

Draft. For definitive version, see *Journal of Applied Philosophy* 21 (2004), 61-76.

CAPACITIES, CONTEXT AND THE MORAL STATUS OF ANIMALS

Sherri Irvin

Abstract:

According to a widely shared intuition, normal, adult humans require greater moral concern than normal, adult animals in at least some circumstances. Even the most steadfast defenders of animals' moral status attempt to accommodate this intuition, often by holding that humans' higher-level capacities (intellect, linguistic ability, etc.) give rise to a greater number of interests, and thus the likelihood of greater satisfaction, thereby making their lives more valuable. However, the moves from capacities to interests, and from interests to the likelihood of satisfaction, have up to now gone unexamined and undefended. I argue that context plays a morally significant role both in the formation of an individual's capacities, and in the determination of the individual's interests and potential for satisfaction based on those capacities. Claims about an individual's capacities and interests are typically presented as unconditional; but on closer examination, they are revealed to be contingent on tacit assumptions about context. Until we develop an understanding of how to account for the role of context within our moral theories, attempts to defend special moral concern for human beings based on their superior capacities are less firmly grounded than is commonly thought.

It is a common strategy, at least as old as Bentham, for defenders of animals' moral status to appeal to sentience as the primary criterion for determining whether a being should be given moral consideration. Peter Singer sees sentience, or '[t]he capacity for suffering and enjoyment',¹ as 'the only defensible boundary of concern for the interests of others',² because all and only sentient beings have interests of the morally relevant sort. He thus holds that all sentient creatures, human or non-human, are equally worthy of moral consideration, and the interests of one must be counted equally with the like interests of any other. Singer regards capacities other than sentience as irrelevant to the question of whether a being deserves moral consideration. If it is sentient, then on his view it clearly does deserve such consideration.

Although Singer argues for equal moral consideration for all sentient creatures, he is concerned to defend his view against an attempt at *reductio ad absurdum* that is frequently levelled against supporters of moral consideration for animals. For if all sentient creatures are equally deserving

of moral consideration, this seems to imply that human beings count, morally, for only as much as dogs or mice: and when the interests of a human being come into conflict with those of, say, a dog, there is nothing to choose between them. Yet, most reasonable people would not accept that one must flip a coin to decide whether to save a dog or a human being from a life raft about to go under, or whether to feed a hungry pig or a hungry child from a limited supply of nourishment.³ Any view that cannot account for such moral distinctions between animals and humans will be thought unacceptable by many.

The intuition that humans deserve special moral care might seem to fly directly in the face of Singer's central claims. Yet, he attempts to show how his position might accommodate it. Singer suggests that it may be worse to kill a normal adult human than to kill a normal adult mouse, since a human being has more interests that will be frustrated by her death, and thus utility will be more substantially diminished. 'It is not arbitrary', he says,

to hold that the life of a self-aware being, capable of abstract thought, of planning for the future, of complex acts of communication, and so on, is more valuable than the life of a being without these capacities... [T]o take the life of a being who has been hoping, planning, and working for some future goal is to deprive that being of the fulfillment of all those efforts; to take the life of a being with a mental capacity below the level needed to grasp that one is a being with a future—much less make plans for the future—cannot involve this particular kind of loss.⁴

The value of a being's life and the kind of treatment it should receive, then, ultimately depend on its capacities.

It is interesting to note that Tom Regan, arguably an even more staunch defender of the equal moral status of humans and (many) animals, makes a similar attempt to avoid the reductio and allow that in certain circumstances, humans may be given preferential treatment. Regan holds that all 'subjects of a life that fares well or ill for them, logically independently of their utility for others or of their being the object of another's interests',⁵ have equal inherent value and an equal right not to be harmed.⁶ However, in his discussion of a lifeboat example in which all passengers will drown if one is not thrown off, he allows that a dog should be thrown off to save a group of humans, since to lose their lives would harm each of the humans more than losing its life will harm the dog. This is because 'the harm that death is, is a function of the opportunities for satisfaction it forecloses, and no reasonable person would deny that the death of any of the four humans would be a greater prima facie loss, and thus a greater prima facie harm, than would be true in the case of the dog'.⁷ Indeed, on Regan's view, if we were forced to choose between throwing a million dogs off the lifeboat and throwing off one normal, adult human (perhaps, say, because all the dogs are chained together and the lifeboat will support at most a million passengers), we should throw off the million dogs.⁸

Singer and Regan, then, both end up avowing that human lives are generally worth more than animal lives, though they do not accept the

suggestion that humans deserve greater moral consideration by virtue of their species alone. Singer, in particular, aims to expose species as a morally irrelevant characteristic, and to direct our moral deliberations to the level of the individual instead. That is, rather than considering the characteristics of a whole species when we decide how to treat one of its members, we should simply consider the characteristics of that member in itself. After all, it is that member's own characteristics that will determine how much utility will be sacrificed or gained under a particular kind of treatment.

On Singer's view, then, we should shift our attention from the species to the individual. To determine what sort of treatment this individual should receive, we must consider facts about this individual.⁹ From a utilitarian perspective such as Singer's, we must attend to the individual's interests: some kinds of treatment will frustrate those interests, other kinds will satisfy them, and the utility that is incurred in the transaction is what will determine how the treatment measures up, morally speaking. Regan, though not a utilitarian, seems to have similar considerations in mind when he appeals to 'the opportunities for satisfaction [death] forecloses' as the justification for choosing to save a human at the expense of a dog.

To know how we must treat an individual, then, is to know something about the interests it has in relation to the treatment, and the satisfactions made available by these interests. The fundamental interests of experiencing enjoyment and avoiding suffering are shared by all sentient creatures. But the magnitude of these interests, it seems, may depend on certain higher-level capacities. Singer allows that '[n]ormal adult human beings have mental capacities that will, in certain circumstances, lead them to suffer more than animals would in the same circumstances'.¹⁰ In addition to magnifying one's fundamental interests, higher-level capacities also give rise to additional interests, such as an interest in seeing one's plans realized in the future.

On the one hand, Singer holds that 'our concern for others and our readiness to consider their interests ought not to depend on what they are like or on what abilities they may possess'.¹¹ That is, our moral concern should extend to all sentient creatures, and we should consider the like interests of two such creatures equally, no matter what the differences in those creatures' capacities. But when it comes to determining whether two creatures' interests, in a similar circumstance, really are 'like interests', the question of individual capacities is raised. And the verdict is likely to be that individuals with more highly developed capacities require greater delicacy of treatment, since they will be harmed more by death and will suffer more by ill treatment in life.

But such a verdict depends on a relationship between capacities and interests that is not well explicated. There remains the question, how exactly are capacities supposed to contribute to the magnitude or quantity of an individual's interests? And if we are going to base our understanding of interests in part on capacities, we must also ask: is the notion of an individual's capacities sufficiently well defined? If not, we will be unable to draw the conclusions about interests that are required for successful utility

calculations. I will be raising doubts based on the role that a being's context plays in shaping both that being's capacities and the significance of its capacities to its well-being. I will end by suggesting that the notion of 'a being's capacities' is misleading: capacities may be better described as residing in the complex of a being and its context, rather than within the being itself. To the extent that this is true, it calls into question assessments of a being's interests based on its capacities.

The Relationship of Context to Capacities

Context shapes the development of a being's capacities and helps to determine the value of those capacities. The shaping of capacities by context is a salient aspect of human development. It is a truism that a child's future capacities can be affected by its environment. It is likely for this reason that we believe the education of children to be morally obligatory; we take education to contribute to capacities that will promote the child's later flourishing. Similarly, the capacities for meaningful relationships, for physical prowess and dexterity, for artistic expression and many others may all be promoted by the stimulations of one's early environment. Conversely, it is clear that capacities can be stunted by an individual's context. Children who suffer severe deprivation in childhood, due to war, famine or abuse, are likely to come away from such experiences with diminished physical, psychological or intellectual capacities.

Of course, the contribution of context to the development of capacities, though perhaps most acute in childhood, continues throughout the life span. My ability to expand my intellectual, physical and psychological aptitudes, or maintain the ones I've already got, is likely to depend in a variety of ways on the resources available to me in my environment. Context, then, affects the development of capacities in a quite straightforward way.¹²

Context is relevant to capacity in a second way, as well. Which capacities are likely to promote my flourishing depends upon the context in which I am likely to find myself. Consider the courageous folk who agree to compete on the television program *Survivor*, in which small groups of contestants spend forty days in the wild constructing their own shelters, foraging for food and fresh water, competing in games requiring both intellectual and physical ability, and attempting to convince other group members not to vote to eliminate them from the game.¹³ For many participants, capacities like physical dexterity and political adroitness make a much greater contribution (or serve as a much greater obstacle) to their flourishing on *Survivor* than they would have in those individuals' more usual environments. Artificial as this example may be, it is one of the few widely-publicised cases in which human beings voluntarily leave their typical surroundings and enter dramatically different environments, without even the opportunity to import their usual accoutrements—tools, snacks, books, etc. But something similar is probably true of less contrived cases of outdoor survival, as well as of cases in which someone is imprisoned at length in circumstances of social isolation or other severe deprivation. We may find that capacities that served us well in one environment will do nothing for us

in a dramatically different environment. How useful our capacities are to us, then, depends on the context in which we find ourselves; and reversals in the relative worth of two capacities, resulting from a change in context, are certainly possible. The value of one's capacities to one at a given time, then—the degree to which they contribute, or are likely to contribute, to one's well-being—depends on one's context.¹⁴

Our understanding of these relationships between context and capacity is straightforwardly reflected in our practices of educating human children. Given the knowledge that context shapes capacities, we plan to supply a child with a range of experiences and stimulations that will promote the development of her intellectual, linguistic, physical and social capacities. Given that the worth of a capacity depends upon context, we try to endow her with capacities well-suited to the environment which we expect (or, sometimes, hope) she will occupy as an adult. And given some uncertainty about what context she is likely to enter, we try to cultivate capacities that will serve her well regardless of what roles in human society she chooses to occupy. In all of this, we are aided by the fact that the context in which a child grows up tends to resemble the context(s) in which she will find herself as an adult: for an excellent way to develop the capacities suited to a context is to experience its challenges and stimulations firsthand.

From Capacities to Expected Utility

Singer suggests that the capacities humans develop under normal circumstances tend to give rise to lives that are valuable—more valuable than the lives of animals of lesser capacities. This is because our greater capacities give us a greater potential for satisfied interests, or tend to promote higher levels of utility. How exactly are our greater capacities supposed to give us greater expected utility? This is rarely stated explicitly.

Here's one way the relationship might go. To have an interest, we might say, is to have an interest in things' being this way rather than that—in the obtaining of a particular state of affairs, rather than some alternative state of affairs. Of course, if one cannot discriminate between alternatives, one cannot form a preference between them. And if one's whole psycho-physiological system does not react differently to two alternatives, it seems one cannot have an interest in the obtaining of one of these alternatives rather than the other. As we become more sensitive, however, as we cultivate and refine the physical and cognitive faculties responsible for sensory discrimination, we become able to make finer distinctions among states of affairs. We may then form preferences for some states of affairs over others, and these preferences may give rise to, or simply amount to, interests.¹⁵ On this way of construing the nature of interests, it is easy to see how beings with greater capacities would have a correspondingly larger number of interests. And, the account might continue, to have more interests is to have a greater potential for satisfaction. We might call this the 'discrimination model' of how capacities contribute to expected utility: the greater one's capacities for discrimination among states of affairs, the greater one's quantity of interests; and the more interests one has, the greater one's potential for satisfaction.

The problem with the discrimination model is that expected utility is a measure not of *potential* for satisfaction, but of *likelihood* of satisfaction. And the discrimination model does not establish that beings with more advanced capacities have a greater likelihood of satisfaction, thereby making their lives more valuable. Indeed, it is at least equally plausible to conclude that the expected utility of such beings will be lower: for only *satisfied* interests contribute to utility, and frustrated interests tend to detract from utility. And on this model, there is good reason to think that the interests that arise as discriminatory capacities are refined are more and more likely to be frustrated. First of all, this model involves a progressive narrowing of interests, and it seems that the narrower one's interests become, the less likely they are to be satisfied and the more likely they are to be frustrated.

To see why, consider the following example. Suppose that I start out lacking the capacity to distinguish among the flavours of potatoes, parsnips, yams and turnips, and the consumption of any one of these will satisfy my interest in a nourishing snack. But as time goes on, I may begin to detect differences in taste among these vegetables, and come to form a preference for, say, parsnips. According to the discrimination model, I now have an interest in a nourishing snack that can be satisfied by any of the four vegetables, and an additional interest in savouring the delicate flavour of parsnips. The latter interest, however, is considerably less likely than the initial interest to be satisfied; indeed, if parsnips are rather uncommon in my environment, my interest in consuming them is likely to be frustrated again and again. And of course, as my culinary sensitivities evolve even further—resulting, say, in a preference for parsnips with a light sprinkling of fresh coriander leaf—the increasingly rarefied interests that result will be less and less likely to be satisfied. Thus, as my interests become narrower, frustration is more and more likely. If frustration of interests tends to diminish utility, as it seems it should,¹⁶ then it is far from clear that a being with more interests of the sort postulated by the discrimination model is likely to end up better off, in terms of utility, than a less well endowed being with fewer interests.

Moreover, it seems that on this model interests may become increasingly trivial as capacities are refined. I may, and indeed I do, have an interest in lentil stew rather than minestrone for dinner tonight, and in vegan brownies rather than tofu cheesecake for dessert. But why should these interests of mine count for much, if anything, morally? And, more to the point, why should the satisfaction of these interests count for more than the easier satisfaction of, say, a cow's interest in munching on her hay? It is dubious to say that just because I have multiple interests where the cow has only one, my satisfactions (if any) will necessarily be greater; perhaps, as my quantity of interests is increased, my possible satisfactions are simply divided among them. To take up the case of the root vegetables again, it seems plausible that as I develop my preference for parsnips, I might come to find potatoes and turnips less appealing, and thus the utility I derive from consuming potatoes and turnips may diminish as my capacities of discrimination increase. As I develop new interests, the satisfaction I gain from the fulfilment of my prior interests may become less intense; there is

no good reason to assume that new interests simply add to the 'pot' of available utility, leaving prior relationships between interests and levels of satisfaction unchanged. Thus, although higher level capacities may lead to a greater quantity of interests, there is no reason, on the discrimination model, to conclude that these interests will translate into greater expected utility.

The examples I have presented so far focus on preferences, such as the desire for a particular kind of food. However, many of the same problems arise if we consider interests derived from a measure of health or well-being that may be independent of the individual's preferences. Suppose that my increasingly specialised organism develops, even without my conscious awareness, the capacity to distinguish between parsnips and other vegetables in terms of their nutritive properties. I might then develop an interest in consuming parsnips based on their likely contribution to my health; perhaps they contain a nutrient that is present in few if any of my other food sources. This interest, though not trivial, is narrow: like a taste-based interest in consuming parsnips, it would be less likely than a potatoes-or-yams-or-parsnips-or-turnips interest to be satisfied. Moreover, while we might wonder whether the non-satisfaction of a merely preference-based interest need always detract from utility (since I may never reflect on the fact that the preference has not been fulfilled), it seems plausible to maintain that non-satisfaction of a health-related interest, by compromising my well-being in the long run, does diminish my expected utility. So again, we see that the interests that accompany the development of capacities, according to the discrimination model, carry with them no assurance of satisfaction, and a considerable likelihood of costly frustration.

The discrimination model, then, has serious problems: it seems that the narrow interests that result from the refinement of capacities are more likely to be frustrated; and it is unclear that the effect of an increase in the number of interests will be simply to increase the overall availability of satisfaction. Unless one is prepared to offer a further argument that my satisfaction is more intense, just by virtue of the greater refinement of my capacities or interests, it is unclear that we will end up with the likelihood of higher utility scores for beings with greater capacities. While the discrimination model may be a correct account of how some of our interests are acquired, and does explain why beings with greater capacities would have more interests, it does not establish that these interests are likely to lead to greater levels of satisfaction or to more valuable lives.

To defend the idea that more highly developed capacities lead to greater expected utility, we must turn to another model. I will term it the 'appreciation model', since it focuses on the satisfactions that are to be had from certain kinds of appreciation. There are some kinds of rich and valuable experience that we can appreciate only because we have certain capacities. Our interest in intellectual stimulation obviously depends on the attainment of a certain level of intellectual ability. Our interest in close interpersonal relationships is similarly dependent on psychological faculties. The satisfactions to be had from these pursuits may seem to be more intense and more enduring than satisfactions that do not involve our higher faculties. And, since they are operative in new domains of experience, they seem likely

to add to the pot of satisfactions rather than spreading a fixed amount of satisfaction more thinly: it does not seem, intuitively, that my ability to enjoy a ripe mango is substantially compromised by my interest in love or Dostoevsky.¹⁷ If these observations are correct, then it is easy to see why, on the appreciation model, the amount of satisfaction possible for a normal adult human would be much greater than the amount possible for a being of lesser capacities.

Moreover, interests in things like intellectual stimulation and close interpersonal relationships are, under ordinary circumstances, *likely* to be satisfied rather than frustrated. Unlike the progressively narrowed interests proposed by the discrimination model, these interests are broad enough to be satisfied in a variety of ways; and agents with the capacities required to form such interests in the first place also have the capacities they need to pursue satisfaction of those interests. This includes, we expect, the abilities to assess one's environment and formulate appropriate strategies for satisfying one's interests within it, and to revise one's strategies in the face of obstacles on a particular path to satisfaction. Thus, under normal circumstances, the appreciation model provides an account of why beings with higher-level capacities would have greater expected utility.

But it is crucial to notice that the link between capacities and expected utility, on the appreciation model, depends centrally on assumptions about context. For the possibility of pursuing satisfactions as one chooses, the possibility of revising one's strategies and the possibility of following alternative pathways to utility, are all dependent on context. If the individual is in a context of freedom, with a relatively large and unconstrained realm of activity, she will be in a position to generate strategies that seem likely to satisfy her interests and to modify those strategies as appropriate. As we have seen, under such circumstances the likelihood of satisfaction is high. Of course, a context of freedom does not guarantee that one will succeed at satisfying one's interests; but it greatly increases the probability of such satisfaction, and thereby contributes to expected utility (which is, after all, a probabilistic measure).

If, on the other hand, the individual is in a context of severe environmental constraint, in which she cannot make the necessary manoeuvres in pursuit of her ends, the converse is true. In such circumstances she is likely to encounter very intense frustrations, since the interests that come along with higher-level capacities tend to be accompanied by deep needs: frustration of one's interest in close personal relationships, for example, may lead not just to dissatisfaction but to misery. The loss of utility in such cases of frustration is likely to be substantial: under such circumstances, a being with higher-level capacities is likely to end up much worse off than she would have been without those capacities.¹⁸ Thus the appreciation model does not warrant the claim that the lives of beings with higher-level capacities are more valuable than the lives of other beings, simpliciter. An individual's likelihood of satisfaction will vary with the degree to which she is free to pursue that satisfaction; and if circumstances are unfavourable, higher-level capacities may well diminish one's expected utility and, thus, the value of one's life. The claim that higher-level capacities make

for more valuable lives, then, must be read as conditional on assumptions about context.

For some time now, I have been speaking primarily of humans. I have pointed out that (1) context contributes to the development or stifling of human capacities. I have suggested that (2) which capacities are most likely to promote the individual's flourishing will depend upon the context in which those capacities are likely to be deployed. And finally, I have argued that (3) the additional interests that come along with higher-level capacities are likely to be satisfied, and thus to contribute to the individual's expected utility, only in a context of freedom. How do these observations bear on animals, and on the relative moral standing of animals and humans?

The Problem of Morally Laden Contexts

When we are engaging in moral deliberation about our treatment of animals, we are typically contemplating a situation involving their placement in a context constructed and controlled by human beings. The context is constructed for the benefit not of the animal but of the humans, such benefit being the usual reason for interacting with the animal in the first place.

The contexts in which animals are brought into contact with humans are very often such as to stunt the development of their capacities. Typical contemporary examples, in such areas as scientific experimentation and the meat industry, involve rearing animals from birth in contexts of severe restriction on movement, limited environmental stimulation and abnormal or absent social relations. It is to be expected that animals will develop abnormally, in systematic ways, within such contexts. Moreover, little or no attention is given to promoting the capacities most likely to contribute to the animals' flourishing within such contexts. Even when animals are taken into human custody only after maturing in their natural environments (which are more likely to provide stimuli that will promote the development of capacities), the capacities developed in the wild often are not suited to the animals' new, human-constructed contexts.

It is not always incidental that capacities are stunted by such contexts; the stunting may be intentionally built in, to make the animals more suitable for the human purposes for which they are being used. For example, the development of muscular strength in veal calves is discouraged by the animals' placement in small enclosures which completely restrict their movement, so as to preserve the tenderness of their flesh for human consumption. It seems clear that such stunting of capacities, whether intentional or incidental, is morally reprehensible in itself.

But the moral problem with human-controlled contexts extends further than this. When we assess the value of a human life—the expected value, from a utilitarian standpoint, of future satisfactions—we assume a context that is morally neutral. That is, we assume that the human being in question will not be subjected to a context that has been expressly constructed to control her for the benefit of others. This may not always be true, of course. Individuals can be imprisoned, or subjected to oppressive social institutions that tend to exploit some so that others may profit. When this is the case, the likelihood of satisfaction of the individual's interests diminishes, for, as

we have seen, the likelihood of satisfaction depends on a context of freedom in which one has a variety of modes for pursuing that satisfaction. But even when the individual is in a restrictive context that diminishes the expected value of her future satisfactions, we do not therefore conclude that her life is less valuable. Rather, we take the restrictiveness of the context as, itself, a morally negative feature that should be rectified. When context is morally laden in this way, the correct moral verdict cannot be reached simply by relying on utility calculations based on actual interests, without consideration of the circumstances which produced those interests and which continue to affect the likelihood that they will be satisfied.

To see why this is so, consider women living in misogynistic regimes in which education, outdoor exercise, and even the opportunity to leave the house without a male family member are forbidden to them. It is likely true of such women that some of their capacities have been stunted by this treatment. And they may, as a result, lack certain interests that are thought to make a great contribution to the value of human lives, such as the interest in determining the course of their futures according to their own plans and intentions. In a repressive social system, a woman's interest in such self-determination may be undermined, since she is prevented from developing the capacities required to flourish in a situation where it is left to her to determine the course of her own life. In such a situation, the expected value of her future satisfactions will be, on average, less than the expected value of a man's future satisfactions. Do we therefore conclude that her life is less valuable, and that in a situation of direct competition it will generally be appropriate to sacrifice her interests or her life in favour of an average man's? Surely not. To do so would be to justify one wrong by another, to use the morally corrupt circumstances that have already harmed her (at the very least, by stunting her capacities) to justify making her still worse off, in favour of another. Instead, we take, or at least should take, the morally corrupt nature of the circumstances into account from the start, when we assess her capacities and interests. And if those circumstances are directly contributing to the diminution of her life's value, by decreasing the expected value of her future satisfactions, that is a further reason for rectifying them.

As this example shows, the problem cannot be solved simply by considering the *potential* for satisfaction the individual would enjoy if a morally neutral context were restored. For the stunting of capacities that has already occurred may be such as to permanently diminish such potential. And there is no room, within a purely utilitarian perspective, for appeal to the potential for satisfaction the individual *could* have had if the stunting had never occurred: to make such an appeal would be to change the subject, since such a hypothetical measure makes no contribution to the expected utility of the actual individual whose treatment we are now contemplating. An appropriate course would be to *supplement* our utilitarian calculations with some such hypothetical understanding of potential; to do so would allow us to avoid the 'double jeopardy' effect in which a harm immorally done to someone in the past serves to justify a further harm. And to make the required estimate of potential, we must give explicit consideration to the appropriate, morally relevant context and the capacities the individual would

likely have developed in such a context. Thus, if we are to avoid error in cases like the one described, reference to context is ineliminable.

Most of our moral deliberation about the treatment of animals relates to situations in which they are under human control, very often in contexts that are far from morally neutral. As I have already said, those contexts, constructed by humans for human benefit, are often such as to stunt the animals' capacities; in some cases, indeed, they are designed to cause such stunting. Even in cases where the animal has been brought into the human-constructed context after normal development in its natural environment, and thus no stunting has occurred, the new human-constructed context is not designed so as to maximise its likelihood of flourishing, given the capacities it has. And finally, such contexts are often severely restrictive. In this way they deprive the being of opportunities to pursue satisfaction of its interests. Thus, all three of the relationships between capacity and context that I identified above, in the discussion of human capacities, conspire to the animal's detriment.

In all of these ways, the contexts in which animals are often placed are not only such as to make them worse off at any particular moment, but also such as to make their lives less valuable by reducing the likely value of their future satisfactions. This is bad enough in itself. But worse, it seems that estimations of both an animal's capacities and its expected utility are often made under such circumstances; and decisions about how it may be treated, morally, are based on such assessments. The capacities and interests of an animal, and the expected value of its future satisfactions, are rarely assessed in relation to a context that is not morally suspect from the start; rather, they are typically assessed in contexts constructed by humans for human purposes. Under these circumstances, in which the animal's ability to pursue satisfactions is often severely restricted, it is not surprising that its life would appear to have little value. In a utilitarian calculation in which the needs of the animal are in competition with those of a human being, and the value of the human's life is measured in relation to a context that is not morally compromised, the animal is sure to lose out.

All of this is not to suggest that, were we to assess animals' capacities, interests and likely future satisfactions in relation to a context that is not morally suspect, we would suddenly discover that animal lives are worth more than human lives. We are unlikely to conclude that Regan and Singer had it *backward* when they said, respectively, that a dog, rather than a human, should be thrown off the lifeboat or that it is worse to kill a human than a mouse. I am suggesting, rather, that our moral calculations may often be based on a diminished assessment of the satisfactions of which a being is capable; and this may—and, it seems, often does—lead to treatment that makes no attempt to bring those satisfactions about, and to a failure to take seriously the ways in which those satisfactions may be systematically undermined.

Capacities, Contexts and Animals

Many of the arguments made thus far apply equally to animals and to humans. Indeed, I have used examples involving humans to illustrate my

claims about the effects of context on capacities, interests and potential for satisfaction, and to defend the need to appeal explicitly to context in the course of moral deliberation. Thus one might wonder if my focus on animals should be seen as a mere illustration of a broader theoretical point. However, given the content of the surrounding debates, these issues arise far more acutely in relation to animals than to humans. It may be useful to position the present discussion in relation to these broader debates, so as to see why the emphasis on animals is warranted.

Most aspects of our moral theory relate to the ways in which human beings are to treat each other. And in contemporary discussions, we virtually never see defences of the idea that one human being may harm another based on the latter's inferior capacities, or that one or more human beings may use, and harm, another of lesser capacities to promote their own ends or well-being. For example, we do not see arguments to the effect that it is permissible to experiment on severely mentally retarded humans because their limited capacities make their lives less valuable than those of the normal, adult humans who would benefit from the experimentation. Though such experiments have occurred in the past, and we cannot be sure that no others are underway in bleak corners of the contemporary world, these practices are widely thought abhorrent, and no reasonable person is advancing philosophical arguments in their favour. Certainly, most people, in their everyday lives, do not engage in, promote or benefit from such practices. Indeed, Singer and other defenders of the moral status of animals have used the idea of such experiments in the service of a *reductio ad absurdum*: if we accept experimentation on animals because of their lesser capacities, we should accept the same sort of experimentation on humans with comparable capacities, since all the same justificatory arguments are applicable. Because we would not be willing to subject any humans to such experiments, we should abandon experimentation on at least some animals.¹⁹

It is widely accepted, then, that the inferior capacities of some humans do not justify harming and exploiting them for others' benefit. However, arguments that use the inferior capacities of animals to justify using them for the benefit of humans are common currency. They occur in virtually every philosophical defence of experimentation on animals, meat consumption and other practices that involve harming or killing animals to make humans better off.²⁰ Moreover, these practices are prevalent in contemporary societies around the world, and most people, in Western societies at least, directly engage in or benefit from them. Indeed, defenders of a particular practice that causes suffering to animals will often appeal to the prevalence of other such practices as part of the argument that the practice they favour is morally acceptable.²¹ Thus, in relation to animals, we see a complex of practices, and a form of capacity-based argument in support of those practices, that are nowhere evident in relation to humans.

Another crucial point that is widely accepted, at least within the realm of moral theory, is that the appropriate sort of context for a human being is a context of freedom. Unless a person is a danger to herself or others, or has violated others' rights, we generally agree that she should be at liberty to

live her life and pursue her projects as she chooses. While some restrictions are required to maintain a well-ordered society, the restrictions we find morally acceptable are generally not such as to substantially interfere with people's ability to formulate strategies to achieve their most important ends. This is not to say that the ideal of freedom is invariably realized; but there is no serious debate over the ideal itself, either within philosophy or in Western society as a whole. With respect to animals, however, our society endorses many practices that involve denying them even a modicum of liberty.

In short, when it comes to human beings, we begin from the understanding that it is not morally acceptable to imprison and exploit them, regardless of their endowment of higher-level capacities. When it comes to animals, however, no such understanding can be assumed; and indeed, widespread practices suggest that just the opposite understanding is at work. Although it is generally acknowledged that animals feel pain and are capable of suffering and enjoyment,²² most people currently behave, and many engaged in the philosophical debate currently argue, as though they believe there is no particular presumption in favour of leaving animals at liberty or against sacrificing their comfort and well-being for human benefit.²³ Because beliefs about capacities are among the chief motivators of the assumption that animal suffering lacks the moral relevance of human suffering, it is crucial to re-examine the role animals' capacities play in the philosophical discussion.

Finally, for reasons I have already alluded to, the issue of context is much more pressing with respect to animals than with respect to humans. In our encounters with them, animals are very often in contexts designed to facilitate their use for human benefit (sometimes by intentionally stunting their capacities), regardless of the fact that such treatment causes suffering and prevents them from pursuing satisfaction of their interests. Moreover, while it is rare for a human to be plucked out of one environment and transferred to a very different one, animals are routinely subjected to such treatment. Since, as I have argued, judgements about capacity are correctly viewed as relative to context, such dramatic shifts in context pose a special challenge for moral theory.

Thus, while the central arguments of this paper pertain to both animals and humans, it is with respect to animals that they address a serious gap in both philosophical discussion and popular thinking and practice.

Assessing the Value of Lives

As we have seen, the inferior capacities of animals are adduced, by both advocates and opponents of the idea that we owe them substantial moral consideration, to support the notion that human lives are more valuable than animal lives. I have suggested that this move from capacities to the value of lives is too quick; and when we examine the intermediate steps, from capacities to interests and from interests to expected utility, it is clear that the morally relevant assessments must be made relative to the individual's context. Because our moral theories typically presuppose a benign context, and because the contexts in which animals are placed

frequently are not benign, the validity of our conclusions about the value of their lives is, at best, thrown into question.

But what are the practical implications of this observation? If we were to rectify the problem, would we be likely to reverse our assessments of the relative value of human and animal lives? To answer these questions, we may begin with Richard Ryder's provocative discussion of the relationship between capacities and context:

In some environments man is not the best adapted species and in some special instances not the most intelligent... Many of his apparent advantages over the other creatures depend upon his relatively recent discovery of how to pass on knowledge to future generations; but men isolated from civilisation, illiterate and reared in total ignorance of technology, would probably survive, if at all, no better than other animals, practically tool-less and speechless for generations, without the discovery of fire or the luxuries of agriculture.²⁴

Now obviously the point here is not to suggest that if their contexts were dramatically different from the actual contexts they usually inhabit, dogs would be able to build television sets and human beings would be completely without intellectual resources for coping with their environments. Nor is it to suggest that we cannot determine, regardless of context, whether a normal adult human is more or less intelligent than a normal adult mouse. An individual clearly has inherent features that determine the range within which its capacities may be realised; and there may not be (indeed, unless our science has gravely deceived us there is not) any intersection between the range of intelligence of a normal adult mouse and that of a normal adult human.

But imagine, say, a community of chimpanzees who were taught sign language and encouraged (perhaps with substantial human intervention) to use it amongst themselves. The chimps might receive other sorts of training, as well: they might, for example, be given tools suitable to their environment and taught to use them.²⁵ After several generations we might find that some normal adult chimpanzees, with the same genetic endowment actual chimps now have, had become more effective learners and had begun to achieve quasi-technological advances by virtue of their ability to convey complex information more effectively. In such a chimpanzee society, just as in human society, many would benefit from the advances made by the few, most intelligent individuals.

It is conceivable that, if we assessed the capacities of humans in a severely impoverished context—one which failed to provide adequate stimulation to physical, psychological and social development—and of chimpanzees in a greatly enriched context such as I have described, we would observe an apparent reversal of the usual ordering of certain capacities in chimpanzees and humans. We might find that the chimps have more interests in social relationships, since their social upbringing has given them a greater capacity to relate to others. The chimps might prove better

able to handle certain kinds of tasks that could be used as measures of intelligence. And it might be reasonable to conclude that, given their greater capacities, the expected value of the chimpanzees' future satisfactions is greater than that of the impoverished humans'. A simple utilitarian calculation would say, then, that a chimpanzee's life is worth more than a human's in this scenario, and in a case of direct competition (such as a sinking lifeboat, where one must be thrown off or both will drown) a human's life may, or must, be sacrificed in favour of a chimp's. My point is not to draw a specific conclusion about how we should evaluate this case, but rather to show that the development of individuals' capacities, and the resulting assessment of the value of their lives, is deeply inflected by context; and the crucial role of context in shaping the individual's morally relevant features is not readily accounted for by our current moral theory and practice.

It should also be noted that a *reversal* in our assessment of the relative values of human and animal lives is much more than would be required to prompt an extensive rethinking of our views. For what is often at issue, in contemporary moral deliberation about animals, is not whether human or animal lives are more valuable, but simply whether animal lives are valuable enough to merit some degree of inconvenience or change in practice on the part of humans. As I discussed above, many current practices and theoretical debates implicitly assume that if there is a *prima facie* duty to avoid harming animals or infringing on their liberty, it is immediately overridden by any promise of benefit to humans. Once we recognize the role of morally suspect contexts in diminishing our assessments of the value of animals' lives, it will be much harder to treat them as though they were, morally, of little or no account.

It follows from the arguments offered here that we must change the way we typically think about capacities and interests. Capacities, rather than being straightforwardly a feature of the individual, depend in a variety of ways on the individual's context. And the contribution that capacities make to interests, and to the expected value of the individual's future satisfactions, is similarly interwoven with context. Perhaps, then, we should think of capacities not as the endowment of an individual in isolation, but as something that emerges from the complex of an individual and her context. Until we have a better account of what sort of context to use as a baseline for our calculations, the legitimacy of our claims about the relative capacities of human beings and animals will, in at least some cases, be undermined. And insofar as our defence of the special moral status of humans depends on ill-founded assessments of human and animal capacities, interests and potential satisfactions, that special status will be undermined as well.²⁶

Sherri Irvin
Department of Philosophy
University of Ottawa
70 Laurier Avenue
Ottawa, Ontario K1N 6N5
Canada
sirvin@uottawa.ca

NOTES

- ¹ Singer, P. (1995) *Animal Liberation*, 2nd ed. (London, Pimlico), p. 8.
- ² Singer, *Animal Liberation*, p. 9.
- ³ For these examples see, respectively, VanDeVeer, D. (1983) 'Interspecific Justice and Animal Slaughter' in H. Miller and W. H. Williams (ed.) *Ethics and Animals* (Clifton, New Jersey, Humana Press); and Steinbock, B. (1978) 'Speciesism and the Idea of Equality', *Philosophy* 53, 247-256. Carl Cohen raises a similar concern that '[i]f all forms of animate life ... must be treated equally, and if therefore in evaluating a research program the pains of a rodent count equally with the pains of a human, we are forced to conclude (1) that neither humans nor rodents possess rights, or (2) that rodents possess all the rights that humans possess. Both alternatives are absurd.' See Cohen, C. (1986) 'The Case for the Use of Animals in Biomedical Research', *The New England Journal of Medicine* 315, 867.
- ⁴ Singer, *Animal Liberation*, p. 20-21.
- ⁵ Regan, T. (1983) *The Case for Animal Rights* (Berkeley, California, University of California Press), p. 247. Regan's full account of the 'subject-of-a-life criterion' is as follows: '[I]ndividuals are subjects-of-a-life if they 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 psychophysical 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' (p. 243). Presumably, certain animals (e.g., some molluscs, crustaceans, and insects) do not satisfy this criterion, and thus do not fall within the scope of Regan's claims about equal inherent value and equal rights not to be harmed.
- ⁶ One of Regan's central tenets is that it is prima facie wrong to kill any subject of a life, human or animal. Singer stops short of this claim when he states, 'The idea that it is also wrong to kill animals painlessly gives ... additional support that is welcome but strictly unnecessary' (*Animal Liberation*, p. 21). It is for this reason, among others, that Regan may be described as an especially staunch defender of the moral status of animals.
- ⁷ Regan, *The Case for Animal Rights*, p. 324. This conclusion might seem to be in tension with Regan's claim that all subjects of a life have equal inherent value and an equal right not to be harmed. In fact, though, Regan suggests, the very equality of the humans and the dog demands the conclusion that the dog should be thrown off. '*Precisely because M and N are equal in inherent value, because the two have an equal prima facie right not to be harmed, and because the harm M faces is greater than the harm N faces, equal respect for the two requires that we not choose to override M's right but choose to override N's instead*' (p. 309; emphasis in original).
- ⁸ On Regan's view, to decide on a course of action we must make a series of one-to-one comparisons between the human being and each of the dogs. As long as the harm to the human would be more severe than the harm to

any one of the dogs, we should choose to throw off the dogs, no matter how many there are. This is because for Regan, *aggregation* of harms is morally irrelevant: 'No one *else* is harmed by summing the harms of the [individuals]; there is, that is, no aggregate individual' who would suffer the aggregate of the harms caused to the million dogs, and whose right not to be harmed would in consequence override the right not to be harmed of the human. '[A]dding numbers', Regan says, 'makes no difference in such a case' (*The Case for Animal Rights*, p. 309).

⁹ Of course, the interests of others who will be affected by the treatment of the individual, such as the individual's family members, must also be taken into account, on the utilitarian view. To simplify, in this paper I restrict my attention to the interests of the direct recipient of the treatment.

¹⁰ Singer, *Animal Liberation*, p. 15.

¹¹ Singer, *Animal Liberation*, p. 5.

¹² Note that I make no particular claim about the magnitude of the effect. Capacities are heavily constrained by genetic and developmental factors that are not under our control. I focus here on those factors that it is within our power to alter, since it is to such factors that moral considerations most clearly apply.

¹³ *Survivor* has been produced in the U.S., the U.K. and elsewhere, after initially appearing as *Expedition Robinson* in Sweden.

¹⁴ It may, of course, be possible to make some 'absolute' comparisons in the value of capacities: for example, if capacity X is at least as valuable as capacity Y in every context, and more valuable in some, one might wish to say that X is more valuable than Y simpliciter. Similarly, if X is valuable—tends to promote utility—in every context, we can say that X is valuable simpliciter. But if such relationships do not hold across all contexts, we must be more cautious. Suppose that X is very valuable in most contexts and useless in a few. If a person doesn't know in what context she is likely to end up, it will be rational for her to cultivate X: thus, we might be tempted to say that X is valuable independent of context. However, if she finds herself in one of the contexts where X does not promote utility, then X is of no use to her. The fact that X is valuable in many other contexts gives her no reason to value it, unless there is reason to think she will eventually find herself in such a context.

¹⁵ Of course, the ability to distinguish among states of affairs is only necessary, and not sufficient, for the formation of a preference among them. From a fully developed account we would require an explanation of why discrimination is likely to lead to preference formation. For the present, we will leave this issue aside, as the account under discussion will be seen to fail for other reasons.

¹⁶ The reasons why this is so will vary, according to the type of utilitarianism at issue. For some preference utilitarians, such as R. M. Hare, the frustration of a desire simply constitutes a harm, and thus detracts from utility. For classical utilitarians more concerned with the character of conscious experience, non-fulfillment of an interest will detract from utility only if it results in an experience of frustration in the agent whose interest it is (or in some other way compromises the agent's happiness). As Robert Solomon

has pointed out, Singer devotes little attention to clarifying just which version of utilitarianism he is concerned to defend (Solomon, R. C. [1999] 'Peter Singer's Expanding Circle: Compassion and the Liberation of Ethics' in D. Jamieson [ed.] *Singer and His Critics* [Oxford, Blackwell]). However, given his focus on enjoyment and suffering, it seems likely Singer would incline toward the classical account.

¹⁷ Of course, I may be wrong about this, since I don't know what it is like to taste a ripe mango while lacking interests in love, Dostoevsky, and so forth. Edward Johnson has speculated that '[t]he availability of the "higher" pleasures may change everything, so that we are no longer in a position to have, or to judge, the "lower" ones' (Johnson, E. [1983] 'Life, Death, and Animals' in H. Miller and W. H. Williams [ed.] *Ethics and Animals* [Clifton, New Jersey, Humana Press], p. 125). If this is true, it will give us a reason, in addition to those discussed below, to doubt the ability of the appreciation model to establish that the lives of beings with higher-level capacities are more valuable than those of other beings.

¹⁸ Michael Leahy, an opponent of the animal rights movement, suggests, 'The presence of self-consciousness guarantees that [humans] are prone to a range and intensity of suffering light-years from that of brute beasts' (Leahy, M. P. T. [1994] *Against Liberation: Putting Animals in Perspective* [London, Routledge], p. 256).

¹⁹ Singer, *Animal Liberation*; Hettinger, E. C. (1989) 'The Responsible Use of Animals in Biomedical Research', *Between the Species* 5, 123-131.

²⁰ See, among others, Carruthers, P. (1992) *The Animals Issue: Moral Theory in Practice* (Cambridge, Cambridge University Press); Carl Cohen's contributions to Cohen, C. and T. Regan (2001) *The Animal Rights Debate* (Lanham, Rowman & Littlefield); Frey, R. G. (1980) *Interests and Rights: The Case Against Animals* (Oxford, Clarendon); and Leahy, *Against Liberation*.

²¹ See, for example, Cohen, 'The Case for the Use of Animals in Biomedical Research', and LeGallois, M. (1813) *Experiments on the Principle of Life*, trans. N. Nancrede and J. Nancrede (Philadelphia, Thomas). The latter is cited approvingly in Gallistel, C. R. (1981) 'The Case for Unrestricted Research Using Animals', *American Psychologist* 36, 357-362.

²² For discussion, see Rollin, B. E. (1989) *The Unheeded Cry: Animal Consciousness, Animal Pain, and Science* (Oxford, Oxford University Press).

²³ Indeed, many authors, particularly in discussions of experimentation on animals, argue as though they need only establish that the practices in question offer substantial benefit to humans; they see no need to offer further arguments that it is acceptable to override animals' rights or inflict suffering on animals in pursuit of human benefit. See, for example, American Medical Association (1989) *Use of Animals in Biomedical Research: The Challenge and Response* (Chicago, American Medical Association), a policy paper whose main points are condensed in Loeb, J. M. et al. (1989) 'Human vs animal rights. In defense of animal research', *The Journal of the American Medical Association* 262, 2716-2720; and Gallistel, 'The Case for Unrestricted Research Using Animals'. Michael Allen Fox offered similar arguments in Fox, M. A. (1986) *The Case for Animal Experimentation: An Evolutionary and Ethical Perspective* (Berkeley, University of California

Press), but later recanted them on coming to view the presupposition that it is acceptable to harm animals as indefensible. See Fox, M. A. (1987) 'Animal Experimentation: A Philosopher's Changing Views', *Between the Species* 3, 55-60.

²⁴ Ryder, R. (1983) *Victims of Science: The Use of Animals in Research*, revised ed. (London, National Anti-Vivisection Society Limited), p. 3.

²⁵ For a discussion of tool use, linguistic ability and further measures of intelligence in chimpanzees and other apes, see Byrne, R. (1995) *The Thinking Ape: Evolutionary Origins of Intelligence* (Oxford, Oxford University Press).

²⁶ An earlier version of this paper was presented in 2002 to the Canadian Society for the Study of Practical Ethics, and I benefited from useful comments made by the attendees, particularly Jason Kawall. Thanks are owed to Martin Montminy for insightful comments on previous drafts, as well as for many helpful discussions about the relevant issues. I am grateful, too, for suggestions provided by an anonymous reviewer for this journal.