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Robbing PETA to Spay Paul: Do Animal Rights Include Reproductive Rights?

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Let me begin with a confession. My papers are often praised more for their titles than for their contents. At a job interview a few years ago, I was told that if I didn't have a future in philosophy (hardly the words one wants to hear during a job interview), the quality of my titles suggested that I could always pursue a career in advertising. What, I was asked, was my secret? I declined to reveal my secret at the time, for fear of appearing shallow (it didn't help; I didn't get the job). But I am going to go ahead and reveal my secret now: my approach to philosophical research has always been to start with a good title and then try to figure out what I would have to write about in order to use it. I have been planning for some time, for example, to write a paper on the phenomenology of insect abuse, just so that I could call it "What is it Like to Bat a Bee?"

This paper is no exception. The title had been kicking around in the back of my head for some time, waiting for an appropriate topic to go with it, when inspiration arrived one day in the form of a letter from an animal welfare organization asking me for money. The letter made the following argument: two of the greatest sources of preventable animal suffering are factory farming and the overpopulation of cats and dogs. We could end the former by opposing the practice of meat eating, and we could end the latter by supporting the practice of spaying and neutering. But, the letter pointed out, there is tremendous and deeply-entrenched resistance to abolishing meat eating, both at the individual and the institutional level, while there is no such resistance to expanding the practice of spaying and neutering cats and dogs at either level. There is simply a lack of funding. So rather than use my somewhat meager means (since I did not, in the end, pursue a career in advertising) to oppose factory farming by supporting groups such as PETA (People for the Ethical Treatment of Animals), the letter concluded, I should instead send my money to them to promote spaying and neutering.

From a strictly utilitarian point of view, of course, the letter's argument was irreproachable. My duty, on such a view, is to prevent as much suffering¹ as I can, and if my contributing to pro-spaying efforts prevents more suffering than does my contributing to anti-factory farming efforts, then that is just what I should do. But I am not a utilitarian. I do not oppose factory farming on the utilitarian grounds that it fails to promote the most overall happiness for humans and nonhumans, though surely it does fail to maximize such happiness. Rather, I oppose it on the deontological grounds that animals have certain rights which practices such as factory farming violate. And I suspect that this is true for many people who support such groups as PETA. PETA's slogan, after all, is not that animals should be used so as to produce the greatest good for the greatest number of humans and nonhumans, but rather that "animals are not ours to eat, wear, or experiment on." So the letter's argument did not convince me that I should use my limited resources to support spaying rather than to oppose factory farming, and I believe that it should not convince others whose support for such groups as PETA arises from reasoning that is similar to mine.

But the letter did nonetheless prompt the following unsettling concern. I oppose factory farming and I support spaying and neutering dogs and cats. And it is easy to see how these two positions can be rendered consistent from a consequentialist point of view. But it is less easy to see how they can be rendered consistent on the deontological, rights-based view suggested by PETA's slogan. Indeed, I came to realize, it is downright difficult. After all, when we spay a cat we typically justify our act by saying that it is warranted because it will prevent others from suffering, not by claiming that it is in the cat's own interest to be spayed. A common bumper sticker advocating spaying and neutering reads simply: "There are not enough homes for all of them. Spay or neuter your pet," and I have yet to see one that says "sterilize your pets: they'll be glad you did." Yet justifying the imposition of costs on one animal by appealing to the

benefits that this imposition will provide to others seems to be paradigmatic of the sort of position that is ruled out by a rights-based approach, even when the others involved are other animals and not human beings. This suggests that a proponent of animal rights should be an opponent of spaying and neutering, that we can support such practices only by robbing groups like PETA not only of some of their financial support, but also of the theoretical support that underwrites their positions (hence the title of this paper). I should state clearly at the outset that I do not welcome this suggestion. But I believe that it cannot easily be defeated, and that it therefore demands more attention than it has thus far received in the literature on animal rights.

I want here, then, to do three things. First, I will state the problem for the rights-based position more clearly, by putting it in the context of the best-known presentation of that view, that developed by Tom Regan in *The Case for Animal Rights*. Second, I will consider whether Regan's position provides any resources for justifying the practices of spaying and neutering. I will conclude, although not happily, that the claim that animals have rights, at least as that claim is understood and defended by writers such as Regan, does imply that spaying and neutering cats and dogs is, at least in general, morally impermissible. Finally, I will consider the question of how we should respond to the conclusion that Regan's position has this implication.

I.

Let me begin with a more explicit statement of the problem. On Regan's account, all individuals who satisfy what he calls the subject-of-a-life criterion have the right to respectful treatment (sec. 8.4). To be a subject-of-a-life is to have a certain kind of psychophysical identity over time (p. 243), and Regan argues that at least normal mammalian animals aged one or more are best understood as having this sort of identity (chaps. 1-3). To have the right to respectful treatment is to have the right that one's inherent value be respected (p. 277), and respecting an individual's inherent value requires that we not harm the individual just so that we can "bring about the best aggregate consequences for everyone" (p. 249). To say that an individual P has a right to respectful treatment, in short, is to say that the fact that harming P is likely to produce better consequences overall cannot count as a justification for harming P. And this, I take it, is representative of what most non-consequentialists mean when they maintain that at least some nonhuman animals have moral rights.

But now consider what happens when, for example, we spay² a cat, say Fluffy. This act imposes a variety of harms on Fluffy. Fluffy must be confined and taken to the vet, placed in unfamiliar surroundings, exposed to a frightening environment. Most animals who go through such procedures will surely experience a great deal of anxiety if not outright fear and terror. In addition, Fluffy must either be given a general anesthesia, which can cause a variety of adverse reactions and in some cases even death, or suffer a tremendous amount of physical pain during the procedure. The procedure itself exposes Fluffy to non-negligible risks of various infections and of complications that can arise from incomplete removal of the organs or from excessive bleeding. And when the procedure is over, she will suffer from a general disorientation as well as nausea and physical discomfort, lasting in some cases for several days. So on the whole, the harm to Fluffy, while not as serious as many other harms we routinely impose on animals, is more than trivial. If precisely this kind and amount of harm were imposed on Fluffy in order to test the safety of some new shampoo or hair spray, there is no doubt that Regan's view would commit him to the conclusion that this would be a violation of Fluffy's right to respectful treatment. And there is no doubt that organizations such as PETA would oppose such a practice as well. Of course, the benefits we typically appeal to in justifying the spaying of Fluffy are not as trivial as the benefits of producing a new shampoo or hair spray. The benefits are quite substantial. But they are not benefits to Fluffy. The benefits we appeal to are simply those which follow from reducing the population of unwanted animals: less overall suffering. And if Fluffy has the right to respectful treatment, then these benefits cannot provide a moral warrant for our behavior. So if Regan's theory is right, then spaying Fluffy is wrong.

As I have said, I do not welcome this result, and I do not believe that Regan would welcome it either. How, on Regan's account, might it be avoided? One possibility can quickly be dismissed: we could deny the claim that spaying Fluffy harms her by complaining that my account of Fluffy's mental life is naively anthropomorphic. Some behaviorists, for example, might deny that Fluffy is capable of experiencing the sorts of pains, anxieties, disorientations and discomforts I counted as the harms spaying inflicts on her. But Regan clearly cannot appeal to such considerations, since they would undermine the basis for his attributing rights to Fluffy in the first place.

A second possible response to the problem I have identified is in a sense just the opposite of the first; for one could agree that spaying Fluffy harms her, and maintain that it benefits her as well. If it can

plausibly be maintained that the benefits to Fluffy of her being spayed outweigh the costs to her, then spaying Fluffy can be justified on paternalistic grounds, in much the same way that one could justify giving her a rabies shot, and the practice would thus pose no serious problem for the attribution to her of a right to respectful treatment. But there are two kinds of reasons to be dissatisfied with this sort of response to the problem I have identified.

The first kind of reason is empirical and is based on the kinds of facts to which one might attempt to appeal in defending such a response. For there are two kinds of benefit to Fluffy that might be appealed to in attempting to justify spaying her on paternalistic grounds, and in typical cases, at least, it simply does not seem plausible to maintain that these benefits are great enough to outweigh the costs to her. One apparent benefit is that spaying an animal reduces the risks for developing breast cancer in females. But there are three problems with appealing to this fact. The first is that the risk of developing such cancer in the first place is not sufficiently high to make it clear that the reduction in risk would justify subjecting an animal to the risks and harms imposed by the procedure itself. If you had a cat who you knew with certainty would never breed, and if you took the animal to a veterinarian and asked whether or not she recommended having the animal spayed merely in order to reduce its chances of getting cancer, the chances are good that she would say no, and it would at best be controversial for her to say yes. Saunders Manual of Small Animal Practice, for example, notes the preventative factor of spaying, but does not list the possibility that an animal will later develop such cancer as one of the indications for performing the procedure.³ The second problem is that the evidence indicates that the most significant risk reduction is produced only if spaying is done before the animal's first estrus, and that, at least in dogs, spaying loses its preventative effect entirely if it is done after the age of two and a half.⁴ The third problem is that there is no comparable benefit to neutering. Saunders Manual notes no significant preventative benefits to neutering and certainly includes none in its list of indications for performing the procedure.⁵ Thus, even if the benefit from reduction of cancer risk were sufficiently significant when it occurs to clearly justify spaying very young cats and dogs on paternalistic grounds, the argument would still fail to justify spaying dogs once they are over two and one half years old, and would fail to justify neutering dogs or cats at any time, and this failure seems barely more tolerable than the failure to justify spaying and neutering in general.

The other possible benefit that might be appealed to in justifying the spaying of Fluffy on paternalistic grounds is that it will spare her the burdens of any possible pregnancy that might otherwise have arisen.⁶ But there are two problems with appealing to this claim. The first is simply that, even if it is accepted, it fails to apply to the case of neutering. Since males do not suffer any burdens when they impregnate females, neutering them relieves them of no burdens. And the result that spaying is permissible while neutering is not is, again, hardly less problematic than the conclusion that neither are permissible. The second problem is that although pregnancy and labor impose a significant amount of physical trauma on human beings, there is very little evidence to suggest that this is true of dogs and cats. Pregnant dogs and cats do not seem to suffer from anything paralleling morning sickness or back pains, for example. Indeed, one veterinarian I spoke to suggested that the only noticeable effect of pregnancy on cats was that they tend to spend more time sleeping. And anyone who has spent much time around cats will suspect that, if anything, Fluffy would be likely to welcome the extra sleep as an added benefit. The birth process, too, seems to be largely untraumatic. Typically the cat will simply walk off to a quiet corner or closet and the kittens will seem painlessly to emerge. There are, unfortunately, some exceptions to this rule, which humans have created as a result of their desire to breed dogs to fit their idiosyncratic aesthetic tastes. The English Bulldog, for example, has been selectively bred for a large head and small body to the point where it is difficult and potentially dangerous for a female bulldog to give birth. So paternalistic concerns might well justify spaying female bulldogs, though not spaying female dogs in general or neutering male bulldogs. On the whole, then, while empirical considerations might plausibly tip the balance in favoring of spaying and neutering on paternalistic grounds in some special cases, they cannot plausibly be invoked to justify the practice in typical cases. And as a result, they cannot be used to overturn the claim that Regan's theory implies that spaying and neutering, at least in typical cases, is morally impermissible.

The second reason for being dissatisfied with the paternalistic response to the problem I have identified is more theoretical. For suppose that spaying and neutering do turn out to confer substantial enough benefits on the individuals involved to outweigh the harms even in typical cases. In that case, Regan's theory will imply that spaying and neutering is generally permissible. But it will remain the case that on Regan's theory, spaying Fluffy is morally permissible only because it benefits her more than it harms her. And this claim, given the great overpopulation of cats and dogs, seems barely less counterintuitive than the claim that spaying Fluffy is not permissible in the first place. The intuition that Regan's theory comes up

against is the one that holds that the easily preventable suffering to others provides legitimate grounds for imposing on Fluffy the non-trivial harms and risks of harm associated with spaying her.

A third response to the problem I have identified might run as follows: I am willing to bear the costs of feeding and taking care of Fluffy. But if she has kittens, I am unwilling to take care of them, unlikely to be able to place them all in loving homes, and unable to accept the view that I'd have no responsibilities toward them at that point. So I am only willing to take Fluffy in if I can spay her, and clearly she'll be better off being spayed and living with me than being left unspayed to fend for herself on the streets or in a shelter. And given this fact, it is permissible for me to spay her.

There are two problems with this response. The first problem is that it applies only to cases where one has taken Fluffy into one's home. It thus fails to apply to those programs that temporarily capture feral cats and sterilize them before releasing them into their original environments. But surely anyone who thinks that spaying one's own cat is permissible will think that such programs are permissible as well. The second problem with this response is that it turns on the claim that so long as your actions leave an individual better off than she would have been had you not intervened, then your actions do not violate her rights.⁷ And Regan is plainly, and justifiably, committed to rejecting such a claim. If such a claim were true, for example, then an animal researcher who plucked stray cats and dogs (or humans) off the street would be entitled to do anything he wanted to them as long as their lives were on the whole no worse than they would have been had they been left on the street.⁸ But surely this is not permissible, and so the claim needed to support this response cannot be true.

A fourth consideration one might appeal to is this. Regan is only committed to the view that normal mammals have the right to respectful treatment once they reach the age of one, but cats and dogs can safely be spayed and neutered before this point. So long as the procedures are done before this point, it might therefore be argued, they are perfectly consistent with the animal rights position. But there are several problems with this response. In the first place, this response still concedes that it is impermissible to spay and neuter animals after this point, and as I have already said, this concession seems hardly less counterintuitive than the original claim. In addition, Regan argues in other contexts that we must often give the benefit of the doubt to those who we think may be subjects-of-a-life even if we have less confidence that they are, and the same sort of consideration which he thinks should be extended, for example, to mature frogs (e.g., pp. 366-67) would seem equally to apply to Fluffy even when she is only a few months old. Furthermore, if we refused to allow that three-month-old Fluffy has a right to respectful treatment, then it would seem that we are entitled to do many things to her that Regan and others would presumably find objectionable, and could thus avoid one counterintuitive implication only by generating many others.

A fifth possible response to the problem I have identified is suggested by some remarks that Regan makes about euthanasia. Regan points out that in most cases involving animals, the term "euthanasia" is simply a misleading euphemism for killing. "Euthanasia" comes from the Greek words for good and death, and refers properly only to those cases where a patient's suffering is so great that it is believed to be in his or her own interest to die. But in the vast majority of cases where animals are killed, say at an animal shelter, this is done not to benefit the animal, but to benefit others. So what is often referred to as euthanasia in the case of animals, is forbidden by Regan's respect principle. But as Regan also points out, this need not be so for all cases of killing an animal. In some instances, such as those in which a cat is suffering from an advanced case of feline leukemia, the animal's suffering may be so severe, unrelenting, and untreatable, that it may truly be in the animal's interest to die. Unlike a human patient, of course, the cat cannot consent to its being killed, or leave instructions about how to treat it should it become permanently comatose, but Regan sensibly argues that we can justify killing the cat as a form of what he calls "preference-respecting euthanasia" (113-14). The cat does not, strictly speaking, have a desire to die, since Regan presumes that she does not understand the nature of death, but it is plausible to suppose that she does have a desire that the pain stop, and if killing her is the only way for us to satisfy this overwhelming desire, then killing her is consistent with respecting her preferences, and thus consistent with the respect principle.

It might be urged that this sort of argument could be extended to the case of spaying Fluffy. Fluffy does not know that spaying her will prevent her from contributing to the already overcrowded population of unwanted kittens. So we cannot say that she desires to be spayed. But if she did understand this, one might argue, she would prefer to be spayed, just as if she understood the nature of feline leukemia, she would prefer to be euthanized. And so what might be called "preference-respecting spaying" might be consistent with acknowledging Fluffy's right to respectful treatment in just the same way that preference-respecting euthanasia is.

This response is unacceptable for two reasons. First, it is just not clear what Fluffy would desire, even if she understood all the relevant facts. The claim that she has a strong desire to avoid her own severe and unrelenting pain is not very controversial, but the claim that she has a desire to prevent others from suffering at some non-trivial cost to herself is much less so. And if we do take her to have this desire, then it is very difficult to see how we will avoid justifying all sorts of other “preference-respecting” forms of behavior whenever we can find ways to benefit others by harming her.

A sixth response to the problem I have identified appeals to the notion of a “wrongful birth.” Suppose a woman deliberately conceives and brings to term a child whom she knows will suffer from some very terrible genetic disorder that ensures that he will live for only a few months, and in severe, continuous and untreatable pain. Most of us will agree that this woman’s behavior is seriously immoral, and a number of philosophers and legal theorists have suggested that the best way to account for this judgment is to say that it is a violation of the child’s rights. It cannot be a violation of the child’s right to life, of course, since the woman is not guilty of killing the child. But it is at least arguably plausible to maintain that one has a right not to be conceived if one’s conception can occur only in a manner that will make one’s life so miserable, and if this is so, then the woman’s actions could count as a violation of this right. Suppose that there is such a right, a right not to be wrongfully conceived. This might be cashed out in one of two ways: a right not to be conceived when one’s life would be worse than no life at all, or a right not to be conceived when one’s quality of life would fall below some specified threshold. In that case, then it might be that no matter what we do, someone’s rights will be violated. If we spay Fluffy, Fluffy’s rights will be violated, but if we refrain from spaying her, the rights of Fluffy’s kittens will be violated. Regan defends two principles to govern our behavior in cases where rights violations are unavoidable, and it might be argued that these principles, conjoined with the claim that one has a right not to be wrongfully conceived, suffice to show that the permissibility of spaying Fluffy is consistent with the attribution to her of the right to respectful treatment.

Regan’s first principle is the minimize overriding principle, or the minimize principle (p. 305):

Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many.

His second principle is the worse-off principle (p. 308):

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 harm 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.

Assuming that the harm of being wrongfully conceived is worse than the harm of being spayed, and assuming that a typical feline or canine pregnancy results in the birth of more than one kitten or puppy, both the directive to minimize the number of rights violations and the directive to minimize the harm done to those whose rights are violated would point in favor of spaying Fluffy, despite the fact that this harms her and that she has the right to respectful treatment. And if this is so, then Regan’s account of rights can justify the practice of spaying and neutering after all. What shall we say about this argument?

One way to defeat it, of course, would be to deny that there is a right not to be wrongfully conceived. But while I do have my doubts about the existence of such a right (for one thing, it is very unclear who the subject of the right is, especially in cases where the right is respected and so the potential individual is never conceived), I will not develop them here. For even if we accept the existence of such a right, the case for using it to ground the permissibility of spaying Fluffy is subject to a variety of fatal objections. In the first place, it is not clear that we can reasonably expect Fluffy’s kittens to have lives that are sufficiently wretched to fall under the scope of the principle. Given the already existing overpopulation of cats and dogs, we may well expect that at least some of her kittens will end up strays and that some of these will end up being put to sleep prematurely in animal shelters, but this amounts only to saying that many of them will have lives that are difficult and which include some suffering. It seems implausible to assume that their lives will be worse than no life at all, and if we maintain that their quality of life will be insufficiently high, the wrongful birth principle will almost certainly yield unacceptable results in the case of many human beings. In addition, even if we were fully confident that Fluffy’s kittens would have lives that are sufficiently wretched, we could avoid this problem without inflicting any harms on Fluffy. We could

simply kill them when they are born, or as soon as they are weaned.⁹ And this prospect is no more attractive than the prospect that we are not permitted to spay Fluffy in the first place.

Finally, even if we agreed that there is a right not to be wrongfully conceived and that Fluffy's potential offspring, in particular, have this right, it still would not follow that Regan's principles would justify our spaying Fluffy, and for a very simple reason: the principles apply only to cases where we will override someone's rights no matter what we do. But the case of Fluffy is not like this. If we spay her we will violate her rights by wrongfully harming her, but if we do not spay her we will not violate her (potential) kittens' rights by wrongfully conceiving them because we will not be conceiving them. Fluffy will be conceiving them. So it will still be wrong for us to spay Fluffy even if all of these claims are true. To this objection, of course, it might be responded that we have a duty not only to refrain from violating the rights of others but also to assist those whose rights are threatened with violation by others. Regan himself clearly endorses the existence of such a duty (p. 249), and it might be thought that this would vindicate the claim that we have a duty to prevent Fluffy's (potential) kittens from having their rights violated. But even this maneuver is unsuccessful, again for a very simple reason: Fluffy is not a moral agent. As Regan himself emphasizes in explaining why his position does not entail that we have a duty to save a sheep from a wolf, only a moral agent is capable of doing an act that counts as a rights violation, and so the duty to prevent rights violations from occurring entails only a duty to prevent other moral agents from wrongfully harming others. One could revise Regan's principle so that it would entail our having a duty to prevent Fluffy from wrongfully conceiving her offspring, but this would then imply that we also have a duty to save the sheep from the wolf, and would thus again allow us to avoid one unpalatable implication only by embracing another.

A final attempt to reconcile the practice of spaying and neutering with the attribution of rights to animals arises from the recent work of Evelyn Pluhar. In *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals*, Pluhar acknowledges that, on the face of it at least, such practices seem to be at odds with the deontological ideal that we not interfere in the lives of nonhuman animals. But she responds by arguing that "we have already interfered by participating in the process of domestication" and that this fact, combined with "our willingness to take them in, results in acquired duties on our part":

Given this context, deliberately exposing them and their offspring to cars, abandoning them by roadsides and streets, and dumping them in "euthanasia" mills is hardly tantamount to noninterference! It is as deeply irresponsible as allowing one's barely pubescent children to breed other children: "George, we mustn't interfere with little Hortense and her boyfriend! We must respect their autonomy!" 10

The argument from acquired duties seems plausible enough in the case of the duties we have to keep our companion animals safe, well-fed and healthy. Surely it provides plausible grounds for supposing that we have such duties toward our own companion animals while we do not have them to dogs and cats generally or to the entire animal kingdom. But the argument cannot succeed in the case of the problem of spaying and neutering. The reason is this: the argument from acquired duties shows how an act that would otherwise be permissible but not obligatory can be made obligatory. It would be permissible but not obligatory for me to buy some medicine for a sick child living in the third world, but if I were to adopt that child as my son my special relation toward him could make the act obligatory, and the same would go for my relationship with Fluffy. But the argument from acquired duties does not show how an act that would otherwise be impermissible can be made permissible. And the problem about spaying Fluffy is not that Regan's account seems to imply that it is nonobligatory, but that it seems to imply that it is impermissible. If it would be impermissible for me to sterilize a child in the third world, it is difficult to see how my adopting him as my son could make it any more permissible.

Which brings me to Pluhar's example. Pluhar compares our duty to spay Fluffy with a parent's duty to prevent her barely pubescent children from reproducing. But there are several important differences between these two cases. In the first place, as I have already noted, we would think far differently of the parents in question if they were to have their child sterilized rather than to keep her from having sex with her little boyfriend. But second, and more importantly, a parent is presumably justified in preventing her 12-year-old daughter from becoming pregnant because it is very strongly in her daughter's interest that she not become pregnant at the age of twelve. The interference in the girl's life is thus rendered permissible because it is paternalistic in nature, and the paternalism may then be rendered obligatory by the fact that the child is so young, that the potential harms to her from so early a pregnancy are so serious, and that she stands in a special relation to her parents. But the problem about spaying Fluffy that I have identified arises precisely from the fact that it cannot be justified on paternalistic grounds in the first place. It is not in Fluffy's interest to be spayed. And so the argument from acquired duties cannot help us here.¹¹

III.

I began by maintaining that there is a strong prima facie argument in favor of the claim that Regan's position commits him to the view that spaying and neutering cats and dogs is, in typical cases at least, morally impermissible. I have now considered a number of responses which might be made on Regan's behalf, and have argued that none of them are successful. For better or worse, the claim that Regan's position commits him to opposing spaying and neutering seems to me to be true. The question now becomes: how shall we respond to it?

There are, I believe, three possibilities. One is that we should simply bite the bullet. If we have been persuaded by Regan's overall case for animal rights, or by the more recent Gewirth-based defense of animal rights found in Pluhar's work, then we should be willing to oppose practices once we come to see that they violate animals' rights even if we would prefer not to. My argument seems to show that spaying and neutering dogs and cats does violate their rights so understood, and so, on this view, we should oppose the practice. I do not want my argument to be taken as an argument against spaying and neutering, but it is possible that in the end this is the best way for it to be taken. A second possibility is that we should take my argument as a *reductio ad absurdum* on the deontological approach to questions about our treatment of animals. It may well strike us as little short of ludicrous to oppose spaying and neutering even while it strikes us as not at all ludicrous to oppose factory farming, hunting, the use of fur and leather, and so on. Utilitarian and rights-based approaches may do a roughly comparable job of showing that these latter practices are immoral, and since utilitarianism can easily justify spaying and neutering while the rights-based position cannot, this may count as a reason for thinking that in the end the utilitarian approach is superior.

I want my argument to be taken as a defense of utilitarianism even less than I want it to be taken as an argument against spaying and neutering. But it may be unreasonable not to take the argument in this way unless we can justify a third kind of response. The third response is to say that my argument shows that the rights-based approach of people like Regan should be preserved but amended. What is needed, on this view, is an account that shows that it is permissible to impose relatively minor harms on animals (and relevantly analogous humans) in at least some cases where this produces great benefits for others, and that is not only consistent with the attribution of rights to animals, but is motivated by the same sorts of considerations that justify such attribution. This, in fact, is how I think my argument should be taken. I cannot attempt to justify taking it in this way here, but will conclude by very briefly sketching what such an amendment might look like.

Suppose that an infant is about to step on a button that will detonate a bomb. If the bomb goes off, you will certainly be killed, and there is no way for you to prevent the infant from stepping on the button other than to kill him. Most people¹² will agree that you may kill the infant in this case, that killing him does not violate his rights, even though he is morally innocent, and so not responsible for the threat that he poses to you. And the same would presumably apply if it were instead a dog that were about to step on the button, even if a dog's right to life were taken to be every bit as strong as yours and mine. One plausible account of why this should be so appeals to the following counterfactual consideration: the infant (or dog) is doing an action such that if he were a moral agent who understood the consequences of stepping on the button, the act would be morally impermissible. Since this is so, on this account, we are allowed to prevent him from doing the action even if our doing so imposes harm on him, provided that the harm we impose on him is proportionate to the harms we thereby prevent him from wrongfully (though innocently) imposing on others. If this is so, then one could by analogy argue roughly as follows: it is wrong to bring new animals into the world if you cannot ensure that they will be well cared for. A dog breeder who breeds more puppies than he can place in good homes, for example, does something seriously wrong. Fluffy cannot ensure that her kittens will be taken care of. Were she a moral agent, it would be wrong for her to reproduce under these circumstances. We are therefore entitled to prevent her from reproducing even if our doing so imposes harms on her, provided that these harms are proportionate to the harms we thereby prevent her from wrongfully imposing on others. Spaying Fluffy does harm her, but in relatively minor ways, and in many cases this may be the only way we can effectively prevent her from doing what it would be wrong for her to do were she a moral agent. And so, on this account, we are entitled to spay Fluffy after all.

The account I am envisioning here would circumscribe a set of cases in which it is permissible to harm animals (and relevantly similar humans) in order to benefit (or prevent harm to) others. These harms would not be justified on Regan's account, and so this proposal does not count as reconciling his position with the practice of spaying and neutering. Rather, it counts as curtailing his position. If the curtailing of his position were accepted merely on the grounds that it would permit us to achieve the result that spaying and

neutering turn out to be permissible, of course, then its acceptance would be unacceptably ad hoc. But I have been suggesting that there may be independent motivation for accepting this restriction, based in part on the plausibility of the idea that such counterfactual considerations are morally salient, and in part on its cohering with other moral judgments we are inclined to make, such as those about cases of innocent threats. And while the proposal I am sketching would impose a restriction on the range of cases in which harming an animal would count as violating its rights, it would do so in a manner that is consistent with saying that animals nonetheless have such rights, that factory farming, for example, is wrong because it treats animals in ways that they have a right not to be treated, not because it fails to maximize overall happiness. This is, of course, only a very brief sketch. I do not claim to have provided a sufficient reason for accepting it. But perhaps I have at least provided some reason to think that it, or something like it, points to a more plausible way of responding to my argument than the alternatives. And if I have not, then I can only hope that my argument is wrong.¹³

Notes

¹Strictly speaking, this is true only on hedonistic versions of utilitarianism, but I take it as clear on any version of utilitarianism in which the interests, welfare, or happiness of animals is included in the utilitarian calculus, my modest donation would produce more good if used to support spaying and neutering than if used to oppose factory farming.

²I will focus on spaying because it is a substantially more invasive procedure than neutering, requiring an abdominal incision and causing greater post-operative stress and discomfort, but it seems unlikely that the harms of neutering are so trivial as to make the argument inapplicable to it as well.

³Stephen J. Birchard and Robert G. Sherding, eds., *Saunders Manual of Small Animal Practice* (Philadelphia: W. B. Saunders Company, 1994), pp. 904-5.

⁴Birchard and Sherding 1994, p. 210.

⁵Birchard and Sherding 1994, p. 882.

⁶David DeGrazia pointed out that an earlier version of this paper neglected to take this possibility into account.

⁷It might be objected that the response I am considering need not depend on so unqualified a claim. In *Taking Animals Seriously* (Cambridge: Cambridge University Press, 1996), for example, David DeGrazia defends the following principle to govern our treatment of pets: "Provide for the basic physical and psychological needs of your pet, and ensure that she has a comparably good life to what she would likely have if she were not a pet" (p. 274, original in italics). And spaying Fluffy would certainly be consistent with this principle. But the problem here is that there is no clear way to get from Regan's rights-based approach to DeGrazia's principle (nor does DeGrazia claim that there is).

⁸In addition, a dog breeder can truthfully say of his puppies that they would have no life at all had he not intervened in the course of things by having their parents produce them, and so if the principle needed to underwrite this response were true, it would be permissible for him to do anything he wanted to these puppies so long as they were left with lives that are at least barely better than no life at all.

⁹Killing them would presumably be justified on Regan's account as an instance of preference-respecting euthanasia. It might be objected to this response that it is worse to be conceived, born and then killed than never to be conceived, an argument that often arises in the debate over the moral permissibility of abortion. I have argued in that context elsewhere that this claim cannot be sustained, and will have to settle here for simply asserting that death is a harm in virtue of the fact that it deprives us of future experiences, and that it is not worse to have some experiences and then be deprived of many more than to have none at all (see my "A Defense of 'A Defense of Abortion': On the Responsibility Objection to Thomson's Argument," *Ethics* 107 (January 1997), pp. 306-08, and also Frances Myrna Kamm, *Creation and Abortion* (Oxford: Oxford University Press, 1992), pp. 84-87). The analysis of the harm of death in terms of the opportunities it deprives the victim of, moreover, is endorsed by Regan himself (e.g., *Case For Animal Rights*, p. 35 1)

¹⁰Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman*

¹¹And even if it could, it would still prove unable to justify the permissibility of our spaying and neutering stray animals, which again would seem a serious shortcoming.

¹²Though not all. For an important argument against the permissibility of killing in such cases, see Michael Otsuka, "Killing the Innocent in Self-Defense," *Philosophy and Public Affairs*, vol. 23, No. 1 (Winter 1994), pp. 74-94.

¹³I would like to thank David DeGrazia and Dale Jamieson for their helpful comments on an earlier draft of this paper, and Nancy Nathan DVM for guiding me through some of the veterinary dimensions of the issue.