accordance with the Animal Welfare Act 1999.” (Veterinary Council of New Zealand 2007, 11)

These obligations can cause the veterinarian to occupy a rather complicated and often difficult position with respect to the welfare of animals they encounter. Veterinarians have obligations to their client (the animal owner) and obligations to the patient (the animal). The interests of client and patient may be aligned – the client wants what is in the animal's best interests, and the veterinarian can treat the animal accordingly, ensuring adequate or higher welfare standards are met. However, maintaining adequate standards of welfare can raise the cost of treatment, meaning that a client will accept less than adequate welfare for their animal. In this situation, the veterinarian must mediate between their statutory obligation to animal, and their professional obligation to their client (Legood 2000, 76-78; Rollin 1999, 17-21; Tannenbaum 1995, 113-116). Veterinarians may sometimes fulfil their statutory and policy obligations partly or fully at their own expense, rather than see the client leave without treating their animal, or contact an animal welfare inspector to have an enforcement order issued. In this situation, the veterinarian is shouldering a financial

burden to provide for the welfare of an animal that is the proper responsibility of the owner.

A further problem is presented by stray animals, which may be brought to the veterinarian for treatment by a member of the public. Here the vet may also fulfil their duty of care at their own expense, providing treatment or humanely killing the animal, and disposing of it. As with the RNZSPCA, veterinarians are an important element of the effective implementation of New Zealand's Animal Welfare Act, yet they receive no public funding from MAF to perform this function.

### *The role of the public*

The public are obliged under the Act to satisfy a duty of care with respect to any animals they own or are in charge of, and refrain from ill-treatment of any animals regardless of their ownership status. It is significant that the Act predicates positive duties towards animals on animal ownership, or being in charge of an animal, whereas negative duties apply regardless of one's relationship to an animal. This makes good practical and intuitive sense. It costs us nothing to refrain from ill-treating an animal, so satisfying negative duties is relatively unproblematic for most. And when something becomes our property, or comes under our care, we assume primary responsibility for that care. Would we expect someone else to mow our lawns? Only if we somehow compensated them for their assistance. Moreover, it is efficient that we have primary obligation for care of our own property, since we are usually best positioned both to perform the task, or ensure that it is done, and to monitor when and in what form care is needed.

However, there are significant problems with this model when it is applied to animals. First, the obligation to care for an animal differs from the obligation to care for other things we can own. We do nothing morally wrong when we give up mowing our lawns for any reason, whereas if we fail in our positive obligations to animals under our care, we do. There is therefore a need for harms to animals to be prevented and remedied in a way that is generally not needed for lawns. The coercive powers accorded to Animal Welfare Inspectors in the Act help to ensure animal owners fulfil

their obligations under the Act, and this is a crucial element of its effectiveness. As has already been argued, the fact that the majority of this is performed by a charitable organisation (the RNZSPCA) is a significant weakness of current animal welfare policy. Partly because of the demands of this work, the main mode of function of welfare inspectors is to respond to complaints they receive (Ministry of Agriculture and Forestry 1999, 2), so to a large degree the functioning of the Act is dependent on observant and proactive members of public (or veterinarians) reporting their welfare concerns.

Other members of the public (or organisations) will donate money or labour, or bequeath money, to animal welfare organisations such as the SPCA, going beyond their obligations under the Act. These individuals provide funding that is crucial to the state's implementation of the Act. More will be said on this in the next chapter, however at this stage it suffices to note that relying in large part on charitable donations from the public does not ensure that the basic welfare needs of animals will be met. This is a major weakness of current animal welfare policy.

## *Conclusion*

The Animal Welfare Act (1999) is a large and complicated piece of legislation, which reflects our complicated and diverse relations with animals. The legislation applies quite differently to some people (e.g. veterinarians, pet owners, farmers, welfare inspectors) and to some animals (e.g. those that have owners, those who do not, those that are used in experiments). The Act accords, and relies upon, some quite wide-ranging powers and responsibilities of welfare inspectors, the majority of whom are funded by public charity. Elements of it are compatible with the moral obligations that were the conclusion of Chapter 1, however there are significant areas in which it is deficient as a means of ensuring these obligations are met by those who bear them. The following chapter will discuss these obligations in more detail, propose some ways that the deficiencies in current animal welfare legislation and policy may be addressed, and consider some objections that may arise.

## CHAPTER 3: AN ARGUMENT FOR INCREASED STATE-FUNDED ANIMAL WELFARE SERVICES

### *Articulating our obligations to animals*

After discussing a range of philosophical views relating to animals, Chapter 1 determined some normative conclusions that are broadly compatible among the different perspectives and accord with our considered judgments regarding animals. Even in the case of Carruthers' social contract theory, which accords animals no direct moral status, it was seen that the consequences of the indirect moral status that animals are given can require conduct towards animals that is compatible with giving them direct moral status. The normative conclusions reached in Chapter 1 were that: animals have direct moral status; the welfare of animals is a moral concern; because of these we have a *prima facie* duty not to harm animals; and we have a *prima facie* duty to improve the welfare of animals that are suffering. These are *prima facie* obligations because they may be overridden by other obligations in some circumstances.

I argue for rather modest conclusions that do not rely on any *particular* philosophical viewpoint. It may be that these conclusions do not go far enough, and more demanding normative requirements are justified (as argued by: Regan 2004; Singer 1993; Singer 2002). However, more demanding positions are largely predicated on accepting a particular moral framework. Any conclusion that is closely tied to a particular normative position is less likely to be persuasive to those who do not share that framework. Moreover, whilst there may be a philosophical purity in Regan or Singer's extreme animal-welfarism, the demanding nature of these positions would require dramatic alterations to welfare policy, with profound effects on farming and animal research, and many other ways we use and interact with animals. While they may be achieved in the future, such dramatic changes in public policy are unlikely to occur in one step, and, if they did, would likely be extremely difficult to implement.

The approach taken here is to find common normative ground among the different theories relating to animals. This can provide a more broadly acceptable, and

therefore secure and achievable, basis for assessing welfare obligations, and implementing these in policy. Moreover, in a controversial ethical area, judgments and obligations that are common among ethical theories and which capture our considered judgments are those that we can have most reason to regard as a reliable, perhaps minimal, morality.

The negative *prima facie* duty not to harm animals is the least demanding element of our obligations – all one must do is refrain from engaging in positive actions that cause harm to animals. This can be universalised (or made a general duty) without significantly increasing the demands it places on moral agents (Shue 1988). If we refrain from harming, say, the animals in our care, the burden is usually not increased if we refrain from harming the animals in our care, *and* any other animals, all the time. This duty is largely catered for in Part 2 of the Animal Welfare Act (1999).

The positive *prima facie* duty to improve the welfare of animals that are suffering is considerably more demanding of moral agents. It requires appropriate action to be taken to correct unacceptable levels of welfare experienced by animals. If it is cast as a general duty, it is demanding to the point of absurdity. We could be obliged to improve the welfare of every animal, which, given the number and distribution of animals in the world, would be impossible. Positive duties therefore need to be limited in some way in order for them to be practicable, but that maintains their efficacy (Shue 1988). The Animal Welfare Act contains a positive obligation of care towards animals, and limits this by requiring it of anyone who is in charge of, or owns animals. This is a sensible approach in many respects, as explained in the previous chapter (e.g. it is most efficient for an owner to provide this, and they are most likely to have the animals best interests at heart). However, animals that do not have owners or are not under the charge of people do not fall within the scope of this obligation. While we may have a negative obligation not to ill-treat these animals, we are under no obligation – as the 1999 Act stands – to provide for their welfare, which can be poor.

How can this lack of an obligation of care be justified? There is no change in the characteristics of the animals themselves when they gain or lose an owner, or never have an owner. For example an owned animal does not possess a particular

characteristic of moral relevance (such as become more sensate, or gain important new interests) that an un-owned animal lacks, which would elevate the welfare requirements of the former and depress the requirements of the latter. Given that the duty of care concluded in Chapter 1 is grounded in the direct moral status of animals, and the moral significance of their welfare, we have a *prima facie* duty to improve poor welfare if it occurs in any animal, regardless of its ownership status.

However, the duties described in Chapter 1 are *prima facie* duties only – they must be balanced among other duties that might conflict with them. This is because, while animals are acknowledged as having direct moral status, this does not necessitate them having a moral status equivalent to humans (whether embryonic or adult), although it is compatible with this. Similarly, while the suffering of animals is acknowledged to be of moral significance, this does not entail that the significance of animal interests be considered equal to human interests. Managing this aspect of the moral relationship between humans and animals in a just way is extremely difficult, and is not something that can adequately be dealt with here. Given that it requires quite fine-grained decision-making, it is unclear whether specific principles governing it could be derived from the common-ground among the theories considered here, which yields rather general conclusions. However, some general suggestions can be made as to the types of considerations that can provide guidance.

The common ground between the moral theories discussed requires that the interests of animals be taken seriously in our moral reasoning. Even the theories giving animals only indirect moral status regard doing otherwise to be wrong – not in itself, but because it fails to cultivate a virtuous character, or, indeed, cultivates a vicious one. This must include understanding what interests animals have, and the impact of our actions on them. The fact that marginal cases poses such a difficult ethical problem shows that the moral divide between the status of humans and animals can be extremely narrow at times, and it is a genuine possibility that, at times, the human will be on the subordinate side of it. Rather than reflexively interpreting this as “levelling-down” of humans in some cases to the moral status of animals, the opposite should be inferred – in many instances, animal interests may require levelling-up in order to correct anthropocentric bias (DeGrazia 1996, 19-31).

Collectively, this means that *moral reasons*, not merely prudential reasons, are needed in order to justify the overriding of our duties to animals. For instance, farming animals in a manner that causes poor welfare merely because it suits the current market and provides a better profit margin (a prudential reason) would be unjustified. Farming animals in a manner that causes poor welfare because there are no better alternatives that provide adequately for the welfare of one's family may be justified. Similarly, keeping a large dog indoors and failing to exercise it adequately simply because one desires owning a dog *and* living in an inner-city apartment, this would be an unjustified overriding of your duty of care to the animal, based on prudential reasons. However, not exercising one's dog sufficiently may be justified if this is because children are visiting, and there is a reasonable risk of the dog harming them (a moral reason).

### *Enacting our obligations to animals*

How then, can our obligations to animals be enacted? Fulfilling general negative duties to animals is the least demanding aspect of this, and is generally handled adequately by current welfare policy, assuming that the current Bill (mentioned in the previous chapter) to amend this aspect of the Animal Welfare Act is passed (Carter 2010). However, ensuring that there is adequate public funding to properly enforce this by monitoring, investigating, and prosecuting ill-treatment of animals under the Act is also necessary. Given that the RNZSPCA undertakes many of these prosecutions, directing public funds toward their expenses in this area is required.

Carrying out our positive duties to animals is more challenging. Given the number of animals in New Zealand, which is estimated to be approximately 100,000,000 (Parliamentary Debates [HANSARD] 2010, 11419), the demands of a duty of care will need to be carefully apportioned, or limited, in order to be made practicable. The primary method for doing this under the Act is to cast care as a special duty engendered by being in charge of, or owning an animal. As a means of apportioning the moral labour of a duty of care across owned animals, this is a reasonable approach. Current animal welfare policy does an adequate job of handling this, for the most part. However a problem arises when an animal owner does not have adequate

means (either in terms of knowledge and ability, or finance) to provide for the welfare of the animals in their care. Another problem is that it does not provide for the welfare of animals that no longer have owners.

In the case of owners who are not providing adequately for the welfare of animals in their charge, there are currently two options: the owner can be compelled to resolve the issue by an animal welfare inspector (through use of an enforcement order requiring treatment, or by finding an owner who can provide adequate care, or by having the animal humanely killed); or the animal can be seized by an animal welfare inspector and treated, re-homed, or killed. Fulfilling an obligation of care to unowned animals is a task generally unable to be performed by the public, who lack knowledge and resources to do this effectively. It is best undertaken by an organisation such as the RNZSPCA, who are currently attempting to provide this service under limited funding. Given this crucial role of animal welfare inspectors in fulfilling statutory requirements and the moral obligations of the public, funding must be provided that enables the RNZSPCA (or another appropriate organisation) to provide the standard of care required under the Act.

This requires sufficient funding not only for the inspectors themselves, but also the welfare apparatus that they need (adequate shelter for animals, veterinary services, public awareness to assist re-homing efforts, public education about animal care, etc.), both of which are largely provided by the RNZSPCA. Currently, public funding for these is inadequate (despite a funding increase in the latest budget [Carter 2010]), making the fulfilment of a serious moral and statutory obligation contingent largely on charitable donations. On the one hand, this may seem a reasonable distribution of the welfare burden – those who care enough about the welfare of animals contribute money to support and maintain it. However, the corollary of this is that those who care less about animal welfare, and may cause poor animal welfare if they are in charge of animals, are unlikely to support it financially without compulsion. Thus the burden of care is unjustly distributed. Also, since the RNZSPCA operate almost entirely on their own funding, the government has limited authority to direct and coordinate welfare services for maximum efficiency and effectiveness (Parliamentary Debates [HANSARD] 2010). We cannot purport to take the moral status and

suffering of animals seriously, yet leave the obligations that this engenders to the uncertainty of charity, which can depend on fashion and private enthusiasm.

### *Responding to objections*

The obligations to animals described here, and the method of fulfilling, attempts to strike a balance between those who accord animals high moral status, and those who do not, by finding common ground. However, this common ground may be objected to by both parties.

The fact that the duties posited here are *prima facie* duties only will not satisfy those who argue that animals have rights that are inviolable. *Prima facie* duties may be trumped by other considerations, and recognition of rights prohibits this. Any rights-based theorist who mounts this objection fails to understand rights, either as they are correctly used in the case of animals or in philosophy more generally. Animal rights have been most thoroughly considered by Regan (2004), who recognises that rights can conflict in ways that require some to be overridden, and provides principles to guide this (as noted in Chapter 1). Similarly, Waldron (1989) argues that conflicts of rights are inevitable in most rights systems, and that the duties they give rise to will need to be managed accordingly. *Prima facie* duties are therefore compatible with rights-theory.

The rights theorist may then object that rights are nonetheless not made explicit in the obligations described. This is avoided for two reasons. First, it would tie the obligations too closely to one moral theory, seeming to privilege that above the others from which the obligations were derived. Second, rights (whether positive or negative) can give rise to multiple duties, both positive and negative, making them difficult to incorporate clearly into a discussion of policy within the constraints of this dissertation (Waldron 1989; Shue 1988).

The standard of welfare used in the Act (the Five Freedoms, articulated for particular animals and their uses in Codes of Welfare) may not satisfy either party, being too generous to animals for some, and inadequate for others. In particular, the Act accepts

the humane killing of animals for any reason. Because of the complex philosophical nature of killing and available space here, it has not been thoroughly discussed. Certainly, in fulfilling the obligation of care, especially to unowned animals, many will be humanely killed (those for which the cost of treatment is too great, or for which homes cannot be found, those with behavioural problems, etc.); that this is compatible with a duty of care may seem paradoxical. However, the resources required to keep these animals alive and with good welfare would be extraordinarily large, and the harm of death is something that must be accepted as an ethical option under these circumstances.

Another approach to objections to these welfare standards is to note the Act does not prohibit the provision of care beyond these standards (in fact, Codes of Welfare are explicitly stated to be minimum standards). Animal owners can, and often do, ensure that their animals have a higher standard of welfare than that required under the Act. If the RNZSPCA was adequately funded by the government to achieve the standards of welfare required by the Act, those who wish to have higher standard implemented can donate to the RNZSPCA to provide additional funds to achieve this goal.

This raises another objection, which concerns how the fulfilment of duties described here should be funded. Means of funding welfare services are many and varied, and for reasons of space these issues of economics and its philosophy cannot be discussed here (see: Hills 1995; Fleurbaey 2008). Issues that arise here include who ought to pay? Should the financial burden for the infrastructure needed to maintain animal welfare fall upon animal owners, be they private owners or business owners such as farmers? Or should all tax-payers share costs on the either the basis that we all benefit from the existence of animals or we all have special duties to the vulnerable? Even if it is settled who ought to pay, how is this burden best distributed among those who pay? Each according to income, number of animals owned, or some other measure? The scope of this problem and the potentially large economic burdens commitment to animal welfare could bring is a significant issue. This should then lead into more detailed discussions of distributive justice, where these needs of animals and our duties to them are considered along with moral concerns pertaining to our own welfare.

## *Conclusion*

Our moral obligations to animals are relatively easy to satisfy in the case of negative duties, however recognising and satisfying our positive duties has the potential to be a great deal more so. This is not a fatal problem, since there are ways of allocating moral labour that is both fair and pragmatic, such as according responsibilities along with animal ownership, and augmenting existing welfare provision systems such as the RNZSPCA to better monitor and enforce the Act, and provide for the welfare of unowned animals. Objections can be made to the *prima facie* duties to animals described here that they are too conservative, or too demanding. However, this should be expected from an approach that seeks common ground between the predominant moral theories relating to animals, while eschewing their more extreme implications, which often fail to capture our considered judgments about animals. The changes to welfare policy required in order to fulfil the duties that represent this common ground are not extreme, but would reliably ensure a standard of welfare that many animals currently do not experience.

## GENERAL CONCLUSION

Moral and political theories disagree about a great many issues relating to animals. However, there is widespread agreement among most moral theories that the welfare of animals is of moral significance. We rightly decry those who ill-treat or fail to provide adequate care for their animals, yet many of us fail to accept compromises in our less important interests in order to help satisfy significant welfare interests of animals. By allowing animals to suffer in the absence of a strong moral reason requiring it, we fail to take animal welfare seriously, and we wrong animals.

This dissertation argues for legislative and policy change on the basis of common ethical values that are widely compatible with moral theory. Legislation and policy in New Zealand relating to animal welfare must *at minimum* accord with these values, if it is to have any moral, not simply legal, authority. Given that the Act captures much of the content of these values, it is likely that a significant amendment to the Act could achieve this. As part of this process, the common moral ground between theories should be examined more closely than is possible here, to determine whether other moral conclusions can be discerned, for example investigating the killing of animals. Given that the theories discussed here are universal in their scope, these arguments may also be applied to animal welfare, policy and treatment elsewhere, and have implications for the welfare of animals in other states.

The moral framework presented here can be criticised for being conservative, but its normative implications are profound. They are potentially very demanding of us, but their potential to reduce the suffering of animals is immense. The most difficult aspect of our moral commitment to animals is that moral labour is finite, and we must therefore allocate it justly and effectively. The duties to animals that are proposed here are *prima facie* duties, and must be considered among the many other duties that we have. Prioritising our duties justly is one of the most important and complex problems in ethics. We must take our duties to animals seriously, which means accepting that fulfilling these will require some sacrifices on our part. This is one of the burdens of being moral, whatever our preferred moral system.

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