

## BETWEEN THE SPECIES

### Xenotransplantation, Subsistence Hunting & the Pursuit of Health: Lessons for Animal Rights- Based Vegan Advocacy

#### ABSTRACT

I argue that, contrary to what Tom Regan suggests, his rights view implies that subsistence hunting is wrong, that is, killing animals for food is wrong even when they are the only available food source, since doing so violates animal rights. We can see that subsistence hunting is wrong on the rights view by seeing why animal experimentation, specifically xenotransplantation, is wrong on the rights view: if it's wrong to kill an animal to take organs to save a human life, it's wrong to kill an animal to eat that animal to save a human life or improve human health. I discuss these arguments' implications for animal rights-based vegan advocacy, insofar as some people claim that they don't feel their best on vegan diets and so their eating meat is morally justified. I argue that such an attempt to justify consuming animal products fails on Regan's rights view, but discuss some attempts to morally excuse such violations of animals' rights. These attempts are inspired by Regan's attempts at potentially excusing animal rights advocates' using medications developed using animals.

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## Introduction

Communities that survive by subsistence hunting probably rarely, if ever, encounter vegan or animal rights advocacy. But a common question asked of vegan advocates is, “*What if* you were somewhere where there was literally nothing else to eat but animals? Would eating animals be wrong then?”

I suspect that many vegan advocates dodge the question, observing that our finding ourselves in such a situation is very unlikely, and very unlike most of our present circumstances where vegan foods are readily available. They might also urge postponing the question until we found ourselves stuck, say, at the North Pole, when it’s a “live” issue for us. They might also respond that just as we don’t need to decide whether and when human cannibalism is ever morally permissible to know that it’s wrong in ordinary circumstances, we also don’t need to answer this question to know that we should eat vegan when we easily can. And some might respond that, no, it wouldn’t be wrong, in those challenging circumstances to eat animals: perhaps the view would be that “all (or many) bets are off” in such extreme circumstances: ordinary moral rules no longer apply.

I argue, however, to the contrary, that killing animals for food, even in circumstances such as these, is wrong: subsistence hunting is wrong. At least that’s what animal rights advocates, following Tom Regan, should think. I then discuss the impact this finding should have for vegan and animal rights advocacy insofar as some, more than a few, people claim to not feel their best on vegan diets and so argue that their eating meat or other animal products is justified.

### **Xenotransplantation and Animal Rights**

To see why subsistence hunting – that is, roughly, the killing of animals for food when there is literally nothing else for human beings to eat besides those animals – is wrong, we can consider the animal rights basic perspective on animal experimentation, the using of animals in medical contexts to try to benefit human beings. As Tom Regan reviews in his essay “Empty Cages: Animal Rights and Vivisection”:

Experimental procedures include drowning, suffocating, starving, and burning; blinding animals and destroying their ability to hear; damaging their brains, severing their limbs, crushing their organs; inducing heart attacks, ulcers, paralysis, seizures; forcing them to inhale tobacco smoke, drink alcohol, and ingest various drugs, such as heroin and cocaine. (2012, 108)

Experimentation clearly harms animals, especially since they are nearly always killed at the end of the experiments.

The animal rights perspective on animal experimentation is, of course, that it is wrong because it violates animals’ rights to their lives and bodies, at least. And it’s wrong even if done “humanely” and with a painless death: healthy, or potentially healthy, animals are done no favors by being killed before their natural times. And it’s wrong even if human beings, even *lots* of human beings, benefit from it. That is the animal rights position: so-called “animal welfare” positions deny some or all of this in permitting animal experimentation if certain conditions are met.

According to the animal rights view, for example, animal experimentation *in development* known as “xenotransplanta-

tion,” the “harvesting” or theft of organs from animals such as pigs and primates to transplant to human beings who will likely die without an organ transplant, is wrong (Begley, 2017). This is because it violates the animal’s rights whose organ is taken and so dies as a result. While it is very unfortunate when a human person needs a new organ to survive and that organ is not available from a human donor (and no artificial organ is available), that does not justify violating any animal’s rights, just as it would not justify stealing an organ from a human patient in the next room, even if that organ theft victim will survive the loss.

Regan provides a theoretical explanation for why such organ theft, in both human and animal cases, is wrong: doing so treats others as mere things for one’s own personal benefit (Regan 2004; 1983). Even if it’s a one-time operation, never to be done again, organ theft treats someone else as a mere resource to be used for the benefit of others. Fundamentally, it’s a disrespectful action that denies the victim’s inherent value. There are limits to what we may do to save our own lives, even when we are “under attack” not by any moral agent or even a moral patient but a disease or our own bodies’ malfunctions, and violating others’ rights is never a morally acceptable response to the attack. For example, if my child is gravely ill, I cannot perform a fatal experiment on my neighbor’s healthy child to even successfully save my own child’s life, especially if the parents don’t consent, and even if they do, since this violates that child’s rights.

### **Subsistence Hunting**

We are now able to see why subsistence hunting is wrong. Animal experimentation of many kinds is wrong since it violates animals’ rights. And if animal experimentation of various

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kinds is wrong, for reasons like those that Regan (and others) develops and defends, then it is also wrong to kill animals for food even when there is nothing else to eat.

If it's wrong to kill an animal to *save your life* from a likely fatal medical problem by taking a pig's or primate's organ(s) to save your life, then it is also wrong to kill an animal to *save your life* from starvation. If you can't permissibly kill a pig to get an organ to *transplant* to save your life, then surely you can't permissibly kill the pig to get an organ to *eat* to save your life. One's "needs," even one's needs for what's needed for life itself, need not justify violating another's rights, as Judith Thompson made clear in her famous discussion of abortion (Thompson, 1971): even if someone needs to use another's kidneys to stay alive, they do not have a *right* to the use of those kidney's and nobody violates their rights by not allowing them to use their kidneys: a person's own right to life is not a right to others' bodies, even if that body is needed to preserve one's own life.

This all seems to imply that substance hunting is wrong: hunters do not have a right to animals' lives and bodies, even if those lives and bodies are needed to sustain the hunters' lives. So, unless communities that depend on subsistence hunting can find something else to eat that doesn't involve violating rights, they will have to move to stop violating animals' rights in these ways. Or they would have to perish, it seems.

While this may seem harsh, it is perhaps comparable to a country where, for whatever reason, nearly all the citizens are in desperate need of organ transplants or else they will die. A neighboring country could be raided and its citizens' organs taken, and those people killed in the process. But that would

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be profoundly wrong, as it would involve massive rights violations. So, unless another solution can be found, it appears that the organ-needy persons would have to perish. This reminds us that respecting rights can be personally demanding and have high personal costs, but this is a simple consequence of the idea of rights: some actions must be done (or must not be done) “though the heavens fall” for individuals or communities. A contrary position, that self-preservation or community-preservation can be justified at literally *any* cost to others is indefensible. And we can’t forget that, in this case, violating rights would have high personal costs to those whose organs are stolen and their lives taken.

In the only passage from Regan highly applicable to subsistence hunting that I can find, since he only discusses “sport” hunting, he writes this concerning the potential permissibility of killing animals for food:

If it were the case that these [essential] nutrients [that meat provides] were not otherwise available [from non-animal sources], then *the case for eating meat, even given the rights view, would be on solid ground*. If we were certain to ruin our health by being vegetarians, or run a serious risk of doing so . . . and given that the deterioration of our health would deprive us of a greater variety of number of opportunities for satisfaction than those within the range of farms animals, then we would be making ourselves, not the animals, worse-off if we become vegetarians. (Regan, 2004/1983: 337, emphasis mine).

Regan’s response to this reasoning is just to observe that the factual claim concerning nutrition is false: we don’t need to eat

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animal products to be healthy. So, he responds that meat-eating could be justified, if the facts were different from what they are, but that they are not.

Regan does not, however, engage the hypothetical “What if?” and underlying moral reasoning behind his argument that eating meat could be permissible. This is unfortunate since what he says seems to be, at least, inconsistent with the animal rights perspective on xenotransplantation. Consider some comparable claims:

If we were certain to ruin our health, or lose our lives, *by not taking organs from healthy animals*, or run a serious risk of doing so . . . and given that the deterioration of our health, and loss of our lives, would deprive us of a greater variety of number of opportunities for satisfaction than those within the range of farms animals, then we would be making ourselves, not the animals, worse-off if we refrained from taking organs from animals. If it were the case that these organs from xenotransplantation were not otherwise available, say from human donors or artificial organs, then the case for xenotransplantation, even given the rights view, would be on solid ground.

Rejecting such reasoning is at the core of the rights view: indeed, it distinguishes the rights view from, say, utilitarian and other so called “welfarist” perspectives: animals rights *must* be respected, even if that makes human persons worse off.

So, what Regan says about eating meat appears to be inconsistent with the rights view. I do grant that if *every* human being had to eat meat to survive, as opposed to a few isolated individuals with peculiar biological needs for meat, and that’s

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the way it always has been, that might make the case *feel* different: in this world, it would seem unavoidable that we routinely engage in rights violations. This recognition, however, might prompt us to vigorously find some other food sources that don't involve rights violations, or we might realize that we are making a choice to violate rights that we don't really have to make, and act accordingly, whatever that might be.

Rights are not absolute, however; Regan acknowledges that they are *prima facie* in nature and that there can be circumstances where violating rights is justified. Indeed, his comments about the "solid ground" for killing animals for food might be an application of a misinterpretation of his own "worse-off principle," which is meant to provide guidance in cases where we *must* violate rights:

Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harms faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many. (Regan 2004; 1983, 308)

This principle prioritizes those who are made worse off by an action, whatever their numbers, when we *must* violate rights: if we must either minorly violate the rights of a 1000 people or majorly violate the rights of one person, we should minorly violate the rights of a 1000: the numbers don't matter.

The problem though, if this principle is supposed to justify the potential for meat-eating being justified, is this: in cases of xenotransplantation, or substance hunting, there are alternatives that don't involve any rights violations, namely, *not* steal-



ing organs and *not* killing animals for food. That may, or, for the sake of argument, *will* result in human deaths. And those human beings might very well be worse off for that than any animals would be, if they were killed. But nobody's rights were violated. So the worse-off principle does not apply to cases of xenotransplantation, or any typical animal research, or subsistence hunting, contrary to Professor Regan's remarks, since they are not cases where any rights *must* be violated.

### **Vegan Advocacy**

I have argued that subsistence hunting is wrong, *if* animal experimentation is wrong, for animal rights reasons. Few readers of this essay, however, likely encounter subsistence hunters or have much, if any, influence over them. We do, however, encounter people who *claim* to just not feel good, or not feel their best, on vegan diets, or have medical conditions that make eating vegan and staying healthy enough very difficult or impossible. At least one successful vegan advocacy organization, Vegan Outreach (VeganOutreach.org), very much acknowledges this concern and very much avoids a false message that *every* person who eats vegan will be healthy and feel their best: sometimes that is true, but sometimes it is not, and that fact must be acknowledged, respected and thoughtfully engaged (Adams, Breitman, and Messina, 2017).

Some people who claim to not feel their best on vegan diets may be not telling the truth, or haven't tried very hard, or would benefit from skilled nutritional guidance. But it's surely possible that some people have sincerely tried hard, have sought expert guidance on how to meet their nutritional needs, and yet still do not feel well on a vegan or vegetarian diet. It's not only possible that there are such persons, there probably really are such persons: they've tried their best, but they still don't feel

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well on vegan diets. In personal conversation, Regan told me that he knew of a man who he (Regan) sincerely believed just felt very poorly if he did not eat meat.

If subsistence hunting is wrong, and it's wrong to kill animals to maintain one's *life* (as it would be wrong to xenotransplant and take a healthy animal's organ to save one's life), then it would presumably be wrong to kill animals to maintain one's *health*, in the vague sense of "feeling good." If it's wrong to kill animals to stay alive, which presumably is usually more important than just feeling good, then it's also wrong to kill animals to feel good and healthy.

This is not to minimize or trivialize the importance of feeling good: living with chronic pain, or chronic fatigue, or any other condition that profoundly worsens someone's quality of life, and perhaps entire worldview, can be very bad for that person and those around him or her. But that doesn't seem to justify violating anyone's rights to try to improve the situation, including violating animal rights, and so it would be wrong to kill animals for food, even if doing so is genuinely necessary to promote or preserve one's health and feeling well. At least that's what the rights view suggests, it seems.

Or does it?

Perhaps not. In Regan's (2012) essay, "Animal Rights Advocacy and Modern Medicine: The Charge of Hypocrisy," he considers the charge that animal rights advocates who use prescription drugs, or other medical treatments, developed using animals are "hypocrites" or not insofar as they demand that animals' rights not be violated, yet benefit from drugs, the development of which involves violating animals' rights. Regan acknowledges that the issue is complex, and his discussion is

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rich and full of insight and wisdom. And it is applicable to the questions at hand.

Regan does *not* advocate that animal advocates simply let themselves die to avoid supporting drug companies' violating animal rights. Presumably, although he does not discuss the issues, he would also not encourage animal advocates to starve themselves to death to avoid supporting any killing of animals for food.

It should be made immediately clear, however, that the potential of someone dying because they refuse to eat anything that directly involves violating animals' rights is far more unrealistic than anyone dying from not supporting the pharmaceutical industry. This is because it seems likely biologically impossible that anyone *must* eat recently killed conscious, sentient, "subject of a life" animals to stay alive and healthy. It's hard to believe that such a person couldn't survive and be healthy eating bivalves or other non-conscious animals, insects, the eggs laid by chickens who live good lives, or roadkill, or animals who recently died of natural causes, among other options. So, an "eat-animals-or-die" case is unlikely compared to a "use-animal-tested-medications-or-die" case, especially in contexts where a variety of foods are available: there will nearly always be a way to avoid death without eating what can be called "whole" animals. Anyone who lives by subsistence hunting, however, might not have these options though: they would have to eat whole animals or perish unless they are willing to move to a vegan-friendly location (or become cannibals, presumably a morally impermissible option).

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With these qualifications in mind, let's see if what Regan argues about the pharmaceutical case can be extended to anyone who *must* eat whole animals or else perish or be unhealthy.

Regan tentatively and cautiously argues that it can be permissible for animal rights advocates to take medications developed with the use of animals. This is because the animal experimentation involved in the drug development is *accidental* to the development of the drug, not *essential*: the animal use did not causally contribute to the drug's development; indeed, given misleading results from animal research, the drug may have been developed in spite of any results from animal research (287-8). This type of justification could be used to try to explain why it's not wrong to continue to use buildings made from slave labor – the buildings were in fact made by slaves, but they could have been made without them – and why using items made by Nazis using the bodies of their victims is wrong – those items could not have been made without brutal, inhumane violations of rights. So it has general plausibility, and so perhaps justifies animal advocates taking prescription drugs, even though animals' rights are violated in their development.

It doesn't seem though that this justification could plausibly be applied to cases where someone must eat whole animals to stay alive or healthy. One could *say* that it is merely accidental that the needed nutrients are found only in the body of a subject-of-a-life animal, not essential, and so it's not wrong to kill these animals to eat them. This claim could be supported by observations about the development of "clean" meat, that is, meat developed apart from any animal's body, to try to argue that meat and animals are indeed separable: you can have meat without animals. To me, however, this is an implausible stretch of the principle since, in current actual cases, (a) the nutrients

and the body of the animal and (b) the life of the animal are basically inseparable. This is akin to a murderer claiming that the *experience* of murdering that he or she seeks are separable from the effects on the victim, that there is merely an accident connection between the two, and so murder is not wrong, which is an awful and absurd attempt at a justification. *A drug and the animal experimentation that was involved in development* are separable in a way that an *animal and his or her consumed body or body parts* are not: the latter is a *constitutional* relation, not a causal or temporal relation. So it does not seem that Regan's justification of animal advocates using pharmaceuticals can be extended to the eating of animals, even when necessary to preserve one's life or health.

Recall though that Regan does not discuss this exact issue, as far as I know. And, again, we can only suspect that he would argue that it can be permissible for animal advocates to eat animal products when it is genuinely necessary for them to be healthy and feel good enough and that they are not hypocrites for doing so. Presumably, he wouldn't argue that anyone in such circumstances must just die or be very ill when eating whole animal products would prevent that.

One of the arguments that Regan discusses in favor of animal advocates using pharmaceuticals is that if they are dead or ill then they cannot effectively advocate for animal rights (285-7). So, to continue advocating for the respect of animal rights, perhaps it can be permissible to partake in *some* practices that violate animal rights. Regan's reservation about this argument is that *some* means to promote, and even secure, animal rights would be wrong: for example, Regan states that torturing animal researchers' children to end animal research would be wrong. This argument in favor of using pharmaceu-

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ticals doesn't seem to recognize any moral constraints in seeking animal rights: Regan concludes "what is effective might well be morally wrong" (287) and this argument doesn't recognize that.

In reply, perhaps the argument could be augmented with a constraint that if and only if the supported rights violation is not worse than the rights violation that might be prevented in the long run by the initial supported rights violation, or is a very similar rights violation, then supporting that rights violation is permissible. So, for example, someone's supporting animal research, and the animal rights violations involved, is permissible if doing so will enable that someone to help lessen these types of violations of animal rights. Torturing children, however, would not be permissible, even if doing so would lessen violations of animal rights, as a worse type of rights violation. This response, however, is subject to many concerns: it seems to involve "using" one group to benefit another, which rights are supposed to make wrong, and it introduces complications concerning how to compare the relative badness of different rights violations. So this is not a trouble-free amendment to the argument.

But rejecting it, or something like it, is problematic also. It is hard to believe that any animal advocates dying for the sake of animal rights in any way *helps* the cause of animal rights, at least at present. Indeed, anyone dying for animal rights is a setback, both in terms of both the attractiveness of the movement to outsiders, potential advocates, and in terms of the numbers and morale of current advocates. So while there surely are limits to what can be done to promote animal rights, perhaps supporting some violations of animal rights can be permissible if and only if those rights violations are not worse than the animal

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rights violations we are seeking to end, given broader animal-rights related goals.

Regan also emphasizes that the context of our decisions is not our own creation: we are thrown into a world full of massive rights violations, animal and human, and must make the most of it to try to lessen these rights violations and work for the respectful treatment of all. Since the context of our decision is not self-created, and certainly not created with a peaceable kingdom in mind, perhaps acts of self-preservation are excusable and understandable, even if they involve some participation in rights violations, if doing so is more likely to increase the respect for animal rights than not, in the long run.

Although it is hard to explain why, it appears then that, perhaps, a some actions that involve violating animals' rights, such as human beings' using drugs developed using animals and eating animal products when they genuinely must do so for good or better health (or life), might be morally permissible, or at least excusable, if doing so will better enable the person to advocate for animal rights and the rights violations we benefit from are not worse than those we try to seek to lessen or eliminate. This proposal might likely apply to many more mundane actions that invariably results in harms to animals, such as driving and common ways of growing and harvesting crops, at least. Arguably these literally avoidable actions violate animal rights, and perhaps the proposal developed above helps justify them.

Finally, although Regan does not discuss this, but perhaps this is a situation where the "impotence of the individual" might make a positive difference for animal advocates: in most cases, if an animal advocate were to eat meat, or other

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animal products, it is unlikely that purchase and consumption will *cause* more animals rights to be violated. If so, then eating animal products might be a kind of “free riding” that does not cause more rights violations but allows for some human being to be in a better position to advocate for animals. The same might be said about pharmaceuticals developed using drugs, although this defense is harder to apply to xenotransplantation, if a specific animal is killed for an organ for a specific individual: then an individual’s actions might plausibly make a causal difference to the fate of some particular animal. This justification, however, is problematic in that it opens the door to anyone justify their behavioral indifference to animal rights because, they insist, their actions won’t make a positive difference for animals. We surely want to try to resist that type of reasoning about all sorts of social justice issues. But, on the other hand, it does seem to simply be true that individual actions often don’t obviously make the concrete differences we hope they would: that truth should likely not be denied and perhaps it sometimes makes a difference to, at least, how confident we should be about the morality of our actions.

Although it is hard to explain why, it appears then that some actions that involve violating animals’ rights, such as using drugs developed using animals and humans eating animal products when they genuinely must do so for good or better health (or life), might be morally permissible, even though they involve violating animals’ rights, *if* doing so will better enable the person to advocate for animal rights.

Whether these rights violations could be justified *only if* they better enable to someone to advocate for animals is an interesting question: if “yes,” that answer might, surprisingly, result in it being permissible for animal advocates to occasion-



ally support violating animals' rights, but wrong for foes of animals to do the same action: that is an interesting result, and surely one that it would be hard to use to develop policy, as well as a bit paradoxical: animal advocates can sometimes support animal rights violations, since they will go on to promote animal rights, but those indifferent to animal rights, and oppose it, cannot? Promoting such a view to the public would surely not work, so perhaps everyone should be viewed as a potential animal advocate and treated accordingly as if they were an actual advocate (a problematic proposal in itself, insofar as rarely should potential things of a kind be treated as actual things of that kind).

### Conclusion

In conclusion, vegan advocates are often asked "*What if you were somewhere where there was literally nothing else to eat but animals? Would eating animals be wrong then?*" The basic options for response are to either dodge the question, answer "yes," or answer "no." I have argued that the "no" answer, that it would be permissible to eat animals in these circumstances is contrary to animal rights perspectives: in particular, that reasoning would justify xenotransplantation. I have argued that the "yes" answer, however, faces challenges but that there may be complicated, but plausible, ways to at least morally excuse people supporting some violations of animals' rights, especially if their doing so better enables them to advocate for animals. Perhaps the best and wisest response, for most people, in most contexts, is to dodge the question, as perhaps Professor Regan did, so that none of us get distracted from the core, immediate, and pressing questions and challenges about animal rights that confront each of us as we are and where we are, *now*.

## Notes

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After developing the main arguments for this paper, I read Jason Hanna's excellent paper, "A Moral License to Kill? Animal Rights and Hunting," in Mylan Engel and Gary Comstock, eds., *The Moral Rights of Animals* (Lexington Books, 2016). He also argues that the animal rights explanation for the wrongness of animal experimentation suggests the wrongness of subsistence hunting. Hanna's paper offers some arguments that are similar to mine, but for generally overall different purposes, and readers are very much encouraged to read his very insightful paper.

I also observe that Mark Rowlands in *Animals Like Us* argues that subsistence hunting is permissible, since it satisfies "vital" human interest (161), but that animal experimentation never is, even though it could occasionally satisfy a "vital" human interest (144-50). His arguments are subject to the critique above.

## References

- Adams, Carol J., Breitman, Patti & Messina, Virginia. 2017. *Even Vegans Die: A Practical Guide to Caregiving, Acceptance, and Protecting Your Legacy of Compassion*. Brooklyn: Lantern
- Begley, Sharon. "She's hellbent on solving the organ shortage with 'designer pigs.' Just don't keep her waiting." 2017. *STAT News*, April 6. <https://www.statnews.com/2017/04/06/crispr-pig-organs-transplant-luhan-yang>

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Hanna, Jason. 2016. "Animal Rights and Hunting." In *The Moral Rights of Animals*, eds. Mylan Engel and Gary Comstock, 257-77. Lexington Books.

Regan, Tom. 2004. *The Case for Animal Rights*, updated version. First edition, 1983. University of California Press.

Regan, Tom. 2012. "Animal Rights Advocacy and Modern Medicine: The Charge of Hypocrisy." In *The Ethics of Animal Research: Exploring the Controversy*, edited by Jeremy Garrett, 267-291.

Regan, Tom. 2012. "Empty Cages: Animal Rights and Vivisection." In *The Ethics of Animal Research: Exploring the Controversy*, edited by Jeremy Garrett, 107-124.

Rowlands, Mark. 2002. *Animals Like Us*. Verso.

Thomson, Judith Jarvis. 1971. "A Defense of Abortion." *Philosophy & Public Affairs*: 47-66.