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THE MORAL EQUALITY OF HUMANS AND ANIMALS

Mark H. Bernstein

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In memory of my father Louis, my mother Matilda, and my friend Knish; and for all those who have needlessly suffered from having been born members of nonhuman species.

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Preface: The Human–Animal Relationship

I love my dog Wulfie.

Reflection on this indubitable truth served as one motivation for this monograph, for in loving Wulfie the way I do, I conceive of his interests and life as significant as any of those of the humans I love. I believe this motivation is reasonable, justifiable, and generalizable. My thesis, baldly stated, is that the interests and lives of nonhuman animals are as morally important as the interests and lives of fellow humans.

I recognize how radical most will find this position; few people believe that the interests of nonhuman animals are as worthy of concern as those of humans, and fewer still believe that the lives of animals are as significant as the lives of humans. Even among philosophers, who tend to spend more time thinking about these issues than laypersons, my thesis finds relatively few supporters. While there are some thinkers who believe that the interests of humans and animals deserve equal consideration, there are precious few who depart from the general consensus that, from a cosmic or thoroughly impartial perspective, human lives are more valuable than lives of nonhuman animals. I am swimming against a powerful and entrenched tide.

This book scarcely merits a readership if it amounts to nothing more than an expression of an idiosyncratic contrarian. That we have been mistaken in our assessment of the relative importance of human and animal interests and lives had better matter. It does.

Consider the fact that some 11 billion (that's 'billion' with a 'b' to appropriate the language of the late Carl Sagan) animals are killed annually in the US in factory farming. Since there are slightly more than 300 million people living in the US, there are about 35 animals killed each year for every adult and child in the US, but perhaps even worse than the terrible and premature deaths that await most of these creatures are the 'lives' chickens, cows, and pigs endure in preparation for slaughter. I will spare you the details of how these

animals are raised, transported, and murdered – feel free to read my *Without a Tear* for some of the grotesque details – but there can be no doubt that *if* we believed in my thesis, that is, *if* we believed that, respectively, the interests and lives of nonhuman and human animals were on a par, the public outcry would be unprecedented. Imagine we discovered that humans were being intensively farmed in a rural area of Pennsylvania, that there were tens of thousands of humans being confined to the point of immobility, fed a 'diet' consisting of scraps of bone and antibiotics served with the sole purpose of fattening the inmates, transported hundreds perhaps thousands of miles in cramped and freezing conditions, and killed by means that often resulted in excruciating painful exterminations. I take it that we would be morally outraged and unexceptionably demand for the immediate abolition of this practice. Without the pervasive supposition that humans have greater moral significance than animals – that animals just don't *matter* or *count* as much as humans – we would, and should, have similar attitudes toward the actual institution of factory farming as we would to our fictional case. The stakes, then, are large.

This is not a mawkish tract. There will be no references to 'cuddly' dogs or 'cute' cats. While these omissions are not consequences of believing that dogs are not cute nor that cats are not cuddly (in fact, I believe quite the contrary), I forbear making these fuzzy allusions to these furry animals not because they are, in some way, untoward or insidious, but simply because my argument does not require them. In recent years, feelings have received bad press. We are told that arguments that employ 'appeals to sentimentality' are evasions, perpetuated because authors of such tactics lack 'tough-minded' reasons for their views, and so revert to 'tender-hearted' ploys playing on the emotions of others. There is some sense but much nonsense in this diatribe, but best we don't become embroiled in this debate if we need not; we needn't, so we won't.

I can anticipate, being involved in these questions for over 30 years, what people's immediate reaction will be when hearing about the publication of this book. Most, of course, will yawn; it is a very rare book that garners any significant attention, and there is no reason to think that mine, regardless of the urgency of its subject matter, will prove the exception. Bracketing this majority response, virtually all others will be either openly antagonistic or highly skeptical. Few

people want to change, and virtually no one wants to hear that they ought to change. Exacerbating matters is the fact that if I am right, or even right-headed, we need to change very basic activities: what we eat, how we recreate, what we wear, and how we conduct research.

Still, I harbor some hope. I am well into my fourth decade of university teaching having spent time at an 'elite' small liberal arts university on the East Coast, a fledgling state university in the Southwest, and a large, established university in America's heartland. My anecdotal evidence culled over a long time with fairly diverse student populations leads me to believe that about 25–35% of my students – who have been introduced to the philosophical and lay literature on 'animal rights' – modify some of their animal-related activities. Some become vegetarians, some stop wearing fur, some refuse to use cosmetics and household products that are tested on animals, and some demonstrate, protest, and eventually become leaders of animal rights organizations. And I suspect that almost all of those who undergo some behavioral changes speak to friends and family about their 'awakening', and thus there is likely to be some ripple effect among people whom I never meet or even hear about.

I recognize that there is probably a fair amount of backsliding – fervor fades, enthusiasm wanes – and there is comparatively little societal support for those who want to maintain a more friendly animal stance. My intention is to both offer a bulwark, a relatively jargon-free, reasoned account to support those facing the ubiquitous antagonistic forces they confront in their daily lives, as well as a rational call to action that may incentivize those with open minds to change their ways.

To the charge that I am an academic, I plead guilty, but to what, in contemporary times appears to be the unkindest jibe of all – that I am an ivory-tower academic with no conception about how the 'real world' (read: non-academic) operates and deigns it beneath his elevated status that he should dirty himself in practical affairs – I emphatically plead innocent. As evidence, I offer a bit of biography. I have been president and active member in a rather large animal-rights group in Texas, a quite animal-unfriendly state, an obstacle mitigated somewhat by the group being housed in Austin. With my wife at the time, I co-hosted local weekly radio and television shows. I have participated in and led innumerable protests, rallies, and demonstrations, been arrested and jailed twice, came very, very close

to being killed, trying – successfully at it turns out – to save a squirrel from a rather angry hunter (I can personally confirm that it is not necessarily true that your entire life flashes before you – although you do get very scared), received one death threat (my advice: when in Texas, do not question the moral judgment of any Texas sports legend, especially in a setting of some 300 avid 'outdoorsmen', and, oh yes, very especially when the legend in question is one of the 300 present), and generally live in tolerably close alignment with what I preach. Sainthood, I'm afraid, is not on the horizon – and not only because of my last name – but I hope I've carried on sufficiently to discharge the worry that I'm 'one of those' who spends his life in the clouds assiduously avoiding contamination from real folk.

Acknowledgments

Jack Kent Cooke – the late owner of the Washington Redskins – relayed the story of graciously offering George Allen – the coach of the team at the time – an unlimited budget. Unfortunately, Allen exceeded it. This is a way of giving thanks to my wife, Stacy Holden, for showing a penchant for patience that equals Allen's proclivity to spend.

My thanks also to Wulfie – who is a leading character in the monograph before you – as well as all the other animals who have added meaning to my life.

Restricting my domain of gratitude to humans, I want to mention Jan Cover for both encouragement and philosophical aid. It takes a good person to take upon these charges in the face of disagreement with much of what I say. I also extend my thanks Matthias Steup for developing (and I think this is the right word) the title of the book, and to Mark Satta for proofreading.

Lastly, let me thank, profusely, Vickie Sanders, Brenda Picket, and Teresa Berninger for their administrative help. I share – some might say 'epitomize'– the philosophical trait of maintaining only the most tenuous connection with the 'real world'. As my mom used to say: 'You'd lose your head if it wasn't attached to you'; so thanks, again, for frequently checking in on the quality of the attachment.

Mom, I finally 'put a period on it'.

1
On the Relative Unimportance of Human Interests

1.1 Setting the stage

Ordinary thought includes the evaluation that humans are more worthy than nonhuman animals. Perhaps at the very margins of humanity and animality exceptions loom, and so we can allow that our commonsense judgments have room for permitting that in very extreme cases – say in the case of the human being Hitler and the animal being a good-natured, clever chimpanzee – the usual hierarchy between human and animal significance gets reversed. For the time being, let us bracket these possible outliers, and concentrate on what is undoubtedly accepted as folk wisdom: humans morally matter more than animals.

What makes me so certain that, as a matter of course, we think of humans mattering more than animals? In part, simply because this is the dominant answer that I have received when asking thousands of students – and quite a few non-academics – which of these two groups matter more. More significantly, we consistently allude to this hierarchy in justifying many of our common practices. Some 11 billion animals are annually killed in factory farms in the US; no humans are similarly used. Several hundred million animals are annually hunted in the US; no humans are similarly exploited. Vast numbers of animals (precise statistics are impossible to come by since the accounting procedure is, shall we say, lax) are tortured and murdered in animal experiments; no humans are so treated. Virtually without exception, when apologists of these institutions

are queried for their warrant to exclusively use animals in these circumstances, the answer is some variant of the idea that humans are morally more important creatures than nonhuman animals. We are told that humans matter more, and that this disparity between the significance of humans and animals morally underwrites practices that virtually everyone would find abominable if nonhuman animals mattered as much as humans.

What do we mean when we assert that humans matter more than animals? My experience suggests that this terrain is exhausted by two claims. First, people tend to explicate the difference of moral significance between humans and animals in terms of the difference between the consideration (concern, care, or attention) that human interests and animal interests deserve. So, as a first pass, consider Jack and Wulfie both in pain, and sharing an equal interest in having their respective pains alleviated. To claim that humans matter more than animals is to say that, all else being equal, or special circumstances aside, Jack's interest in having his pain relieved deserves privileged consideration relative to Wulfie's interest in having his pain mitigated. Second, people tend to explicate the disparity between how much humans and animals matter in terms of the difference between the value of human and animal lives. So, to say that humans matter more than animals is to say that human lives are more valuable than animal lives, or that humans are more valuable creatures than animals. As a first pass, consider a situation in which only Jack or Wulfie can be saved from death. If all else is equal, to claim that Jack's life is more valuable than Wulfie's is to say that one ought to save Jack rather than Wulfie in these very stylized and orchestrated circumstances.

Codifying these two claims a bit more formally with, I hope, minimal corruption of their ordinary intent, we have, respectively, the *considerability of interests principle* (*CI*) and the *value of life principle* (*VL*).

> (*CI*) The interests of humans deserve (are worthy of, merit, warrant, justify) preferential consideration relative to the similar interests of (nonhuman) animals.
>
> (*VL*) The lives of humans are more valuable than the lives of (nonhuman) animals.

Let us refer to the conjunction of (*CI*) and (*VL*) as the *human superiority thesis* (*HST*). I believe that (*HST*) is doubly false; both (*CI*) and (*VL*) are false or, somewhat more cautiously, that we have good reasons for thinking both of them false. I remain sufficiently optimistic (naïve?) to believe that in the real world a convincing case against both (*CI*) and (*VL*) would have enormous implications. Here is a preliminary test of my faith. Ask a carnivorous friend if she would forsake factory-farmed products if she firmly believed that animal interests and animal lives were (at least) as significant (where this significance is cashed-out by (*CI*) and (*VL*)) as human interests and human lives. Or ask a self-described rational hunter if he would abdicate his early morning activity if he were convinced in the falsity of (*CI*) and (*VL*). Or, finally, ask your local college vivisector if she would end her invasive animal procedures if she came to be persuaded that neither (*CI*) nor (*VL*) is true. My hope is that answers in the affirmative would follow all of these questions, and that such answers are solid indicators that a persuasive case against (*HST*) really would motivate changes in behavior.

While it may be obvious that the notions of interests, preferential concern and the value of life require elucidation, the very idea of being human (as well as its 'trouser' concept of being nonhuman) probably requires most attention. The difficulty arises from the frequent equivocation of the use of the term by both laypersons and professional philosophers. Perhaps in the most natural understanding of 'human', the term refers to a particular species; 'human' is synonymous with '*homo sapien*'. To be labeled a human, in this sense, is an exercise in biological taxonomy. Since species identity is determined or fixed by DNA structure, assuming a one-to-one correspondence between DNA structure and species identity, and allowing 'H' to denote the DNA structure that determines membership in the species *homo sapien*, we may claim that necessarily all and only humans have DNA H.

While I intend nothing controversial by what I take as little more than reporting about a commonsense usage of 'human', there are tricky cases of categorization. Should we think of human corpses as human (i.e., are the dead bodies of members of the species *homo sapien*, *homo sapiens*?) or is it more accurate to speak of these corpses as (merely) remains of humans? Are chimeras – individuals created

from some human and nonhuman genetic material – partly human and partly nonhuman, or are they individuals of some newly inaugurated species? These issues are probably verbal (which is not to say unimportant) and so portend no substantive difficulties, but in any case we will bracket discussion of these gray areas. Our uncertainty about classifying some individuals should not shake our confidence about the species membership of others. Under the fairly safe assumption that you are a product of a human mother and father (and not, say, a product of a human mother and Martian father), I am certain that you were born human. I am equally certain that Wulfie is not human but a member of the *canis lupus* species; he is a dog, an individual who, although sharing the animal kingdom with humans, is a member of a different species which itself is defined in terms of nonhuman DNA D.

I here leave it as an open question whether an individual can alter its species identity over time. At one time, received opinion had it that human sexual identity was an essential feature of all humans; if Sam were born a male, he could not remain a human and exist as a female, and if Samantha were born a female, she could not remain a human and exist as a male. We now know that we were wrong, and that one can continue to exist as the same human individual through changes of sexual identity. Sam maintains his (human) identity even after his trip to Denmark (although Sam may now, after becoming a female, may opt to go by the name 'Samantha'). Perhaps, in similar fashion, Jack can maintain his individual identity during a species-altering operation when he becomes a dog; perhaps Wulfie remains Wulfie even in becoming a human. For all I know, Kafka's Gregor Samsa prefigures some strange new world. But whether or not these (currently) science-fiction scenarios can be exemplified in the real world, the biological conception of species identity endures; one's species membership at any particular time is uniquely determined by the individual's DNA sequence at that time.

We can index both (*CI*) and (*VL*) to this 'species' sense of 'human', the sense where 'human' and '*homo sapien*' are synonyms, just by making the point explicitly.

> (*CIS*) The interests of humans (i.e., *homo sapiens*) deserve (are worthy of, merit, warrant, justify) preferential consideration

relative to the similar interests of (nonhuman) animals (i.e., non *homo sapiens*).

(*VLS*) The lives of humans (i.e., *homo sapiens*) are more valuable than the lives of (nonhuman) animals (i.e., non *homo sapiens*).

Compare this 'species' conception of human with a second, perhaps less common but by no means unique reading that we may call the 'kind of life' or 'person' understanding of 'human'. To characterize someone as human in this sense is to refer to a kind of life that an individual is currently leading, where this kind of life is associated with the kind of life typically and normally led by adult humans. We employ this 'person' conception when we speak of someone who suffers from severe Alzheimer's disease as not being human anymore. In describing someone in this way, we aren't denying that he is still a human in the species sense – it isn't as if we have come to believe that he no longer has DNA H and so is no longer a member of the species *homo sapien* – but rather are saying something along the lines that he no longer lives the kind of life that we think of as both typical and normal for an adult *homo sapien*. Imagining our *homo sapien* as being no longer able to reason, remember what he had for breakfast just a few hours ago, or recognize his own parents and children provides us with a situation in which the withholding of the appellation 'human' makes perfect sense.

Just as a member of the human species may not live the 'person' kind of life, it is at least conceivable that an individual who is not a *homo sapien* lead a 'person' kind of life. At least if we identify the 'person' kind of life with cognitive or psychological capacities, there is no reason to rule out, *a priori*, that some nonhuman animals either actually already lead such lives – perhaps some of the other great apes or dolphins – or in certain circumstances under particular conditions could be justifiably characterized as leading the 'person' kind of life. This characterization is not an exact science; in ordinary parlance, 'the person kind of life' does not refer to a stable set of dispositions awaiting our discovery, but rather speaks to a fluid group of capabilities. Vague as the categorization is, we can call those individuals, regardless of species membership, who lead lives of persons, 'persons'. We can understand both (*CI*) and (*VL*), then, as referring to persons. Let's make this indexing to a kind of life rather than a species identity explicit.

(*CIP*) The interests of persons deserve (are worthy of, merit, warrant, justify) preferential consideration relative to the similar interests of (nonperson) animals.

(*VLP*) The lives of persons are more valuable than the lives of (nonpersonal) animals.

A bit more of the distinction between these two ways of indexing ('relativizing') of (*CI*) and (*VL*) will later be made, but for our present purposes we need only be alert to the fact that these two ways that are frequently used to express (*HST*) should not be conflated. As long as we are clear whether by 'humans' we are referring to a members of a particular species or are referring to persons (i.e., those who are identified in terms of living a particular kind of life), we should be able to evade verbal pitfalls.

1.2 What do we mean when we say that human interests are more significant than animal interests?

The notions of 'interests', 'similar interests', and '(deserving) preferential consideration' are essential ideas in (*CI*), and any articulation of these concepts must satisfy one substantive restraint. Since I understand (*HST*) as a thesis that is implicitly, if not explicitly, held by most people, it would be confusing, at best, were I to begin an investigation of (*CI*) with a technical – and so non-ordinary – explication of its central lexicon. 'Interests' and 'preferential consideration' are largely terms of ordinary language, and although philosophers are entitled to sharpen our common concepts, they need to exercise caution to avoid precisifying a part of our everyday idiom into unrecognizable bits of jargon. At the end of the day, then, my accounts of the key vocabulary implemented by (*CI*) had better cohere quite closely with our pre-philosophical understanding of what these words mean. I have failed if after my 'conceptual analysis' many of those who accept (*CI*) have the following reaction: 'Well, if that's how you understand "interests" and "preferential consideration" [i.e., 'if that's the meanings you assign to "interests" and "preferential consideration"'], then, of course, I agree that (*CI*) is false. But my acceptance of (*CI*), and the acceptance of (virtually) all of us who endorse (*CI*) relies on different – and we insist the ordinary – ways of explicating these key terms'. My failure still may be instructive; it

may yet be interesting to discover that assigning certain meanings that aren't *too* far removed from the attribution assigned by ordinary language to 'interests' and 'preferential consideration' results in a consensus to reject (*CI*). Nevertheless, this possibility provides little solace, for the fact would remain that I have not engaged the real issue. At best, I would have achieved some marginally interesting feat without giving any reasons for anyone to change their assessments of the relative significance of human and animal interests.

I use 'interests' as we use it in the common expressions, 'exercising daily is in Stacy's interests' and 'eating 3 pounds of meat per week is opposed to Stacy's interests'. The former can be paraphrased as 'exercising daily enhances Stacy's welfare (or well-being)' and the latter paraphrased as 'eating 3 pounds of meat weekly diminishes Stacy's welfare (or well-being)'. In common parlance, what is *in* one's interests is what is good for that individual. What is in one's interests improves one's welfare; one is made better off (advantaged, benefited) in having one's interests satisfied. What is *opposed* to one's interests is what is bad for that individual. What is opposed to one's interests diminishes one's welfare; one is made worse off (disadvantaged, harmed) when one's interests are opposed.

We can, and should, remain neutral regarding any substantive account of interests; my remarks about interests are intended to allow for various theories to speak to the kinds of items that can be good or bad for an individual. To get a firmer grip on this, it is worth briefly reviewing the three theories of interests that dominate the philosophical landscape. Mental-state or experientialist theories situate well-being in the mental states of individuals. Roughly, one is doing well to the extent that one undergoes pleasant and satisfying experiences. Three colloquialisms capture the gist of mental-state accounts; 'you are doing as well as you think you are', 'it [i.e., your well-being] is all in your head', and 'what you don't know can't hurt you'.

Desire or preference theories of well-being locate welfare in the satisfaction or fulfillment of individuals' significant desires; one is doing well to the extent that the desires that are of greatest importance to an individual are satisfied. The significant difference between mental-state and desire theories can be gleaned by considering the case of Jones who desires that his son have a happy marriage. As it turns out, his son does have a wonderful marriage but, unfortunately, Jones never becomes aware of this. On the desire

theory, Jones's welfare is improved, for one of his most important desires has been satisfied. On mental-state theories, however, since Jones never becomes aware of his son's marriage and so never experiences any feelings of pleasure or satisfaction from his son's marriage, his welfare remains unchanged.

Finally, there are perfectionist or objective-list theories that claim that an individual's well-being is a matter of exemplifying a particular list of perfections or 'objectively valuable' properties. What qualities belong on this list – what qualities are perfections – vary among proponents of this account, but a representative list may include courage, wisdom, honor, and magnanimity. The simplest way to discern the uniqueness of objective-list theorists is to imagine some property on a list – and so a property, the possession of which to perfectionist lights makes one better off – that is neither experienced nor the object of the individual's desire. We can imagine Sue who receives no feelings of pleasure or satisfaction from the fact that she is courageous, and does not desire to be courageous, and yet, as life turns out, is very brave. In such a case, only the objective-list theorist would judge Sue as having an improved welfare than she would have had, had her life contained no bravery.

For our purposes, both apologists and critics of (*CI*) assume not only that humans and nonhuman animals have interests, but that they are, oftentimes, commensurable; interests can frequently be measured against each other, in the sense that, on many occasions, we can confidently assess that a human (animal) has a greater interest in X than an animal (human) has in X, or even that a human (animal) has a greater interest in X than an animal (human) has in Y.[1] In the same way that it is intelligible to compare the seriousness (importance, significance) of interests of different humans (or, indeed, of comparing the seriousness of different interests relative to the same human), both parties to the debate about (*CI*) assume that it is intelligible to compare the seriousness of a human interest to the seriousness of an animal interest.

Comparing human interests is common. We say that Jill's interest in relieving her headache is greater than Jane's interest in seeing the latest Tom Cruise flick, where this is elliptical for saying that it matters more to Jill's welfare (i.e., it is more significant to Jill's well-being, it *means more* to Jill) that she have her headache relieved than it matters to Jane to see the Cruise movie. We even have, in principle,

a way of 'operationalizing' (i.e. defining by means of an empirically test) whether this comparative claim is true. Suppose we know, independently, that Jill and Jane have the same regard for money and that they have an equal amount of disposable income. Money 'means the same' to Jill and Jane, and so, in particular, the loss of $10 means the same to Jill and Jane. Special circumstances aside, if Jill would give $20 in exchange for headache relief, but Jane would only give $10 to see the Cruise movie, we have reason to believe that Jill's interest in relieving her headache is greater than Jane's interest in seeing the film; it means more to Jill to have her pain eradicated than it means to Jane to see the movie.

A similar narrative is told in inter-species cases. We say that Wulfie's interest in relieving the pain in his paw is greater than Jack's interest in watching the Knicks, where this is elliptical for saying that it matters more to Wulfie's welfare that he has his pain relieved than it matters to Jack's welfare that he see the Knick game. It *means more* to Wulfie that his pain is relieved than it *means* to Jack to watch the Knicks.

How might we come to know this? While it is true that we cannot use the 'money test' as we did when trying to decide whether Jill had a greater interest in relieving her pain than Jane had an interest in watching a film – after all, money plays no direct role in Wulfie's life – we can note that neither Jack nor Wulfie have turned down many meals in the last few years. Both Jack and Wulfie have great interest in eating. We design an experiment where Jack has a choice between watching the Knick game and eating a tofu burger, and Wulfie has a choice between ridding himself of his pain and eating kibble. If Jack were to eat the burger and forgo watching the basketball game – thus displaying a preference for the food over the sporting event – and Wulfie tries to rid himself of pain and forgo the kibble – thus manifesting a preference for his pain relief over food – we would have a (defeasible) reason to think that Wulfie has greater interest in relieving the pain in his paw than Jack has interest in watching basketball.

That oftentimes we can make inter-species comparisons of interests should not blind us to the fact that the causes and kinds of interests involved may be species-specific. Owing to his human biology, Jack is susceptible to suffering headache pain; in virtue of his canine nature, Wulfie is spared this specific type of suffering. By virtue of

his human anatomy, Jack can have a pain in his thumb; Wulfie's anatomy makes him immune. Resisting reductionist attempts that conceive of all suffering as suffering *pain* reveals even wider discrepancies. While Jack and Wulfie can suffer from being angry, depressed, frustrated, and bored, only Jack is subject to the suffering brought about by failed romantic relationships, and while Jack may get upset about his inability to solve a math problem or remember a poem, Wulfie mercifully remains unafflicted by these woes.[2] Finally, some states of mind cannot literally be attributed to Wulfie by virtue of our commonsense (albeit, perhaps possibly mistaken) conception of canine psychology. Imagining Wulfie as experiencing a bout of ennui, for example, makes for a funny cartoon in the *New Yorker* in large measure because of our implicit recognition of the blatant anthropomorphizing being pictured.

The interest to avoid and relieve suffering is mirrored by the interest to garner and prolong pleasure. Again, both Jack and Wulfie share this interest although, once again, its causes and forms vary greatly. Jack receives great pleasure from attending the NBA playoffs and reading Wittgenstein biographies; Wulfie not so much. On the other hand, Wulfie gets pleasure from sniffing bushes and fetching tennis balls, activities that fail to entice Jack's participation. Jack and Wulfie both like eating, yet their tastes differ; grapes bring smiles to Jack's face, kibble elicits a wag of Wulfie's tail. The intelligibility of (*CI*) is not threatened by the fact that some kinds of suffering and enjoyment are undoubtedly circumscribed by species-specific anatomical and mental structures.

It is worth reminding ourselves that, even intra-species, individual grounds for enhancing or diminishing one's welfare vary widely. Women, in childbirth, can suffer (and enjoy?) in ways that men cannot, and men can suffer through some pains that, in virtue of physiological differences, cannot hurt women, but neither example provides us with reasons for concluding that suffering is incommensurable between sexes. In like manner, we should continue to subscribe to our commonly held belief that, at least on very many occasions, we can make inter-species comparisons of interests. Just as we glean – by behavioral cues – that Sue is suffering more in childbirth than Jack is suffering in experiencing his toothache, and so judge that Sue has a greater interest in relieving her pain than Jack has in relieving his, we recognize – also by behavioral cues – that

Wulfie is suffering more pain from his fractured leg than Jack is suffering from his paper cut. In fact, as we have seen, there is no theoretical impediment to operationalize comparative inter-species suffering. It is true, of course, that Jack and Sue can speak to us while Wulfie cannot, and this additional bit of behavioral evidence *may* make the comparative judgments of suffering easier for us. On the other hand, Sue's stoic nature combined with Wulfie's transparency may make the comparative intra-human judgments more difficult than inter-species comparisons. In sum, then, we have no good reasons to reject our ordinary beliefs that (supposedly) nonlinguistic creatures can suffer and enjoy (and so have interests), and that we can frequently make well-founded judgments regarding the relative degree of suffering that is taking place; mothers (and some fathers) of human pre-linguistic children have been successfully doing just this for untold millennia.

In turning toward explicating the notion of deserving preferential consideration, it proves profitable to distinguish between two reasonable ways of responding to the question, '*from whom* do the interests of humans deserve greater consideration than the like interests of nonhuman animals'? Some who endorse (*CI*) believe that human interests warrant preferential consideration from all capable agents, i.e., from all individuals who are capable of dispensing varying degrees of concern. These *impartialists* believe that the benefactors and beneficiaries of privileged concern need not share any 'special relationship'. Not only need they not they share a familial, friendship, or fiduciary relationship, they need not share a species relationship or a relationship of sharing a personal kind of life. From a neutral, *sub specie aeternitatis*, God's-eye perspective, human interests are worthy of greater attention than the like interests of nonhuman animals, and so anyone who, when confronting a situation in which preferential concern is called for (defeasibly), ought to favor the interests of humans over the like interests of nonhuman animals. Being deemed worthy of privileged concern from the point of view of an impartial judge is to say that human interests are *objectively* more morally significant than the like interests of nonhuman animals. It may be helpful to codify (*CII*), a precept that cuts across both (*CIS*) and (*CIP*).

> (*CII*) All else being equal, the interests of humans deserve (are worthy of, merit, warrant, justify) preferential consideration (care,

> concern, attention) relative to the similar interests of (nonhuman) animals from all impartial agents capable of dispensing preferential consideration to the interests of humans and animals.

Partialism, on the other hand, does *not* claim that, special circumstances aside, human interests ought to be privileged over like animal interests, *full stop*. Unlike impartialists, partialists reject the notion that *being human* – in either its 'species' or 'personal' interpretation – has cosmic significance. However, the partialist does believe that sharing a species relationship (if she accepts (*CIS*)) or sharing a kind of life (if she accepts (*CIP*)) has impartial or God's-eye moral significance; co-speciesism or 'co-personism' are morally significant relationships in that they can legitimize extending special concern to those individuals who share in these relationships. So, capable humans ought to privilege the interests of fellow humans over the like interests of dogs, and capable dogs (if any there be) ought to privilege the interests of their fellow dogs over like interests of humans. Partialists, then, conceive of co-speciesism (and 'co-personism') impartially; special circumstances aside, members of any species (and so not just members of the human species) are mutually obligated to privilege their co-speciesists' interests over the similar interests of individuals of different species; partialists, then, are partial but not parochial. Where the impartialist places moral significance on the fact that an interest is a *human* interest, the partialist bestows moral significance on the fact that the potential beneficiary and benefactor are co-speciesists or co-personists. While acknowledging that insofar as they insist that members of *any* species or members of the *any* kind of life should privilege the interests of 'their own', partialists are not parochial, since our focus is the legitimacy of privileging human interests, we'll codify partialism as

> (*CIT*) All else being equal, the interests of humans deserve (are worthy of, merit, warrant, justify) preferential consideration (care, concern, attention) relative to the interests of (nonhuman) animals from all and only (capable) fellow humans.

Our goal now is to provide the practical significance or content of *deserving preferential consideration*; we need to have some idea of the pragmatic, real-life cash-value of claiming that one set of interests

merit special concern relative to another set of interests. Effectively, then, what we are seeking is an operational definition of 'deserving preferential consideration' as the term is used in both (*CII*) and (*CIT*). After all, without understanding how this notion gets played out in real-life, of what the practical consequences are of one set of interests meriting greater concern than another, (*CII*) and (*CIT*) would – and should – attract little interest; we need to see how individuals' actions ought to be affected if some individuals' interests are deemed more worthy of concern than others. That some individuals' interests *deserve* (are entitled to) greater concern than the like interests of others makes a *claim* on some people to act in certain ways in particular circumstances.

We begin with proposing an operational definition for (*CII*). The *personae dramatis* are Jack, the human, Wulfie, the dog, and Al, our morally perfect and capable Alpha Centaurian, who shares neither species identity nor kind of life with either Jack or Wulfie.

> (*Aspirin*) Jack and Wulfie have an equal interest in relieving their respective suffering. Al has an aspirin, the whole of which is necessary and sufficient for relieving the suffering of either Jack or Wulfie. Al can dispense the aspirin to either Jack or Wulfie. There are no other morally relevant factors; i.e., all else is morally equal.

(*Aspirin*) presents us with a *conflict situation*; initially an agent can perform one of two actions, but, subsequently, the performance of one action eliminates the further possibility of the agent performing the other act. Initially, Al can give the entire aspirin to either Jack or Wulfie, but after making his choice and dispensing the aspirin to one of these two, he can no longer give any aspirin to the other. (*Aspirin*) presents us with a zero-sum game; one party wins if and only if the other loses.

Al, being neither human nor canine, living neither a human nor dog kind of life, is insulated from any consideration that sharing either a species or a kind of life may legitimately ground. Conjoin this neutrality with Al's moral perfection, and we are warranted in identifying Al's decision with the *objectively* morally right decision; what Al decides to do in (*Aspirin*) is what any competent moral agent (objectively) ought to do.

To say, then, that human interests impartially *deserve preferential consideration* relative to the like interests of nonhuman animals is to say (i.e., is to 'practically mean') that in (*Aspirin*) Al gives the aspirin to Jack rather than to Wulfie. Or, to make the identical point, to say that human interests (impartially) merit special concern over the similar interests of animals is to say that we humans, as well as all other agents capable of dispensing concern, *ought* to give the aspirin to Jack rather than give it to Wulfie in (*Aspirin*) type situations. (We don't say that Al *ought* to give the aspirin to Jack rather than Wulfie because the morality is already 'built into' our characterization of Al; he is posited as a perfectly moral being.)

We should note the explanatory order of our operational definition of 'human interests (impartially) deserve preferential concern'. Al's giving Jack the aspirin *reflects* the fact that Jack's interests, *sub specie aeternitatis*, merit special consideration; Al's giving the aspirin to Jack rather than Wulfie is *not* what makes Jack's interests more (impartially) deserving than Wulfie's interests. We have not yet discovered what (allegedly) makes Jack's interests more deserving; we have not yet, in other words, discussed the argument for why human interests, impartially considered, merit privileged concern over the like interests of a nonhuman animal. My practical account of what it means to say that one individual's interests are to be preferentially considered or privileged over those of another is intended to be acceptable to both advocates and skeptics of (*CII*).

Although right-headed, this attempt at operationalizing the idea that, from the impartial point of view, human interests should be privileged over those of nonhuman animals arguably needs a bit of tweaking. The problem with using (*Aspirin*) is that it is slightly too demanding of one who endorses (*CII*); one can endorse (*CII*), and so be committed to the idea that human interests are, all else being equal, impartially deserving of privileged concern over the interests of nonhumans, and *still* not be rationally compelled to believe that Al dispenses (or that all capable agents ought to dispense) the aspirin to Jack (and not Wulfie) in (*Aspirin*). Although I believe that most proponents of (*CII*) would, in fact, be happy to use (*Aspirin*) as the basis of an operational account of (*CII*), they are not required to do so, and so it would be unfair to burden them with it.

To recognize that one can both endorse (*CII*), and yet deny that Jack is entitled to the aspirin in (*Aspirin*), we can consider a case

where the preferential consideration that one deserves is so slight that it does not rise to the level where a capable third party would be obligated to alleviate all the serious suffering of one party and allow the continuation of all of the serious suffering of the latter.

We imagine Mary driving in the middle of three lanes of traffic on the Long Island Expressway. On her immediate right is Rennie, and on her immediate left is Lannie. While Rennie's bumper sticker says 'Go Yanks, Boo Mets', Lannie has a sticker exclaiming 'Go Mets, Boo Yanks'. Mary is a huge Yankee fan, and also dislikes the Mets. As bad luck has it, Rennie and Lannie are involved in an automobile accident, and Mary stops to help. In our first variant, Rennie and Lannie receive quite minor injuries; they have equal interests in having their scratches attended to. Mary, who believes (for good reasons, of course) that the interests of Yankee fans should be privileged over the interests of Met fans treats Rennie's cuts prior to treating Lannie's. In the second variant, Rennie and Lannie suffer life-threatening injuries, each of which requires immediate attention. Mary, so it seems to me, can create the convincing soliloquy:

> I still heartily endorse the idea that, all else being equal, the interests of Yankee fans should be privileged over the interests of Met fans, but the only way that I can manifest this preferential consideration is by taking Rennie to the hospital and allowing Lannie to die. But the stakes for acting on my principle are too high; my acceptance of the idea that the interests of Yankee fans should be preferentially considered relative to the interests of Met fans cannot bear the burden of a life-and-death decision. It would be absurd for me to save Rennie's life over Lannie's simply because Rennie is a Yankee fan and Lannie is a Met fan, and so I will not implement my principle. Since all else is equal, I will flip a coin to determine which of the two women I will save. If somehow I were compelled to save either Rennie or Lannie (say, God commanded me to do so), I would still flip a coin; baseball affiliation is simply too flimsy a basis for privileging Rennie's interests when the interests are at such high stakes. When the stakes are low, i.e., when the interests are minor, my commitment to the principle that the interests of Yankees fans should be privileged relative to the interests of Met fans is appropriate, and I would – and should – attend to Rennie's minor scratches over the equally minor scratches of Lannie.

We can apply the moral of this story to Al in (*Aspirin*). Suppose that Al correctly believes that the preferential concern that the interests of humans deserve relative to the concern that interests of animals deserve is minuscule. So, while Jack, in virtue of being human and Wulfie being a dog, deserves to have his interests privileged, Jack only warrants a very tiny bit of privileged concern. Al may quite justifiably believe that this tiny preferential benefit that Jack deserves does not justify giving Jack an aspirin to completely relieve his horrible (let us now say) suffering while allowing Wulfie to bear his suffering. If the equal interests of Jack and Wulfie were trivial (e.g., Jack has the slightest discomfort because of not having shaved this morning, Wulfie has the slightest discomfort because of some matted hair), Al could, and would, demonstrate his allegiance to (*CII*) by attending to Jack instead of Wulfie. But in cases where the interests are of great significance to both Jack and Wulfie, Jack's being human is insufficiently authoritative to legitimize Al giving Jack the aspirin and leaving Wulfie to his excruciating suffering. Just as Mary may consistently subscribe to her principle that Yankee fans deserve privileged concern over Met fans, and yet find it inapplicable in certain high-stakes situations, Al may subscribe to (*CII*) and yet in certain cases of equal but horrific suffering – as described in (*Aspirin*) – find it illegitimate to use being human as a basis for extending privileged concern.

We can modify (*Aspirin*) very slightly to accommodate the charge that it unfairly burdens the supporter of (*CII*). Consider

> (*Aspirin**) Jack and Wulfie have an equal interest in relieving their respective suffering. Al, a morally, capable agent has an aspirin that is infinitely divisible. Each infinitesimal part of the aspirin has an equal, positive relief-providing power. All else is morally equal.

Operationalizing (*CII*) now takes the form of Al giving more than half of the aspirin to Jack. (Let's pass over the physical problem of dispensing infinitesimal amounts of aspirin.) That is, an advocate of (*CII*), and thus someone who believes that, all else being equal, human interests ought to be privileged relative to nonhuman animal interests, should dispense more aspirin to a human than to an animal in cases like (*Aspirin**). By allowing for the infinite divisibility of the aspirin, we block the objection voiced by our prior supporter of (*CII*) who felt that endorsing the idea of human interests deserving

preferential concern did not commit Al to supplying Jack with the entire aspirin, and so leaving Wulfie with none at all. In (*Aspirin**), Al has the resources to reflect his allegiance to (*CII*) even if being human and being a nonhuman animal carry very little weight, for Al could give very little more of the aspirin to Jack than he gives to Wulfie. In sum, then, the practical, real-life, behavior-guiding meaning of human interests deserving of greater concern than animal interests is that in (*Aspirin**)-like situations, humans should be given more aspirin than nonhuman animals by any capable creature. If anyone inquires as to the practical consequences of preferential concern – of how the notion that one individual's interests deserve to be privileged over another's gets 'played out' or manifested – we should refer to either what Al does in (*Aspirin**) or, equivalently, what other capable agents ought to do in (*Aspirin**).

> The practical implications for (*CIT*) will, unsurprisingly, resemble those for (*CII*). We first return to (*Aspirin*) replacing Alpha Centaurian Al with human Jill.
>
> (*Aspirin+*) Jack and Wulfie have an equal interest in relieving their respective suffering. Jill has an aspirin, the whole of which is necessary and sufficient for relieving the suffering of either Jack or Wulfie. Jill can dispense the aspirin to either Jack or Wulfie. There are no other morally relevant factors.

To say that human interests deserve special consideration *from humans* is to say (i.e., is to practically mean) that in (*Aspirin+*), Jill ought to give the aspirin to Jack and withhold it from Wulfie; i.e., all capable humans ought to dispense the aspirin to Jack rather than Wulfie in (*Aspirin+*) circumstances.

Our reasons for replacing (*Aspirin*) by (*Aspirin**) in operationalizing (*CII*) apply, *mutatis mutandis*, in operationalizing (*CIT*). We effect this 'technical adjustment' by slightly modifying (*Aspirin+*) to (*Aspirin+**).

> (*Aspirin+**) Jack and Wulfie have an equal interest in relieving their respective suffering. Jill has an aspirin that is infinitely divisible. Each infinitesimal part of the aspirin has an equal, positive relief-providing power. Jill is a capable, moral agent. All else is morally equal.

We operationally define (*CIT*) in terms of Jill being obligated to give more of the aspirin to Jack than she gives to Wulfie in (*Aspirin+**). The practical significance of saying that humans deserve to have their interests preferentially considered – by fellow humans – is that in (*Aspirin+**) circumstances the fellow human ought to give more of the aspirin to her fellow human than she gives to a nonhuman animal.

When ordinary folk express allegiance to (*CI*) – to either its (*CII*) or (*CIT*) variant – they are advocating a perfectly reasonable and intelligible position. It makes sense to attribute interests to animals in the very same way that we attribute interests to human beings; it makes sense to think of human and animal interests as commensurable or comparable; it makes sense to advance the idea that human interests deserve preferential consideration relative to animal interests. Not only does (*CI*) make sense in the quite minimal reckoning that it is an intelligible position subject to truth or falsity, but it also makes *practical* sense; (*CI*) has real-life, action-guiding force that is revealed in its operational accounts of its variants, (*CII*) and (*CIT*).

So while intelligibility isn't a problem, finding good reason for accepting (*CII*) or (*CIT*) is a major difficulty. This difficulty is easily explained; there are no good reasons to think of either variant of (*CI*) to be true. But I'm in a very select minority especially when the domain of opinions ranges over the lay public. I'll try to be convincing; we begin with (*CII*).

1.3 Does the cosmos inform us that human interests are more significant than animal interests?

If from an impartial perspective when all else is equal, we ought to privilege human interests over like nonhuman animal interests, there must be some morally relevant difference between a human having an interest and an animal having a similar interest. To privilege one individual's interest over another's is to treat these interests morally differently, and different treatments or levels of concern require an explanation or reason. This *principle of differential concern* – the idea that different moral responses require, as a matter of justice, a morally relevant difference in the cases to which we are responding – is, I take it, a fundamental or constitutive ethical principle. If (*CII*) is true, then, there must be some morally relevant difference between

a human having a certain interest – say an interest in relieving some pain – and a nonhuman animal having a similar interest that justifies or legitimizes an impartial agent preferentially considering the human's interest over the animal's interest. Allegiance to the principle of differential concern places a burden on the advocate for (*CII*); she incurs the responsibility to supply us with a good moral reason for considering like interests of humans and animals differently, and for thinking that the difference favors the human over the animal.

How, then, to proceed? Some methodological order can be brought to the discussion by recalling that (*CIS*) and (*CIL*) express the two ways in which 'human' has been used by supporters of (*CI*). Impartialist advocates of (*CIS*) – those who believe that all those who share the idea that the interests of *homo sapiens* are objectively deserving of having their interests privileged over the like interests of animals of other species memberships – must believe that, at root, the fact that one is a member of the human species is a morally relevant difference that favors those of this species. Impartialist advocates of (*CIL*) – those who believe all those who participate in the human (person) kind of life are objectively deserving of having their interests privileged relative to the like interests of those who live nonhuman (nonperson) kinds of lives – must believe that, at root, the fact that one lives a human kind of life (and, again, we have not yet identified in what such a life consists) is a morally relevant difference that favors those who live this kind of life.

Abstracting away the difference between (*CIS*) and (*CIL*), we can see that interrogating whether there are, from an impartial perspective, good reasons for favoring human interests over like animal interests is tantamount to asking whether there is any good moral reason (i.e., moral justification) for Al to give Jack more aspirin than Wulfie in (*Aspirin**). Alternatively, we want to know what the world has to be like in order for every morally capable creature to be obligated, all else being equal, to give more aspirin to Jack than to Wulfie in an (*Aspirin**)-like circumstance. At root, those who interpret (*CI*) as (*CIS*) are committed to the fact that species identity is somehow, in some way, a morally relevant factor, and that membership in the human species confers greater objective significance on the interests of the members of the human species. So, in (*Aspirin**)-like circumstances Al ought to give more aspirin to Jack than to Wulfie because – at the end of the day – Jack is a *homo sapien* and Wulfie is not. At bottom, those

who interpret (*CI*) as (*CIL*) are committed to the fact that the kind of life one leads is somehow, in some way, a morally relevant factor, and that those who live 'the human (person)' kind of life are, by virtue of this very fact, impartially deserving of having their interests privileged relative to the like interests of creatures who lead nonhuman kinds of lives. So, in (*Aspirin**)-like circumstances Al ought to give more aspirin to Jack than to Wulfie because – at the end of the day – Jack leads a human kind of life and Wulfie does not.

Let's begin with the impartialist who advances (*CIS*), and so insists that all individuals capable of dispensing concern to either Jack or Wulfie in a conflict situation are morally obligated to privilege Jack's interests over Wulfie's by virtue of the fact that Jack is, and Wulfie isn't, a member of the human species. The simplest and most direct defense of this position is *primitivism*; it is just a brute, fundamental fact about the world that being a *homo sapien* (defeasibly) obligates any capable being in privileging interests of such an individual over the like interests of any creature of a different species identity. Primitivism precludes any further 'why'-questions; in virtue of its fundamental justificatory status, there are no reasons why membership in this one particular species has such remarkable moral power. It's not merely that we can know no deeper explanation; there is no deeper explanation for us to know. Since we have identified species membership with the possession of a specific bit of genetic material (viz., DNA H for *homo sapiens*), primitivism can also be characterized as the thesis that insists that (the possession of) DNA H confers special moral significance on the interests of its subjects. Finally, it should be emphasized that primitivism claims that membership in the species *homo sapien* or, equivalently, having DNA H *in and of itself* justifies privileged concern. The qualification, 'in and of itself' is meant to highlight the fact that species identity, independently of what other properties may derive from someone having H, has the moral potency to legitimately ground privileged concern from all other capable agents.

In denying that there is any further explanation of why it is that being a member of the human species makes one's interests (impartially) worthy of prioritized attention, primitivists may parse their view by claiming either that 'it is in the nature' of being a human interest that it merits preferential consideration, or that it is 'part of the way the world works' that human interests deserve privileged

concern. Honest primitivists acknowledge that these paraphrases provide no illumination explaining *how* it is that species identity has the moral significance they ascribe to it; they are nothing more than the use of a different vocabulary to express the very same primitivist thought.

Primitivists may well recognize that some dissidents are made uneasy by primitivism's essential reliance on brute, unexplainable facts, and try to assuage this worry by reminding opponents that this fate may await all explanations. Scientists currently speak of the spin of electrons 'being in their nature', (i.e., the 'explanation' for electrons spinning the way they do is that 'it is part of their nature' to do so) and although there may eventually be informative explanations of what accounts for the nature of electrons – perhaps in terms of quarks, muons, and gravitational forces – there is no guarantee that these will be forthcoming. And even if such explanations are in the offing, the issue of fundamentality recurs at this more basic level. Although there is no *a priori* reason to think that these levels of explanations cannot continue indefinitely, there is also no *a priori* reason to believe that we will not reach a most basic explanatory level. If the latter alternative proves to be the case – and there is some fundamental explanatory level – we are not compelled to conclude that scientific explanations that refer to these unexplainable facts are, after all, illegitimate or arbitrary. In moving from physics to metaphysics, we encounter a similar story when some philosophers of mind insist that it is the nature of immaterial minds or souls that they think, and that no further explanation of how it is that thinking occurs in souls is possible. The moral is that unless one is comfortable with rejecting, *a priori*, such scientific and metaphysical views simply by virtue of a terminus in their explanatory chains, one should not dismiss primitivism simply because it conceives, as a basic fact about the moral world, that human interests are more considerable than animal interests in virtue of the fact that human interests are interests of members of the human species.

I fear, however, that primitivism's attempt to gain legitimacy by making its methodology akin to that of the sciences is not convincing. When physicists remark that electrons spinning in manner S cannot be given any deep explanation, and that it is simply a brute physical fact about the world that electrons behave in this way, presumably they are under no illusion that reference to this fundamental fact

provides any reason for a skeptic to change her mind. The parameters of the discussion between the physicist and her audience involve both parties accepting the fact that electrons spin with S; the only question is what accounts for this fact. However, the situation facing the primitivist is one where there are differing views regarding the facticity of the claim that human interests are worthy of greater concern than the like interests of nonhuman animals. Whereas we are imagining the interrogator of the physicist accepting, as a datum, that the electron has spin S, the individual who questions (*CIS*) does *not* antecedently accept the claim that human interests are (impartially) worthy of greater concern than similar interests of nonhuman animals. While primitivists believe that human interests merit greater consideration than animal interests by virtue of them being *human* interests, their adversaries are skeptical whether the alleged fact that is being explained, viz., that human interests are more considerable than their animal counterparts, is really a fact at all. If there were no disagreement about this issue – if all parties accepted the fact that, all else being equal, human beings impartially deserve greater concern for their interests than animals deserve for their like interests – and the only remaining question was what accounts for this moral fact, then the primitivist would indeed be in the same boat as the fundamentalist physicist. But there *is* disagreement; after all, we are embedded in a debate about the merits of (an impartial understanding of) (*CIS*).

Compare primitivism to egotism or personal egoism. Suppose Frank, a personal egoist, insists that his interests deserve greater consideration than the like interests of anyone else because the interests are *his*; Frank insists that by virtue of the fact that certain interests are his rather than interests of other capable agents entitles him to privileged concern for his interests from all capable parties. I would think that Phil, who has the same interest as Frank in having his own suffering relieved, would be unimpressed. Phil wants to know what is it about Frank's interests that make them worthy of special care. To be told by Frank that it is simply a brute moral fact that his (i.e., Frank's) interests are more considerable than anyone else's similar interests is, effectively, to repeat Frank's egoistic position. Phil should remain unconvinced. Phil has been given no reason – and indeed, in our tale, can be given no reason – why he cannot appropriate Frank's

tactic, and insist that by virtue of the interests being *his* (i.e., Phil's), his interests deserve to be universally preferentially considered.

Of course, none of this shows that primitivism (or personal egoism, for that matter) is false; for all that has been said it may well be that it is a brute moral fact that human interests deserve unrestricted privileged concern. All that has been shown is that those not disposed to believe primitivism – those, say, who believe that *being a canine* is a fundamental fact that legitimately grounds preferential concern, or those who believe that species identity, of whatever token, is morally irrelevant – have been given no good (i.e., non-question-begging) reason to change their minds. Unfortunately for the primitivist, things are about to get worse; there are good reasons for rejecting primitivism.

Imagine that Ned, who everyone (including Ned, himself) justifiably believes to be human, is actually Neanderthal. For some reason, Ned undergoes DNA testing and, lo and behold, to the shock of everyone involved, Ned had Neanderthal parents, and therefore has Neanderthal and not human DNA. I submit that it would be thoroughly irrational, on the basis of this discovery alone, to now attribute a diminished moral significance to Ned's interests. To bring some poignancy to the example, suppose that *you* are Ned, that your birth records had been forged, and that despite having excellent reasons to think that you were created from human sperm and egg, you had actually been created from Neanderthal sperm and egg. Surely, you would not now come to believe – as primitivism suggests – that, all else being equal, the concern directed at your interests should be discounted relative to the time when everyone (justifiably) believed you to be human.

It might be replied that this thought-experiment may be (biologically) incoherent. Implicit in the story is that Ned is pretty much just like human beings, i.e., creatures possessing DNA H, only with DNA N. But – so goes the objection – for all we now know, there is some biological or physical law that makes it impossible for creatures with DNA N to have some human-like features. And if it is the presence of these features, whose exemplification is possible only in *homo sapiens*, that accounts or grounds the merited privileging of interest, then, *pace* the tacit assumption in our tale of Ned, Ned could not be sufficiently human-like in the morally relevant ways.

The problem with this response is that it is beside the point. If the respondent's story turns out to be factual then, as she implicitly concedes, it is not the presence of DNA H that, in and of itself, legitimately grounds preferential concern, but rather the morally relevant features that can be instantiated in creatures with DNA H. So, *contra* primitivism, the ultimate explanation of warranted preferential concern rests with these other attributes, and not in the fact that certain individuals have DNA H. Despite the fact that (the possession of) H is necessary for grounding preferential consideration of a creature's interests, i.e., that H is necessary for an individual to have the morally relevant features that legitimize special concern, the explanatory terminus is located in the features and not in the human DNA proper. With this response, primitivism loses its distinctive voice.

Insofar as primitivism regarding species membership precludes, by its very nature, any further inquiry as to why species identity has the moral potency to ground favoritism, it acquires an arbitrariness that even most of the most virulent racists and sexists avoid. Those who endorse racism, for example, all but invariably say that a person's race or skin color, in and of itself, doesn't ground differential concern. Rather a person's race or skin color is an indication – perhaps even an infallible indication – of some other trait that does lend itself to being a legitimate basis for privileged concern. So, for example, anti-black racists (e.g., the KKK) will argue that a person's skin color is a sign of stupidity or an immoral character, and it is in virtue of these characteristics that the interests of blacks merit less consideration than the like interests of whites. Sexists usually act similarly, denying that one's chromosome distribution is, in and of itself, the ground for differential concern, but insisting that by virtue of one's chromosome pairing, one who is male (or female) has other qualities that are morally relevant to the extent that they justify special care. So, perhaps men are said to be more rational than women (a favorite from the time of Aristotle), or that women, in virtue of their genetics, are more virtuous than men. Racists and sexists allow discussion; we can argue, among other things, whether there really is the connection between racial and sexual identity, on the one hand, and the (allegedly) morally relevant qualities on the other. Primitivism stops this kind of discussion before it can begin. Unlike one's race or sex, one's DNA constitution is not an *indication* of an agent having some

other putatively morally relevant attributes; (possession of) the DNA H *is* the terminal morally relevant characteristic.

Appropriating this tactic from racists and sexists, those who endorse (*CIS*) would need to abdicate primitivism – and so allow that the mere fact of species membership doesn't serve, in and of itself, as a the legitimate ground for the impartial privileging of human interests – but insist that species identity is a reliable, perhaps infallible, sign that humans alone have some attributes that legitimize the preferential concern of their interests from all capable agents. Let *attributivism* be the name of this strategy to defend (*CIS*). Just as anti-black racists used skin color as a reliable indication of, say, an immoral character – and so a sign of an individual who deserves to have diminished concern of her interests relative to the like interests of white people (whose skin pigmentation was a reliable indicator, say, of a morally outstanding character) – attributivists claim that membership in the human species – though not, in and of itself, a legitimate basis for privileging interests – is a reliable sign of some other property, the possession of which does warrant the universal preferential concern of that agent's interests.

That species identity serves as a reliable indicator of some 'interest-preferencing' attribute is most plausible either if species membership caused such an interest-preferencing attribute or there was a common cause of both the species identity (i.e., DNA H) and the interest-preferencing attribute. To make this point more concrete, consider the Aristotelian who believes that rationality is an interest-preferencing property unique to those who are members of the human species. The suggestion may be that only those who have DNA H can be rational, where this 'can' represents physical or natural possibility. The hypothesis then is that there are natural laws – laws of biology, psychology, and physiology – that make it impossible for any creatures with a nonhuman DNA to be rational. So, since rationality is deemed an interest-preferencing attribute, i.e., an attribute, the possession of which entitles its possessor to privileged concern of her interests over the like interests from all capable parties, only members of the human species are deserving of having their interests deserving of special concern. Someone attracted to attributivism may be tempted to go even further, and hypothesize that all humans have rationality, and so special privilege is not only restricted to humans but exhausts the entire human population. Here the idea

is that rationality is an interest-preferencing characteristic, and in virtue of the laws of nature, all and only human beings, i.e., all and only creatures with DNA H, have this attribute, and so, all else being equal, all and only humans are entitled to have their interests preferentially considered relative to the like interests of creatures with a DNA configuration other than H.

The most frequent rebuttals to attributivism come in two forms: for whatever interest-preferencing attribute that is suggested either there are some individuals who aren't *homo sapiens* that also have such an attribute – and, thus, being a *homo sapien* is not a necessary condition for having this (supposed) interest-preferencing quality – or not all *homo sapiens* have this (alleged) interest-preferencing property – and thus membership in the species *homo sapien* doesn't suffice for owning this special attribute. To exemplify, consider again our Aristotelian attributivist recommending rationality as an interest-preferencing quality, where rationality (as with all candidates for interest-preferencing attributes) is reckoned a dispositional property; humans, in virtue of their DNA structure, uniquely have the capability (capacity, ability) to reason discursively. The responses take the form of either claiming that there are some agents who are not *homo sapiens* (think chimpanzees, dolphins, and, perhaps more contentiously, dogs, cats, and birds) who reason, or, that there are some *homo sapiens* (think those who suffer from very advanced Alzheimer's disease or other types of severe cognitive and psychological impairment) who lack such a quality.

It hardly requires great imaginative skills to predict the contours of the debate. Attributivists often respond by defining 'rationality' in such a way that the suggestions of chimpanzees and dolphins no longer seem to make the cut; so being a *homo sapien* is, after all, necessary for having the interest-preferencing quality. Or, to reply to the other horn of the dilemma, attributivists may suggest that when we understand 'capacity' sufficiently capaciously, those who suffer from dementia or brain disorder still, unlike chimps and porpoises, retain the capability of rational discourse. This debate has filled many pages of many books – feel free to search the index for almost every book regarding the moral status of nonhuman animals for *marginal case argument* – and I will not add to it here.[3] Instead, I want to question a more basic idea of attributivism: the coherence of attributing the moral power to objectively raise the considerability

of certain individuals' interests solely on the basis that these individuals possess certain *capacities*. I aim to throw doubt on the presumption that (the possession of) capacities – regardless of the content of the capacities – are the appropriate kind of items to play the interest-preferencing role that some attributivists assigned to them.[4]

To help ensure that that the nature of my suggestion isn't (understandably) conflated with other attempts to refute an impartial rendering of (*CIS*), let's stipulate that the capacity to think rationally is possessed by all and only *homo sapiens*; we allow that owning DNA H is both necessary and sufficient for an agent to have the capacity for rational thought. It may be, for example, that the laws of biology and psychology make the possession of DNA H (or membership in the human species) both necessary and sufficient for having the power to rationally think.

There are, of course, good reasons for rejecting the view that the capacity for rationality has much at all to do with interest-preferencing. Consider a case where two humans simultaneously enter a doctor's office with equal interests in relieving their respective suffering. Stipulate that all else is morally equal, and so there are no concerns, for example, that the suffering of one causes additional suffering to her parents and children than does the suffering of the other. In such an admittedly sterile circumstance, it seems perverse to think that the doctor ought to decide whose welfare to prioritize (i.e., decide whose interests she should preferentially consider) on the basis of the capacity for rational thought. It would be grotesque – would it not? – that the doctor treat Jane before Jim because Jane has a higher IQ than Jim does. (We assume, no doubt falsely, that IQ is a measure of the capacity for rational thought.) We would not think it justified for the doctor to treat a 'normal' human being over a marginal one who is in just as much pain even if the difference in rational ability was enormous; the capacity to reason is just not the sort of attribute that is intrinsically interest-preferencing.

The argument continues by claiming that since differences in the capacity for rational thought are not grounds for legitimizing privileged concern for humans, it would be *ad hoc* to have differences in the capacity for rational thought serve as legitimate grounds for privileging the interests of humans over the like interests of animals. After all, if the IQ of the 'normal' human was 100 and the IQ of the 'marginal' human was 1, and this difference didn't support a

judgment that the interests of the higher IQ human being should be privileged over the interests of the lower IQ human, then it seems utterly bizarre to think that the difference between a 100 IQ human and a zero IQ animal can justify privileged concern.

Unless one is unbothered by biting a rather leadened bullet, and insist that, in the intra-species case, the difference in IQ – and so the difference in rational capacity – is, after all, a relevant factor in determining the consideration one (objectively) deserves, the only viable response is to counter that the argument conflates the moral significance of a difference in degree with a moral importance of a difference in kind. It's claimed that while the difference between the IQs of the two *homo sapiens* is a difference of degree – one has an IQ of 100 and the other has an IQ of 1 – the difference between the IQ of either human and the IQ of the animal (which, again, we are, no doubt falsely, assuming is zero) is a difference in kind. The idea here is that to attribute an IQ of zero to Wulfie, say, is, effectively, to say that he lacks the capacity for rational thinking, and it is *this* difference between either human and Wulfie – the categorical difference between having and lacking the capacity for rational thought – that is reputed to have the moral clout to justifiably ground privileged concern. This response, then, agrees with the commonsense perception that differences in the degrees of rational thought aren't morally relevant insofar as granting one person's interests over the like interests of another (i.e., it is not as though we believe that, all else being equal, the pain of an Einstein deserves preferential consideration relative to our pain just because he's smarter (read: more rational) than we are), but insists that the categorical difference between having the capacity of rational thought *to any extent* is a sound basis for privileging interests over similar ones of an individual lacking this capacity altogether.

It is important to recognize that this attributivist attempt to justify an impartial rendering of (*CIS*) – of trying to justify the idea that species membership is itself (indirectly) morally significant at least insofar as it legitimizes privileged care – amounts to an impartial defense of (*CIP*) suitably qualified. We are now assuming, for the sake of argument, that all and only *homo sapiens* have the capacity for (say) rationality, and are faced with interrogating the idea that (the possession of) the capacity for rational thought is, in and of itself, a good reason for extending preferential consideration. (*CIP*) is the

view that those who individuals who lead a particular kind of life – a 'personal' life – are thereby entitled to have their interests privileged relative to the like interests of others who don't lead personal lives. For the sake of our present discussion (and here is where 'suitably qualified' finds application), we can think of the personal life – the kind of life that supposedly legitimizes impartial favoritism – as the rational life.

What justifies the idea that an attributivist defense of (*CIS*) is tantamount to a defense of (*CIP*)? It seems eminently plausible, if not inescapable, to think of kinds of lives being identified and individuated in terms of capacities. If we are asked how does the kind of life normally led by *homo sapiens* differ from the kind of life normally led by a tuna fish, our answer would likely be cast in terms of the different capacities or abilities unique to each. *Homo sapiens* have the capacity for, say, rational thought, self-reflection, and autonomous action, while tuna have the capacity, say, for acute underwater vision and enjoying plankta. Whatever the specifics, the idea is that what makes a kind of life the kind of life it is, and what differentiates one kind of life from other kinds of lives are (the possession of) distinct capabilities or capacities. So, the case for (*CIP*) rests, most fundamentally, on the viability of (the possession of) capacities having the moral significance to justifiably ground privileged concern. This basic assumption is precisely the one that the categorical defense of (*CIS*) relies on. A sound argument for the rejection of an impartialist defense of (*CIS*), therefore, suffices as well as an argument against the impartialist (*CIP*).

Discussion of the plausibility of using (the possession of) capacities as grounding special concern can be short-circuited by adopting a primitivist strategy. As with a speciesist insisting that membership in the *homo sapien* community is intrinsically and fundamentally interest-preferencing, a defender of the moral significance of capacities may insist that possessing certain capacities (say, the capacity for rational thought) does, by itself, defeasibly, justify entitlement of privileged concern. The aforementioned comments regarding species primitivism apply, *mutadis mutandis*, to a primitivism concerning capacities. But we can press further.

If the very notion of capacities serving as an appropriate ground for privileging interests is flawed – if, that is, our search for the ground for preferential consideration is essentially misguided when

we look at (the possession) of certain capacities as the linchpin for privilege – then worries regarding the particular contents or objects of the proffered capacities become superfluous. If founding special attention on capacities is a non-starter in virtue of something akin to a category mistake, then debates about *what* capacities may function as grounding privilege (i.e., does the capacity for rational thought ground privilege, is the capacity for self-consciousness the fundamental basis for preferential concern, does our ability to use language make us humans the kind of beings that are entitled to have our interests privileged) are gratuitous.

We begin by taking a step back and seeing just how strange it is to believe that the fact that some individuals have certain capacities that others lack, i.e., that certain individuals *can* perform certain feats that other individuals *cannot*, or, equivalently, that a difference in the kinds of lives individuals lead can legitimize, *sub specie aeternitatis*, favoring the interests of one group over the interests of the latter. We should be puzzled by the fact that A *can* do x and B *cannot* do x is advanced as a reason to preferentially consider the suffering of A over the like suffering of B.

Consider a fragile plate of glass, a pane of glass with the capacity to break. So, very roughly, to say that this pane of glass is fragile is to say (among other things) that if it were dropped from 100 feet and left to fall unimpeded on a concrete street, it would shatter. We think that this capacity can be instantiated or uninstantiated; if in the career of the sheet of glass, it's dropped from 100 feet and shatters upon its impact with the ground, the glass instantiates or exemplifies its fragility, and if the glass never gets dropped, and so never impacts the ground with sufficient force, it never instantiates its fragility. Significantly, the glass sustains its fragility even if its disposition to break when dropped is never manifested.

Armed with the distinction between instantiated and uninstantiated capacities, we return to the attributivist thesis that, special circumstances aside, human interests ought to be privileged over like nonhuman interests by virtue of certain interest-preferencing capacities uniquely possessed by humans. If the mere possession of a capacity (of whatever content) legitimately grounds preferential concern, then it should not matter whether or not this capacity ever becomes instantiated; an uninstantiated capacity should serve just as well as an instantiated capacity since it is (the possession of) the

capacity, and not the exemplification of the capacity (e.g., it is the capacity for rational thought and not the actual rational thinking; it is the capacity for self-reflection and not the manifestation of this capacity) that does the moral work. But this seems utterly strange. While it may be true that there is a discernible difference between a fragile pane of glass whose disposition to break is never instantiated and a non-fragile pane of glass (perhaps the molecular constitution of the two sheets of glass noticeably differ), the mere difference between one pane having and the other lacking fragility cannot be exploited in the actual world. While a world with a never-to-be-exemplified fragile pane of glass may be constitutionally different than a world with non-fragile but otherwise identical sheet of glass, neither the world nor anything in it is advantaged or disadvantaged by which of the two panes of glass exist. The point is that the mere possession of a capacity, i.e., the possession of the capacity absent its manifestation, should no more benefit its subject (i.e., legitimize the preferential concern of this individual's interests) than a subject who lacks the capacity altogether.

Consider Casey, the manager of a baseball team, whose sole goal is to create the best, most competitive team. Casey has one roster spot to fill and the candidates are Cliff and Andy. Casey recognizes that both hit, field, and run equally well. They are the same age. Cliff, however, has far more potential than Andy; he can (i.e., has the capacity to) run faster, cover more distance in the field, and hit with more power than does Andy. But Casey knows that Cliff will never fulfill his potential (i.e., will never instantiate his baseball-enhancing capacities). Perhaps Cliff is lazy, or spends too much time chasing women, or drinks too much, but for whatever reasons, although Cliff *can* be a superior player than Andy, he never will be. Finally, Cliff and Andy have equal interests to make the team.

If we stipulate that there are no other relevant factors (e.g., neither Cliff nor Andy will enhance team chemistry or morale more than the other, their salaries are the same), it is mysterious why Casey ought to choose Cliff over Andy (or conversely) or why Cliff deserves to have his interests preferentially considered over the like interests of Andy. Unsatisfied potential, i.e., unexemplified capacities, *contra* attributivism, should not, by themselves, advantage their possessors.

Or, in a similar vein, suppose that God offers you a choice. You can either lead a life in which you are incapable of contracting cancer,

or you can lead a life that, while including the capacity to contract cancer, is one in which you will always live cancer-free. Assume all else is equal, so, among other things, assume that you are assured by God that if you pick the second option, you will never worry about acquiring any malignancy. As before I see no reason to make a decision one way rather than the other.

These thought-experiments give us good reasons for denying that the mere ability to perform some action, considered independently from the instantiation of such capacities, is an interest-preferencing quality. Even if all and only humans (i.e., *homo sapiens*) have particular capacities, regardless of the contents of these capacities, the mere possession of such powers give us no reason to preferentially consider the interests of these individuals over the like interests of those lacking such capacities. Alternatively, since kinds of lives – in particular the personal and non-personal kinds of lives – are identified and individuated in terms of capacities, the kind of life one leads is not, in and of itself, a sound basis for impartially dispensed privileged concern.

In a bit of a twist, let's consider the suggestion that there are certain capacities, the possession of which, all else being equal, makes one's interests worthy of less consideration than the like interests of individuals who lack such capacities; instead of capacities that are interest-preferencing, we have capacities that are interest-diminishing. Perhaps it is suggested that the capacities to perform evil acts and contemplate evil thoughts are examples of interest-diminishing capacities. Suppose, further, that all and only humans (i.e., *homo sapiens*) have these capacities, but that no humans ever manifest these capacities; although all humans can perform and think about performing evil acts, none ever do. I submit that in an (*Aspirin**) situation, we believe that Al does not give more of the aspirin to Wulfie than to Jack, or alternatively, that it would be wrong for any capable agent in an (*Aspirin**) situation to dispense more aspirin to Wulfie than to Jack simply by virtue of the fact that Jack uniquely has the capacities – the capacities that will never be exercised – to act and think in an evil manner. But if, from an impartial perspective, Wulfie isn't entitled to more aspirin simply because he lacks a capacity that Jack has, by parity of reasoning, Jack shouldn't be entitled to have his interests impartially privileged merely by virtue of his unique possession of interest-preferencing capacities.

I would like to end my diatribe against (*CII*) in all its variants by developing a quite different line of thought. Whether one forwards the idea that membership in a particular species is legitimate ground for impartial preferential concern or one advances the notion that leading a particular kind of life (i.e., having certain capacities) impartially makes one entitled to privileged concern, one would be hard-pressed to deny that, ultimately, one's species membership and capacities are not qualities for which its possessors are responsible. We had no say about originally being *homo sapiens*; it's not as though we had a choice about our initial genetic constitution.

At least at first blush, it seems plausible to believe that one needs to have some responsibility for an attribute to deserve to be (relatively) advantaged or disadvantaged by virtue of possessing that attribute. If you had absolutely no say over having a particular attribute, if it was not, in the slightest, 'up to you' that you acquired a specific property, it seems objectively unjust that you either benefit or suffer harm from possessing it. God, so to speak, upon realizing that your acquisition of attribute A was, ultimately, something for which you had no control, would not send you to Heaven or Hell simply because you had A. In a very basic, ordinary sense of 'deserve', having A in these circumstances is not something for which you deserve credit or blame, praise, or punishment. Let's codify this idea in the *principle of legitimate desert* (*PLD*).[5]

> (*PLD*) If L is a legitimate reason for privileging the interests of A over the interests of B, then A is at least partly responsible for her having L.

Conjoin (*PLD*) with the platitude that no one is (indeed, can be) in any way responsible for her (original) species identity, and we reach the conclusion that species identity is not a viable basis for privileged concern. Combine this result with the (near) platitude that the kind of life one (originally) leads, i.e., the capabilities one (originally) has, is a function of one's original genetic make-up and environmental factors over which one also lacks any responsibility, and we may conclude that (the possession of) particular capacities aren't legitimate grounds for privileged concern. (It might be noted that that I am not saying, nor is it required for my point, that (original) genetic constitution and early environmental factors *determine* certain

capacities. There may well be some indeterminacy in what capabilities one even originally has; nevertheless you – the agent – has absolutely no say or responsibility in bringing about these (original) capacities, and so (*PLD*) is still applicable.)

While I claimed that (*PLD*) has *prima facie* plausibility, it will come as no surprise that it – and its many variants – have come under frequent attack. Before we enter a defensive mindset, however, we should note that, at least implicitly, (*PLD*) helps explain and unify many of our deeply held moral convictions. In our relatively enlightened age, most of us believe that (original) sexual identity is not, in and of itself, a morally relevant factor in determining distribution of goods and harms. We don't, for example, believe that a male (female) simply in virtue of his (her) sex deserves to have his (her) interests privileged. (*PLD*) can be implemented to explain this. Since we believe that (original) sexual identity is a property for which no one has any responsibility (we are 'born' either male or female as the current expression goes), we think it unjust to base preferential consideration on this factor. A similar story can be told about skin color; since one's (original) skin color is beyond one's ken, using it as an attribute to ground privileged concern strikes as illicit and unfair.

Contrarians to (*PLD*) adopt several guises. In (*Olympics*), we envision a 100-meter Olympic race with Jane and Janice being in the final. Jane, but not Janice, is blessed with great fast-twitch muscles, and as a result has the capability to run a faster 100-meter time than Janice. Both women train equally diligently and maintain a similarly austere diet for a few years prior to the Olympics. Jane wins in record time, a time that, given her natural limitations, Janice was incapable of matching. Although Jane and Janice had equal interests in reaping the monetary and social awards of an Olympic victory, Jane's victory resulted in her interests being satisfied and Janice's aspirations being vanquished.

We are asked to reflect upon our conviction that, despite the fact that Jane did nothing to earn her innate capacity to run swiftly, she deserved her trophy and all the consequent goods she received for winning the Olympic gold. Jane did nothing illegal or immoral in her preparation for the race (e.g., she took no performance-enhancing drugs, engaged in no blood-doping), and although she would not – let us say – have won the race without her unearned capacity to run faster, it seems perverse to think that this is a reason to claim that

Jane didn't deserve her victory and its attendant benefits. After all, we would find it farcical if Janice lodged a complaint to the Olympic committee insisting that Jane didn't deserve the trophy because Jane did nothing to earn her fast-twitch muscles that allowed her to run as quickly as she had. So, (*Olympics*) supposedly provides us with a counter-example to (*PLD*); we have a case in which someone deserves to have her interests privileged based on an unearned attribute.

But (*Olympics*) is not a counter-example to (*PLD*). Jane's interests were privileged not on the grounds that she had inherited fast-twitch muscle fibers, but on the fact that she won the race against Janice. Analogous to the fact we do not earn our (original) nature, i.e., we do not earn our species identity as human beings, and so we do not deserve special credit for entering the world with our original species, is the claim that we do not earn our (original) capacity to run fast, and so we don't deserve credit, let alone extra credit, for entering the world with fast-twitch muscle fibers. But Jane isn't benefiting – directly at least – from her inherited musculature, but from her victory in the race. It is true – so we have presumed – that absent this innate capacity to run fast, Jane would not have won the race, but (*PLD*) does not force us to conclude that Jane does not deserve privileged concern for some deed that would not have been possible were it not for the possession of some unearned capacity. It is one thing to insist, as (*PLD*) does, that we can only be deserving of preferential consideration for a state of affairs if we earn it, and quite another to insist, as (*PLD*) does not, that we can only merit privileged concern if we are responsible for each ancestral state of affairs that made the performance of the consequent state of affairs possible. This is not to take a stand on the truth of the stronger principle that desert for an act requires responsibility throughout the causal chain that culminates in the act; it is simply imply to point out that (*PLD*) is neither equivalent to, nor entails, this stronger claim.

But the adversary of (*PLD*) may use a different example to make his point. In (*Beauty*), we consider Felicia and Felicity as the final two contestants in a beauty contest in which they have equal interests in winning a role in a Spielberg movie and a boatload of cash. Let us assume that one has no responsibility for one's (original) personal beauty. Felicia is judged the more beautiful and so wins the contest. The opponent of (*PLD*) suggests that this is a case where Felicia deserves the rewards, i.e., deserves to have her interests privileged

over the like interests of Felicity, and yet the basis of this desert is an attribute over which Felicia has no responsibility or control. So, (*PLD*) is refuted, and so cannot be used to justifiably mount an objection to (*CII*).

I think that this kind of challenge to (*PLD*) can be met. Suppose that instead of monetary and social rewards, the beauty contest awarded cancer treatments. Imagine that Felicia and Felicity suffered from advanced cervical cancer (a condition for which neither Felicia nor Felicity had, respectively, any responsibility) and that only the most beautiful would win the cervical cancer treatment, a treatment that would serve their respective interests equally. Felicia is judged the most beautiful, and wins the treatment.

There is a sense in which Felicia deserves the cancer treatment; we posit that she was, in fact, the most beautiful – and so the judges' assessment was accurate – and that she performed within the rules, i.e., she used no (rule-prohibited) botox injections, and used no (rule-disqualifying) make-up. Within the conventional practice of a beauty contest, Felicia deserved her victory and her cancer treatment. As a fellow contestant, Felicity has no cause for complaint. Nevertheless, I submit that, as 'external reviewers', we find it repellent that the potential beneficiary of a treatment for a debilitating, painful, and life-threatening condition is determined by the comparative beauty of the contestants. While within the convention (i.e., the practice of awarding cancer treatments on the basis of physical appearance) the result is just, the convention itself is unjust. To employ a theological metaphor, while God might condone the practice of beauty contests, He would disallow this institution to be used to decide who benefits from treatments for serious medical conditions. *Sub specie aeternitatis* – from the broader perspective of an impartial judge – Felicia does not deserve to be benefited for her beauty.

(*PLD*) explains our (and God's) negative reaction; Felicia had no responsibility for her beauty and so does not deserve to have her interests privileged on the basis of her physical appearance. My suggestion, then, is that (*PLD*) speaks to a more fundamental, non-parochial sense of justice – the kind of justice that would be dispensed by an omniscient, omnipotent, and omnibenevolent being who is allowed to act without any conventional restraints – and so (*Beauty*), a case proposed as problematic for (*PLD*) that operates with an artificial notion of desert, misses its target.

Ordinary language gestures toward the conventional/non-conventional distinction that I'm relying upon. We quite naturally speak of Felicia being *entitled* to her spoils; she has met the qualifications stipulated for victory, and so, in this sense, deserves her trophy and cash. The fact that she did not earn her beauty is simply irrelevant in the context of a beauty context. But we can imagine a situation where we would say that, although entitled to her prizes, not only did Felicia not deserve to win but Felicity did deserve the crown. Suppose that Felicity exercised and trained diligently for months prior to the contest; she ran ten miles a day, stayed away from all junk food, and ate copious amounts of fruits and vegetables, all activities, so we presume, that are good ways of aiding one's physical appearance. Felicia, on the other hand, exercised no such effort; she drank alcohol to excess, ate gobs of potato chips, and never saw the inside of a gym. Felicity expended effort to maintain her appearance; Felicia acted with indolence. It is natural to characterize such a case as Felicity 'really' deserving to win, where this judgment in no way is intended to cancel the fact that Felicia was entitled to win, but rather to register our thought that in a perfectly just world effort and intention counts (at least if the individual is, in part, responsible for her efforts and intentions) and that luck – manifested in this case by Felicia winning the genetic lottery – does not morally legitimize special concern.

There is another type of case that suggests that desert – in the deep, natural, God-dispensed sense – does not, *pace* (*PLD*), require the beneficiary to be, in any way, responsible for the basis of his advantage. In (*Brady*), Brady and Brent are the only two candidates for a one million dollar lottery prize. Brady just lost his only two children in a car accident, and has discovered that he has an advanced case of pancreatic cancer. Brady was in no way responsible for either tragedy. Brent is doing fine. All else being equal, we might say that Brady deserves to win the prize. As we might naturally put it: the world 'owes' Brady at least this much compensation for his horrible luck. Reverting to our theological metaphor, God, upon finding the world as just described, would manipulate the lottery so that Brady won. This, then, appears to be a case where someone deserves (and is not merely conventionally entitled) to have his interests privileged on a basis (i.e., his tragedies) for which he had no responsibility whatsoever. So (*PLD*), which requires legitimate preferential concern to be earned is false.

I am not convinced that 'deserves' is quite the right term here. Suppose we imagine Brent discovering the details of Brady's tragic past. It would be quite nice of Brent to either withdraw from the lottery, ensuring Brady's victory, or giving Brady the prize money if Brent were to win, but I believe we would consider this an act of supererogation, and not one of obligatoriness. While such behavior would surely speak well of Brent and reveal an admirable character, we don't think of Brent doing something wrong or unjust if he stays in the competition, wins, and keeps his money.

Bracketing any precise analysis of what is transpiring in (*Brady*), we should recognize that this kind of problem for (*PLD*) – if in fact it is one – does not serve the cause of (*CII*). The analogue to Brady being the undeserving subject of some horrible luck would be a human who, by virtue of his undeserved species status, greets the world at a severe disadvantage to Wulfie the dog or Tony the tiger. To put it mildly, this is a tough sell. Indeed, as we will see later when we discuss the value of life, there are some philosophers – in lockstep with many ordinary folk – who believe that a way of arguing for the greater value of human life over life of other species is that an individual familiar with the kinds of lives of all terrestrial species would, self-servingly, choose to be human among all the possible alternatives. In other words, assuming for the moment that it even makes sense to think of choosing which species identity one would like to inhabit (cf., 'I'd really wish I am [were?] born a rabbit'), most of us believe, far from humans entering life at a relative disadvantage to individuals of other species, humans are given an unwarranted head start to a good and fulfilling life. So, insofar as (*Brady*) is problematic for (*PLD*), it is problematic for (*CII*) as well.

I am not sufficiently deluded into thinking that this is anything more than the first few words of a defense of (*PLD*), but further battle on this issue would takes us too far afield, especially since I've already argued that a convincing case against (*CII*) doesn't require (*PLD*) at all. The conclusion is that we have no impartial justification for (*CI*); *sub specie aeternitatis*, there are no good reason for preferentially considering the interests of humans or persons over the like interests of nonhumans and nonpersons. Still, this leaves it an open question whether a partialist defense of special concern can be successfully mounted; i.e., perhaps (*CIT*) is true. While it may be unjust for God to privilege human interests over Wulfie's similar

interests, it may be permissible, indeed even (defeasibly) obligated for either fellow humans or fellow persons to extend special concern to their respective own. It is to an investigation of the prospects of a partialist defense of (*CI*) that we now turn.

1.4 Should humans consider human interests as more significant than animal interests?

Advocates of (*CIT*) insist that, all else being equal, humans are obligated to preferentially consider the interests of their fellow humans over the like interests of nonhuman animals in virtue of the fact of either a shared species membership (here, 'humans' is conceived in the 'species' sense) or a shared set of capacities (here, 'humans' is conceived in the 'kind of life' or 'person' sense). If shared species identity is conceived as the ground for legitimizing special partial concern, co-speciesism is thought of as a morally relevant relationship, at least insofar as participants in such a relationship are warranted, if not obligated, to privilege each other's interests over the like interests of those in different species. If sharing a set of capacities (i.e., sharing a kind of life, sharing personhood) is proffered as the legitimate ground for partial privileging, then 'co-personalism' (an admittedly horrid word) is conceived as the relationship with sufficient moral significance to allow, if not mandate, that participants in this relationship preferentially consider each other's interests over the like interests of those of non-persons. If we refer to those relationships that have the moral significance to justify mutual privilege as *associationist relationships*, and the group formed by virtue of sharing associationist relationships *associations*, we can say that that some supporters of (*CIT*) think of co-speciesism as an associationist relationship and the group consisting of those who participate in such a relationship an association, while others think of 'co-personalism' as an associationist relationship and the group consisting of those who participate in such a relationship an association.

It will be easiest to begin by inquiring into the propriety of attributing moral significance to sharing a species; is co-speciesism an associationist relationship? We start with some preliminary and general comments. First, we should note that we cannot infer justice from fairness. Let's imagine an (*Aspirin**) situation in which (human) Sue replaces Centaurian Al. Supporters of (*CIT*) insist that, by virtue of

a shared species identity, Sue is justified, indeed obligated, in giving more aspirin to Jack than to Wulfie. Given their usual distaste of parochialism, these associationists are likely to agree that if we replace Sue by Knish, given his capacity to do so, he should dispense more aspirin to his co-speciesist Wulfie than to the equally suffering Jack, and capable Alpha Centaurians such as Al, finding themselves in an (*Aspirin**) situation with fellow Centaurian Alice and human Jack as the potential beneficiaries, are obligated to give more aspirin to Alice than to Jack. Were Wulfie to replace Alice in such a circumstance, the interest-preferencing power of co-speciesism would not play a role. Al, lacking a species identity with both Jack and Wulfie, would split the aspirin equally between the two potential beneficiaries.

We should not infer the legitimacy of a practice from its egalitarian employment. If a ship's captain forces everyone to walk the plank, he is being fair in that he treats each member of his crew equally, but if the reason for his order is not a good one – say, it's a consequence of his dislike for the way each member of his crew shaves – he is not acting justifiably. Likewise, fair deployment of co-speciesism gives us no reason to believe that the use of the practice itself is morally permissible. As yet we have no reason to think that membership in the same species grants an imprimatur to privilege the interests of insiders over outsiders.

Second, as a matter of logic, not all relationships can be associationist and not all groups can be associations, and so one cannot infer simply from the fact that co-speciesism is a relationship that it is an associationist relationship. To see this, we first remind ourselves that the complement of any group is itself a group. So, for example, there is a group of all those who share a particular species; Sue and Jack are members of one such group, and Wulfie is excluded. There is also a group of those who are of different species; Sue and Wulfie are members of one such group, and Jack is excluded. In an (*Aspirin**) situation, Sue, the potential benefactor, cannot consistently claim that co-speciesism and its complement are associationist relationships. If the former is associationist then she should privilege the interests of Jack over the interests of Wulfie, for she and Jack share a species membership; if the latter is associationist then she should privilege the interests of Wulfie over the interests of Jack, for she and Wulfie do not share a species membership. She cannot do both; Sue cannot both give a greater portion of the aspirin to Jack and give a

greater portion of the aspirin to Wulfie. Thus, it is simply incoherent to conceive of all groups being associations or all relationships having associationist power. If there are good reasons for thinking co-speciesism associationist, then, the reasons must be grounded in something peculiar to this relationship itself.

Third, it may be plausibly suggested that humans are naturally inclined to favor their own, and that this psychological disposition to be partial to the interests of one's own species can be explained in terms of evolutionary pressures. But we should not conflate a naturalistic explanation with a justification. There may well be a compelling evolutionary story that explains why men are inclined to be violent to women, but presenting this narrative to a judge in a court of law in an attempt to justify (or excuse) a beating is unlikely to be a found a mitigating circumstance. Men *may* be naturally disposed to be violent to women, or to cheat on their wives, but even if they are, this scarcely justifies men to act this way. Almost all of us, almost all the time, can act against our inclinations. We find ourselves wanting the chocolate bar but realize that eating it is bad for our health and so we refrain; we are tempted to leave the restaurant without paying for our meal, but we recognize that this would be wrong and so we don't. Self-interest and morality provide us with powerful and usually efficacious reasons to act against what we are naturally inclined to do. So, although humans may have inherited the tendency to preferentially consider the interests of 'their own' over the like interests of other animals, moral reflection can show us that these dispositions should not be instantiated, and that we ought not to act in the way that we are naturally inclined. The evolutionary tale, then, does not resolve the justificatory challenge to the associationist status for co-speciesism.

Turning now to the specific task of interrogating the associationist status of co-speciesism, we can imagine a deflationary primitivist response. The most basic way to justify the associationist status of co-speciesism is simply to insist that the relationship, by its very nature, justifies favoritism among its members. We are told that it is a fundamental moral fact, unamenable to any deeper analysis or explanation, that species are associations, and so that members of a particular species are morally obligated to privilege the interests of fellow members over the like interests of outsiders. To the question, 'what is it about the nature of the co-speciesist relationship that makes it associationist?', the answer is, 'the co-speciesist relationship

is, at bottom, the kind of relationship that has the moral power, all else being equal, to justify individuals so related to mutually privilege their interests over the interests of those of different species'.

We have primitivism *redux*, with the only difference between this and its earlier incarnation consisting in the fact that now a primitivist account is applied to a particular sort of relationship (or group), where previously it attached to the species identity or personal identity of individuals. Unsurprisingly, the same problems that plagued these other primitivist accounts recur and there is no reason to rehearse these arguments here.

Perhaps advocates of (*CIT*) can invoke the idea of loyalty.[6] Presumably, the general train of thought begins with the claim that humans are justified in being loyal to other humans in virtue of sharing a species membership, and that, participating in a loyalty relationship requires that its members have a defeasible obligation to mutually privilege its others' interests. The substantive part of this suggestion is that co-speciesism legitimately grounds loyalty, while it is submitted as trivial or analytic that loyalty relationships establish (defeasible) mutual obligations to preferentially consider interests. This *loyalty defense* (*LD*) of (*CIT*) entails that in an (*Aspirin**) scenario, Sue ought to give Jack more aspirin than she gives to Wulfie, for only in this way does she satisfy her obligation, grounded in loyalty, to privilege the interests of her co-speciesist.

(*LD*) differs from the bald assertion that co-speciesism establishes a justified basis for the privileging of the interests of insiders; i.e., (*LD*) does not reduce to *primitivism*. (*LD*) gives us a reason for preferentially considering the interests of members of our species; the obligation to privilege our own is generated by our justified loyalty to members of our own species. But difference need not be progress. We now require reasons to believe that sharing membership in a species grounds loyalty, where participating in a loyalty relationship, by definition, legitimizes privileged concern.

As is the case with virtually all terms of ordinary language, it would be a fool's errand to attempt to give necessary and sufficient conditions for the correct use of 'loyalty'. Still, we can supply some salient characteristics of loyalty that should not be too contentious. First, rough lexical equivalents include 'fidelity', 'faithfulness', 'devotion', and 'allegiance'. Secondly, loyalties motivate; we act certain ways 'from' or 'out of' loyalty to something. When we are loyal to some

object, we are disposed to remain committed to it even in times when such perseverance is likely to be personally costly. We are inclined to 'take the side' of an object of loyalty even when presented with evidence that, if impartially considered, would move us to the other side of an argument. We tend to act protectively toward an object of loyalty. Third, loyalties are usually accompanied by positive sentiments or feelings toward the object of one's loyalty especially at the origin of the relationship. Although we may be angry, or even hate, what we are loyal to, it is rare that these attitudes are present when the relationship is first forged.

Paradigmatic objects of loyalty are persons; we are loyal to our parents, wives, husbands, and friends. (I suggest, in passing, that it is virtually, if not veritably, a conceptual truth that mutual loyalty exists between true friends.) Nevertheless, ordinary thought and language accommodate great elasticity of loyalty's domain. We can be loyal to abstract principles; we speak of being loyal to the First Amendment and to the precept of equal pay for equal work. We speak of being loyal to our country, our place of worship, and our local library. And, the same presumption of intelligibility extends when we speak of our nation's military, the congregants at our synagogue, mosque, or church, or the science-fiction collection inhabiting our local bookstore.

Acting from loyalty is never reducible to let alone identifiable with acting from beliefs regarding a set of impersonal, objective facts; to act from loyalty requires a special, subjective, personal relationship between the subject and object of loyalty. Consider two ways, among others, that I may be motivated to help my mother go grocery shopping. First, I may recognize her kindness, magnanimity, and courage, and be moved by these objective facts about her. Her virtuous characteristics provide some (easily defeasible) reason for any capable being to help my mother. Second, I may be motivated by loyalty to my mother, a loyalty that I would lack toward a stranger who, let's suppose, has virtue equal to that of my mother. While we should not confuse loyalty with its causes- my loyalty to my mother derives from, although is not identical with, the quantity and quality of intimate moments we shared- we might loosely say that loyalty requires a personal history between the subject and objects of loyalty. One cannot be born loyal to just anything or anyone, nor can there be 'loyalty prodigies'.

There are similarities between loyalty and love. While one can be loyal to X without loving X, love without loyalty would be odd, and while distinct sources of motivation, attempts at disentangling them are typically forced and unnatural. Both are 'particularist' relationships; loyalties and love depend upon an intimate relationship between subject and object, and not merely upon a recognition of some impersonal, objective qualities that are, in principle, universally accessible. As with love, loyalties can be either unwarranted or warranted. Joe may not deserve Jane's love. He repeatedly steals and lies to her, and cheats on her whenever an opportunity presents itself. In like manner, Phyllis may not deserve Fran's loyalty. Phyllis ridicules Fran behind her back, and constantly invents phony excuses to explain her failure to keep promises to Fran. In betraying her friendship with Fran, Phyllis is objectively not worthy of Fran's loyalty; Phyllis is undeserving whether or not Fran recognizes her ersatz friend's behavior. Fran ought not to 'take Phyllis's side' any longer, and after discovering Phyllis's's behavior, it would be appropriate and justified for Fran to feel duped and angered.

Our verbal expressions of loyalty have behavioral counterparts. We 'stand up' for, or 'take the side' of, our country when we fight in wars for its survival even if the reasons for entering battle are murky and ambiguous. We self-identify as citizens of a particular country, and are likely to feel pride in such identification. We manifest our loyalty to our local synagogue by regular attendance despite the fact that another *schul* is closer to our home with a less loquacious rabbi. We demonstrate our loyalty to the idea of equal pay for equal work by marching and protesting, and donating dollars to the apposite causes despite the financial and time costs we absorb by doing so.

I trust that this behavioral, affective, and motivational profile of loyalty, at least in broad outline, proves recognizable to most of us, and as a result, the idea that loyalty analytically establishes a ground for special concern is a reasonable understanding of ordinary language. The difficulty with (*LD*), as we'll see, resides in the fact that this (hopefully) amenable account of loyalty would seem to make it all but impossible for loyalty to extend to anyone other than a tiny percentage of our co-speciesists.

True friendships (what Aristotle has called 'virtue' or 'character' friendships) are paradigmatic loyalty relationships because they epitomize intimacy. Deep friendships typically include the sharing

of feelings, fears, and insecurities, the identity of which would not usually be circulated with anyone other than a close friend. (Perhaps the only exception is when these intimate thoughts are spoken to certain professionals such as guidance counselors or psychologists.) There are no relationships that are as 'particularist' as friendships, in that friends aren't substitutable or interchangeable even if these alternative candidates objectively possess the same qualities to the same (perhaps even greater) degree as one's friend. Diametrically opposed to the intimacy that friendship and loyalty demands, is the relationship between almost any two humans on the globe; well over 99.99999% of the earth's human population are strangers to me. Just as much as friendships are paradigms of loyalty relationships, relationships with strangers are models of relationships lacking loyalty. I am impressed as anyone with King, Mandela, and Einstein, but though I may be loyal to their ideas and pronouncements, my lack of a personal relationship makes loyalty with any of these icons impossible.

While the prospects for (*LD*) are dim, what is really needed to decide the merits of conceiving of co-speciesism as an associationist relationship is some general account or theory of associationism.[7] Reasonable demands on such an account include either providing a rationale for why we (appropriately) conceive of some but not all groups as associations (think here of close friendships and most families) or, if it deems that *pace* our ordinary practices there really is no justification for treating any relationships as associationist, providing some explanation of why we have been deluded for so long about so many relationships. While there have been multiple attempts to give accounts that meet these *desiderata*, none have gained anything close to general acceptance. Rather than review these prior efforts, I'll offer what is, to the best of my knowledge, a novel theory. While I am not sufficiently jejune to think that this proposal will find consensus, I think it will resonate with many who share or at least tolerate my intuitions on certain examples. The theory will have the unpopular- but I think eminently reasonable- result that the associationist status of relationships is *not* determined simply by the nature of a relationship. If my account is right-headed, we cannot simply 'read off' from a relationship whether or not that relationship is associationist or not; the capacity of a group to legitimately ground mutual privileged concern among its members will be contingent on some extrinsic

normative facts about the group. The case for the associationist status of co-speciesism will not fare well, but this result will have some theoretical support and so shouldn't seem *ad hoc*. To relieve the anxiety of anticipation, *solidarity value associationism* (*SVA*) informs us that associationist status is a function of both the objective, albeit contingent, value of a group, and the (subjective) attitude of solidarity that members of the group share.

We begin by reflecting upon several examples, elicit certain morals from these cases, and apply these results to two groups that are frequently conceived as associations. This exercise suggests that attributing associative power to groups is a more complicated affair than has been traditionally believed; determining the associative status of a group (or, equivalently, determining the associationist status of a relationship) requires more than simply knowledge of the kind of group that is under discussion. (*SVA*) identifies what additional knowledge is necessary to make this determination. I will then consider one specific relationship- friendship- that initially appears to fit uneasily with (*SVA*), and try to show that, in this case, appearances are deceiving. Finally, I articulate the ramifications that acceptance of (*SVA*) should have on our assessment of the associationist status of co-speciesism.

Suppose that Hitler finds himself in an (*Aspirin*+*) circumstance with co-Nazi Himmler and an equally malevolent non-Nazi Sven as the potential beneficiaries. I submit that we find it grotesque that sharing membership in this most evil of institutions could be used to legitimize Himmler's appeal to receive preferential consideration of his interests from Hitler. Presumably, we have the same conviction regarding similar narratives involving the KKK and the Mafia; a shared affiliation in a group dedicated to evil in both goals and methods cannot be justifiably used to comparatively advantage someone in a circumstance where all else is morally equal. Co-Nazism, and its analogues, are not associationist relationships.

Suppose that Himmler and Sven are at the Pearly Gates, and God asks if either has anything to say prior to His passing Final Judgment. Himmler, expressing a bit of contrition for his contribution to untold pain and suffering on innocents, pleads that he has been treated unjustly in one regard during his mortal life and that God ought to take this into account in His final decision. His complaint is that when Hitler, his co-Nazi, was situated in (*Aspirin*+*) situations with

Sven and himself, Hitler did not, despite all else being morally equal, privilege his interests over those of Sven. Himmler complains that Hitler misunderstood the moral significance of co-Nazism, and failed to appropriately assess the relationship as associationist. Himmler insists that that the scales of justice had been tipped against him, and so he deserves a bit of post-mortem dispensation. God, presumably, would not be swayed. Leveraging the fact that one stands in solidarity with genocidal murderers- attempting to gain any relative benefit in virtue of working in concert with those engaged in unadulterated wickedness- surely is morally indefensible.

Our inclination to reject Nazism as an association is not altered by the fact that some Nazis exhibited certain traits that, were they used in advancing other goals and employed by other means, would be judged as admirable and commendable. By many accounts, Nazis were frequently faithfully committed to each other and their cause even to the point of incurring personal risks and sacrifices. Nevertheless, such revelations do nothing to shake our confidence that membership in, and even loyalty to, a group bent on evil is no reason to be comparatively advantaged. Nor is our certainty diminished by learning that many Nazis viewed the success of their enterprise as far more important than any individual achievement, that, to use John McCain's mantra, they saw themselves as participating in something greater than themselves. Many self-identified as being involved in a historical calling of the first magnitude, of being agents of change who were being asked to bring the world order into its rightful place. While we might become convinced that some Nazis were justified in these warped beliefs, and so come to believe that their blameworthiness is mitigated, we would still refuse to accept co-Nazism as associationist.

Contrast our Nazi narrative with the tale of the US Army in Europe in WWII gallantly fighting in what we posit to be a war of necessity, a just war- both insofar as its introduction and conduct- carried forth with commitment, self-sacrifice, dedication, and concern for the lives and well-being of innocents. We are imagining a group whose goals and aspirations are honorable and whose means to reach these ends are virtuous. Suppose that one of these Army veterans, now a medical doctor, finds himself in an (*Aspirin*+*) situation, where one of the two potential beneficiaries is a fellow Army member who is unknown by his potential benefactor, while the other, also a stranger

to the doctor, fought, equally gallantly for the Allies in the Navy. (So we are to think of both potential beneficiaries as being equally good, reverse-mirroring the case of Himmler and Sven who were equally evil.) Contrary to the case involving Nazi colleagues, I submit that we think that the Army doctor is justified (though perhaps not obligated) in privileging the interests of the Army veteran over the like interests of the Navy veteran. In this admittedly sanitized story, we seem warranted in conceiving the Army as an association; at the very least, I hope we share the conviction that the plausibility of attributing associative status to the Army is far greater than that of granting the Nazis associative power.

Two baserunners do not a rally make, but I hypothesize that two necessary conditions for a group being an association, i.e., two necessary conditions for a group legitimately grounding mutual preferential consideration of the interests of insiders over the like interests of outsiders, are that (i) the purposes, goals, and ideals of the group have positive objective moral value, where 'positive objective moral value' means 'having worth, *sub species aeternitatis*' (i.e., the ends of the group 'really' must be good, and not merely *believed* to good) and (ii) the means used to achieve the ends of the group are (objectively) virtuous.

So far, we have suggested that there are two objective hurdles that any group must negotiate to become an association. But I believe that any legitimate appeal to one's group membership as a justification for receiving preferential consideration from a co-member requires passing a *subjective* barrier as well. The *solidarity condition* requires that the author of any appeal for favoritism must act (or be willing to act) in solidarity with others in the group to effect the ends that the group represents and the means that the group uses to implement these ends. Indicatively, the solidarity requirement includes identifying oneself with the group (i.e., in appropriate circumstances, if asked who one is, one is disposed to respond, in part, that she is a member of the group in question), sincerely believing that she and other group members are 'all in it together' (i.e., one believes that there is a fellowship among the members of the group to pursue specific ends by using particular means), and having the various affections, motivations, and inclinations toward the members of the group as individuals and toward the group as a collective that are criterial for sincerely believing that one is part of a fellowship

community with certain ends. In part, then, the solidarity condition requires the author of an associationist appeal to be disposed to help other members in the group in their attempts to support the group, and to be inclined to feel pleasure and satisfaction when the group has success or a member has some group-defined success.

The solidarity requirement raises the bar for membership in an association. Prior to establishing the solidarity requirement, membership in an association could occur passively, but subsequent to the solidarity requirement, membership in an association requires 'active commitment'; one needs to have some recognition of the goals of the group, retain a sense of being a participant along with others in trying to reach such goals, and, at least dispositionally, want to take steps to achieve such goals.

My motivation for introducing the solidarity condition is somewhat based on the intuition that 'free riders'- individuals who are nominally members of a group without recognizing and acting upon their commitments to the ends of the group- are not entitled to the preferential consideration of other 'dues-paying' members of the group. An example of my worry is when a son, Sam, demands that he is owed special concern from his parents because he and they are a family, and yet has for years deliberately distanced himself from any familial activities. Suppose that, as an adult, Sam has never initiated or returned phone calls from his parents, never visited his very ill father in the hospital, thoroughly dissociated himself from family outings, and never identified or conceived of himself as 'the son of Harry and Heloise'. Now at age 30, Sam finds himself unemployed and and virtually penniless, and (finally) picks up the phone and calls his mother and father insisting that they are duty-bound to help him since, together with his sister, they formed a family, which, as Sam reminds his parents, is a group with associative power.

Not only does Sam not deserve any special concern were he to find himself in an (*Aspirin*+*) situation, he fails to deserve *any* concern grounded in his appeal to sharing a co-familial relationship with Harry and Heloise. Although he is in a very thin or nominal sense a member of the Harry/Heloise family, Sam has continuously sincerely believed, felt, and acted as though, he was an outsider. Not only was Sam not 'in it together' with his family in times thick and thin, he intentionally kept himself as far away from any of his closest relatives as possible. Sam is not a member of an associative family.

It seems plausible that the objective and subjective conditions advanced for associative staus of groups are jointly necessary and sufficient. At any rate, even at the increased risk of inviting even more counter-examples than it would otherwise, I offer the following as the 'official' statement of *solidarity values associationism*.

> (*SVA*) A group is an association for a person P if and only if (i) the group has positive objective moral value ; that is, the goals, purposes, hopes, aspirations, and values of the group are (objectively) noble (honorable) and the means implemented by the group to secure and promote these ends are (objectively) virtuous, and (ii) P satisfies the solidarity condition; that is, P is actively committed to the ends and means of group.

The US Army- so we have supposed- has noble goals and employs virtuous means to achieve these goals; the US Army, then, is an objectively valuable group. Presuming our Army veteran is actively committed to these goals and means, he is justified in appealing to his relationship with other veterans of WWII as a ground for mutual preferential consideration., where this mutual preferential consideration is given its practical meaning in (*Aspirin+**) circumstances. Although we can presume that Nazis satisfy (ii), co-Nazism fails as a candidate for an associationist relationship because it fails the objective requirements given in (i). Therefore Nazis cannot legitimately appeal to their group membership as grounding a special concern for their interests over the like interests of outsiders.

It serves us well to discover the implications of (*SVA*) when applied to two groups with questionable associative status: nations and religions. Evaluating the reasonableness of these consequences will help us decide the merits of (*SVA*).

While there is no consensus regarding the definition of 'nation' nor, therefore of 'co-nationalism', it is unlikely that we can do better than follow the lead of Jeff McMahan who suggests that we think of the criteria of nations including both objective and subjective elements. Objective criteria include 'a history of mutual association and common occupancy of the same territory, common ethnic origins, use of the same language, shared religious beliefs, a common commitment to certain political institutions, a common culture involving shared values and customs, and so on'.[8] As McMahan

notes, we should think of these as relatively loose criteria far from supplying necessary and sufficient conditions for nationhood; indicatively, many entities that we would unhesitatingly refer to as nations contain many languages and a host of incompatible religious beliefs. As for subjective criteria, 'most adult members of a nation must share a sense that together they constitute a distinct group and that belonging to this group is a constitutive element of each individual's identity. They must, in other words, recognize one another as sharing a collective identity'.

A salient point to note is that there are no overt normative valences essential to these criteria; sharing membership in a nation does not require that the occupied land is beautiful or pleasing, that the employed language is expressive or nuanced, that the political institutions are just, or that the shared values are worthy. Similarly, when we turn to the subjective criterion, that one self-identifies as a member of a particular nation imposes no demand to judge this to be a good or bad fact of life; one may be proud, ashamed, or indifferent about the current state of her nation. (Recall that self-identification is just one part of what solidarity requires.) Self-identifying as an American, a Chilean, or an Israeli does not commit one to adopt a chauvinistic attitude toward one's own nation; to say that one is an American is not shorthand for claiming that in being an American, one is better- in *any* sense- than being a member of some other nation. Indeed, in the extreme case, someone may think of her personal identity being in part constituted by her national identity, and yet be less than sanguine about her nation's values. Self-identifying Americans, for example, frequently complain with what they take to be America's current moral trajectory. Some believe that America has 'lost its way', that its values have become perverted over time, and that America is best served by returning to how it was some 200 years prior when it manifested its 'true' or 'uncorrupted' values. Or perhaps one believes that a new era cries out for new national values, and that what worked well for its people in the past in regard to national priorities and goals are relics of a simpler time. Revolutionaries, after all, tend to be loyal to and love their nation, and make great efforts and take large risks to improve it.

Not only does membership in a nation not require thinking of one's nation as good and being committed to its current values, the existence and identity of a nation does not demand that its goals, customs,

practices, institutions, and values, be worthy or just. Membership in a nation in the thin sense that I take McMahan to be explicating (i.e., in the value-free sense, or in the sense of leaving it open whether membership in a nation implies being 'actively committed' to the nation's current goals and values) merely requires conceiving of one's identity being constituted in part by national identity, but this leaves undetermined how one is motivated and emotionally affected by the recognition of this self-conception. Nations *stand for* something, but whether they represent (objectively) valuable ideals and aims is a matter unsettled by the mere acknowledgment that these ends and hopes are *national*. The consequence of all this indeterminacy is that (*SVA*) cannot yield unexceptionable verdicts regarding the associationist status of co-nationalism. (*SVA*) informs us that it is a mistake to think that the associative status of nations- the associationist status of co-nationalism- can be fixed, once and for all, for all nations; *a priori* reflections on the concept of a nation cannot lead to knowledge of its associative status.

It is reasonable to believe- and, in fact, most of us do believe- that some political institutions are objectively more worthy than others. On a plausible theory of human nature- of what humans typically want and need to lead a tolerably happy and productive life- one could argue that a moderately liberal democracy is a better form of government than a totalitarian regime; the former is likely to be a better environment for human flourishing than the latter. And, in a similar vein, one might argue that some cultural values are objectively morally superior to others, so that, for example, a culture that prizes human rights and individual freedom is better than one that endorses slavery.

We should not unreflexively genuflect to the pervasive relativism that insists that, at bottom, there are only provincial standards that allow us to rate some nations as being more worthy or more valuable than others. The point here is neither to claim that nationhood requires a democratic government nor that nations must condemn slavery; I have already rejected any such hurdles to national identity. Nor is the lesson even that democracy and personal respect are, from an objective standpoint, more admirable practices than are, respectively, totalitarianism and indifference. Rather, the more modest suggestion is that, in virtue of the meaningfulness of speaking about objectively more and less worthy forms of ideals and

political institutions- and so, to at least this extent, the intelligibility of speaking about the relative worthiness of nations- we may have identified a foothold where (*SVA*) finds traction.

To make the discussion more concrete, let's assume that America is one of those relatively rare nations in which its collective hopes, goals, aspirations, and ideals – the attitudes that constitute the American identity- are distinctively noble and worthy, and that the means that are collectively urged to meet these goals are honorable. The US expounds and manifests the freedoms of speech, association, and mobility and, perhaps most importantly, upholds the conviction that all individuals are, at least at birth, deserving of equal respect. America endorses a representative form of government where votes rather than violence are the acceptable currency of regime change. And let us additionally presume that the American struggle for independence required uniquely strong bonds of community to succeed, bonds that are aptly admired and venerated. Of course, our American patriotism may be mistaken; we can imagine that these American values are not worthy, and that the US has been guided by false values somewhat in the same way that we think of other nations- both ancient and contemporary- being led by erroneous ideals. Perhaps the emphasis on personal freedom is misplaced, and instead we should have been embracing a more communal form of life where individual liberty is subordinated if not flatly discouraged. Or maybe our beliefs about our relationship with God- beliefs that account for some of our American values- are simply wrong, and that if we had a more accurate picture of our relationship to the Divine, what America stands for would be drastically different from what it actually does represent. Nonetheless, *if* these American values are, in fact, worthy values, and honorable means have been employed to to reach the goals structured by these values, by satisfying (i) in (*SVA*), we have a *prima facie* partial explanation for why membership in America- and not membership in some nation with ignoble aims and vicious means – may ground special privileging among its population on the basis of a shared nationality. America and not, say, presently configured North Korea, passes the objective test for being an association.

Hopefully, we now have some confirmation of the idea that the associative status is a contingent matter. *Pace* the prevailing idea that conceptual analysis is sufficient for determining whether

co-nationalism is or is not associationist- and so, *if* co-nationalism is associationist, all nations are (and indeed must be) associations, and *if* co-nationalism is not associationist, the no nations are (nor can be) associations- we need empirical data about the history and present conditions of a nation to determine its associative status. This result is messier than an unequivocal answer to the question of whether co-nationalism is associationist, but it resonates with commonsense. Legitimizing privileged concern by an appeal to a shared nationality *should* be contingent on the 'moral quality' of the nation. Just as it was rebarbative to think co-membership in the KKK can justify preferential consideration, it is repellent to think that sharing a national identity in an evil nation should somehow justly ground special concern. The answer, then, to the question 'is co-nationalism associationist?' is 'it depends'.

As with nations, there are disputes about the best way of understanding religions. For our purposes, we can think of co-religionists being affiliated in having similar beliefs (even here, the notion that *belief* rather than *practice* serves as the cornerstone of religions is contentious) about the cause, nature, and purpose of the universe, where these beliefs are reflected in certain rituals that are devotionally observed. Additionally and relatedly, religions are identified and individuated by their conception of what is truly or ultimately valuable, and by their recommendations concerning the proper conduct of human life.

We might start by noting one somewhat liberal consequence of (S*VA*); (S*VA*) does not automatically eliminate co-religionism as associationist merely in virtue of the religion having false beliefs. Having and even promulgating false beliefs is not, in itself, a moral failure, though it is an epistemic one. Consequently, if we assume that Christianity on the one hand, and Judaism and Islam, on the other, have incompatible beliefs (e.g., Christianity accepts the Trinity, i.e., that God is three persons, while Judaism and Islam reject this conception) and so, at least one of these religions must entertain a false belief, (S*VA*) still allows for the possibility that all three religions are associations. Even more radically, we can suppose that there is no God who satisfies any of the conceptions of these religions. Still, unless shady tactics, i.e. vicious means, are used to disseminate their beliefs in the Divine, all these religions may maintain their associative status.

Illustratively, and in roughest outline, let's concentrate on the Christian narrative that describes an omniscient, omnipotent, omnibenevolent, eternal being creating the universe *ex nihilo*, where humans are the central characters in a salvific drama trying to end their historical alienation from God. God, the source of all value, commands us, through sacred texts and revelations, to act in specific ways. Some of these ways include worshipping Him, helping others come to appreciate His love and plan for us, and doing what we can to usher His plan to a successful completion. Our end, if all goes well, is to spend our posthumous lives with Him in everlasting bliss.

So understood, is Christianity an association? While we have seen that (*SVA*) brackets the truth of the existential claims insofar as assessing its candidacy, we can review its recommendations for its worthiness. If, given prevalent human psychological capacities, the demands promulgated by Christianity ensured or made probable a life filled with misery and angst, we would have strong reason to consider its recommendations unmeritorious, question the very moral motivation of the religion, and so be highly skeptical of its associative status. (Why 'highly skeptical' rather than flat-out 'reject'? Because if Christian eschatology is accurate, our infinitesimal time spent in misery, may not carry much negative weight in our deliberations regarding Christianity's associative status.)

The idea that the associative status of religion is indexed to our normative assessments of its particular commitments is buttressed by considering how differently we think of the associative interest-preferencing legitimacy of Christianity and some devil-worshipping or voodoo religion. Justifiably or not, at least in the American culture, we are far less inclined to think it legitimate that fellow devil-worshippers may appeal to their affiliation to exercise privileged concern among its members relative to the interests of those with different religious beliefs, than we are inclined to at least seriously consider the merits of the associative status of Christianity. If asked to explain the difference in attitudes, most people would probably first refer to the (alleged) greater plausibility (if not truth) of the Christian narrative relative to the story supplied by the devil-worshippers but, if even slightly pressed, would also point to the nobility of values that Christians but not devil-worshippers espouse. If *dis*honoring one's mother and father were the morally sound

policy, Christianity, along with virtually all other established religions, would lose their claim to associative status.

Most Americans may be wrong about their comparative beliefs between devil-worshippers and Christianity. It may be, *mirabile dictu*, that Satan devotees have endorsed the objectively worthy values, and that Christianity has the evaluative picture wrong. Or perhaps Judaism or Buddhism presents the accurate portrait of the moral world. For all I know (let us say), co-Christianity is associationist but co-Judaism is not, and co-Nazism is, but co-Americanism is not. I may, in some broadly epistemically possible sense, have a very warped picture of how the world works and what values ought to be pursued. (*SVA*) does not pretend to give us direction on any of these matters. The answer, then, to the question 'is co-religionism associationist?' is identical to the answer regarding co-nationalism: 'it depends'.

Let's turn now to what appears to be a large problem with (*SVA*). Unless one refuses to accept the legitimacy of any associationist relationship- a position that some stripes of utilitarians adopt- friendships (loving relationships) are generally conceded pride of place in their claim to justifiably ground preferential consideration among its members. In (*Aspirin+**) circumstances, the fact that one potential beneficiary is a friend of the benefactor is taken as a decisive reason for favoring her interests over the like interests of a stranger.

It may seem that (*SVA*) has a doubly uncomfortable relationship with recognizing the associative status of friendships. First, unlike armies, nations, and religions, friendships are groups that do not seem to be identified in having goals and ideals. The friendship of Sam and Sarah does not depend upon having some collective end toward which they are working in solidarity, a situation quite unlike the Nazis, say, who would have maintained only a nominal identity had they abdicated their goal of purifying the Aryan race . Moreover, even if some purposive account of friendship could be supplied, there seems to be no reason why it need to have 'positive moral value'. After all, there is friendships among, respectively, thieves and politicians, and few would urge the nobility of the goals- let alone the virtuousness of the means- of these groups.

The tension between (*SVA*) and the conception of friendship as an associationist relationship can be somewhat relieved once we appreciate Aristotle's analysis of friendship as a relationship in which the

parties wish for what is best for the other for the other's sake.[9] Friends mutually try to enhance the well-being of the other, and this tends to lead to an even closer friendship- an even more intimate relationship- that, in turn, promises to be even more mutually beneficial and supportive. One may say, then, that the goal of friendship is to make both the relationship and the participants in the relationship better off. The distinction between the actions of the specific individuals, and the actions of the group as a collective becomes blurred. Friendships are the relationships that deliver 'acting in solidarity' its most serious and extreme expression; in friendships, to act with the other in solidarity is to (virtually) to act as one.

Still nothing yet has been said to address the demand of (*SVA*) that the ends of legitimate interest-preferencing groups must be noble and the means for accomplishing these goals must be good; we still need to discharge the 'thieves and politicians' problem alluded to earlier. Once again, I think we can enlist Aristotle to provide some guidance.

Aristotle constructs a tripartite distinction among forms of friendships based on what he sees as the three ways in which someone may find another attractive. 'Pleasure friendships' emerge when both parties are mutually attracted by the prospect of finding pleasure in each other's company and conversation. These friendships tend to wane since the pleasure itself is quite ephemeral; we need only consider how the pleasure we receive from eating our favorite food will not survive daily consumption. 'Advantage (utility) friendships' develop when the parties are mutually attracted by virtue of the use each has to the other. We might think here of people who become friends in virtue of business arrangements; a stock broker and her client may become friends because each is of financial use to the other. As with pleasure friendships, advantage friendships tend to be short-lived since it is unlikely that people will remain advantageous to each other for long periods of time; the stock broker may change professions and become a school teacher, or her client may no longer want to invest in the stock market. Finally, Aristotle speaks of 'character (virtue) friendships', where the mutual attraction is grounded in the recognition of each other's virtue or good character. Character friendships, unlike pleasure and advantage friendships, tend to persist since their basis, i.e., qualities of character, are long-lived; virtuous character traits such as honesty, courage, and magnanimity

are typically stable dispositions that, once formed, often last a lifetime. Moreover, it seems plausible to suggest that our attraction to these traits is enduring as well. We don't tire of people because we encounter their honesty too frequently or that they exhibit their courage or kindness too consistently.

My suggestion is that we conceive character friendships as the only friendships that legitimately ground preferential consideration. There is no need for linguistic revision; we can still call the pleasure and advantage friendships 'friendships', but we ought not to transfer the associative power of character friendships to either of the other lesser forms. Limiting associative status to character friendships has the salutary effect of assuaging our 'thieves and politicians' worry; character friendships, by their very nature, ensure that the ends be honorable and the means virtuous. Morally good persons would not only not entertain evil in either their aims or their methods, but would only employ ends and means of (positive) moral value.

I expect that some will find this solution arbitrary and *ad hoc*. Despite its proud pedigree, there are many ways to make distinctions among kinds or forms of friendship, and I have given no reason to think that this conventional carving has any more real significance than any other. So, while I selected a partitioning that, when conjoined with (*SVA*), can resolve the 'thieves and politicians' problem, dissenters of (*SVA*) aren't compelled to give up the fight.

I demur. Ordinary practice includes making Aristotelian-like distinctions among kinds or forms of friendship and the associative interest-preferencing power that we attribute to them. We often speak of having an eclectic group of friends, friends with different interests and with whom we associate for different reasons. We're happy to go to a movie with Ben and Barb, but wouldn't think of asking them to join our book club; Sarah and Steve are great pals for attending a Yankees game, but are terrible candidates to take along on a week vacation. Furthermore, there are better and worse friends for each activity. Max and Millie are fine movie mates, but not nearly as good as Ben and Barb, and as terrible as Sarah and Steve are for travelmates on a trip, Sue and Stretch would be intolerable. These common facts of life reflect well, I think, on Aristotle's idea of mapping kinds of friendship on the ways we find individuals attractive, and so lend credence to the notion that the distinctions he draws are more natural than we might immediately believe.

Another (orthogonal) evaluative dimension of friendships measures their casualness/closeness or shallowness/depth. Closeness or depth is a function of intimacy; the closer the friend is the more you truthfully share your thoughts, hopes, aspirations, and fears. It is with these friends that we have the most trust and the least doubt, but it is for exactly these reasons that we are our most vulnerable with our most intimate friends. But here, so it seems to me, Aristotle's assessment that character friendships are of the highest quality is quite insightful. In these paradigmatic friendships, one shares his innermost self with another who you know will not harm you, who will best try to understand you, who will do what she can to make you most comfortable and secure, not out of any narrow self-interest, but purely out of love for you. In other words, the person with whom you can be most yourself is the person you deem as honest, sensitive, magnanimous, and kind, i.e., the person with a virtuous character. Friendships with the virtuous mitigate the fear of being hurt. To legitimately grant privileged concern to the interests of this person is about as remote from a capricious ground as one can conceive.

The prospects for co-speciesism serving as an associationist relationship are inversely proportional to the extent (*SVA*) resonates. It's difficult to discern some joint project that humanity, as a whole, is engaged in, let alone one with noble goals and purposes. Without a purpose that the species pursues, the solidarity condition is trivially left unfulfilled. So, (*SVA*) would, at least at first blush, dismiss the associationist candidacy of co-speciesism.

Instead of rebelling against (*SVA*), advocates of (*CIT*) may insist that the human species as a collective does have a noble end and the virtuous means to reach it, and so *homo sapiens* meet the objective criteria for associative status. And ironically, they might begin by trying to exploit Aristotle's acumen to their own advantage.

Aristotle believed that biological organisms had 'proper ends' (*tele*) distinctive to their species. Individuals 'flourish' to the extent that they manifest their species-defined end; dogs and humans thrive to the degree that they exemplify the best that their essence has to offer. So, there is a best way for a dog to be (there is 'something wrong' or imperfect about a dog who eats coal rather than meat, or who does not want to run or play) and a best way for a human to be (there is 'something wrong' or imperfect about a human who acts irrationally or does not want to socialize with others of his kind).

Dogs are 'designed' to eat certain foods, play, and bark, and humans are 'designed' to think rationally and live in communities, and members of both species do well to the extent that they fulfill their respective natures.

Although post-Darwinian biology has, by and large, discredited this 'natural state' model of organism development, even its acceptance would not take us very far.[10] From the fact that the individual members of a species function as teleological centers, it scarcely follows that the species, *as a whole*, has purposes, goals, values, or better and worse ways to be. To baldly make this inference is to engage in the *fallacy of composition*; we are not, in general, logically permitted to infer that a group has a certain property merely from the fact that each of the members of the group has that property. From the facts that atoms and space are colorless, and the piece of paper on my desk is nothing more than atoms configured in space (let us say), we cannot infer that the piece of paper is colorless; from the facts that all the parts of my refrigerator are light, and my refrigerator is composed of these parts, we cannot infer that my refrigerator is light.

Aristotelianism to the side, it is difficult to discern what plausible candidates there are for species' ends. While the idea of nations and religions *striving*, *aspiring*, or *standing for* something is a natural and integral part of our conception of these entities, it is rare to speak in the same way about species. The US is different that Saudi Arabia partly in virtue of the fact that the US aspires to be a republic by democratic means while Saudi Arabia aims to perpetuate the monarchy by using more coercive methods. Evangelical Christians differ from Jews, in part, because they aim to join God in a blissful afterlife and actively seek converts, while Jews tend to assign more mundane purposes to our lives, and are inclined to have little interest in persuading others to change their religious affiliation. We seem to lack an analogous means to distinguish species. Humans and dogs are, of course, different species, but this distinction seems not to be, in any way, a function of humans and dogs *qua* species aiming at different ends; the difference is simply a matter of two DNA sequences.

In response, it may be argued that all species 'strive' to perpetuate themselves, that through reproduction of its members, species manifest their 'drive' to survive. Not only does this suggestion provide some response to satisfying (i) of (*SVA*), it also goes some way in

responding to (ii), the subjective requirement of (*SVA*). If we conjoin the suggestion that humans, as a group, are working together to perpetuate their species with the presumption that the survival of the human species is (objectively) valuable and that the means for reaching that goal (i.e., reproduction) is virtuous, we receive with the associative interest-preferencing imprimatur from (*SVA*) that supporters of (*CIT*) seek.

It may be objected that when we spoke about the teleological nature of nations and religions, we didn't list survival as a goal for either. This omission may make us suspicious of thinking of the survival of a species as being a goal of a species; it is reasonable to think of survival- be it of a nation, religion, or species- as a pre-condition for having and attaining goals rather than itself a goal. Insofar as this suggestion is suasive, we would need to search further for a definitive goal of species.

But perhaps we should not make too much of this (putative) difference between nations and religions on the one hand, and species on the other, especially if we are trying to derive the purposes of groups from how individuals self- identify as group members. After all, self-identifying Americans surely want their nation to survive, and self-identifying Christians surely hope for the survival of their religion. We can understand survival as itself a goal as well as a pre-condition for other goals. That survival is typically omitted in discussions of national and religious ends is a function of its normative self-evidence ('of course, as an American I want to see America survive'; 'of course, as a Christian I want to see Christianity survive'), and not an indication that survival isn't an end that is highly desired.

But this response, in turn, engenders a problem when we recognize how little in common the self-identifying speciesist has with either the self-identifying American or evangelical Christian. Whereas individuals lose their status as Americans if they no longer want to see their nation survive (this is quite different than wanting their nation to take on quite different values), and persons are no longer Christians if they lose their desire for Christianity to continue, one's status as a human is not threatened by even the most radical misanthropy. One who fervently wishes for the end of the human species, and does his part to bring his hope about – either by intentionally abstaining from reproduction or by more violent means- remains human. This result is to be expected. Being a member of the human

species is simply a matter of biological taxonomy; if and only if an organism has DNA H is an individual a human being. Unlike nations and religions, there are no subjective criteria for species membership.

I doubt even many procreators conceive of themselves of being part of a grand mission to perpetuate their species. While some may think this way about their own nuclear family ('Thanks, Robert, for having children, and keeping the family line going.'), few in West Lafayette, Indiana, say, are cheered by the thought that some couple in Jakarta just gave birth to triplets. While remaining uncommitted on the Clintonian doctrine that it takes a village to raise a child, I am resolute in my conviction that it doesn't take a village to create one, and so the idea of solidarity playing a central role in engaging in a war or advancing a religion is simply absent in keeping the world populated with more of one's kind. And, at the risk of being labeled a sociopath, I admit finding it far from obvious that human survival is a noble goal. (I'm more sanguine about reproduction being a virtuous means.) And, even if human survival is, in and of itself objectively valuable, there would be no reason to withhold the same evaluation to dog, chimpanzee, and even virus survival. Unlike the cases of nations and religions where we have norms to distinguish good from bad instances, there is no method to distinguish between objectively good and bad survivals of species. Some may not find this discomforting, but others who suffered from bubonic plague might well find the opinion that the survival of *yersina pestis* contains objective (positive) value rather hard to swallow.

We turn to Bernard Williams, a philosopher with a justified claim for Mt. Rushmore status among twentieth century moral philosophers. Williams' inclusion isn't an homage but as an illustration of an attempt to legitimize intra-human favoritism without either conceiving of human interests as having greater objective value than nonhuman animal interests or characterizing co-speciesism as an associationist relationship.

By way of distancing himself from (*CII*), Williams expresses difficulty accepting the intelligibility of objective, *sub specie aeternitatis* value, significance, or perspective, insisting that appeals to these concepts of *uber*-neutrality are anachronistic remnants transported from a more theological era. There is only one point of view- the human point of view- and while this does not mean that a concern

for animals is not part of a developed (human) ethics, it does mean that, unlike the moral relations between whites and Blacks, and between men and women, '... the only question for us is how those animals should be treated',[11] i.e., the only question for humans is how those nonhuman animals should be treated *by us*. While it is wrong, indeed prejudicial, to judge white/Black and men/women relationships as one in which 'we' are deciding how to treat 'them', this bifurcation is proper, and so not prejudicial, in the moral context of the human/animal relationship.

We are, then, not permitted to preferentially consider our own interests because they have some greater cosmic significance than interests of nonhumans. Neither does our justification reside in the fact that we constitute a species; co-speciesism lacks the moral significance that most people impute to it. Rather our moral imprimatur to mutually favor our own human interests derives from the fact that we '... do not have to deal with any creature that in terms of argument, principle, world-view or whatever, can answer back'. Williams points out that as things now stand on Earth, nonhumans are at a severe competitive disadvantage. They lack the cognitive and technological abilities to protest our treatment of them or threaten us. Williams insists that there is no moral standpoint from which it is wrong to act toward creatures with such limited capacities.

But in fact we believe nothing of the sort. It is just when we interact with individuals with unmitigated vulnerabilities that morality plays perhaps its most important role As a matter of biological fact, human infants are equally exposed to abuse as animals, but surely the fact that adults have the power to discount babies' interests does not make it morally permissible for grown-ups to do so. As a matter of contingent, cultural fact, infants may currently enjoy a stronger lobby than nonhuman animals, but it would be bizarre to think that such accidents can ground a moral distinction between how we (adults) ought to treat them and how we ought to should treat vulnerable animals. Much like infants, in this matter, are those human adults who are cognitively and physically marginalized to the extent that meaningful discursive communication becomes impossible. We typically think that our obligations to those suffering from severe senility, retardation, Alzheimer disease, brain-damage and the like are, if anything, more encompassing and

stringent than obligations to the more able among us. Consider the relative disdain we hold for people who steal money from the disabled, say, and those stealing the same amount from a fully abled person; the act of the first thief strikes us as far more vile than the second and, barring exculpatory evidence, we judge him as more vicious than the second criminal.

That animals cannot 'answer back' does differentiate the prejudice against animals from the prejudices of racism and sexism where, presumably, Blacks and women do have world-views, principles, and arguments that they can articulate. But no one has ever claimed that the prejudices of racism and sexism are *just like* the prejudice against animals, any more than anyone has said that the prejudices of racism and sexism are themselves exactly similar. But this hardly shows privileged consideration of the interests of one's own species is not an unwarranted prejudice. The proposal that animals' inability to respond to humans by articulating precepts and arguments within a world-view hardly means that species-based bias needs no justification. Worse yet is the Thrasymachean proffer that the *power* to escape retaliation confers legitimacy to the practices of debasing others.

For Williams, at the end of the day, were power relationships reversed and dis- favoring humans, moral debate would draw it last breath. Williams asks us to consider the (currently) science-fiction conceit of a visit from cultured, intelligent, technologically advanced aliens. We are to imagine them 'benevolent, fair-minded, and far-sighted', and 'knowing a great deal about us and our history, and understand that our prejudices are unreformable: that things will never be better in this part of the universe until we are removed'.[12] So, both we humans and the aliens know that it is best for the world if we humans vacate. Are we not just engaging in a self-serving prejudice to think that our species, nonetheless, is worth saving and we should fight to ensure its survival? Williams' responds that this juncture

> ... it seems to me, is a place at which the project of trying to transcend altogether the ways in which human beings understand themselves and make sense of their practices could end up. And at this point there seems to be only one question left to ask: Which side are you on?[13]

It is worth noting, in passing, an apparent tension in Williams' denial of an 'objective' or *sub specie aeternitatis* perspective and the apparent intelligibility of a state of affairs that he puts forth. After all, when Williams has us assuming that the world (or, at least, the part of which we find intelligible) would *be better* if humans were no longer in it, he seems to think that this assessment is made by the aliens, humans, and all other capable individuals, and this appears tantamount to saying that the improved world subsequent to the removal of humans is an evaluation from the 'objective' point of view. (I find nothing incoherent in the idea that, from the human perspective, humans think it better off that they no longer exist.) But bracketing this internal issue, rather than conceiving the thought-experiment as presenting us with a case where understanding ourselves and our practices gives out, we can view this fantasy as a device for putting our moral convictions to the ultimate test: choosing the side of right augurs the end of our species. I do not blithely opine that there are far worse fates than an honorable end, and being the indefensible cause of horrible suffering is one of them.

When one of the most innovative and astute moral minds of the last half of the twentieth century needs to invest power with warrant in order to argue that we are morally permitted to privilege our own human interests over those of nonhumans, we have an indication of just how tenuous is the case for (*CIT*). Few of us are tempted to accept Thrasymachus's proclamation in Book 1 of Plato's *Republic* that 'might makes right'; we should not be disposed to a contemporary iteration some 2400 years later.

Do the prospects of (*CIT*) fare any better if we construe 'humans' as persons, i.e., where the justification for partial consideration is based not on a shared species identity, but rather on some shared capacities or, equivalently, instantiating the same kind of creature? The question now becomes whether on our account for identifying associationist status, i.e., (*SVA*), co-personalism is an associative relationship or, equivalently, whether the group of persons- inevitably defined in some psychological/cognitive terms- is an association.

Regardless of the precise mental capacities that are used to delineate persons from non-persons, it is difficult to imagine that any group so configured has objectively valuable goals or virtuous means to reach these goals, let alone that an individual in such a group stands in solidarity with others in trying to accomplish any

group-defined end. Let's again take rationality as the capacity whose possession makes an individual a person. I know of no plausible candidate for some goal toward which rational agents aim; it's not as though there is a 'rational agents club' to which all rational agents concertedly act to reach some goal of positive moral worth (cf. to our example of the US Army). If I can be indulged a brief anecdote, in the 90's I was, with a few other (relatively) rational agents, in a large Austin mall asking other presumably rational agents if they would sign a petition for world peace. There was no exchange of money or goods, no other identificatory markers except for the name, and no chance that any people would be later contacted by others. The exercise would take about two seconds of time. We had about an 80% positive response rate; that is, about 20% of the people who stopped at our table refused to sign the petition. I don't doubt that rational reasons could be given for not signing, but these reasons quickly become exceptionally tortured when you recognize the culture of an Austin crowd on an especially beautiful day. At any rate, the point is that articulating a goal that defines the group of rational agents is an elusive task.

We should reject (*CII*), (*CIT*), and Williams' apologia. But an even bigger challenge lies ahead, for as much as people are inclined to believe in the greater significance of human interests than nonhuman animal interests, they are even more fervent in their conviction that human life is more valuable than animal life.

2
On the Relative Unimportance of Human Life

2.1 Setting the stage

Even more popular than the opinion that human interests merit special concern relative to like animal interests is the belief that human lives are (objectively) more valuable than nonhuman animal lives; almost everyone – layperson and philosopher alike – accepts (*VL*). Of course, in virtue of its quite formal nature, such agreement, in and of itself, does not amount to very much, and indeed can mask rather significant differences. For those who either endorse or reject (*VL*), then, two reasonable demands can and should be cast.

First, we rightfully require an answer to the *practical question*. The practical question asks for the practical significance (practical implications, practical consequences, real-life cash-value) of (*VL*). We need to know what practical differences in the world are implied by (*VL*), where presumably these real-life differences are manifested in actions that capable agents ought to take in particular circumstances; supporters of (*VL*) need to identify the obligations that this hierarchy of value imposes on capable agents. There must be some circumstances – actual or possible – in which the fact that a human life is more valuable than a nonhuman animal life calls upon capable agents to act in certain ways, ways that would not be demanded of capable agents were (*VL*) not true. For if there were no such (even) possible circumstances in which (*VL*) has this power or significance, we would have no reason to concern ourselves about its truth; (*VL*) would be practically inert or otiose. Containing no practical significance – having no moral influence on our behavior in any possible

situation – even the most ardent 'animal rights' advocate imaginable should not be disturbed about the truth or falsity of (*VL*); why in the world should she care about (*VL*) if its truth (or falsity) has absolutely no ramifications about how she ought to behave in any situation whatsoever.

The second request that requires a response is the *constitution question*. Apologists of (*VL*) need to tell us what constitutes the difference of value between human and animal lives. We want to know in virtue of what – what makes it the case that – human lives have greater value than animal lives. The legitimacy of the constitution question forecloses two responses. Advocates of (*VL*) cannot simply reply that there are *no* differences between human and animal lives that account for the (alleged) fact that the former are more valuable than the latter. The second forbidden reply is one that does not identify what constitutes the difference between the value of human and animal lives. So, an advocate of (*VL*) cannot say something along the lines of 'the difference is a matter of certain relational (or non-relational) attributes that only human lives have but I have no idea what these attributes are'. I suppose that there may be those who think this is an unreasonable demand, and that it is perfectly consistent for a supporter of (*VL*) to admit that he has no idea what relational (or non-relational) properties account for the greater value of human life. But the charge against such a position is not one of inconsistency but rather one of recklessness and arrogance. Virtually all those who support (*VL*) – especially, but not exclusively non-philosophers – see it as doing very serious work. In the real world, life-and-death decisions – always to the detriment of nonhuman animals – are grounded in (*VL*). To justify actions of such magnitude without explicit mention of what serves as legitimizing sources is beyond irresponsible.

The practical and constitution questions are closely related in that an answer to one question circumscribes the permissible answers to the other. Suppose that an advocate of (*VL*) informs us that one practical implication of the fact that human lives are more objectively valuable than nonhuman animal lives is that in situation S, agent A is obligated to do P. This determination of what it practically means to say that human lives have greater value than animal lives limits what items can constitute the special value that is assigned to human lives. It would be unacceptable for this supporter of (*VL*) to suggest

that what makes human lives more valuable than animal lives is C*, and yet we cannot see, either pre-reflectively or reflectively, how C* can have the consequence that A ought to do P in S. So, to take an extreme example, suppose that the advocate of (*VL*) tells us that a practical consequence of humans having greater value than animals is that recreational hunting is morally permissible. When asked what it is about humans that make their lives more valuable than animal lives such that it accounts for the permissibility of recreational hunting, the supporter of (*VL*) refers to the fact that humans, but not animals, can paint fences. We, justifiably, find this response utterly bizarre. The oddness of this answer is not, for our present purposes, that the advocate of (*VL*) thinks that painting fences is a capacity that adds value to a life, but rather that there is seemingly no meaningful relationship between being able to paint fences and being permitted to hunt deer or doves for fun. The problem is neither in the answers to the practical and constitution questions in isolation, but is rather generated by the fact that we fail to see any connection between the two answers; colloquially,what in the world does the ability to paint fences have to do with grounding a moral permission to kill animals for sport?'

Similarly, a particular response to the constitution question constrains the scope of answers to the practical question. To exemplify, we can just reverse the sequence in the aforementioned case. Strangely, our advocate for (*VL*) claims that the human capacity to paint fences is what confers greater value on human lives than on animal lives. But far more odd is the belief that it is the possession of this capacity that has the real-life consequence that recreationally hunting animals is permissible. Colloquially, how in the world does the fact that humans can paint fences (and animals cannot) morally justify humans killing animals for fun? There is, then, a mutually restrictive effect of viable candidates to the practical and constitution questions. What someone wants (*VL*) to do, i.e., what someone sees as the practical, real-life significance of human lives having greater (objective) value than animal lives, sets limits on acceptable answers to the constitution question; conversely what someone identifies as the item that makes human lives more valuable than animal lives constrains what count as acceptable responses to the *practical question.*

I want to make explicit some quite formal constraints about value that should elicit unanimous agreement. As a formal or conceptual

point, value is something that ought to be protected, promoted, maintained, sustained, and maximized. We ought to act toward value in ways that protect, promote, and maximize it, and insofar as we do act in these ways toward value, we act justifiably, appropriately, and fittingly. In being disposed to act in these ways toward value, we adopt the proper or apt motivations, and insofar as we have positive feelings, sentiments, emotions, and attitudes accompanying our belief that value has been responded to in the appropriate manner and with the proper set of motivations, we are reacting fittingly. Value makes certain demands on us – on our behavior, our motivations, and our feelings – and there is no mystery how it does so: we, reasoning humans, make it so. We have made it the case that value is just the sort of item that calls for protection and promotion, calls for us to want to effect this protection and promotion, and calls for us to have positive interior attutudes when we believe that value has been responded to in these ways.

In failing to meet these claims of value, we do not act immorally, or at least not inevitably so. The 'ought' that governs our behavioral, motivational, and emotional reactions is one of appropriateness, aptness, or fittingness; failing to act as we ought displays being 'out of sync' with the world. After all, it would be seriously wrong-headed to characterize children and marginal humans as immoral when they fail to act appropriately toward value, but it would be accurate and fair to speak of these people as blamelessly behaving in an unfitting manner with the world.

An analogy may help. Suppose that after your corporeal death you meet God, as Moses is said to, 'face to face'. An appropriate response or reaction to this confrontation would be awe; if ever there is an awe-inspiring experience, one would be hard-pressed to suggest a better exemplar. The failure to react with awe in such an encounter would not be a moral failing; failure to be awed by being directly in the presence of God isn't an ethical issue, but rather one of aptness. If one is not awed in the direct presence of God, one is 'out of sync' with the world.

In characterizing these facets of value as conceptual or formal, I am implying two crucial ideas. First, that the behaviors, motivations, and attitudes toward value are non-negotiable; they form the meaning or fabric of value. If someone demurs, then we are speaking about different things or projecting different meanings onto 'value',

and I am no longer sure what constitutes the subject matter of discussion. Second, these (relational) facts about value are without substantive content. Not only is there no prescription regarding the behavior that ought to be performed in order to protect and promote value (undoubtedly, the proper behavior will be dictated by circumstances), not only is there no implications regarding the identity of the positive sentiments or 'pro-attitudes' that are appropriate to have when confronted with the protection and promotion of value is left open (once again, specific circumstances will undoubtedly call for different positive dispositions and feelings), but even the very existence of value – whether there are items of value in the world – is intentionally left an open question.

We can use Tim Scanlon's insistence that value is not a 'single substantive property which gives us reason to promote or prefer the things that have it',[1] to exemplify my point. Scanlon correctly characterizes that the claim that value 'gives us reason to promote or prefer the things that have it' as a formal, conceptual, non-negotiable comment about value. That value is not a 'single substantive property' is a substantive, theoretical point about this thing that, as a matter of conceptual truth, gives us reason to promote or prefer it. In fact, Scanlon speaks of his own view – the view that denies that value is reducible to a single substantive property but instead conceives value as a property that is reducible to, and is nothing more than, a collection of other qualities that serve as the ground for deserved promotion and preference – as the 'buck-passing' account of value.

I suggest that the best way to proceed, and the best way to get a firm grip about what philosophers mean when they claim that human lives are more valuable than nonhuman animal lives, is to investigate their arguments for (*VL*). Examination of the reasoning employed should supply answers to the practical and constitution questions; we should be able to extract what the purveyors of these arguments intend as the real-life significance of the hierarchy of value that they assign to human and animal lives, and we should be able to discern what it is about human lives that make them more valuable than animal lives. Adopting this strategy stands in opposition to the idea that we should begin by setting, *a priori*, some conditions of adequacy that (*VL*) must meet that venture beyond the aforementioned formal comments that I hope are found unexceptionable. If

we were to antecedently place restrictions about what a successful articulation must look like, we run the real risk of supporters of (*VL*) whose account violates these restrictions objecting that we have begged the question against them. Better we allow those who endorse (*VL*) to speak for themselves and subsequently assess the plausibility of their arguments.

The strategy of extracting answers to the *practical* and *constitutive* questions from investigating specific arguments given by advocates of (*VL*) would be intractable if they employed a host of different lines of reasoning. Fortunately, this is not the case. As we will see, there is a remarkable consistency in the types of reasoning used to persuade us of (*VL*).

2.2 The disvalue of death argument

I begin by reviewing the pertinent comments of five representatives of (*VL*). Although the vocabulary differs somewhat among these spokespersons, the thread of a common argument is not difficult to excavate. This theme will be formally formulated in what I dub the *disvalue of death argument* (*DDA*) for (*VL*). Answers to both the *practical* and *constitutive* questions will be forthcoming.

Ruth Cigman, a not particularly animal-friendly philosopher, believes that death cannot be a misfortune or harm to an individual unless the individual has the capacity to form 'categorical desires'.[2] Categorical desires do 'not merely presuppose being alive (like the desire to eat when hungry), but rather presuppose being able to answer the question whether one wants to remain alive'. The desires to write a book or raise children are categorical, since they would make little sense if the person did not desire to be alive at the times when, respectively, she will be writing the book or raising children. Cigman tells us that animals cannot have categorical desires because they lack the necessary understanding of life and death that the possession of categorical desires presupposes. And animals lack this necessary understanding of death as a misfortune because they lack the concepts of 'long-range possibilities, of life itself as an object of value, of consciousness, agency and their annihilation, and of tragedy and similar misfortunes'. Although animals are inoculated from harm when they die, their lives are kept from being valuable when they are alive because their natures (i.e., the kind of beings

they are) render them incapable of forming the relatively sophisticated concepts that are necessary to possess categorical desires. Humans, having this capacity to form these concepts, are subject to the harm of death; the good news for humans is that the ability to acquire these concepts give their lives a value that ineluctably eludes nonhuman animals.

Mark Rowlands distinguishes between non-conceptually and conceptually future-directed states.[3] As the names suggest, mental states that are conceptually future-directed allow an agent to have a concept of his own future while non-conceptual future-directed states do not. Only individuals with conceptually future-directed states can think of themselves as agents who endure through time; only they are 'persons', as Rowlands uses the term. Animals, capable of forming only non-conceptual future-directed states, are mere sentient creatures. While the satisfaction of these non-conceptual mental states requires the future existence of the animal, since animals lack conceptually future-directed states they are incapable of performing any act intended to satisfy some desire, plan, or future goal. Persons, unlike animals, have perspectives of the future with themselves as constituents. Jack can have plans for the future and so guide his present actions accordingly; he may, for example, assiduously study for his entrance exams to enhance his opportunities to be accepted at a quality university. Wulfie, alas, cannot act similarly, not so much because he is not smart, but because he is limited, by nature, in the ways he can think.

Subscribing to a deprivation view of the badness or evil of death, Rowlands believes that the badness of death is a function of depriving the individual of a future. Since both Wulfie and Jack have futures, both are harmed by their respective deaths. Yet, Jack's death is worse for Jack than Wulfie's death is bad for Wulfie. Having conceptually future-directed states allows Jack to be more closely bound to his future than Wulfie can be toward his. Jack currently acts in ways that are intended to have an effect on his future, a feat that Wulfie can't replicate. While thirst can motivate Wulfie to walk to his water bowl, he cannot conceptualize his journey as a means of satisfying one of his past goals. Jack can *invest* in his future while Wulfie cannot, and thus Jack has more to lose in death than does Wulfie. While Wulfie's death today guarantees that he will not be having breakfast tomorrow, he has made no investment of time or energy to receive this pleasant

future result. If Jack dies after his countless hours of study but prior to his college acceptance notification, he will have devoted time and energy for naught. Conceiving the disvalue of death as the flip-side of the value of life, Rowlands concludes from the fact that Jack – and humans in general – are harmed or disvalued more in death than is Wulfie – and nonhuman animals in general – the lives of humans are deemed more valuable than the lives of animals.

We turn to the view of Peter Singer.[4] While denying that species is a morally relevant factor in deciding whose pain and suffering deserves preferential consideration – and so rejecting (*CII*) – Singer nevertheless believes that typically human life has more value than animal life. This discrepancy in value is a function of certain capacities that humans usually have and that animals normally lack. Included among these value-conferring qualities are the capacities to be self-aware, to hope and plan about the future, to form meaningful relationships with others, to think abstractly, and to perform complex acts of communication. A fair summary statement is that 'the more highly developed the conscious life of the being, the greater the degree of self-awareness and rationality and the broader the range of possible experiences', the more valuable is the life of the individual.[5]

In later work, Singer grants self-consciousness singular importance in attributing an especial value to human life. Unlike merely experiential creatures, persons, in virtue of their capacity to think about themselves, can conceive of themselves existing in the future. This ability allows them to form preferences about how they want their lives to be at later times. There are likely to be many of these personal future-oriented preferences and they are likely to play a crucially important role in the way an individual lives her life. Indeed, these future-oriented preferences will be among the 'most central and significant preferences a being can have' and so the death of a person will typically frustrate a large set of dearly held preferences. Mere conscious beings, lacking any conception of themselves as entities enduring through time, can have no such preferences, and so, by the lights of Singer's favored moral theory – preference utilitarianism – cannot suffer the quantity and quality of harms that plague their self-conscious counterparts.[6] Thus, usually at least, the death of a human brings about more harm to a human than the death of an animal brings harm to the animal. The capacity to have

self-conscious thoughts makes it possible for humans to be harmed by death in a way that merely experiential creatures cannot be. Since only creatures with the capacity for self-consciousness can form future-oriented preferences – and so only creatures with the capacity for self-consciousness can be subject to the harm of having future-oriented preferences frustrated – death poses a unique disvalue to those who lead human lives.

Singer adds that in frustrating these personal future-directed preferences, death will very often 'make nonsense of everything that the victim has been trying to do in the past days, months, or even years'.[7] Evidently, Singer has in mind cases where one greatly organizes her daily activities with the aim of achieving some future goal only to meet death prior to the task's fulfillment. Recall our studious Jack with the addition of more details of his life for dramatic effect. In addition to his incessant studying, he declines party invitations, rarely goes to movies, and even stops himself from forming close friendships, all in the hope that occupying his time with study will eventually pay off in admittance to an elite university. Were Jack to be killed shortly before entering the college of his choice, we might view all of his efforts as a great waste of time (i.e., 'nonsense').

Tom Regan advocates a 'rights view' in which all forms of utilitarianism are shunned. Although attributing an equal 'inherent' value to most humans and animals, and therefore giving each an equal *prima facie* right not to be harmed, he argues that, in general, the death of a human is a greater harm than the death of an animal. Since the magnitude of the harm of death is 'a function of the number and variety of opportunities for satisfaction it forecloses'[8] and since animals have fewer desires, are less competent to intentionally act, and are less responsive to others and the environment generally, death will prove a greater harm to humans than animals.

In Jeff McMahan's *time-relative interest account*, the harmfulness that death brings to the person who dies cannot be calculated merely from knowing how much better his life would have been for him had he not died at the time he did. Most saliently, the harmfulness of death is proportionately mitigated by the lack of 'psychological connectedness' between earlier and letter selves. The rough idea is that, in determining how bad death is for the person who dies, we need to take into account (i) how much similarity there would be in the person's beliefs and preferences had he not died when he did

compared with those he previously had (ii) the quality of the memories the person would have had he survived, and (iii) the 'richness' of the mental life of the survivor.

Since the quantity and quality of the future-directed mental states of nonhuman animals pales in comparison with those of normal humans, and since, perhaps most fundamentally, animals (so we keep presuming) have, at best, only a very modest sense of themselves as continuing substances in time, psychological connectedness would be far weaker between the earlier and later selves of animals than it would be in temporally related selves of humans. As a result, then, of their restricted cognitive and emotional capacities, McMahan reckons that animals are harmed far less in death than are humans. He sees this verdict as a virtue of his theory since it coincides with the commonsense belief that it is 'uncontroversial that the killing of an animal is normally less seriously wrong than the killing of a person'.[9] Identifying the greater harm that humans suffer in death with the greater value that humans enjoy in life results in (*VL*).

Although the argot differs among these and other like-minded authors, we can elicit (*DDA*) from their remarks.

1. Death causes humans harm by bringing about the irrevocable frustration of (some) future-directed mental states. The harm is manifested in two ways. First, the frustration of a mental state whose satisfaction would have been a good to the agent is a harm of deprivation. Second, the frustration of some future-directed mental states makes the time, effort, and resources expended to satisfy these mental states 'nonsense' or of no purpose. (Equivalently, death harms humans by rendering satisfaction of (some of) their plans and projects impossible, and also by rendering some of their antecedent efforts to fulfill plans and projects 'nonsense'.)
2. Death does not cause nonhuman animals harm by bringing about the irrevocable frustration of (any) of their future-directed mental states. (Equivalently, death does not harm nonhuman animals by rendering satisfaction of their plans and projects impossible.)
3. Other than the harm that humans incur in (1), humans and animals are harmed equally in death. (Equivalently, bracketing (1), death harms humans and animals equally.)
4. So, death is an objectively greater harm to humans than it is to nonhuman animals. (Equivalently, humans are made objectively

worse off in death than are animals; death is of greater objective disvalue to humans than it is to animals.)
5. If death is of greater (objective) disvalue to humans than it is to animals, then (the continuation of) life is of greater (objective) value to humans than it is to animals.
6. So, life is of greater (objective) value to humans than it is to animals.
7. So, human lives have greater (objective) value than nonhuman animal lives; (*VL*) is true.

It is imperative to understand (*DDA*) as an argument for one *kind* of life – and not a particular species of animal – being more valuable than another kind of life. When (*VL*) speaks of human and nonhuman lives, or of human and nonhuman kinds of lives, it is *not* referring, respectively, to the kind of lives that are led (let alone that are necessarily led) by *homo sapiens* and non-*homo sapien* animals. Rather, since kinds of lives are identified and individuated (i.e., 'defined') in terms of capacities,[10] the human (or 'personal') kind of life refers to the kind of life that (necessarily) includes the capacity to entertain future-directed mental states or, equivalently, the capacity to create plans and projects, and the nonhuman (or 'non-personal') kind of life refers to the kind of life that (necessarily) precludes the capacity to entertain future-directed mental states or to create plans and projects. (*VL*), then, insists that the human kind of life – the kind of life that is identified and individuated (i.e., 'defined') in terms of including the capacity to entertain future-oriented mental states (or, equivalently, including the capacity to create future-directed plans and projects) is an objectively more valuable kind of life than the nonhuman kind of life, where this latter kind of life is defined in terms of lacking the capacity to entertain future-oriented mental states or, equivalently, defined in terms of lacking the capacity to formulate future-directed plans and projects.

As a matter of analyticity – as a matter of the meaning of terms – those who support (*DDA*) allow that human beings, i.e., those creatures with DNA H, lead nonhuman lives, and that nonhuman beings, i.e., those creatures with DNA other than H, lead human lives. But all this concession amounts to is that, as a matter of definition alone, (i) individuals with DNA H (and so members of the species

homo sapiens) may lead lives absent the capacity to form plans and projects, and (ii) individuals with DNA C, for example (and so members of the species *canis lupus*), may lead lives with the capacity to form plans and projects.

Despite endorsing the view that there is no analytic relationship between 'being a member of the species *homo sapien*' (or 'being a member of the species *canis lupus*') and 'leading a human kind of life', i.e., leading a life defined in terms of the capacity to possess future-directed mental states (or leading a canine kind of life defined, for our purposes, in terms of lacking the capacity to form future-oriented mental states), those who endorse (*VL*) may hold that there is a necessary relationship between being a member of a particular species and possessing a particular capacity. Adocates of (*VL*) may aver that there are natural (biological, psychological, and physiological) laws that necessitate that all and only creatures with DNA H have the capacity to formulate future-directed plans and projects. It may be, for all we presently know, that the world is constructed in such a way that all and only *homo sapiens* have this capacity. If this were the case then necessity is secured not through the meanings of terms by via the natural laws that govern our universe.

While I find this an extremely unattractive position, a determined contrarian has the resources to withstand strong pressure. Consider the case of anencephalics, members of the species *homo sapien* but lacking a brain except perhaps for a stem. These human beings entertain no thoughts and have no feelings; there is, as best we know, 'nothing to be like' an anencephalic. Our contrarian is committed to the view that this individual has the capacity to form future-oriented plans and projects while denying this capacity to the most healthy, flourishing, intelligent orangutan, or dolphin. While presumably the contrarian would admit the empirical point that we (nearly?) always speak of the anencephalic as lacking the capacity for any cognitive processes, let alone the relatively advanced capability of entertaining projects about the future, the contrarian might hypothesize that, in theory, science can find a way to repair his brain so that he then can formulate future-directed attitudes. We may want to describe this scenario as showing that our anencephalic has the meta-capacity – the capacity to obtain the capacity – to form plans and projects. Or, we may simply speak of this 'higher-level' or more generalized capacity as a capacity *full stop*.

Why can't we entertain this scenario with our chimpanzee? Our contrarian would need to suggest that it just may be that her species membership – her DNA structure – makes it impossible, even in principle, for her brain to advance to a level of sophistication where she can create plans and projects; regardless of the progress of brain and neural science, natural laws prevent someone with a monkey's DNA from ever gaining the capacity for future-directed thought. Thus, necessarily, members of the monkey species (and, generalizing, members of all species other than *homo sapiens*) are prevented from leading the human kind of life.

I'll leave the debate here. The essential point – and it remains important whether or not one has any sympathy with our contrarian – is that when we refer to leading a human life or leading a human kind of life, we are referring to the kind of life that (essentially) includes the capacity to entertain future-directed mental states or, equivalently, has the capacity to form plans and projects. When we refer to any nonhuman animal life or nonhuman animal kind of life, we are referring to a kind of life that (essentially) precludes the capacity to entertain future-directed mental states or, equivalently, have the capacity to form plans and projects. As the conclusion of (*DDA*), (*VL*) asserts that the human kind of life has greater objective value than the nonhuman kind of life. (I will understand this assertion as equivalent to that which asserts that individuals who lead the human kind of life are, insofar as they lead the human kind of life, more objectively valuable than individuals who lead nonhuman animal lives.) There is no mention in (*VL*), or anywhere else in (*DDA*) for that matter, what the modal relationship is between living a kind of life and having a particular species identity, and so there is no reason for any advocate of (*DDA*) to commit herself to a particular camp. We can, then, safely leave this issue behind us.

A major consequence of understanding (*DDA*) as an argument for a hierarchy of value between *kinds* of lives is that *marginal case* considerations become moot. Those who have endorsed the idea that human beings (i.e., *homo sapiens*) are more valuable (significant, worthy of greater concern) creatures than nonhuman animals in virtue of possessing some specific set of attributes have been confronted with the fact that, whatever qualities for special status are proffered, there seem to be some humans who either lack these attributes entirely or have them to a lesser degree than do many nonhuman animals.

These 'marginal' humans are advanced as examples that show that any blanket attempt to set humans as superior individuals than animals is futile. So, for example, the suggestion that (the possession of) linguistic ability is what places the value of humans above that of animals is rebutted by the fact that there are some humans who either lack this capacity entirely (think here of the sufferers of advanced Alzheimer's disease and, even more definitively, anencephalics) or have this ability to such a restricted degree that it is reasonable to believe that they are surpassed by some nonhuman animals (e.g., chimpanzees and dolphins). Whatever the merits of this argument, supporters of (*DDA*) justifiably find them irrelevant. For even if the results are accepted, and there is consensus that not all members of the human species are more valuable than individuals with other species identity, apologists of (*DDA*) are free to insist that these marginal humans do not lead the human kind of life, and consequently the existence of *homo sapiens* who lack the capacity to use language augurs no reason whatsoever to question their suggestion that one kind of life has greater objective value than another.

Though implicit, we can now extract (*DDA*)'s answer to the *constitution question*. Since the identities of kinds of lives are supplied in terms of capacities, and so the claim that one kind of life has greater value than another is equivalent to the claim that (the possession of) one set of capacities are more valuable than another, the quality that makes human lives objectively more valuable than animal lives must reside in the value of the capacity to entertain future-directed moral states or create (future-oriented) plans and projects. The reason that the (possession of these) capacities for entertaining future-directed mental states are value-enhancing is because those who own such capacities can undergo a harm in death from which those who lack this capacity cannot experience. The difference, then, in the value of these two kinds of lives is owed not to any adventitious feature but rather to the essential characteristics that are used to define each kind of life.

We also, implicitly, have an answer to the *practical question*. Since the greater value of the human kind of life (i.e., the greater value of individuals insofar as these individuals lead the human kind of life) is immediately inferred from (and so, effectively equivalent to) the fact that death presents a greater harm for those who lead the human kind of life, then – since our formal constraints on value require us

to promote and maximize value – we, as capable moral agents, ought to rescue an individual leading a human kind of life rather than an individual leading a nonhuman kind of life when we can save only one of them from death.

We can summarize the narrative of (*DDA*). Kinds of lives are identified and individuated, i.e., 'defined' in terms of capacities. This means of defining kinds of lives seems natural. After all, typically when we ask what kind of creature we are speaking about, the answer takes the form of detailing the capacities of individuals of that kind. We frequently respond to this question along the lines of 'it is the kind of creature that *can* do x'; in other words we answer a question regarding the identity of a kind by referencing capacities. The human kind of life is essentially characterized as possessing the capacity to entertain future-oriented mental states or, equivalently, the capacity to form (future-oriented) plans and projects. The nonhuman animal kind of life is essentially characterized as lacking this human capacity; those leading the nonhuman animal kind of life cannot form either future-directed mental states or future-oriented plans and projects. Leading the human kind of life makes one susceptible to a harm in death from which those who lead animal kinds of lives are immune; only those leading human lives can have their antecedent efforts at satisfying their plans and projects made 'nonsense' or a complete waste of time and resources in death. We can imagine Jack having spent hours each day for several years training for the Olympics forgoing typical pleasurable activities like eating chips and chocolate all in the hope of making the Olympic track team. If death intervenes shortly before what would have been a successful Olympic tryout, one may plausibly conceive of his pre-trial sacrifices as an exercise in futility, a waste of time, or 'nonsense'. We may even characterize Jack's life as (somewhat) tragic or absurd. Wulfie, on the other hand, being the kind of creature essentially incapable of forming plans and projects – and so, *a fortiori*, essentially incapable of investing effort and resources into satisfying them – is inoculated from the kind of harm that death can bring to Jack.

In virtue of having the capacity to lose more in death than individuals who lead nonhuman animal lives, those leading a human kind of life are more valuable creatures than those leading nonhuman animal kinds of lives. Or, as nothing more than a stylistic variant, we can say that the human kind of life is more

valuable than a nonhuman animal kind of life. Since it is only by virtue of possessing the capacity for making (future-oriented) plans and projects that those leading human lives can suffer more harm in death than those leading animal lives, it is the (possession of) this capacity that makes the human kind of life more valuable than the animal kind of life. The practical implication of this greater value – since it is grounded in nothing more than the capacity to suffer more harm in death than those leading animal lives – is that in a circumstance where all else is equal, and a capable moral agent can save either someone leading a human life rather than an individual leading a nonhuman animal life, one is obligated to save the individual leading the human life. This practical consequence of leading a life of greater value is derived from two facts: (i) those leading human lives are more valuable (because they lose more in death than those leading animal lives); and (ii) our formal conception of value that takes value to be the type of item that ought to be promoted and maximized.

It will facilitate discussion if we devise a concrete case that can serve as a somewhat picturesque way of capturing the practical significance that advocates of (*DDA*) assign to (*VL*), i.e., to their conclusion that human lives are more objectively valuable than nonhuman animal lives or, equivalently for our purposes, that individuals who lead human lives, insofar as they lead human lives, are more valuable individuals than creatures who lead animal lives. We first introduce our *dramatis personae*: Wulfie is a member of the species *canis lupus* and leads a nonhuman animal (indeed, dog) kind of life; Jack is a member of the species *homo sapiens* who leads a human kind of life; and Al is our impartial, knowledgeable, and capable Alpha Centaurian who finds himself in the position of a potential benefactor to Wulfie and Jack in our situation:

> (*Lifeboat*) Jack and Wulfie are drowning. Al can save only one of the two. All else is morally equal.

(*Lifeboat*), mirroring (*Aspirin*), epitomizes a *conflict* case. We are considering an agent who can perform only one of two viable options where the actual performance of one action obviates the possibility of performing the alternative that was open to the agent prior to his act. (We make the plausible simplifying assumptions that a perfectly

capable and moral agent would not allow both Jack and Wulfie to drown.) Advocates of (*DDA*) insist that the practical significance of (*VL*) i.e., the 'cash-value' of the fact that Jack's life is more valuable than Wulfie's, is that Al saves Jack rather than Wulfie in (*Lifeboat*). To say that a perfectly knowledgeable, moral, and capable agent saves Jack rather than Wulfie in (*Lifeboat*) is to say that we humans *ought* to save Jack rather than Wulfie in (*Lifeboat*) circumstances.

Al is posited as Alpha Centaurian to ensure that he shares no species membership with either Wulfie or Jack; there is no reason to inject a possibly problematic detail, in the idea of co-speciesism, when there is no need to. Al is portrayed as fully impartial to ensure that he acts morally without any unwarranted prejudice or bias toward either Wulfie or Jack. Al is posited as knowledgeable to relieve any concerns that he fails to realize that Jack leads a human life, Wulfie leads a dog life, and other details about the seriousness of the stakes. He is assumed capable, where this means that he will fulfill his decision; there will be no obstacle either in his will or in the external world that will prevent him from saving Wulfie if he so decides or saving Jack if this is his choice. In effect, we can conceive of Al as an embodied morally perfect deity, and as such understand his decision as representing the objectively right action to perform. While Al's decision does not make the action that forms the content of his decision the objectively (*sub specie aeternitatis*) right act, it reflects, or makes manifest, which course of action is the objectively right one to take. We now know what the real-life, behavioral consequences are for one individual being more valuable (i.e., leading a more valuable (kind of) life) than another: when involved in a conflict life-and-death circumstance with someone with lesser value, he deserves to be saved at the expense of the individual who leads the lesser-valued life. Capable moral agents who are in a position to rescue either Jack or Wulfie in (*Lifeboat*) incur the obligation to save Jack at the expense of Wulfie. (*DDA*) has argued that Jack has greater objective value than Wulfie, and so saving Jack rather than Wulfie in (*Lifeboat*) is the only way of respecting the formal constraint that value ought to be promoted and maximized.

While I will usually refer to (*Lifeboat*) as the narrative that grounds the practical implication of (*VL*), the somewhat technical worry that caused us to modify (*Aspirin*) to (*Aspirin**) resurfaces with (*Lifeboat*). Recall that in (*Aspirin*), there was a concern that Jack, whose interests

merited preferential concern, still may not deserve reception of a full aspirin from Al to relieve his headache while leaving Wulfie completely unaided. Although in (*Aspirin*) the aspirin was posited as indivisible, and so Al could not proportionately dispense it to Jack and Wulfie, it seemed untoward that Jack should be so differentially rewarded if his interests deserved just a tiny bit more consideration than Wulfie's interests. The suggestion was that in (*Aspirin*), Al should randomize his decision about whom to give the aspirin. When we modified (*Aspirin*) to (*Aspirin**) and allowed that the aspirin could be infinitely divisible, the merited preferential concern could be given an intuitively pleasing operational definition by having Al give more of the aspirin to Jack than to Wulfie.

As revisited in (*Lifeboat*), we can imagine that Jack's life is only minimally more valuable than Wulfie's life. Just as it seemed, in (*Aspirin*), that a tiny difference in warranted preferential concern is not appropriately reflected in the fact that Jack receives all the aspirin and Wulfie none, it seems that a tiny difference in value of life should not be reflected in Jack surviving and Wulfie perishing. It would better if we can exemplify the practical significance of (*VL*) in a way that mirrors the fact that we conceive of hierarchical value of lives as gradeable (i.e., lying on a spectrum), and are not all-or-nothing affairs. Let's then modify (*Lifeboat*) to:

> (*Lifeboat**) Jack and Wulfie are drowning. They are equally good swimmers. Al, a perfectly knowledgeable, capable, morally objective Alpha Centaurian observer, has only one life preserver, and can save only one of the two. All else is morally equal.

To say that Jack's life is more valuable than Wulfie's is to practically imply that Al throws the life preserver closer to Jack than he does to Wulfie. If Jack's life is only marginally more valuable than Wulfie's, the preserver gets tossed only very slightly closer to Jack; if Jack's life is far more valuable than Wulfie's, the preserver gets tossed much closer to Jack but still leaving Wulfie a chance – albeit small – of reaching the preserver before Jack. Analogous to (*Lifeboat*), to say that Al tosses the preserver at a particular distance closer to Jack than to Wulfie – a distance determined by the relative difference between the value of Jack's life and Wulfie's life – is to say that any capable agent ought to do as Al does.

This is an apt juncture to defend (*DDA*) against an objection that may seem to carry some weight. The charge is that it is merely a contingent fact that those leading the human kind of life are harmed more in death than those who lead nonhuman kind of lives and, since the relative value of these kinds of lives is directly inferred from the fact that those leading human lives are more greatly harmed in death than those leading animal lives, it is merely a contingent fact that those leading human lives (or, if you like, the human kind of life) are more valuable creatures than those leading nonhuman animal kinds of lives. While it's true that someone leading a human kind of life *can* suffer more of a loss in death than someone leading a nonhuman kind of life, the converse is also possible. So, at the very best, (*VL*) is inordinately disingenuous; it is not true as (*VL*) suggests that either all those leading human kinds of lives are more valuable creatures than those leading nonhuman kinds of lives.

This complaint is mis-targeted. No one who endorses (*DDA*) should deny that there are individuals who lead the human kind of life and yet are harmed less in death than some creatures who live nonhuman animal kinds of lives, and so no advocate of (*DDA*) should deny that there are some creatures who lead the human kind of life who lead a less valuable life (N.B., but not a less valuable *kind* of life) than some individuals who lead animal kinds of lives. It bears emphasizing that (*VL*) is best understood as a claim about the comparative value of *kinds* of lives or, since kinds of lives are defined in terms of capacities, as a claim about the comparative value of (the possession of) capacities. And one kind of life can be more valuable that another kind of life without each and every token of a more valuable kind of life being more valuable than each and every token of a lesser-valued kind of life. All that is needed, say supporters of (*DDA*), is that a certain kind of life – a certain essential group of capacities – allows those who have this set of capacities to be more seriously harmed in death than those who lack it. Those who endorse (*DDA*) claim that the defining capacity of the human kind of life does just this. By having the capacity to have future-directed plans and projects, and so having the capacity to have death render all the ante-mortem efforts to satisfy these plans and projects utterly futile, those leading the human kind of life can be harmed more in death, i.e., can be harmed more in death in virtue of the kind of life they lead, than those leading the kind of life essentially characterized as lacking

this capacity. That there may be exigencies that make a particular individual leading a human kind of life lose less in death than a particular individual leading a nonhuman animal kind of life is fully compatible with (*VL*) when understood as a statement about the relative value of kinds of lives.

Examples are easy to come by. Recall that supporters of (*DDA*) agree with ordinary folk that nonhuman animals typically are harmed by death. This harm can be constituted in two ways. While unlike those who lead human lives, those who lead animal lives cannot suffer from death making their future-directed plans and projects unsatisfiable, those leading animal lives – like those who live human lives – can suffer from death in losing present-directed mental attitudes being satisfied. So, Wulfie is harmed by death in that he can no longer have the experience of having his desire to eat food now satisfied. Second, supporters of (*DDA*) also accept the commonsense view that Wulfie suffers in death in that he no longer can experience pleasurable feelings and sensations, experiences that would count as goods for Wulfie even if he had no desire for them. So let us imagine that had Wulfie not died at the time he did, he would have experienced an enormous number of extremely pleasant experiences, and virtually no unpleasant feelings. In this case, death would been a very serious harm to Wulfie; death made it impossible for him to continue living a very valuable life. Suppose that if Jack hadn't died at the time he did, his life would have contained an enormous number of excruciating painful experiences with almost no pleasant experiences at all. In this case, death would not have been of great disvalue to Jack. In fact, if we were prescient and knew that if Jack hadn't died at the time he did that he would have had these horrible experiences, we may well have thought of him as fortunate that he died at the time he did. If we place this specific Jack and Wulfie in (*Lifeboat*) and grant Al knowledge of all these particulars, it would then be reasonable that Al saves Wulfie at the expense of Jack.

We cannot conclude, *a priori*, simply from knowing the kinds of lives specific individuals lead how much harm they will suffer in death. But we do know, *a priori*, the types of harms that individuals may incur in death from knowledge of the kinds of lives individuals lead. Specifically, we know that only those who lead human lives risk death making much of their ante-mortem life 'nonsense'. Death can

make human lives absurd; Jack may have lived a tragic life, Wulfie could not have. On the other hand, only the human kind of life includes the possibility of *accomplishment*, of having ends and goals that one can strive to fulfill, and, in this way, have a successful life that is unavailable to those leading animal lives. These extremes are made possible because of the capacities that are essential and unique to the human kind of life; humans could not lead the more valuable life if they did not face the risk of death playing an especially devastating role.

I have referred to one path – perhaps the most natural and direct avenue – that supporters of (*DDA*) can employ to reach the practical meaning they assign to (*VL*). In harmony with commonsense, advocates of (*DDA*) believe that, all else being equal, leading a more valuable (kind of) life entitles that individual to be rescued in a life-and-death situation when in competition with an individual leading a less valuable life. We tend to think that having a more valuable life should, at least, have this significance; if it is to have any practical effects at all, it seems that it should be on display in a pristine, conflict circumstance. I suggested that advocates of (*DDA*) come to this practical meaning of (*VL*) by marrying the fact that human lives are more valuable than animal lives – the specific conclusion that they have argued for – with the fact that our formal understanding on value morally requires all capable agents to promote, protect, and maximize it.

There is an alternative avenue to the same practical implication that supporters of (*DDA*) attribute to (*VL*). Rather than use our formal understanding of value, we can also employ what Peter Singer describes as a 'basic principle of equality', and which he dubs the *principle of equal consideration of interests* (*PECI*).Although we never receive a precise statement of (*PECI*), we are told that its essence is

> that we give equal weight in our moral deliberations to the like interests of all those affected by our actions. This means that if only X and Y would be affected by a possible act, and if X stands to lose more than Y stands to gain, it is better not to do the act.

A bit later, Singer makes the principle more concrete by considering an example where the interest is the interest to relieve pain.

> Then the principle says that the ultimate moral reason for relieving pain is simply the undesirability of pain as such, and not the undesirability of X's pain, which might be different from the undesirability of Y's pain. Of course, X's pain might be more undesirable than Y's pain because it is more painful, and then the principle of equal consideration would give greater weight to X's pain. ... The principle of equal consideration of interests acts like a pair of scales, weighing interests impartially. True scales favor the side where the interest is stronger or where several interests combine to outweigh a smaller number of similar interests; but they take no account of whose interests they are weighing.[11]

By taking 'no account of whose interests they are weighing', Singer intends to give (*PECI*) the power to make (blatant) forms of racism and sexism morally impermissible; it does not matter, all else being equal, whether the suffering is that of a black or white person, or whether the suffering is that of a man or woman. Similarly, it ought not to matter if the suffering is that of a human or nonhuman animal. Assuming, all else is equal, and the undesirability of the suffering of the human and dog are equal (i.e., how much the suffering 'means' to the human is equal to how much the suffering 'means' to the dog), the fact that one instance of suffering is that of a human and another instance is that of a dog is morally inconsequential.

But we can make another use of (*PECI*). In insisting that Jack suffers a greater harm in death than does Wulfie, (*DDA*) is effectively claiming that Jack has greater interest in continued existence than does Wulfie. Since (*PECI*) tells us that all interests, regardless of who possesses them, are to be counted equally, i.e., given equal concern, saving Wulfie at the expense of saving Jack would constitute a violation of this fundamental fact about equality. In saving Wulfie rather than Jack, we would be giving Wulfie's interests *more* weight than they deserve. Since we ought to save either Jack or Wulfie, we ought to save Jack; it is only by saving Jack – the individual with the greater interest in being rescued – that we can follow the mandate of (*PECI*).

There is a strong parallel between the use of our conceptual machinery about value and the use we can put to Singer's (*PECI*) in the service of reaching our commonsense conclusion regarding the practical significance of (*VL*). In the former case, we take the conclusion

of (*DDA*) – that human lives are more valuable than animal lives – apply the formal point that value ought to be promoted and maximized, and recognize how these two facts would be manifested in a (*Lifeboat*) scenario. In the latter case, we focus not so much on (*VL*) per se but on the fact that from which (*VL*) is immediately inferred, viz., that humans are more harmed in death than animals. By identifying 'being more harmed in death' with 'having one's interests more negatively affected', we can then apply (*PECI*) and recognize the practical implications in a (*Lifeboat*) scenario.

The intimacy of the two strategies becomes even more evident when we recognize that a 'basic principle of equality' – the characterization that Singer uses for (*PECI*) – isn't very far removed from speaking of the 'conceptual' constraints about value. Both descriptions suggest formal as opposed to substantive notions, and both suggest non-negotiability. These similarities gesture toward the idea that apologists of (*DDA*) would more than likely be happy to adopt either tactic, probably think of these tactics as mutually reinforcing, and perhaps even conceive of them as, at root, the same. At any rate, we have more reason than ever to be confident that the use of our (*Lifeboat*) narrative to capture the real-life significance of (*VL*) is right-headed.

Armed with answers to the *constitution* and *practical questions* and, hopefully, a better understanding of the machinations of (*DDA*), we are better positioned to register some concerns about the argument. I want to begin by making some friendly emendations or technical refinements to (*DDA*) that should go some way in eliminating several relatively picky complaints. First, to suggest that the capacity to form plans and projects is what separates human from nonhuman lives isn't to imply that this capability is the (most) fundamental capacity that accomplishes this task. It may well be that the capacity to think self-consciously, i.e., the capacity to conceive of oneself as an enduring temporal entity, is required but does not itself require the capability to form thoughts, hopes, and aspirations about the future. (*DDA*) incurs no problem by the possibility that the capacity to make plans and projects demands even more basic capacities.

Second, strictly speaking, the capacity definitive of the human kind of life would need to be the capacity to form *self-involved* plans and projects, since a project that is not self-involved can be satisfied posthumously. In these cases, death would not frustrate an agent's

future-oriented goals, and so, by the lights of (*DDA*), would not be appropriately conceived as an especial harm to the individual who dies. So, for example, I may aim to have an animal rights organization established at my university (N.B., my aim is not that *I* found the group) and die prior to its eventual establishment. Whatever harm I have suffered in death is not even partially constituted by my preference not being fulfilled (yet alone irrevocably left unfulfilled) for the simple reason that my goal was satisfied. Unfortunately, I was not around to see this happen, but this otherwise sad state of affairs does nothing to mitigate the point that death didn't harm me by rendering my goal unsatisfiable. If my desire was that *I* initiate the group and so if my project was self-involved, death would have contained the harm that (*DDA*) focuses on; death would have made this plan unfulfillable since the project essentially involved my continued existence.

Third, the capacity would need to be the capacity to form *satisfiable* future-directed (self-involved) mental states. We can imagine a kind of being who, although having the capacity to entertain self-involved future-directed mental states, also, by nature, is incapable of satisfying any of her future plans and projects. Joe the Jovian is unlike Wulfie since he can and Wulfie cannot make plans and projects, but also unlike Jack since he is not the kind of creature who can satisfy any of his goals regardless of how long he lives. (Maybe the conjunction of Jovian DNA and the laws of nature psychologically render Joe incapable of carrying out his projects.) Insofar as the distinctive harm that humans suffer in death is constituted by death inevitably frustrating their plans and projects, Joe would not be more disvalued in his death than Wulfie is in his. In neither case, did their respective deaths make it impossible for them to fulfill their future-directed mental states. Death cannot harm Wulfie in this way because Wulfie, by virtue of the kind of creature he is, cannot even formulate goals, and death cannot harm Joe in this way not because his nature prevents him from making plans and projects, but because his essence makes him incapable of satisfying them. Thus, when (*DDA*) urges that we accept the capacity to entertain (future-directed) plans and projects as the locus of making one kind of life more valuable than another, it speaks loosely; speaking more strictly, the capacity peculiar to personal lives is one for self-involved, satisfiable plans and projects.

While for our purposes it will not be a source of contention, some mention should be made about the theories of welfare or value that (*DDA*) presupposes. The commonsense commitment that (*DDA*) has to the idea that Wulfie – and many who lead nonhuman animal kinds of lives – suffers a harm in death reveals that (*DDA*) is not confined to a desire-based or preference-based theory of welfare. Insofar as supporters of (*DDA*) allow for Wulfie to have present-oriented desires (e.g., 'now, I want food'), and conceive of death being a harm to Wulfie in that post-mortem Wulfie will never again have these desires and so will never again experience the good of having these present-oriented desires satisfied, these advocates *are* employing a desire-based view of well-being; they are of the mind that the satisfaction of desires, in and of itself, is a good to, or a value for, an agent. But (*DDA*) doesn't rely exclusively on a preference-based account of well-being. Since they accept the ordinary notion that death harms Wulfie insofar as it makes it impossible for him to ever again experience pleasant experiences (regardless of whether or not Wulfie desires to have such mental states), supporters of (*DDA*) also allow that an experientialist or mental-state theory of well-being has a proper role to play in speaking about the welfare of an individual.

And, indeed, both these theories of welfare are utilized in describing the harms that Jack – or any individual leading the human kind of life – suffers in death. Like Wulfie, death harms Jack in rendering fulfillment of his present-directed desires impossible, and this result relies on some desire-based account of well-being. Also like Wulfie, death harms Jack in making it impossible for him to have any future pleasant experiences (again, we can consider the experience of these experiences a good to Jack even without his desire to have them), and this evaluation relies on an experientialist account of well-being. So, regarding the harms that death cause to both Wulfie and Jack, desire-based and mental-state accounts are both employed.

2.3 Why your death is less important than you think

Earlier I tried to defend (DDA) against the 'objection' that not all individual humans lead particular lives of greater value than all nonhuman animals. My response consisted in bringing into relief the crucial fact that (*DDA*) is most charitably understood as a claim comparing the relative value of *kinds* of lives, and that when

understood in this way, the conclusion that human lives are more valuable than nonhuman animal lives is consistent with the claim that some specific or particular human lives are objectively less valuable than some specific or particular nonhuman animal lives. In brief, one kind of life, i.e., the possession of one set of capacities, may be objectively more valuable than another without all instances of the more valuable kind of life being more valuable than all instances of the less valuable kind of life. Although one may be fortunate in inheriting a more valuable kind of life, contingencies can all too often influence just how injurious death is for an individual, and so affect the relative value of an individual's particular life.

But there is a more troubling possibility that can find its inspiration in this failed objection. It seems possible that the very lack of the capacity to formulate self-involved, satisfiable plans and projects, i.e., the very essence of what it is to be a nonhuman rather than human animal, allows one to be more harmed in death (in certain ways) than those individuals whose kind of life does include this capacity. If this were so, then, by the lights of (*DDA*), those leading nonhuman animal lives may (in some respects) be leading a more valuable kind of life. We have seen why advocates of (*DDA*) believe that the human kind of live has greater value than the animal kind of life; the distinctive properties of the former allow death to harm individuals leading this kind of life more than death harms those leading lives that necessarily preclude these capacities, and from this it (allegedly) automatically follows that the human kind of life is more valuable than the animal kind of life. I am now raising the possibility that the distinctive quality that advocates of (*DDA*) themselves assign to the nonhuman animal kind of life, viz., the necessary *lack* of the capacity to create future-directed, self-involved, satisfiable plans may itself place those leading the animal kind of life at a greater risk from death than those leading the human kind of life. To the extent that this is true, supporters of (*DDA*), from parity of reasoning, would need to attribute greater value to the animal kind of life than to the human kind of life.

This possibility, furthermore, raises an intriguing possibility. One can consistently support both the argument of (*DDA*) and my hypothesis. The picture we would have is that in virtue of the defining characteristics one kind of life has greater value than another, and yet in virtue of the defining characteristics of another kind of life,

this other kind of life has greater value than the former. This would relativize the notion of 'greater value'; one kind of life would have greater value than another in a certain respect. But once we countenance the viability of speaking in this way, our grasp on the idea of objective value becomes tenuous; since objective value is thought to transcend 'respects', perspectives, or points of view, and so be antithetical to being 'relativized', one wonders how, if at all, the concept of objective value has any purchase in the real world.

But let's not get too far ahead of ourselves. After all, the suggestion that by virtue of leading the kind of life that necessarily *lacks* the capacity to formulate future-directed plans and projects one may suffer more harm in death than someone leading the kind of life that necessarily *has* such a capacity seems bizarre on its face; it seems strange to think that the (necessary) privation of a capacity can lend value to anything, let alone a kind of life. The thought here is that the value of capacities are manifested when they are instantiated; we value the capacity to form satisfiable plans and projects because we (trivially) need this capacity to possess satisfied plans and projects which themselves are good or of value to us. But the *lack* of a capacity – *a fortiori*, the necessary lack of a capacity – cannot operate this way. We can't instantiate the absence of a capacity; there is, *ex hypothesi*, no capacity awaiting exemplification. So, it is completely understandable why my proposal, to put it mildly, would seem a non-starter.

To be clear: we are not investigating how an individual who leads a more valuable kind of life than another may yet lead a less valuable particular life (though not, obviously, a less valuable kind of life) than someone who leads a life of a less valuable kind. We have already shown not only how this is possible, but that it is commonly exemplified, and, moreover, this situation does not pose a problem for (*DDA*), since adventitious events can easily influence the harm that someone incurs in death, and so, by the lights of (*DDA*), easily affect the value of one's specific life. Rather, what we are now interrogating is the possibility that by virtue of the very essence of a nonhuman animal kind of life – and so not as a result of some contingencies that the world holds – nonhuman animals lead more valuable lives than do those who lead the human kind of life. In other words, can the necessary lack of the capacity to entertain future-oriented mental states (i.e., the lack of the capacity to form future-directed plans and

projects) play the same role for nonhuman animals that advocates of (*DDA*) assign to the (possession of the) capacity to create future-oriented plans and projects?

While acknowledging its counter-intuitiveness, I'll sketch a story that tells of Wulfie who, by virtue of his essence, i.e., by virtue of being the *kind* of individual he is and so not in virtue of any external contingency, is harmed in a way that is not available to him, and so according to (*DDA*) is leading the more valuable kind of life. Alternatively, the tale will tell of an individual who can experience goods that are unavailable to another individual where the availability and unavailability respectively are functions of the kinds of lives these individuals lead and not derived from exigent circumstances.

I submit an admittedly highly speculative evolutionary story where the survival advantages of obtaining the capacity for making future-directed plans and projects came with a cost. While those who were fortunate enough to inherit this capacity had better chances of reproductive success than those who were not as lucky, the laws of psychology, physiology, and biology mandated that the possession of this advantageous capacity is accompanied by a decrease of pleasure or satisfaction from present, occurrent experiences. Perhaps, say, the vividness and richness of visual, gustatory and tactile experiences and the concomitant satisfied feelings with which they are associated become deadened to some degree if and when one gains the (Darwinian-considered) advantageous capability to make plans and projects.

As a result, Wulfie receives more pleasure and satisfaction from his ordinary daily activities than does Jack. Not only does Wulfie enjoy his kibble more than Jack enjoys his tofu burger, and enjoys playing ball more than Jack enjoys his movie experience, the value of these and other episodic experiences cannot (i.e., it is physically impossible) be matched by the good that any experiences expose to Jack. Even if we allow that death provides Jack a unique loss in that it makes his future-directed plans and projects unsatisfiable and makes his ante-mortem efforts to fulfill these plans and projects absurd, it still may be that an overall assessment has Wulfie losing more in death than Jack. The difference in the kind of creatures Jack and Wulfie are – the former essentially characterized as the kind of life that has the capacity to entertain future-oriented mental states,

the latter essentially characterized as the kind of life lacking the capacity to entertain future-oriented mental states – that makes the animal, and not the human, kind of life susceptible to a greater harm in death, and so a more valuable life. The counter-intuitive, but physically possible, pivotal idea is that the lack of a capacity – in particular the lack of the capacity to formulate plans and projects – is (causally) necessary to have certain unique experiences whose value to an agent cannot be duplicated in an agent with such a capacity.

It is important to emphasize that this example doesn't cheat. In creating a thought-experiment in which I posit that the pleasures and satisfactions that Wulfie would have experienced had he not died are more valuable for him than are the pleasures and satisfactions that Jack would have experienced are valuable for Jack, it may give the impression that I have insinuated a purely contingent fact that has no role when we are investigating the relative value of different *kinds* of lives. After all – so goes the criticism – I just as well could have created a story in which Jack's enjoyment of occurrent activities had been equal to or greater than Wulfie's. What I needed to do – so goes the objection – is concoct a case where the disvalue from the pleasures and satisfactions that were rendered unattainable by death would be the same for Jack and Wulfie.

I have not cheated; I have by narrative *fiat* insinuated the capacity to experience greater sensory pleasures as part of the essence of an individual who leads the nonhuman kind of animal life. That is, by hypothesis, we are imagining a creature who leads the kind of life that precludes the capacity to make plans and projects, but who, as a consequence of certain laws of nature, has the capacity to experience greater sensory pleasures than those individuals leading the human kind of life. On this hypothesis, we cannot separate the nonhuman kind of life- defined in terms of essentially lacking the capacity to form plans and projects – from the 'special-sensory' kind of life, and so the capacity for experiencing more pleasure from sensory experience is not an 'add-on' or contingent fact about Wulfie or anyone who leads the nonhuman kind of life. Just as advocates of (*DDA*) individuate and identify the human kind of life as one with the capacity to formulate future-directed mental states, I am proffering the possibility that by virtue of leading a nonhuman kind of life – the kind of life that, by definition, is incapable of forming future-oriented

mental states – one must, as a matter of physical necessity – have the capacity for receiving more good from sensory experiences than those who lead the human kind of life. The strongest version of my objection has it that it may be, for all we know, that possessing the capacity for formulating future-oriented plans and projects demands (i.e., physically necessitates) that these creatures are rendered incapable of replicating the value of certain experiences that – again in virtue of various laws of nature- must attach to only those who are incapable of establishing future-directed plans and projects. While, of course, highly speculative, I have not referred to any contingent facts about the kind of life that Wulfie leads that make his life more valuable than Jack's. My example, then, is not like a case where, in virtue of some accidental occurrence, Jack's life turns out to be one harmed less in death than Wulfie's, and is, therefore, less valuable than Wulfie's.

A second challenge to (*DDA*) is founded on the idea that, despite protestations to the contrary, apologists frequently miscalculate just how formal, and so substanceless, are the principles they employ to reach the commonsense practical meaning of human lives being more valuable than animal lives. Recall that in order to provide an answer to the *practical question*, those who endorse (*DDA*) needed to conjoin their conclusion, (*VL*), with either statements expressing the formal conditions of value or use some principle along the lines of Singer's (*PECI*). Merely recognizing the (alleged) fact that human lives are more valuable than animal lives (or that those leading human lives are harmed more in death than those leading animal lives) provides capable agents with no guidance regarding how such knowledge should influence the way we behave in any particular circumstance. Combined either with the prescription that value ought to be promoted and maximized, or with the precept that we ought to consider all (like) interests equally, we now have instructions about how to act at least when facing a pristine conflict life-and-death situation where we can save either an individual leading a more valuable life or an individual leading a less valuable life. We used (*Lifeboat*) to exemplify this result. Apologists for (*DDA*) unexceptionably believe that any capable moral agent ought to save Jack at the expense of Wulfie in (*Lifeboat*) because they believe this behavior is mandated given the truth of (*VL*) in conjunction with one of the two formal principles.

Let's begin with those, like Singer, who conceive of (*PECI*) as a (quite) formal principle of equality and morality. Since those leading human lives are harmed more in death than are those leading nonhuman animal lives, and so the interests of the former are more negatively affected than the interests of the latter when death poses a risk for both of them, acting in accordance with (*PECI*) requires all morally capable agents to save the individual leading the human kind of life at the expense of the individual leading the animal kind of life when only one can be rescued from death; Jack deserves – is entitled – to be rescued over Wulfie, for only if he is saved by our capable agent are the interests of our two potential victims considered as (*PECI*) tells us that they ought to be considered.

Suppose that instead of Jack and Wulfie on the lifeboat Al needs to make a decision about whether to save Hitler or Gandhi. Suppose, moreover, that they have equal interests in survival, that Hitler and Gandhi would have their interests equally frustrated in death. Presumably Singer, along with all other advocates – as well as dissenters – of (*DDA*) would insist that Al save Gandhi and leave Hitler to perish. Gandhi is good and virtuous, and has manifested these qualities on numerous occasions; Hitler is evil and vicious, and has similarly exemplified these character traits on numerous occasions. It is surely received opinion that, despite the fact that Hitler may have the same interest in survival as Gandhi, his interests should not be considered equally; everyone, I gather, would say that Al saves Gandhi rather than Hitler, and that all capable agents have an obligation to save Gandhi if in the situation Al finds himself. But if we all agree on what we ought to do and why we ought to do it – that we ought to save Gandhi despite him having no greater interests in survival than Hitler because his interests ought to count more, and his interests ought to count more because he is good and Hitler is evil – then it appears as though we are flouting (*PECI*); we are not extending equal concern to equal interests regardless of whose interests they are. It seems as though the interests of virtuous people count more than the like interests of vicious individuals.

The application of (*PECI*), then, seems more problematic than we may have initially thought. It's true that we don't believe that the interests of white people should count more than the like interests of Blacks just because the interests are the interests of white folk (i.e., we would like (*PECI*) to cast (blatant) racism as immoral), and we don't

believe that the interests of men should count more than the like interests of women just because the interests are the interests of men, i.e., we would like (*PECI*) to cast (blatant) sexism as immoral, but yet we do believe that the interests of virtuous people deserve to extended privileged concern over the like interests of vicious individuals just because the interests are the interests of virtuous individuals, i.e., we would like (*PECI*) *not* to characterize as immoral actions that favor the interests of the virtuous and even, if possible, encourage the privileging of the interests of the virtuous over the like interests of the vicious. Unlike racism or sexism, 'virtueism' seems morally legitimate. All this is to say that (*PECI*) – the prescription that morally requires capable agents to consider all (like) interests equally – is not as simple and transparent as it is commonly presented.

There are, I believe, various ways of responding to this concern. But one general strategy relies on the extreme formal or conceptual nature of (*PECI*). When (*PECI*) prescribes that we consider the (like) interests of all equally, it does not restrain us to one particular way of understanding what 'interests are equal' amounts to, nor does it limit us to a single way of understanding what constitutes equal consideration of these interests. So, for example, one may suggest that although it may seem as though Hitler and Gandhi have equal interests in survival, the fact that Gandhi's interests issue from a virtuous person and Hitler's interests issue from a vicious person make it the case that Gandhi's interests are thereby weightier than Hitler's. Those who support a theory along these lines – and I believe it is a theory that resonates with many people – would need to provide some account articulating the relationship between the moral character of an individual, on the one hand, and the *gravitas* of the interest, on the other. One might suggest that if the character of two individuals are bracketed, and the interests are (close to?) equal, then the fact that one set of interests are those of a virtuous individual and the other set of interests are those of a vicious individual suffices to make the former's interests weightier than the interests of the latter. If this were so, then, a conflict situation (*PECI*) would dictate that we ought to save Gandhi rather than Hitler because Gandhi has a greater interest in survival (his interests have gained extra weight in virtue of his virtue) than does Hitler. Saving Hitler in a (*Lifeboat*) scenario would be giving inappropriately too much consideration to his interest to survive.

Supporters of (*DDA*) may revert to the same tactic if they choose to use our formal apparatus regarding value instead of (*PECI*). Again, since we posit both that there was are no differences in how much Gandhi and Hitler (subjectively) feel they would lose in death, and there is no quantitative difference between what each would lose in death insofar as their plans and projects being left unfulfilled, by the lights of (*DDA*) it would seem as though Gandhi and Hitler are equally harmed in death. They would, then, have equally valuable (kinds of) lives, and so would be equally entitled to be saved by Al in a (*Lifeboat*) situation. But one may respond that respect for the conceptual properties of value – that it ought to be promoted and maximized – is maintained only once we realize that the harm that death brings to a virtuous individual is (objectively) greater than the harm death brings to a vicious individual. So, while Gandhi and Hitler would be equally harmed in death – and so have equally valuable lives – were it not for the fact that one is good and the other evil, the fact of the matter is that one is (extremely) good and the other is (extremely) evil, and this, so goes the suggestion, makes the harm suffered by Gandhi in his death (objectively) worse than the harm suffered by Hitler in his death. So, initial thoughts notwithstanding, Gandhi's life is (objectively) more valuable than Hitler's life, and so, in accordance with our formal understanding that value is just the type of item that deserves to be promoted and maximized, we ought to save Gandhi rather than Wulfie in (*Lifeboat*). Much like we would be inappropriately extending too much concern for Hitler's interests if we were to save him rather than Gandhi in (*Lifeboat*) when using (*PECI*) as our basic principle of equality or morality, we would be flouting the formal conditions of value – in that it would not be maximized – if we were to save Hitler rather than Gandhi in (*Lifeboat*). Again, proponents of this view owe us an accounting of how this all works out. It would be good to know, for example, whether the degree of difference in the moral character between the two prospective victims matters; how ought we to act if instead of Gandhi and Hitler in the lifeboat, we had Gandhi and Lincoln, or, on the other extreme, we had Hitler and Stalin as boat mates?

The fact that (*DDA*) may be able to incorporate the plausible notion that the character of an individual may affect the degree of harm death poses for that individual does not have direct relevance for the lifeboat scenario that involves Wulfie and Jack, if for no other reason

that supporters of (*DDA*) do not conceive of dogs and cats as *moral agents*; conforming with received opinion, those who endorse (*DDA*) do not believe that nonhuman animals can employ moral rules in their deliberation. So, even if we attribute some deliberative power to dogs and cats (to which there is great reluctance since many believe that any deliberations require self-consciousness and most of these folk also believe that animals lack this capacity as well), we cannot plausibly grant these animals the capacity to deliberate morally.

For this reason, among others, I want to suggest another story one that, in outline at least, will be familiar to many of us. The point of the tale is that there may well be kinds of creatures who, by virtue of their necessary participation in certain relationships, are entitled to have their interests given greater consideration than like interests of other creatures who, necessarily, don't share in this relationship. This narrative will suggest, then, the possibility that even though some creatures are more subjectively harmed in death than other kinds of creatures (i.e., death has more harmful effects to some kinds of beings than others), in virtue of the kinds of creatures they are, the greater subjective harm they suffer should not be conflated with a greater objective harm. In virtue of their essential attributes – and so unlike character traits which are plausibly construed as contingent features of individuals – some interests are (objectively) worthy of greater concern than otherwise like interests of other kinds of beings. In keeping with our formal conditions of adequacy concerning value, we ought to rescue individuals who, though not suffering the subjective loss in death that others do, have greater value. *Contra* some conceptions of (*PECI*), the kind of creature one is may justifiably influence the consideration that she deserves.

Suppose there exists a unique Source and Authority of all objective value, and it is by virtue of His decisions that particular individuals or perhaps kinds of individuals are objectively more valuable or more worthy than others. As it so happens, He makes it that those leading animal kinds of life are more objectively valuable creatures than those leading the human kind of lives, and so the interests of the former are objectively more significant – and so impartially deserve preferential concern – than the like interests of the latter. There is nothing 'intrinsic' about animal lives that make them worthier; it isn't by virtue of their (let us say) greater abilities of smell, sight, or even goodness that makes them worthier. It is rather their unique

relationship with this Source and Authority that makes their lives more worthy, and so makes their interests more considerable. We may allow advocates of (*DDA*) to insist that animals lead lives of less (non-objective, subjective) value than humans, i.e., they lose less in death than humans because of their inability to form plans and projects, but nonetheless continue to insist that animals are more objectively valuable creatures than humans, and so have objectively (*sub specie aeternitatis*) more important interests than humans. Though humans have a greater *subjective* interest in survival than do animals, i.e., it means more to Jack that he survives than it means to Wulfie that he survive, Wulfie's higher cosmic status – his greater objective value as an agent, and so his interests having greater objective significance – suffices to outweigh the advantage that Jack has in having interests of greater subjective value. On this picture, our impartial, knowledgeable, and capable Al saves Wulfie rather than Jack, and all capable moral agents ought to save Wulfie rather than Jack in conflict circumstances, for only by saving Wulfie rather than Jack is value maximized. If he were to save Jack rather than Wulfie a less objectively valuable creature with objectively less worthy concerns would exist.

No cheating occurs in this tale. In the story, I am supposing a necessary connection between being a nonhuman animal, i.e., being the kind of creature who essentially lacks the capacity to formulate future-oriented plans and projects, and the ultimate source and authority of objective value. Just as advocates of (*DDA*) characterize animals as essentially lacking future-directed attitudes, I am positing that animals essentially are related to the source and authority of all (moral) value in a way that humans are not. One cannot 'abstract away' the relationship between animals (i.e., those leading the nonhuman animal kind of life) and this source any more than those who endorse (*DDA*) can 'abstract away' either the capacity for creating future-oriented plans and projects from humans (i.e., those leading the human kind of life) or the incapacity to form future-directed plans and projects from nonhuman animals. That I posit a *relational* property as essential to nonhuman animals (in addition to maintaining the non-relational property of animals' being incapable of creating future-oriented plans) and the lack of this same relational property to humans (in addition to subscribing to the fact that humans are essentially capable of creating future-directed

projects) is of no moment. There is no reason to think that relational properties are precluded from constituting (part of, indeed all of) a creature's essence.

This story is, of course, a not very subtle inversion of the Christian narrative in which humans play the privileged role. For our present purposes, it doesn't matter which, if either, of these two tales is true. What does matter, however, is that these narratives are intelligible, and that we do have the concept of there being interests of some kinds of creatures that, just because they are interests of *those* kind of creatures, merit special attention.

In fact, this story isn't merely a fanciful invention with no actual relevance to the real world. History is replete with examples of the interests of some counting more than the like interests of others, and so morally requiring special attention. Kings' interests were considered more deserving of care than the like interests of their subjects by virtue of their (alleged) special relationship with the divine. Doctors at the time wouldn't justify privileging the king's interests on the ground that the king suffered more than his subject in experiencing their respective headaches, but would rather justify their special concern on the basis of the king being a more important individual (and kings being a more significant kind of creature) than his common subjects. Although I am hardly an expert in matters ecclesiastic, I believe that similar reasoning would have (and perhaps still is) employed by those dealing with the suffering of priests and their parishioners. And this continues in full flower today as the source for much of the lay public's justification for privileging the interests of humans over the like interests of animals. The former, so it is popularly held, have a special relationship to the source and authority of all that is moral in virtue of which their interests deservedly attain greater objective significance; a doctor/veterinarian should attend to Jack's suffering prior to Wulfie's equal suffering because Jack, by virtue of his relationship to the divine, is a more worthy creature.

It should be noted how using this relationship that humans have to God as a warrant for making human interests deserving of more consideration than the like interests of animals – as a warrant, that is, of making humans more worthy of concern – is markedly different from the usual methods implemented to accomplish this. Aristotle's reference to rationality, Descartes' talk about linguistic ability, and

Kant's employment of autonomy are all subject to the response that these qualities, even if possessed by all and only humans, seem to be inappropriate grounds for extending greater or lesser moral concern. We don't use these criteria in intra-human cases; think how bizarre we would find a doctor prioritizing treatment on the basis of intelligence, language capacity, or freedom from external sources. We don't believe that Einstein's pain deserves preferential consideration (at least not simply because he's smarter), that an esteemed linguist merits privileged concern over someone linguistically challenged (at least not for this added competence alone), or that an unsupervised adult warrants special attention relative to one who still lives under his parents' thumbs.

But the gap between possessing any of these intrinsic or non-relational qualities and having a moral claim to having one's concerns specially attended to is bridged when the unique quality is that of being related to He who is the source and authority of all value. So, for example, suppose that the Christian narrative, rather than my story, is accurate, and that Jack and Wulfie simultaneously arrive at the office of the doctor/veterinarian with the same degree of suffering, and where all else is equal. Jack can justifiably claim that his pain should be prioritized because his life is objectively more worthy than Wulfie's by virtue of his unique relationship with the source and authority of all moral value, and so the suffering that he is experiencing, although no worse than the suffering Wulfie is experiencing, is objectively more significant and so deserving of privileged concern. Unlike attempts that relied upon non-relational attributes such as rationality, language capacity, and autonomous behavior to ground preferential care, founding one's case on the fact that one shares this special relationship with the ultimate source and authority of value makes it impossible to question the moral relevance of possessing this property. After all, if the individual with the power and authority to *make* one's life more worthy than another's – where this is tantamount to making one's interests objectively deserving of special concern relative to the similar interests of another – does so act, then there is no space to question the moral relevance of His decision. Where it did make sense to question why Einstein's greater intelligence should influence our priority of attending to his pain and the like pain of Wulfie, it makes no sense to question why Jack's special relationship to the source and authority of all moral value

should influence the way in which we prioritize our concern for Jack's and Wulfie's similar suffering.[12]

We can parse the moral of my inverted Christian narrative in several ways. One way, alluded to earlier, is to claim that the possibility of either humans or animals standing in a particular relationship with the divine shows that (*PECI*) despite its intuitive appeal and support by many is false; not all like interests deserve to be considered equally. On this rendering, it matters, after all, whose pain and suffering we are considering, and while we should (doubtlessly?) maintain our conviction that race, skin color, ethnicity, and sexual identity are morally irrelevant to our calculations regarding how we ought to dispense care and concern, that one kind of creature is deemed more morally significant than another by the authoritative source of moral significance certainly does matter. While it may be true that humans have a greater interest in survival than nonhuman animals since, in virtue of being the kind of creature that can have the prospects of the satisfaction of its plans and projects doomed by death, the kind of lives humans lead may be, *sub specie aeternitais*, less morally worthy than animal lives. We can allow the truth of (*VL*) to stand as long as we remain cognizant that 'valuable' must be conceived as elliptical for 'subjectively valuable', and we diligently remember that under this interpretation of (*VL*) that the (commonsense) practical implication that we illustrated with (*Lifeboat*) no longer applies. Jack can subjectively lose more in death than Wulfie – Jack is harmed, as Wulfie is not, by death making satisfactions of his plans and projects impossible – but this does not mean the death brings about a greater harm if it were to greet Jack rather than Wulfie in (*Lifeboat*). As a result, it may well be that Al does not – and no morally capable agents should – save Jack at the expense of Wulfie. Indeed, if my inverted Christian narrative is accurate, we ought to save Wulfie rather than Jack.

Or, much like the option we had when we were discussing our (*Lifeboat*) scenario with Gandhi and Hitler, we can continue to subscribe to the truth of (*PECI*) and so agree that all like interests should be equally considered but insist that, in virtue of the respective relationship animals and humans have to the source of objective value, the interests of humans and animals are never 'like'. On this view, we move directly toward the idea that animal interests, as well as animals themselves, are objectively more significant than, respectively, human interests and humans.

Or we may, in a bit of verbal maneuvering, accept the soundness of (*DDA*) when (*VL*) is interpreted subjectively – and so agree that death is of greater harm to humans than it is to nonhuman animals – but insist that the practical implication attributed to (*VL*) should have been ascribed instead to lives of greater *worth*, where this latter comparative metric takes into account the objective significance of the agents (and so the objective importance of the agents' interests), that is left unaccounted for in (*DDA*). Here, Al realizes that Jack's kind of life is more valuable than Wulfie's, but still saves Wulfie rather than Jack because Wulfie's kind of life has greater worth.

Opting to use the instrument of our formal machinery regarding value rather than (*PECI*), the lesson is the same. That we ought to promote value should be understood as an abbreviation for a prescription to promote objective value. If God reveals to us that animals are (far) more valuable creatures than humans and that, therefore, their interests are (far) more significant because He made it so, then even if humans, in virtue of their capacity to create future-oriented plans and projects, lose more in death than nonhuman animals, we have reason to save Wulfie rather than Jack if we happen to find ourselves in a life-and-death conflict situation where they are the potential victims (and beneficiaries) of our behavior.

Regardless of how either the Judeo-Christian narrative or my inverted narrative is described, the important lesson is that the following argument is invalid:

1. all else being equal, in death, those leading the human kind of life are harmed more than those leading a nonhuman animal kind of life;
2. therefore, all else being equal, those leading the human kind of life lead more objectively valuable lives than those leading nonhuman animal kind of lives

when the claim that human kinds of lives are more valuable than animal kinds of lives is imbued with the (commonsense) practical consequence that in conflict situations, in which all else is equal, all capable agents ought to – because of our allegiance to either (*PECI*) or the formal constraints surrounding value – rescue the individual leading the human kind of life rather than the individual leading the nonhuman animal kind of life. In incurring a greater subjective

harm in death (that it 'means more' for someone to die than 'it means' to another individual to die), one may still be undeserving of being saved in a conflict situation involving someone who would lose less in death.

While the theological narratives are useful to make the point that we cannot validly reason to true conclusions about the objective value of kinds of lives from the subjective (relative, comparative) values of kinds of lives, at least for those who share some popular moral intuitions, these stories are dispensable. To see this, let's return to our intuition that character matters, and that the interests of good individuals are objectively worthy of greater concern than the otherwise like interests of evildoers. It may be – in virtue, once again, of natural laws – that only creatures essentially lacking the capacity to formulate future-oriented mental attitudes have the capacity, say, to progress to particularly elevated levels of loyalty, loving kindness, and other virtues. We may admit that individuals who lead the human kind of life – the life that is identified and individuated in terms of including the capacity to create plans and projects – lose more in death than those leading the nonhuman animal kind of life insofar as their ante-mortem efforts to reach their aims have been rendered tragically futile, but insist that, overall, the loss of an extended hyper-virtuous life brought on by death causes more (objective) disvalue to those leading animal lives than the loss that death causes for those who lead a human kind of life. In the same way that bearing a particular relationship to the authoritative source of all value makes some agents and their interests objectively more significant than others, we may believe that being in particular relationships with virtue legitimizes privileging the lives and interests of some individuals who fail to partake in these relationships. In this manner, we can still agree that, as conceived by supporters of (*DDA*) human lives are more subjectively valuable than animal lives, but insist that our hyper-virtuous agents have lives of greater objective worth than these other agents. If this were so, just as Al would save Wulfie rather than Jack in (*Lifeboat*) in our inverted theological story, Al would act similarly in our tale of creatures with different relationships to virtue.

Both my theological and naturalistic narratives are, of course, just heuristic devices to show the consistency of (i) those leading the human kind of life are harmed more in death than those leading

nonhuman animal lives; (ii) human lives are more valuable than animal lives (as an implication of (i)); and (iii) the denial of the practical implication that the individual leading the human kind of life should be saved over the individual leading the animal kind of life in a life-and-death conflict circumstance. The 'trick' is to discriminate between subjective and objective value, and show that while (*DDA*) – given all our concessions – can be conceived as showing that human lives have greater subjective value than nonhuman lives, it is yet an open question whether this translates into human lives having greater objective value than nonhuman animal lives. Once we recall that the practical significance of (*VL*) is that we ought to save the individual who leads a life of greater objective value, we realize that for all (*DDA*) says, we lack any decisive reason for thinking that Al saves, or that we ought to save, Jack rather than Wulfie in (*Lifeboat*).

Needless to say, there are problems with showing the truth of either of these narratives. Questions about the theological story, even in its favored Judeo-Christian version, has lasted for two millennia; the last I checked no one has proven to the satisfaction of skeptics that there exists a supreme Source and Authority of all objective moral value who favors human creatures and their interests over nonhuman creatures and their interests. And no one, as best I know, has offered a version of, let alone a defense, of my inverted Christian story. Recent work in cognitive science has provided novel reasons to deny the very existence of virtues – understood as relatively stable character traits – but even if we accept the orthodoxy that virtues exist, there is no doubt that their identities have changed over the centuries. Judaic and Christian virtues differ, as do those proffered by Aquinas and Maimonides, and Benjamin Franklin and Bill Bennett. Not only are we hard-pressed to identify which if any of these candidates confer objective moral value but, even if this challenge were answered, there are still some who would deny the idea that the possession of these virtues – whatever they may be – makes agents' lives more valuable in the sense that it legitimizes saving the life of one individual rather than another in a conflict circumstance.

Adopting a telescopic perspective on (*DDA*) we should have initially been extremely skeptical of its chances for success, and we can see that our use of theological language was merely of ancillary aid and so dispensable. (*DDA*) immediately infers (i.e., infers without argument) the greater value of the human kind of life from the fact that

death disvalues (read: harms) those leading this kind of life more than it harms those leading animal kinds of lives. The validity of this direct inference requires that the claim about comparative value is simply a paraphrase of the claim about the relative harms that death brings to those leading human and animal lives. But why in the world should we believe that any conclusions about objective value – where objective value is 'operationalized' in terms of what all capable agents ought to do when confronting a life-and-death conflict situation in which tokens of these different kinds of lives are potential survivors – can be deduced from the fact that one kind of individual loses more in death than does another kind of individual? The formal constraints concerning value are just that: formal constraints about value *simpliciter*; there is absolutely nothing in the idea that value (i.e., value per se or objective value) is the type of item that ought to be protected, promoted, or maximized that gives us any direction how to act when all we know is that acting one way in a situation will benefit one individual (and disadvantage the other) while acting in the other possible way in the same situation will benefit the other individual (and so disadvantage the individual who would have been advantaged if we acted in the first way). Those who endorse (*DDA*) *may* be correct in thinking that reducing harm promotes value, but they are clearly wrong in thinking that they need no argument or theoretical account in which to ground this assertion.

Imagine that we find ourselves in a situation in which we can rescue from death one, and only one, of two individuals knowing only that one of the individuals leads a life of greater value than the other. Our formal notion of value – that it should be promoted and maximized – mandates that we save the individual leading the life of greater value, for it is only in this way – so we posit – that value is promoted and maximized. But notice that nothing in this process that ends with the decision to rescue the individual leading the life with greater value makes any mention at all about the relative benefits or disadvantages that accrues to either the individual who we save or the individual who is left to die. It may be that the individual that ought to be saved, i.e., the individual with the more valuable life, would be better off if he had been left to die, and we instead saved the other individual. But even if this is the case, it is irrelevant insofar as we are guided by our formal prescription to promote and maximize value. Our conceptual

structure of value does not guarantee that if death harms A more than it harms B, i.e., that death presents a subjectively worse harm for A than B, that by saving A in a conflict life-and-death circumstance value is thereby promoted or maximized. By not supplying any reasons (argument, theory, account) for why we should believe that there is this connection between being more greatly harmed in death and having an objectively more valuable life, advocates of (*DDA*) effectively insist that our concept of value suffices for forging this connection. But they are mistaken about this. They are incorporating substantive theory into formal machinery, or, if you like, they make the (common) philosophical error of underestimating just how little can be inferred from formal claims.

Since I conceive the insinuation of substance into formality as the 'conjuring trick' that disposes us to accept (*DDA*), let me make my point again in just slightly different ways. While supporters of (*DDA*) can, by *fiat*, inform us that when they use the term 'leading the kind of life with greater value' as effectively synonymously with 'leading the kind of life that is more harmed in death', they are within their linguistic rights. But what is illicit on their part would now be to use the formal notions that we ordinarily conceive of as parameters regarding value, and apply them – without any argument, without any account or theory about harms, death and the relationship between them – to how *they* now, by *fiat*, use the language of one life having greater value than another. Most importantly for our purposes, what those who endorse (*DDA*) cannot justifiably do is argue as follows: value is just the type of item that merits protection, promotion, and maximization, and I am directly inferring the greater value of the human kind of life from the fact that individuals leading the human kind of life are more greatly harmed in death than individuals leading nonhuman animal kinds of lives. So, if we are in a situation in which we can save one and only one of two individuals knowing only that one individual is harmed more in death than is the other, we ought to rescue the individual who would be harmed more in death.

Here's yet another way of making the point. I agree that a formal condition on value is that it is the type of thing that deserves to be protected, promoted, and maximized. And, for the sake of this discussion, I agree with (*DDA*) that those leading a human kind of life are harmed more in death than those leading animal lives, and I

will also agree that the explanation of this greater harm is a matter of death intervening between the formulation and completion of plans and projects making ante-mortem efforts 'nonsense'. I will further allow advocates of (*DDA*) to identify, by hypothesis, i.e., without argument, that this greater harm that death causes those who lead human lives relative to the harm death brings about to those leading animal lives with human lives being more valuable than nonhuman animal lives. Nevertheless, I do not agree, and see no reason why I should, let alone must, agree that, when advocates of (*DDA*) make their hierarchical value claim, i.e., (*VL*), that it any longer is governed by the formal notions of protection, promotion, and maximization that ordinary folk use when they speak of value.

If advocates of (*DDA*) wish to compel the use of our formal constraints on value on their conception of value, they need to conceive of the step from 'leading a kind of life that is more greatly harmed in death' to 'having a more valuable life' as substantive. They need to supply some convincing argument to the effect that lives that are harmed more in death than other lives are, all else being equal, lives which ought to be rescued over lives that are less harmed in death. I need to know why, all else being equal, necessarily, value is promoted or maximized by saving the individual who leads the kind of life that is more harmed by death.

There are moral philosophers (i.e., philosophers who study morality) who, *a priori*, reject any story that places the source or authority of moral value, or morality in general, in the hands of some transcendental figure. *Meta-ethical contractualism* asserts that morality is a human artifact, a set of rules made by rational, self-interested humans for the sake of humans. Spurred by the natural desire to live in a peaceful, secure, and commodious world in which humans can flourish, these contractualists effectively replace the role that God has traditionally served as the source and authority of value by humans. If objective value has any place in this meta-ethical theory, its determination is up to humans; we create the rules, and if humans assign greater objective value to humans than to animals – if humans make it the case that capable agents ought to save Jack rather than Wulfie in (*Lifeboat*) – the matter is closed. There is no other moral perspective to adopt to criticize the human decision about the significance of value or worth. At least in the moral realm, man *is* the measure of all things.

If this contractualist story was the only rational alternative we could accept, there would be little need for debate; humans are the source and authority of all objective morality and they make it that humans (i.e., those who lead the human kind of life) and their interests have greater objective value than animals. The easiest way to see that this won't do – that making humans more objectively valuable than animals cannot be achieved so simply – is by imagining a group of Martians performing a similar task on their planet. Assume that we have somehow ascertained that their powers of reason exceed ours, and that their natural sentiments (feelings of sympathy, empathy, appreciation of the subtleties of situations, etc.) are more developed and more sensitive than ours. They deem themselves to be on top of the objectively valuable food chain, and humans, say, are far down on their list, perhaps lower than chimpanzees and dogs. Why, then, as a matter of seeking the impartial truth, should we accept our judgments rather than the Martians? It appears that we've discovered another perspective from which our own morality can be interrogated.

There may some temptation to say that whatever the Martians have created, it isn't a system of *morality*. Morality by definition – so goes the objection – is a human artifact developed to make humans live more secure and fruitful lives. No need here to cavil; we allow this objection and label the Martian construction 'sh-morality'. There is no principled problem in comparing the merits of (human) morality and (Martian) sh-morality. While there may not be an 'ultimate' point of view, there are perspectives sufficiently broad to encompass human morality and Martian sh-morality. The contractualist attempt to make humans the ultimate arbiters of objective moral value fails.

2.4 The problem with valuing capacities

We have analyzed – identified and individuated – kinds of lives in terms of capabilities or capacities; what makes a kind of life the kind of life that it is are its essential capacities. (*DDA*) defines the human kind of life as one with the capacity to possess future-directed mental states (formulate self-involved satisfiable plans and projects) and identifies nonhuman kinds of lives in opposition as kinds of lives lacking this unique human capacity. So, if one kind of life is

more valuable than another kind of life – where this is practically understood as requiring the rescue of an individual leading the more valuable kind of life rather than the individual leading the less valuable kind of life in a conflict situation – then it must be that (the possession of) some capacities are more valuable than others.

For our purposes, there are two relevant ways to conceive of the manner in which capacities have value; one may think of (the possession of) capacities as 'intrinsically valuable' where this means that, all else being equal, the (possession of the) capacity, in and of itself, makes a life more valuable than it otherwise would be. On this reading, human lives – lives that are essentially characterized in terms of the capacity to formulate and satisfy future-oriented plans and projects – are more valuable than animal lives in virtue of the (possession of the) capacity itself. When we attribute intrinsic value to (the possession of) a capacity, we are attributing value to this capacity in the same way that we commonsensically attribute value to (the possession of) pleasant feelings. Just as experiencing pleasure is typically conceived as a value independent of any other use we can make of it, and so the mere experience of pleasure is a good, in and of itself, to its possessor, we are to similarly conceive of the good of owning the capacity to have self-involved, satisfiable, future-directed mental states.

We can also think of (the possession of) capacities having value instrumentally. On this reading, the value of (the possession of) the capacity to make plans and projects resides in the fact that they are (trivially) necessary for the possession of satisfied plans and projects. Their trivial necessity is an instance of the platitude that to do or possess something, one needs the capacity to do or possess that thing; roughly, actuality implies possibility. In this case, the additional value that is attributed to human lives is situated in the satisfied plans and projects; the value of the capacity to have these satisfied plans and projects is both necessary and derivative. Its necessity derives from the fact that without the capacity, there would be (and, indeed, could be) no satisfied plans and projects; its derivativeness is a matter of fully owing its value to the existence of some other valuable item.

To clarify the distinction between conceiving of a capacity as intrinsically and instrumentally valuable, as well as understanding the significance of this distinction for (*DDA*), let's consider Frank,

a human leading the human kind of life. Frank is elderly and has lived a wonderful life, accomplishing all that has been important to him. He's been in a happy and rewarding marriage for some 50 years, has thriving and well-adjusted children and grandchildren, and has traveled the world. At this point in his life, he has no plans and projects for the future, and although not actively seeking death, he is indifferent toward it; when it happens it happens. Frank still has the capacity to form future-oriented plans and projects, i.e., we ought not to think of Frank not any longer leading a human kind of life, but as a matter of fact, death is impotent to render his prior expenditures of time, effort, and resources in the service of satisfying his plans 'nonsense'. Since all his antecedent efforts have already been serviceable – he has fulfilled his goals for his life – when death comes to Frank tomorrow it will produce a greater harm for Frank (*qua* an instance of someone leading a human kind of life) than it would for Wulfie *only if* the (possession of the) capacity to formulate and satisfy future-oriented plans and projects is, in and of itself, valuable. For if we suppose that the (possession of the) capacity to create and satisfy future-directed projects had only instrumental or derivative value – a value that only becomes realized when an individual actually creates and subsequently satisfies one of these projects – then since, *ex hypothesi*, Frank will never exercise his capacity to form future-oriented plans, this capacity will have no value to him. And if the capacity has no value to Frank, then surely he cannot be disvalued or harmed by death taking this capacity from him. So, despite the fact that Frank and Wulfie lead different kinds of lives, they would be equally harmed by death. If, as (*DDA*) claims, death harms Frank more than it harms Wulfie in virtue of the kinds of creatures they are, i.e., in virtue of, respectively, their possession and lack of possession of the capacity to create and satisfy future-oriented plans and projects, advocates of (*DDA*) must conceive the very possession of this capacity to be valuable. (*VL*), then, if true, must be true because having the capacity itself is a good to those who lead the human kind of life.

We garner confirmation that supporters of (*DDA*) are disposed to think of the value attending to capacities as intrinsic value; we need only review the modal language that (*DDA*) employs. When death is said to cause the 'irrevocable' frustration of certain ante-mortem plans or projects, or is described as rendering the satisfaction of plans

and projects 'impossible', it strongly suggests that the capacity (i.e., what we *can* do) is, in and of itself, something, the possession of which is valuable. For if the (possession of the) capacity to create and satisfy future-oriented plans and projects was deemed not to be valuable per se, then we might have supposed that supporters of (*DDA*) would have used the language of prevention. So rather than claiming that death renders it impossible for those leading a human kind of life to satisfy any ante-mortem plans and projects, the apologist for (*DDA*) might have used non-modal language, and spoke instead of death preventing the fulfillment of ante-mortem plans and projects. Implementing the non-modal 'prevention' language carries no connotation of death making satisfaction of plans and projects impossible; it does not hint at the notion that, necessarily, satisfaction of these plans and projects will not be forthcoming, but only that that satisfaction of these future-directed mental attitudes will, in fact, never occur. Using the non-modal language would not – as the modal language does – incline one to believe that the (possession of the) capacity for future-oriented plans and projects is, in and of itself, valuable to humans, although it would certainly suggest that that this capacity has value instrumentally.

It may be somewhat surprising to realize that death can render one incapable of satisfying future-oriented plans and projects without preventing the satisfaction of these plans and projects. Our example with Frank provides one example of this. Recall that death did not prevent Frank from forming and satisfying future-directed plans and projects; Frank, himself, in virtue of being fully satisfied with his lot in life, was the cause of his future being bereft of these mental states. In fact, it was just because death didn't prevent Frank from forming and satisfying future-oriented plans and projects (although death did make it *impossible* for Frank to do so) that we thought that apologists of (*DDA*) attributed intrinsic value to the capacity.

For a more picturesque example of the possibility of death incapacitating, yet not preventing, one from establishing plans and projects, we may consider the plight of Vinny the Venusian. Vinny, like any normal Venusian (and human), has the capacity to form satisfiable self-involved plans and projects. While Venusians, in virtue of the kind of beings they are, can formulate plans and projects, they, *in fact*, are never successful in completing their plans and projects. We might think that the heightened level of intricacy and complexity

of Venusian plans always prevents their completion. Or perhaps Venusian plans always require the help of others but Venusians, being a lazy and argumentative lot, never get their cooperative act together. At any rate, Vinny *could* construct a (satisfiable) plan or project; if only he would entertain a simpler plan or project (and he *can* do this) he would succeed, or, if only he would nag his neighbors more vociferously (and he *can* do this) he would complete his project. But, alas, he never does; Vinny's capability to satisfy his (self-involved) plans and projects is never manifested. His future-directed mental states are, in fact, never satisfied. Facts about Venusian life prevent ante-mortem Vinny from fulfilling his plans and projects, leaving death powerless to prevent the completion of any plans and projects.

Vinny leads a human or personal kind of life; he leads the kind of life that essentially includes the capacity to make (self-involved, satisfiable) plans and projects. And it's true that Vinny loses something in death that Wulfie doesn't lose, namely, the capacity to formulate plans and projects. But the claim that Vinny loses more in death – is harmed more in death – than Wulfie, and so leads a more valuable life than Wulfie, rests on the presumption that the possession of the capacity to form future-directed projects is, in and of itself, valuable to Vinny. *Death* cannot harm Vinny by preventing him from fulfilling his capability to make future-directed plans because he is, already, ante-mortem, prevented from doing so.

The crucial question, then, facing supporters of (*DDA*) is whether there is a good case for thinking that the possession of the capacity for future-directed plans and projects is of intrinsic value to those leading human lives. If a strong case is lacking and, worse yet, a powerful case can be made for conceiving of the value of this capacity only in instrumental terms, then the intelligibility of (*VL*) gets thrown into doubt. It is difficult to understand what is meant by claiming that the human kind of life is more valuable than the nonhuman animal kind of life if we accept both that the identity of kinds is best conceived as a function of capacities and that (the possession of) capacities are best understood as lacking any intrinsic value to their possessors. Advocates of (*DDA*) have much at stake in the outcome of this discussion.

I begin by submitting that in everyday, non-philosophical contexts, we tend not to attribute value to (the possession of) capacities per se.

Consider the value all of us ascribe to the experience of pleasant sensations. It's platitudinous to assess the capacity to have pleasant sensations as valuable. After all, this is just to say that this capacity has instrumental value as its possession is required for experiencing pleasurable feelings; conferring derivative value to this capacity is uncontroversial. Let's imagine – if we can – that, *per impossibile*, we would have pleasant sensations without the capacity to have them. I don't believe that we would conceive of ourselves as being deprived – as suffering harm – if we had our capacity to experience pleasure rescinded but (somehow) continued experiencing these sensations. I concede this 'intuition pump' is not very convincing; it isn't advanced in that spirit. I recognize that asking that one conceive the impossible is requesting a lot from someone. I'm hopeful that, as an opening gambit, the thought-experiment may serve the purpose of opening the minds of some who were, heretofore, dogmatically opposed to the idea that any capacities (at all) can lack intrinsic value.

More substantively, our worry, broached earlier in Chapter 1, that the (possession of) capacities are ill-suited to ground preferential concern of some interests over others can be re-deployed here in service of the idea that (the possession of) capacities cannot confer greater value onto a particular kind of life. Recall that we made the purely conceptual point that capacities can exist either as instantiated or not; a potable liquid remains potable whether or not its potability is instantiated. When we drink a glass of water, the water manifests its potability; when left untouched on my desk the water is still potable but its capacity is unexemplified. Similarly, the human kind of life – the kind of life that is identified and individuated in terms of the capacity to form plans and projects – sustains its definitive characteristic whether or not the human who possesses this life is or is not forming plans and projects. Just as it's difficult to understand why one would attribute more value to a potable liquid that will never have this capacity manifested than to a liquid lacking this capacity altogether, it is equally odd to grant more value to a kind of life with a never-to-be instantiated capacity to form future-oriented plans and projects than to a kind of life absent this capacity.

One may not be overly impressed by this argument from analogy. It may cheerfully be admitted that for humans or for any creature that would like to make use of a liquid, there is no practical difference between a potable liquid that will never have this disposition

instantiated and a liquid that lacks potability. But we are investigating whether the capacity to make future-oriented plans and projects is intrinsically and not instrumentally valuable to its possessor, and this, it may be suggested, is an entirely different matter. The fact that an object may be equally useful for us whether it has a never-to-be exemplified capacity or the outright lack of that capacity has no direct relevance to the question of whether this difference is relevant to the intrinsic value of the item. Furthermore, it may be suggested that it is bizarre to conceive of liquids as the type of item that has intrinsic value.

Respecting this last comment, let's turn to a different example, and ask whether a living organism is more intrinsically valuable having a never-to-be instantiated capacity for sentience than it is without having the capacity altogether. It may be thought that this example suits my opponent's purposes. Consider early-stage fetuses who although not sentient have the capacity for sentience. Many of us believe that these fetuses have a value – an intrinsic value – that items such as glass and water lack. It seems, then, that the mere possession of the capacity for sentient experiences, without this capacity being manifested, holds intrinsic value for the fetus. But to the extent we believe that this capacity does ground intrinsic value, we may implicitly be imagining that the capacity for sentience will eventually be manifested. The true test of our intuitions, then, is to consider whether we believe an early-stage fetus with a never-to-be exemplified capacity for sentience is more objectively valuable, i.e., is more valuable in that it deserves to be promoted, protected, and maximized, than an otherwise identical fetus lacking this capacity altogether.

Obviously, my conviction is that these fetuses have no difference in intrinsic value. But I recognize that conceived as an argument against those who hold just the opposite view regarding the capacity to form future-oriented plans and projects, this amounts to little more than question-begging. In truth, I am simply substituting the capacity for sentience – a plausible candidate for a capacity owning intrinsic value – for the capacity to create future-directed projects, and voicing my opinion that possession of the mere capacity amounts to no gain of value. I have made little (read: no) progress; I just as well could have repeated my insistence that the mere capacity for creating plans and projects is not intrinsically valuable.

Perhaps a second sort of thought-experiment will prove more persuasive of the idea that (the possession of) capacities are not intrinsically valuable to the agents that have them – and so the loss of them in death is not, in and of itself, harmful to the agent who dies. Consider the fact that, by virtue of their physiologies, Jack but not Wulfie has the capacity to get thumb cancer. While both Jack and Wulfie are susceptible to suffering from cancer, since only Jack has thumbs, he alone can acquire this specific type of cancer. Suppose that Jack will never get cancer of the thumb, and so his capacity to get thumb cancer will never become instantiated. Assuming that the occurrence of thumb cancer is a harm to Jack, i.e., that Jack's interests would be frustrated were he to contract thumb cancer, would we think that, all else being equal, Jack loses more in death than Wulfie in that Jack loses a capacity that Wulfie does not?

If the possession of a capacity *of whatever kind* is an intrinsic good to an agent, i.e., if the possession of a capacity per se is an intrinsic good to an individual, then Jack loses more than Wulfie in death in losing the capacity to acquire thumb cancer. But conceiving of the possession of a capacity of whatever kind as a good to an agent seems absurd; after all, surely no rational, self-interested agent would prefer to have, rather than lack, the capacity to acquire thumb cancer. This is one of many capacities we would prefer to do without. (Of course, my point is that I would not mind having this capacity if God assured me that it would never be instantiated.) On the other hand, if the possession of a capacity is an intrinsic good to an agent only when the exemplification of the capacity is in the interests of the agent – as is the case where the capacity is one that makes possible satisfied plans and projects – and intrinsically bad otherwise, then Wulfie would be less harmed than Jack by death. Jack's interests would be served in death in a positive way that Wulfie's interests would not be since Jack would lose something disvaluable to him in death that Wulfie would not. This should strike us as beyond bizarre. Imagine a (*Lifeboat*) situation in which we are in a position to save either Jack or Wulfie where all else is equal other than the fact that Jack has the never-to-be-manifested capacity to contract thumb cancer. Then, by virtue of the fact that this capacity is a capacity for something disvaluable and so intrinsically bad, it would serve as a reason to save Wulfie rather than Jack. We are likely to demur from this consequence,

and so should reject the notion of the intrinsic value (positive or negative) of capacities.

I freely admit that none of these stories are decisive, and indeed, that discussions concerning whether or not an item of purported value has the value intrinsically or not, virtually, if not veritably, engage a question-begging aspect at some juncture. (Whether this is true of all philosophical arguments is a topic I leave for another time, but Russell's quip that all philosophical arguments are either trivial or false should give us pause.) Nevertheless, the tales may be useful. The undecided may reasonably take one side rather than another despite the fact that a contrarian would be within her rights to think that the persuasive power of all my scenarios is (not so?) subtly grounded in presuming that the capacity for forming and satisfying future-oriented plans and projects and, for that matter, in presuming that all capacities, in and of themselves, lack the moral power to make their subjects more valuable than they would otherwise be.

At any rate, the conclusions that I promote leave options to those who endorse both the hierarchical value of (kinds of) lives, and the claim that kinds of lives are identified and individuated in terms of capacities. There is, as of yet, no demand to withdraw from the view that the capacity to create plans and projects is valuable to humans, but I hope that I've shown that there's sufficient pressure on the idea that this value is of the intrinsic kind to at least bring doubts to the minds of all those but the most doctrinaire contrarians. If I have, then, to continue to subscribe to the notion that the capacity to create future-directed plans and projects is of value to their possessors, one must conceive of this value as instrumental. This means that the value of this capacity becomes realized only when it is manifested, i.e., when an individual leading the human kind of life does actually form such plans and projects. And this in turn means that the value of the capacity is, as we've noted previously, of a derivative and trivial sort. The locus of the substantive value resides not in the capacity but in the satisfied future-directed plans and projects.

To take stock. The remaining hope of those who wish to meaningfully speak of the hierarchical value of kinds of lives lies in vindicating the instrumental conception of the value of a capacity. If the (possession of the) capacity for making plans and projects is, in and of itself, unemployable as a criterion for one kind of life being more valuable than another (and, equivalently, cannot be used as

a criterion for one kind of life being subject to a greater harm in death than another), allegiance to (*DDA*) requires that we must now conceive of the *content* of the capacity (i.e., the satisfied, self-involved plans and projects) as the locus of especial human value. Supporters of (*DDA*) can still insist that human lives are more valuable than animal lives and that human and animal kinds of lives are defined in terms of their necessary capacities, but they can no longer aver that it is (the possession of the) capacity to make plans and projects, per se, that determines the greater value of the human kind of life. Possessing the capacity for making plans and projects is still valuable, of course, since, trivially, without this capacity humans could not have plans and projects, let alone have fulfilled plans and projects. But what, at bottom, makes humans more valuable creatures than animals – what makes death a greater harm for humans than it is for nonhuman animals – is not the loss of the capacity to make plans and projects, *per se*, but rather the loss of the satisfied plans, projects, and future-directed mental states.

If the loss of satisfied plans, projects, and future-directed mental states are especial harms caused by death to humans, then the satisfaction of these attitudes must be goods to humans. But we can now iterate the strategy we used to suggest that the possession of a capacity, in and of itself, cannot confer additional value to a kind of life. We can ask, that is, whether the good resides in the satisfaction, per se, of these attitudes – in which case, regardless of either the identity of the plan or the consequences of having the plan satisfied, the value of the life of an agent is increased simply by virtue of having his mental state satisfied – or whether the good resides not in the mere fact that the plan is satisfied, but instead in the particular plan itself or in the consequences of having the plan satisfied.

If one's value of life is enhanced merely from the fact that one's plans and projects are satisfied, then one is committed to claiming that some good or value attaches to a human from a satisfied plan or project regardless either of the character of the plan or the consequences of its fulfillment. Suppose Hitler plans to murder another 10,000 European Jews. On the view considered here, the satisfaction of the project (i.e., fulfillment of the plan, not to be confused with feelings of satisfaction that are contingently connected with the awareness of the plan being satisfied) makes Hitler better off than he would have been if the plan had failed. Death presents itself as a

harm for Hitler insofar as its occurrence prevents the satisfaction of his goal.

This suggestion leaves most of us with a queasy feeling: the idea that Hitler is made better off – has his welfare improved – by having his wicked goal fulfilled is at odds with our sense of justice; surely fulfilling one's aim of murdering innocents ought not to make someone better off than he would have been had his goal been left unsatisfied. God, so to speak, surely would not have created the world to work in such a way.

Advocates of this view can supply some addenda to make this idea more palatable. They will surely remind us that they are not committed to the fact that, overall, Hitler would be made better off if his evil plan succeeds; they may even supply some theory that, although the satisfaction of the plan adds some good or value to Hitler's life – Hitler's well-being is increased just by having his plan fulfilled –there is always, or perhaps even necessarily, a loss of welfare that perhaps, in absolute terms, is greater than the positive value that inheres in the satisfaction of the plan itself. Still, if one adopts this first view about the value of satisfied plans and projects – that, necessarily, a human agent suffers a unique harm in death in virtue of the prevention of the project per se – then some value must be attributed to the satisfaction of the plan or project itself, notwithstanding any distaste we have for the idea that Hitler benefits from the completion of his evil ends.

The same worry about this view can be introduced without resorting to any moral evaluation of an agent's goals. Consider the perfectly morally innocuous plan of Saul's participating in the 2024 Olympics. Assume that if this goal had been achieved, Saul would have finished dead last in the 100 meters, fell into a deep depression, ended his marriage, and, within the same year, lost all his money and friends. But since Saul died in 2023, none of these events transpired. If death is to be considered a special disvalue to Saul, then the satisfaction of his desire to participate in the Olympics would need to be considered a good for, or a value to, Saul. Since we are currently concerned about the view that holds that the satisfaction of a plan or project is, in and of itself, a good to the agent, despite the fact that the satisfaction of the plan would have reaped great disvalue upon Saul, the very fact that the plan is satisfied increases the well-being of Saul. Once again, an advocate of this view may yet say that overall

Saul was fortunate that he died when he did, although his death did somewhat disvalue him insofar as it prevented his plan (which would have had disastrous implications) from becoming completed.

Obviously, this first (as well as the second, to be discussed below) account of how death constitutes a special harm to humans in interfering with completion of their plans and projects, assumes a preference-satisfaction (better, because more inclusive, a future-directed mental state-satisfaction) theory of well-being. And some, but not all, of the problems with this view come from the pressure exerted from other theories of welfare. Returning to the 'Hitler' example, I have suggested that our unease in thinking that Hitler is made better off – to any degree – by the fact that his immoral plans are satisfied is our distaste for thinking that one can benefit from evil, and that no one 'really' inherits advantage from vicious motivations. This objection implicitly rests on a different theory of welfare; *perfectionism* (as mentioned earlier) is the view that welfare is a function of an agent having particular, objectively valuable, qualities. Being courageous, magnanimous, wise, and kind make one better off; lacking these qualities, especially when replaced by the vices of cowardice, self-centeredness, ignorance, and meanness make an agent worse off. The picture forges an inextricable connection between virtue and welfare; how well one does is a matter of character which, in large measure, is conceived as under one's own control, and so not held hostage to the exigencies in the external world. Satisfaction of his preferences notwithstanding, Hitler is not made one bit better off.

While the sentiments behind this objection are laudable, I'm afraid that this is a case of wishful thinking. While it is difficult to make objections without begging the question against any theory of welfare, the unfortunate truth is that there are tyrants and evildoers who appear to be made better off when their immoral plans get fulfilled. Would that Hitler, Stalin, and Pol Pot did not have improved lives when their projects became realized, but this seems not to have been the case. It may be argued that in these, and indeed all other, cases where welfare is improved when plans are satisfied, strictly speaking it is the *awareness* or the *belief* that the plan has been satisfied that brings about the well-being; the intuition here is the experientialist one in which one's welfare is exclusively 'in the head' and so if you are not subjectively connected with the fulfillment of your project, your welfare cannot be either positively or

negatively affected. Moreover, on this view, and even more strictly speaking, it's not even the awareness of the satisfied plan that makes an agent better off but rather the positive feelings that all but invariably accompany the realization that a goal you set has been successfully met.

The case of Saul is, I think, the more interesting one, for now our reason for rejecting the notion that the satisfaction of a plan or project is, in and of itself, welfare-improving, is that Saul himself – let us imagine – if granted the gift of foresight of how his life would have progressed had his goal for Olympic participation been fulfilled, would have wished that his plan were left unsatisfied or that he never had those desires to begin with; he now regrets that his project worked out in the way that he originally planned. This objection is based on the plausible intuition that almost always an agent is the best judge of what is in his self-interest; if prescient, calm, deliberative Saul comes to believe that the satisfaction of his own plans made him worse off than he otherwise would have been, it would be a sign of enormous arrogance to insist that his self-assessment isn't as sound as that of any external reviewer.

At the end of the day, what is most problematic about the idea that satisfactions of plans and projects, per se, are value-adding characteristics is precisely the qualification 'per se'. An analogy with capacities is appropriate. Just as it seemed odd to conceive of the capacity to incur cancer as a reason to attribute greater value to this life than another identical kind of life except for the absence of this capacity, so too it seems bizarre that the satisfaction of certain goals, the completion of which are undeniably bad for an agent, at least carries a value to the agent of being a satisfied future-directed mental state. It strikes me that Saul would receive – and should receive – no consolation from someone reminding him that at least he got what he originally wanted and hoped for. Rather than interpreting this as a comment that his life has become more valuable in this respect – albeit not overall – Saul would probably understand this comment as snarky, and rubbing salt into an already gaping wound. If the loss of satisfied future-oriented mental states in death are to count as harms, and so the possession of satisfied plans and projects are to count as value-enhancing, the good cannot reside in the satisfaction, per se, but rather in the character of the plans and projects that one satisfies. We need, then, to turn to the second attempt to show

that humans especially are disvalued in death in virtue of the loss of satisfied plans and projects.

The hypothesis, then, is that the character or quality of the plans and projects (and the ramifications of the satisfied plans and projects) matter; that only the loss of the satisfaction of plans and projects (and consequences) of the 'proper sort' constitute the distinctive harm that death brings to humans. Hitler's aims were not of this appropriate kind and the consequences of Saul's would-be satisfied plans and projects were also not of the appropriate sort. So, it must be that the distinctive value available only to those leading human lives is the (actual) satisfaction or realization of these 'proper sort' of plans and projects.

But what are the 'proper sort' of plans and projects, the loss of whose satisfaction in death would cause humans a distinctive objective harm? Since death is alleged to present a distinctive objective harm to those leading human lives relative to those leading nonhuman animal lives, the only completely safe answer identifies the 'proper sort' of plans as those that are objectively valuable, and so not merely those satisfied ends that are 'good for' or 'valuable to' the agent. Let's grant that it is intelligible to speak of objectively valuable plans and projects, that only those who lead the human kind of life can have these (by definition), and that humans have had such objectively valuable plans and projects already (i.e., ante-mortem, prior to finding oneself in a (*Lifeboat*) circumstance) satisfied. Recalling that (the possession of) capacities is not intrinsically valuable, not only do I not see why those who lead human lives and who have experienced the satisfaction of objectively valuable plans and projects have more valuable lives – practically understood as legitimizing the rescue of an individual with such a life – but in fact see it as a reason for just the opposite conclusion. That is, the fact that only humans have experienced the satisfaction of objectively valuable plans and projects, and *not* that they possess the capacity to experience the satisfaction of objectively valuable plans and projects) – gives Al a reason to save Wulfie rather than Jack in (*Lifeboat*).

Why so? If we attribute greater value to a human kind of life than an animal kind of life in virtue that the former but not the latter has experienced satisfied objectively valuable plans and projects, it is unclear why death is a greater harm to humans than to nonhuman animals. The reason cannot be that in death we lose the capacity to

have any future experiences of satisfied objectively valuable plans and projects because, although it's true that death would have this effect for only humans, we have seen that capacities, in and of themselves, are not apt subjects of value to a particular kind of life. Death cannot bring about the loss of these already, ante-mortem valuable experiences; whatever disvalue death can cause, death cannot erase the good that has occurred prior to its occurrence. For the same reason death cannot make 'nonsense' out of the past efforts to reach some goals and complete some plans and projects; since these goals, plans, projects have already been completed, the resources expended in the effort to attain these ends has been fruitful, and there is nothing that death can subsequently do to change these efforts from meaningful to absurd. In bestowing greater value on a human than on a nonhuman animal by virtue of the fact that only the former has realized satisfied plans and projects of objective value, we appear to lose contact with the practical meaning that advocates of (*DDA*) assign to one kind of life having greater value than another.

Adopting, as do all proponents of (*DDA*), a deprivation view of death, this result should not be surprising. If the badness or harm of death is understood as a harm of deprivation, the only plausible candidate for what is being deprived is the future. Regardless of how one understands the future, any analysis must make some reference – direct or oblique – to some times or events that either have already occurred or are currently occurring. Since our hypothesis about what makes human lives of greater objective value than nonhuman animal lives exclusively focuses on what has already transpired to the agent – that the agent has already experienced satisfied objectively valuable plans and projects – death, conceived as a harm of deprivation, can find no traction. As powerful as death is, even it cannot change the past; it cannot deprive us of something that we already have had.

Taking a step back, perhaps we should have expected such troubles plaguing (*DDA*). It seems right-headed to think that leading a particular kind of life – where leading a certain kind of life just is leading a life that includes particular distinctive capacities – cannot guarantee that death is of greater disvalue to one who leads this kind of life than to one who doesn't in instances where the possession of the capacity itself is not of value to its possessor; it seems implausible to think that just because you *can* do something that another *cannot*,

that in eradicating that capability, death harms one more than it harms another.

Still, this goes no way in substantiating my stronger suggestion that if we think of Jack as having experienced a better, more valuable life than Wulfie, in that he alone has led a life filled with satisfied plans and projects of objective value, this provides a reason for Al to save Wulfie rather than Jack in *(Lifeboat*). The argument for this, once again, reverts to one's attitudes toward luck egalitarianism. Since Jack had no responsibility whatsoever for the (original) life he led, and since it is only by virtue of leading this life that he had the opportunity to lead a life with satisfied plans and projects, it seems plausible that, under the aegis of justice *sub specie aeternitatis* that Al try to 'even up' the score. And, in a conflict situation such as (*Lifeboat*), the only way of making progress on this score is by saving Wulfie rather than Jack. Once again, I am not denying that Jack deserves some moral credit for leading such a good life; presumably, he played his cards well insofar as he managed to select objectively valuable plans and had the skills and wherewithal to fulfill them. Nevertheless, one cannot deny that that the global description of Jack's life needs to include reference to the fact that he did nothing to earn the kind of life that he inherited.

We can imagine that in (*Lifeboat**) Al reasons that:

> Jack loses more in death than Wulfie for the reasons that (*DDA*) has supplied. But I know that Jack has experienced satisfied future-directed mental states and Wulfie has not. In having this life of greater goods, Jack has had partial responsibility. He's been lucky in that he comparatively benefited in being born with the human kind of life; he's been deserving in that he's done well, through his own efforts, with the kind of life he's been given. Also while it's true that Jack will suffer more harm in death than Wulfie, this is only because he has an unearned capacity from which he has gathered (partially) undeserved goods throughout his life up to this point. In effect, Jack loses more in death only because he's been so fortunate in life. Objective, *sub specie aeternitatis*, God's-eye justice requires that I 'even up the score' as best I can. So I will toss the life preserver nearer to Wulfie. If in so doing, Wulfie is saved, he will still be incapable of forming, let alone satisfying, future-directed attitudes, but he will experience pleasures that he would not have experienced had I saved Jack.

Al's reasoning incorporates the notion that *history* matters to what he does or what we should do. While (*DDA*) makes no allusions to how Jack or Wulfie came to lead the kinds of lives they do, Al's deliberations crucially make this genealogy relevant in his decision-making. Al's guiding principle receives support from some versions of luck egalitarianism, very roughly the idea that unearned (unmerited, undeserved) advantages – benefits that are garnered by pure luck – ought to be 'evened out' by subsequent, morally appropriate actions. Since Jack has not earned the additional value that his kind of life has to offer – Jack just 'lucked out' into leading a human kind of life – and Wulfie, through no fault of his own (i.e., through relatively bad luck), came to lead a nonhuman kind of life – a kind of life with comparatively lesser value – Al, as a capable, moral agent saves Wulfie rather than Jack, for only in this way can Wulfie have future valuable experiences that would 'even out' the good that has already, ante-mortem, occurred in the lives of Jack and Wulfie. It's true that Wulfie, while remaining a dog, would not receive the good of possessing satisfied plans and projects – for this would require him no longer being a nonhuman animal – but if he were rescued, he would receive the goods of occurrent and episodic pleasures, as well as the satisfaction of present-oriented mental states.

There is perhaps some irony in the fact that the very item that makes a human life more valuable than a nonhuman animal life legitimizes saving an animal rather than a human in a conflict circumstance. Nevertheless, if one is convinced that 'history matters' – that the genesis of how one came to lead the human and animal life – and has some sympathy for the idea that luck egalitarianism captures something essential to a robust concept of justice, one can make a plausible case for a verdict diametrically opposed to the one offered by (*DDA*).

It may appear, at first blush, that following the directive of luck egalitarianism may conflict with our formal imperative to promote, protect, and maximize value. In the case at hand, we have conceded that not only is Jack harmed more in death than Wulfie but that Jack has had a more valuable life than Wulfie. After all, it is just this presumption that Jack has (undeservedly) led an objectively more valuable life than Wulfie that provides the impetus to appeal to luck egalitarianism as a way of showing how it would be reasonable for Al to favor Wulfie's survival over Jack's. It would seem to protect

(preserve) this more valuable life, Al is prohibited from throwing the life-preserver closer to Wulfie than to Jack in (*Lifeboat**). But here again, recognition of just how formal, and so flexible, is the prescription to promote and maximize value is important. Luck egalitarians may respond that even if we allow, with the supposition that Jack's life is more valuable than Wulfie's, that Jack's life would continue to be more valuable than Wulfie's, that there is yet great value produced by ameliorating previous injustices. The fact is that in helping Wulfie's chances of survival by tossing the life-preserver closer to Wulfie than to Jack is itself an act having value and it therefore is deserving of being promoted. And there is nothing in our formal conception of value that forecloses the possibility that acting in the way luck egalitarians suggest actually is the best means of promoting and maximizing value. The larger lesson, and one that is continually missed by proponents of (*DDA*), and just how little is being offered by the formal proclamation that value is to be promoted, protected, and maximized. Since, by its very nature, formal claims are neutral as to the constitution of value, as well as how the promotion of value is to be carried out, it would actually require great effort to advance any normative theory with which our formal account would conflict and so preclude.

Regardless of one's attitude toward the viability of luck egalitarianism with its concomitant consequence that argues for Al privileging Wulfie's survival in (*Lifeboat**), one should feel strongly suspicious of (*DDA*). Advocates of (*DDA*) have failed to make their case. They have, so I've argued, been unsuccessful in showing that the human kind of life – the kind of life that by their own lights is defined in terms of possessing the capacity for formulating and satisfying (future-oriented) plans and projects – is more valuable than the nonhuman animal kind of life, where the cash-value or practical significance of one kind of life having greater value than another is displayed in a conflict situation where any moral, competent agent ought to rescue the individual leading the more valuable kind of life.

2.5 From preservation to creation

One specific line of reasoning I have rejected is that from the fact that A has a more valuable life than B – where this is immediately

inferred from the fact that A is more disvalued in death than B – that A ought to be rescued rather than B in a (*Lifeboat*) situation; that death is a worse harm for A than it is for B doesn't entail that (objective) value is promoted or maximized by a moral, competent agent saving A at the expense of B in a conflict situation. While conceding that the practical significance of (*VL*) is – as the advocate of (*DDA*) and the ordinary person has it – most naturally understood as Al saving Jack rather than Wulfie in (*Lifeboat*), I want now to suggest a different operational definition of (*VL*) that should carry much intuitive appeal. One of my aims is to see if (*DDA*) can be at least partially revived. Perhaps with this different assignation of cash-value to (*VL*), the fact that humans lose more in death than nonhuman animals – and so, by the lights of (*DDA*) have greater value than nonhuman animals – does commit us to act in a particularly favorable way toward humans in certain circumstances. If this could be demonstrated, (*DDA*), and the idea that the human kind of life is more valuable than the animal kind of life, despite not having the practical significance that most have attributed to it, would still have real-life importance. On the other hand, if the argument of (*DDA*) cannot even support this novel understanding of what (*VL*) practically amounts to, we have yet another reason to send (*DDA*) – and the notion of human superiority – to the dustbin of history along with other forms of bigotry and elitism.

All parties to our discussion to this point have agreed to the non-negotiable conceptual point that value ought to be promoted, sustained, and maximized. (*DDA*) unsuccessfully as I have tried to show, has tried to parlay this formal truth with an argument for the greater value of the human kind of life to demonstrate the practical significance of this greater value: capable beings ought to save humans rather than animals in conflict situations. Note that the formal properties are being respected from, so to speak, the 'back'; promotion and maximization come in the form of *extending* a certain kind of life. In (*Lifeboat*), there are, *ex hypothesi*, two, already existent, individuals with some value; maximizing value amounts to keeping the individual with the more greatly valued life intact, for if he dies the world continues with less value than it would have had if we had sacrificed the lesser-valued Wulfie for Jack.

But we may also think of respecting the formal properties of value from the 'front'. Suppose that a capable agent is in a position where he must create either a human (i.e., an individual who, if brought into existence, would lead a human kind of life) or a dog (i.e., an individual who, if brought into existence, would lead a dog kind of life). It would seem that, parallel to the way (*DDA*) applied the conceptual restraints on value to compel capable agents to save Jack rather than Wulfie in (*Lifeboat*), we are now likewise morally obligated to bring Jack into the world rather than Wulfie, since only by bringing Jack into the world do we maximize (or do our best to promote) value in the world. For the sake of concreteness and clarification we consider:

> (*Creation*) Ned, our capable, moral, and quite powerful Neptunian is deciding to create either a human, Jack, or nonhuman, Wulfie. He must create one of the two. There are no other morally relevant facts to consider.

While unlike Al in that he doesn't find himself in a life-and-death conflict situation, Ned does find himself in a similar create-a-life and fail-to-create-a life situation.

We are assuming that Jack's life is more valuable than Wulfie's in the sense that supporters of (*DDA*) conceive of one kind of life having greater value than another kind of life, viz., that, all else being equal, an individual leading the more valuable kind of life is harmed more in death than is an individual leading the less valuable kind of life. So the immediate question before us is this: does the fact that Jack is harmed more in death than is Wulfie – and thus, according to (*DDA*) leads a more valuable life than Wulfie – commit Ned to create Jack rather than Wulfie in (*Creation*)? If my prior arguments have been right-headed then we have seen that (*DDA*) does not commit Al to save Jack rather than Wulfie in (*Lifeboat*), i.e., we have seen that Jack's losing more in death than Wulfie doesn't commit one to save Jack rather than Wulfie in (*Lifeboat*) in order to respect our formal constraint that (objective) value should be promoted and maximized, and so we have seen that having a greater-valued life as (*DDA*) understands it does not (practically) mean that the individual leading such a life ought to be saved in a conflict circumstance. Now

we are asking whether if the acceptance of (*DDA*)'s understanding of what constitutes a life of greater value (namely, that an individual leading such a life is, all else being equal, more harmed in death than an individual leading a lesser-valued life) has the practical implication of Ned creating Jack rather than Wulfie in (*Creation*).

My answer is a resounding 'no'. Just as I have tried to show that if Jack is harmed more in death than Wulfie (and so has a more valuable life by the lights of (*DDA*)), that the formal constraints on (objective) value – that it ought to be promoted and maximized – doesn't commit capable agents to save Jack rather than Wulfie in (*Lifeboat*) situations, that Jack is harmed more in death than Wulfie scarcely shows that conforming to our formal constraints on objective value commits us to create Jack rather than Wulfie in (*Creation*). The reasoning for both negative conclusions is identical.

The more interesting issue is whether we should not avail ourselves of the very opposite conclusion, that Ned not only is not committed to creating Jack but that he is committed to saving Wulfie. Consider the allure of Ned's interior soliloquy:

> (*Ned*) (*DDA*) informs me that Jack will be more disvalued in death than Wulfie. The world will contain more harm if, all else being equal Wulfie who, although also facing the inevitability of death, will by virtue of the kind of life he would lead, lose less than Jack in death. Accepting the precept that all else being equal, capable beings ought to minimize harm (or promote value) I will create Wulfie but not Jack.

This reasoning is meretricious; it implicitly makes the same error that supporters of (*DDA*) make when they infer that greater objective value would be produced – and so the formal strictures regarding value would be adhered to – if Al saves Jack rather than Wulfie in (*Lifeboat*) because Jack loses more in death than does Wulfie. In (Ned) Ned makes the same error when he infers from the fact that Wulfie will lose more in death than Jack would that, *eo ipso*, creating Wulfie would produce more (objective) value in the world than creating Jack. As with the earlier mistake, the reasoning illicitly directly infers a claim about objective value- value as characterized by its formal properties of deserving to be protected, promoted, and

maximized – from facts about the relative disvalue that kinds of individuals suffer in death or the relative value that individuals accrue in being created.

Despite the fact that we cannot elicit a conclusion that is diametrically opposed to that of (*DDA*), our major moral still stands: altering the guiding narrative that grounds the practical meaning of (*VL*) from (*Lifeboat*) to (*Creation*) doesn't help the cause of (*DDA*). Just as the fact that humans are harmed more in death than animals doesn't automatically morally compel capable agents to save Jack rather than Wulfie in (*Lifeboat*), it does not immediately legitimize Ned creating Jack rather than Wulfie in (*Creation*).

Conceiving of the practical significance of (*VL*) – of the claim that human lives are more valuable than animal lives – in terms of the (*Creation*) narrative rather than (*Lifeboat*) narrative suggests an important lesson: we should not presume that the only, let alone best, way of getting a grasp on the comparative value of different kinds of lives is through the prism of investigating the relative disvalue that death poses for these kinds of lives. We should not be fooled by a superficial glance at the language that is used by advocates of (*DDA*) to believe that the value of life and the disvalue of death necessarily track each other.[13] Suppose that we are given a choice to create one of two individuals knowing only that one will lead a more valuable kind of life than another. Surely, the most natural response – the response that most directly accommodates the formal constraints on value – is that we create the individual who, *while alive* (i.e., whose *life*), would lead the more valuable kind of life. We don't, that is, think that our decision depends upon which one of these individuals, in virtue of the kind of lives they lead, loses more in death. This suggests that we don't – at least not as a matter of the semantics of the terms – identify the value of one's life with the disvalue that one suffers in death. Nor do we conceive of the relative value of one's life, i.e., the comparative value of one's life while alive, being dependent upon, let alone identical with, the comparative disvalue that one suffers at the moment of death.

In creating the individual whose life will be the more valuable, we accommodate the formal strictures on value without any judgments about whether the individual who is brought into existence is thereby *benefited* by being created. We should be thoroughly neutral about this question of advantage *if* we are governed purely by our concept of value. By creating the individual who will lead the more

valuable life rather than the individual who leads the less valuable life, we are promoting and maximizing value, and so we have – and only in this way could we have – remained faithful to our formal understanding of value. Whether the individual so created is benefited or made better off in being brought into existence than not being brought into existence has nothing at all to do with obeying the conceptual constraints concerning value. Whether the individual is made better off, made worse off, or even, as some have held, that the comparative question about whether such an individual is made better or worse off by being created is senseless, it matters not. By being told that A will lead a more valuable life than B, we have a (defeasible) reason to create A. That we have such a reason is a matter of logic not psychology; conceptual coherence regarding value demands that all capable agents have a reason to bring A into existence rather than B.

2.6 Mill's argument

We turn now to the one other (secular) argument for the claim that humans (i.e., the human kind of life) are more valuable than nonhuman animals (i.e., the nonhuman animal kind of life), that, as best I know, enjoys some currency.

In honor of the great nineteenth-century philosopher J.S. Mill who serves as the argument's modern inspiration, let's dub this reasoning *Mill's Argument* (*MA*). In *Utilitarianism*, Mill argues that pleasures come in 'higher' and 'lower' forms, and that any rational, self-interested individual familiar with both kinds of pleasure would opt for the former at the expense of the latter, regardless of the quantity of lower pleasure that would be lost in such a selection. The higher pleasures, as one might guess, are the contemplative pleasures or the pleasures of the mind; think here of the pleasures one attracts in writing poetry and executing mathematical proofs. The lower pleasures, equally unsurprisingly, are the carnal pleasures of the body; think here of the pleasures that result from participating in sex and eating pasta. Whether, as erudite consumers of both we would be eager, as Mill suggests, to exchange experiencing exciting sexual experiences with the opportunity of engaging Euclid is not of the moment. What is significant is that this way of distinguishing between 'higher' and 'lower' pleasures can serve as a template to identify more and less valuable lives.

Consider,

> (*Mill**) Suppose that an ideal decider (i.e., an omniscient individual who is ideally rational and self-interested), Maxine, is capable of inheriting the perspectives of those leading the best that the human and nonhuman animal kind of lives have to offer, and so knows what it is like, 'from the inside', to lead both kinds of lives. For our purposes, the salient difference between the human animal kinds of lives is not – as it was in our discussion of (*DDA*) – that the former kinds of lives included the capacities for self-consciousness and entertaining future-directed mental states, but rather that only human lives have the capacity for experiencing the higher pleasures. Imagine, further, that Maxine can adopt a neutral or impartial perspective while recalling both what it is like to live as an animal and what it is like to live as a human. Maxine is then given a choice which of the two kinds of lives she wishes to exclusively live for the remainder of her life, where the choice is predicated solely on her rational and self-interested belief about which life would be best for her.[14]

We are urged to believe that Maxine would choose to live the human kind of life. Although Maxine chooses what is best for herself, since the choice comes from an ideally impartial, rational, self-interested point of view that encompasses direct knowledge of both kinds of life, the choice is said to reflect the kind of life that has greater *objective* value; when such an *ideal* decider as Maxine chooses what is the best life for her, she is choosing what is the best or most valuable life, *full stop*. This thought-experiment is paraded as vindicating the claim that human lives are objectively more valuable than nonhuman animal lives.

Maxine's choice to live the human kind of life is not what *makes* the human kind of life most valuable, but the fact that Maxine chooses the human kind of life as the kind of life she prefers to lead shows (indicates, reflects, manifests) that the human kind of life is the most objectively valuable. What *makes* the human kind of life more valuable than the nonhuman animal kinds of lives are the 'richer' experiences that are available only to those with the capacities for obtaining pleasure from contemplative activities.[15] For Mill, we should not conflate a more valuable life with a happier one; he is

renowned for saying that it's better to be a dissatisfied Socrates than a satisfied pig. This means that for Mill, one's self-interest is not best satisfied by happiness but by value.

(*MA*) appears to secure at least a nominal advantage over (*DDA*). One of my major challenges to (*DDA*) was to insist that it illicitly directly infers objective value from subjective value; it is an error to think that we can, without use of some substantive moral principles, infer from the fact that A is more harmed in death than B (and so in this 'subjective' sense A has a more valuable life than B) that A's life is (objectively) more valuable than B's (where 'objective' value is simply value that is constrained by our formal machinery surrounding our concept of value). (*MA*), however, apparently obviates this criticism by interjecting objectivity into the very notions of higher and lower pleasures. While the decision by Maxine does not *make* one type of pleasure objectively higher than another, her choice is an infallible indicator of one pleasure being objectively higher – one type of experience being objectively 'richer' or more valuable – than another. And she is an infallible judge of such moral hierarchies because Mill bestowed upon her all the properties that are necessary – indeed definitive – of making an objective choice: Maxine is fully rational, knowledgeable, without antecedent inclinations toward one kind of life rather than the other, and so forth. In (*MA*), there is no mention of a certain good or harm being more valuable for a human than a certain good or harm being valuable for an animal, and so there is no chasm to bridge between subjective and objective value. Maxine personifies objectivity; what life she chooses *is* the more objectively valuable life.

We will shortly return to investigate whether (*MA*)'s means of accounting for the (alleged) greater *objective* value of human lives over animal lives really results in a substantive improvement over the strategy employed by (*DDA*), but it is worth illuminating an oft-neglected similarity in the tactics of (*DDA*) and (*MA*). Recall that (*DDA*) essentially distinguished between the human and nonhuman animal kinds of lives in terms, respectively, of having and lacking the capacity to entertain future-directed mental states or, equivalently, having and lacking the capacity to make future-oriented plans and projects. With the distinction between these two kinds of lives crucially relying on the notion of the future, it came as no surprise when advocates of (*DDA*) operationalized the claim that

human life is more valuable than animal life in terms of rescuing a token of the former kind rather than a token of the latter kind in a conflict situation. After all, if human lives are more valuable than animal lives, and the difference between these two kinds of lives is essentially captured by their relationships to the future, one would naturally think that the practical significance of possessing a life of greater value will be manifested in treating tokens of these kinds of lives differently regarding their futures. And there is scarcely a more definitive way of dramatizing this different treatment than in a life-and-death situation where the future of one will be allowed to continue (i.e., Al saves Jack in (*Lifeboat*), while the future of the other is terminated (i.e., Al lets Wulfie perish in (*Lifeboat*)).

In virtue of the defining characteristics that (*DDA*) assigned to both humans and animals, humans had two unique ways of incurring harm from death: first, humans and humans alone could suffer the loss of not having future-oriented attitudes fulfilled (animals being incapable of forming future-oriented attitudes could hardly suffer from death causing such attitudes to be unsatisfiable); and second, humans and humans alone could have their antecedent efforts aimed toward satisfying plans and projects reduced to absurdity or nonsense (animals being essentially incapable of creating plans and projects could not, obviously, make efforts to satisfy 'them').

Although nonhuman animals cannot be harmed in death in either of these two ways, it is the second unique harm to humans that is the *distinctive* harm; it is only this kind of harm that is incommensurable and noncompensable with any harms that nonhuman animal can suffer in death. That death can render the ante-mortem human lives 'nonsense' – can 'tragedize' much of the antecedent lives of humans – is a harm that finds no comparison when death strikes a nonhuman animal. While only humans can suffer the harm of losing their capacity to satisfy future-oriented attitudes in death, animals can suffer commensurable harms and, as a result, even suffer a worse loss in death than humans when we restrict our attention to this first unique harm that humans can suffer in death. It may be, for example, that the loss of the fulfillment of present-oriented desires – a loss that attaches to both those who lead human and nonhuman kinds of lives – is in fact worse for an animal than it is for a human. Or, it may turn out, that the harm that death brings in the form of rendering it impossible to evermore have the good of pleasant sensations – again,

a harm that death brings to both humans and animals – is worse for an animal than it is for a human. The degree of the harms of death that affect both human and nonhuman animals cannot be *a priori* determined; it's a matter of contingency, a matter of how individuals' lives actually get played out, whether death produces greater harm for humans and animals as far as these commensurable harms are concerned. So, even though no animal can suffer the harm of having its future-oriented preference left unfulfillable in death, it may suffer equal or perhaps greater harm, in losing more pleasant sensations, say, than would be lost by a human who had died at the same time. The 'tragedizing' effect that death can have on humans is not only unique to humans but distinctive to them. It is this harm – the harm of making a mockery of their ante-mortem lives – that, according to apologists of (*DDA*) – makes death a worse harm to those leading the human kind of life than to those leading the animal kind of life.

Implicitly (*MA*) also employs a crucial reference to incommensurability. When Mill insists that a rational being familiar with both lower and higher pleasures would not forgo even the most minor of higher pleasures for an infinite increase in lower pleasure, he is, effectively, making the value of these two types of pleasure incommensurable. There is no available scale that can measure both lower and higher pleasures in terms of their desirability to an agent who is thoroughly knowledgeable 'from the inside' with both kinds of pleasure. The difference between the kinds of lives – one with the capacity for both higher and lower pleasures and the other with the capacity for only lower pleasures – and not some accidental qualities that may attach to particular individuals who lead these kinds of lives, accounts for the unbridgeable gulf between the value of these two kinds of lives.

With (*DDA*) and (*MA*) supplying different answers to the *constitutive question*, it should not be surprising that, although both support (*VL*), that there would be situations that call for different assessments concerning the relative value of lives, and so situations that require different behaviors on the part of capable agents. Recall our earlier example of Frank, our elderly gentleman who, after living a wonderful life in which he has experienced fulfillment of all his plans and aspirations, harbors no more future goals. Advocates of (*DDA*) can still insist that Frank is harmed in death – he is, after all, foreclosed the possibility of enjoying pleasant experiences but

he no longer can suffer the distinctive 'tragedizing' harm that death brings to most individuals who lead the human kind of life. Having no more plans awaiting fulfillment, Frank is spared the indignity of having any of his ante-mortem life rendered nonsensical, and so his loss in death owes nothing to the fact that he leads a particular kind that is different than Wulfie's. On the other hand (*MA*), which characterizes the human kind of life as essentially one that includes the capacity for 'higher pleasures', would see the harm that Frank suffers in death as a distinctive type of harm, one that cannot be compensated by any harms that nonhuman animals suffer in death. Thus, advocates of (*MA*) would judge death to be a worse harm for Frank than would supporters of (*DDA*). This, in turn, would lead to different evaluations of relative value of lives, and then, with our formal machinery regarding value, would lead to different prescriptions of how to behave.

(*DDA*) tells us that the human kind of life has greater value than the animal kind of life because tokens of the former kind of life have the capacity to form future-oriented plans and projects; (*MA*) tells us that the human kind of life has greater value than the animal kind of life because only tokens of the former have the capacity to experience 'higher' pleasures. But it surely seems that a kind of life can have one of these capacities and not have the other. The easiest way to see this is that having the experience of 'higher' pleasures does not necessarily require the capacity to think of oneself as a temporally enduring entity, and so doesn't require the capacity to form future-directed plans and projects. Indicatively, while the higher pleasures received from reading a book, solving an equation, and writing a poem may necessitate an agent enduring through some period of time, they certainly don't seem to require the possession of the capacity to create future-oriented plans and projects. This is of course not to say that *some* higher pleasures aren't essentially future-dependent – perhaps the pleasure that one receives while contemplating the thought that she will meet a dear friend tomorrow would count as a higher pleasure for Mill – but there seem to be higher pleasures that happen occurrently or episodically without, at least directly, requiring that the agent have the capacity to entertain future-directed, self-involved, satisfiable mental states.

As a result, our obligations to humans, *qua* kinds of beings with greater value than animals, can be different, even conflicting,

whether one is moved by (*DDA*) or (*MA*). Respecting the formal precepts regarding value, supporters of (*DDA*) are required to save humans rather than animals in life-and-death conflict situations, while supporters of the (*MA*) are required to create a human rather than an animal in a bring-into-life conflict circumstance. We can envision circumstances in which the only way to save a human in a life-and-death conflict situation is to create an animal in a bring-into-life conflict situation, or conversely we can conceive of circumstances in which the only way to create a human in a life-and-death conflict situation is to save an animal in a creation situation.[16]

There may also be cases where only one of the practical consequences of either (*DDA*) or (*MA*) finds application. Suppose we find ourselves in a conflict situation with a dog and human deliberating how to dispense a single pill that extends an individuals' lives by five years, but neither the dog nor human is anywhere near his respective time of death. In this case, we don't face a life-and-death situation as we do in (*Lifeboat*), and so, at least at the moment of decision, considerations derived from (*DDA*) – that the human suffers more in death than the dog and so, in conjunction with the precept to promote value, we ought to save the human – do not apply. Nevertheless, considerations derived from (*MA*) are arguably relevant; adding five years onto the life of the kind of creature with the capacity for higher-level pleasures would seem to align with the formal injunctions that value should be promoted and maximized.

At perhaps the most fundamental level (*DDA*) and (*MA*) differ in that the former attributes greater value to human lives because they are at risk of losing more in death than those leading nonhuman animal lives, while the latter attributes greater value to human lives because of their capacity to possess a 'special' class of experiences. (*DDA*) seems an essential connection between disvalue of death and value of life; (*MA*) sees no essential connection. I have tried to argue that (*DDA*) is mistaken, and that we cannot conclude that one kind of life is more (objectively) valuable than another kind from the fact that members of one kind of life lose more in death than another kind. In not making comparisons of the value of lives essentially dependent upon the harms of death, (*MA*) has a theoretical advantage; we should only investigate the lives of individuals while they are alive – rather than be concerned about their respective harms in death – to determine how valuable their lives are. This is why I believe

that the (*Lifeboat*) scenarios, whatever their details, are misleading and distracting ways to think about the value of life. Value of life is not a function of what one loses when dead; it is a function of what is transpires around you while you are alive. There is a somewhat bitter irony in (*DDA*); the capacities that make the human lives relatively more valuable than nonhuman animal lives are so deemed because they are what make death so relatively disvaluable; humans are as valuable as they are only because death is as harmful as it is. There is no argument here; just a personal rumination that this seems an oddly depressing way to conceive of the value of our lives.

And doesn't (*MA*) rather than (*DDA*) better capture our pre-philosophical conviction that human lives are more valuable than the lives of dogs? I'm willing to bet a few shekels that when queried about their beliefs about the relative value of human and animal lives, most people would never consider the possibility that their opinion is grounded in the thought that humans lose more in death than animals. On the other hand, they would likely take their preference for leading a human rather than animal kind of life to reliably indicate that they believe human lives to have greater (objective) value than animal lives. In a similar vein, if a supporter of (*VL*) was facing someone who demurred, the most likely challenge would come in the form of an incredulous stare with the wiseacre comment, 'So you'd rather live life like a dog and not a human'. It would be highly unlikely that the response to someone who denied (*VL*) would be something along the lines, 'So you think you would be harmed more in death as a dog than a human' (*MA*), and the argument in (*Mill**) that propels it seems a better fit with ordinary thinking about the subject of value than (*DDA*).

All this to say, that the Millian argument has not been given its due, and that when compared with the dominating argument in the literature – (*DDA*) – fares better than what might be supposed by its relative neglect. Still, (*MA*) fails, and fails for not very arcane reasons. Combine this result with the unpersuasiveness of (*DDA*), absent some persuasive novel idea we should abandon the pervasive prejudice that human lives are more objectively valuable than nonhuman animal lives.

We start with the troubling figure of Maxine. Even if we allow the intelligibility of someone with the capacities to inhabit the minds of two different kinds of creatures, and then compare these states of

mind in a reflective, rational, self-interested manner, it is difficult to argue that from an impartial perspective – for Maxine is supposedly not antecedently disposed to adopt one kind of life rather than another – Maxine would choose to live the human kind of life, the life containing 'richer' experiences. To think that this is the life Maxine would choose to live seems to inject our natural, human prejudices into her decision-making process or, frankly, the prejudices of some intellectual elites. Few of us outside the insular world of academe, I think, would trade the pleasures of a great meal from La Scala or The Greens for the joys of writing poetry, yet (*Mill**) seems not only to sanction this exchange but to require it.

This problem of giving a non-parochial account of 'richness', or of giving an unbiased account of which of two lives 'from the inside' are more valuable, has a very mundane analogue. There are many New Yorkers who think of anything west of Ninth Avenue as uninhabitable; the thought of life without the shops of Madison Avenue, the sporting events of MSG, and the art exhibits at MOMA floods these folk with existential horror. On the other hand, there are many Hoosiers, for example, who feel quite similarly about their lives centered around small farms, local farmers' markets, and small denominational churches. Imagine Maxine adopting the interior lives of both New Yorkers and Hoosiers, deliberating in a rational, self-interested way of deciding which of these kinds of lives are better or more valuable. Without presuming a certain temperament – a particular inclination to like either one of these two kinds of lives more than the other – I see no means to determine how to figure what our disinterested Maxine would choose. If anything, deciding whether to live the best of a dog life or the best of a human life engenders even more perplexity.

There is another deeper concern that is all but universally neglected in discussions concerning (*MA*) which revolves around the topic of our rationale for granting Maxine the properties we bestow upon her. There is no mystery surrounding the attribution of full knowledge of 'what it is like' to lead both human and animal lives. If Maxine had only partial knowledge of either or both kinds of lives, her decision to lead the human kind of life would be rash. Imagine that Maxine had no knowledge of what it is like for Wulfie to sniff trees, chase tennis balls, play with his friends, and eat kibble, but knows only what it is like 'from the inside' for Wulfie to have a thorn

stuck in his paw. I trust that it's obvious that under these conditions, Maxine is in no position to make choices about what kind of life she prefers leading. What Maxine needs is full – or sufficiently close to total – knowledge of what 'goes on' in Jack and Wulfie in, respectively, their best circumstances, for she is deciding whether to choose between leading the best life that Wulfie can lead and the best life that Jack can lead. She must know what it is like to experience these best lives.

Ascribing rationality to Maxine is also easy to understand; we don't think that an irrational decision, even when grounded on complete information, is good evidence for a conclusion regarding the relative value of different kinds of lives. Minimally, we need Maxine to have the capacity to compare memories of experiences gathered in the occupation of human and animal lives. But even beyond reasoning capacities, we might understand rationality sufficiently broadly to guarantee that Maxine is making her decision only after cool, calm, and careful deliberations. Making a hurried, compulsive, or distracted choice is obviously not the best means of determining what kind of life one wants to lead, and so is scarcely a good basis for providing the practical significance of one life being more objectively valuable than another.

Now we approach the attribute of self-interestedness which is invariably granted to our ideal decider. Those who support (*MA*) and so support (*Mill**) unexceptionably believe that, just as we must conceive Maxine as impartial, knowledgeable, and rational, we must also think of her decision to pick the human life rather than the nonhuman animal life to be motivated by self-interest. But why is self-interested motivation crucial to our portrait of Maxine? While it is fairly transparent how presenting an operational definition of the hierarchical value of human and animal lives in terms of how a specific kind of individual (i.e., our ideal agent) ought to act in certain circumstances (i.e., choosing whether to live her remaining life as either a human or animal) requires characterizing the agent as impartial, rational, and knowledgeable, it is far less obvious why we must also understand our ideal agent as being motivated by self-interest when she makes her decision regarding which kind of life to lead.

The contrast alluded to is not between acting self-interestedly and acting against one's own self-interests. It is fairly obvious why

Maxine selecting on an anti-self-interest motivation would not choose to live the most objectively valuable life. Rather, what I have in mind is why Maxine is apparently precluded altruistic rather than self-interested motivation; why is it problematic for an apologist of (*MA*) to conceive of Maxine acting for the sake of others – while all the time remaining rational, knowledgeable, and impartial – rather than acting in her own best interests.

Although invariably left unarticulated, the reasoning for requiring Maxine to choose self-interestedly presumably goes along these lines: by demanding that Maxine is motivated by self-interest, we are guaranteed – given her unprejudiced rationality and knowledge – that the kind of life she selects for herself is the best or most valuable life *for her*. In picking the human kind of life to lead, Maxine is telling us that insofar as satisfying her interests, i.e., making her life as good as it can be *for her* (again, where 'good for' means 'valuable to'), leading the human life does a better job than leading the nonhuman animal life. Adding the ingredient of impartiality delivers an objective verdict about the comparative values of the human and animal kind of life. Given that she is making this self-interested choice absent all prejudices, with good reasoning, and in possession of all the relevant facts about 'what it is like' to lead both the human and animal kinds of lives, the life that is best for Maxine – the life that is best for someone who is concerned about her own interests decided on the basis of full knowledge, rationality, and absent all antecedent biases – is the life that is best for everyone. That Maxine selects to lead the human kind of life for herself shows – although it does not make – that the human kind of life is objectively better (more valuable) than leading the nonhuman animal kind of life. The objectively best or most valuable kind of life *just is* that life that is best or most valuable for all agents capable of leading that kind of life.

But this response, so it seems to me, still does not answer why self-interest must be Maxine's motivation, a *sine qua non* that suggests that if we allowed Maxine altruistic motivation, we would not be guaranteed that her choice would issue in the kind of life that is objectively best or most valuable. To make the point more concrete, let's imagine other than being guided to maximize the good for others, Max is identical to Maxine in that he too is fully knowledgeable of the best that the human and animal kinds of lives have to offer, is fully rational, and is without any antecedent inclinations

to lead one of the two kinds of lives. What kind of life would Max choose for himself to live if he is ultimately motivated by seeing others live as valuable lives as possible?

Presumably Max goes through the same procedure as Maxine. He knows 'from the inside' what it is to lead the best life of a human and the best life of an animal. He reflects upon these lives and compares them. But Max can only know which kind of life he prefers; he cannot know what kind of life other individuals would prefer to lead. Yet, if Max is to act altruistically – is motivated to act by his desire that others lead the most valuable lives they can lead – he must know what lives they would prefer to lead if they knew what it was like to lead the best lives of both human and animals. That is, even if we grant that Max acts with full reason, knowledge, and impartiality, he would still not be in a position to know – merely from his self-knowledge about which life he would prefer to live – which life others would prefer to live.

But what is true for Max is true for Maxine. We are distracted from this point when we are told that Maxine acts self-interestedly. Our focus becomes directed on the (correct) fact that Maxine cannot be mistaken (let's allow) about which kind of life would be best for her; her other ideal characteristics are intended to guarantee that she can make no mistake. Her perfect rationality prevents her from making an incorrect comparison, her total knowledge prevents her from acting on just partial information about what it is like to lead the best of human and animal lives, and her impartiality ensures that she isn't predisposed to the goods of one kind of life over those of the other. For our purposes, Maxine knows what her self-interests are; she knows which of these two kinds of lives are most valuable to her. But she, like Max, does not know what kind of lives others would prefer to live.

We may concede for the sake of discussion that how the lives of humans and animals seem to Maxine is identical to how the lives of humans and animals seem to others; we can assume that the phenomenologies of all other capable agents are the same and so, let us agree, all would give identical reports if asked what is it like to lead the best human and animal lives. But what I am not conceding is that Maxine is justified in thinking that her rational, knowledgeable, impartial decision about which kind of life is best (i.e., most valuable)

for her translates into the kind of life that is best for everyone. She is unjustified, that is, in making a verdict about which of the two kinds of lives is more objectively valuable. (*MA*), although deserving better than its usual cavalier dismissal, fails to support (*HST*). It's past time to give up our human chauvinism and all the cruelty and mayhem with which it is associated.

Conclusion

We have no good reason to accept the *human superiority thesis*. Moreover, we have good reasons to reject: (i) that human interests are more worthy of consideration–from either an impartial or partial perspective–than nonhuman animal interests; and (ii) that human lives are more (objectively) valuable than nonhuman animal lives. In brief, the justification that so many use to defend so many of their relationships with animals is bogus. If you believe that because humans are more *significant* than animals we may, with few if any moral strictures, eat, hunt, and vivisect them, you now have reasons to reconsider.

It is worth noting that I have made concessions for the sake of providing supporters of (*HST*) with the strongest case possible. I have imagined that no nonhuman animals have even the capacity to entertain future-directed states, that they are incapable of having reflexive thoughts, and that they lack the ability to form plans and projects. In truth, I believe that we have strong empirical evidence that many nonhuman animals have all of these powers, and that the armchair philosophical musings that have animals incapable of performing any of these mental feats are terribly misguided. I ask skeptics about this point to peruse the last three to four years of the *New York Times*. You will find quite a few articles and reviews on the latest research on animals, and almost all of it suggests that we humans have been denigrating their abilities, skills, talents, and intelligence for millennia. I'll leave it to anthropologists, psychologists, and cognitive scientists to explain why we have systematically engaged in this practice, although I suspect that the reasons will ultimately be traced to our unflattering proclivity to abuse power.

Notes

1 On the Relative Unimportance of Human Interests

1. A complication that we'll ignore is an ambiguity of 'interests meaning more' to one party than another. One may think of the difference as being cashed-out either in terms of absolute value or the percentage of the welfare that is increased. So, for example, it may be worth 5 points of significance to Jack that he watches the Knicks game and 5 points of significance to Wulfie to eat kibble, but the 5-point increase to Jack may account for only a 1% increase in his well-being while a 5-point increase to Wulfie may account for a 10% increase in his welfare. Nothing will hang on this distinction.
2. Many articles and books concerned with the welfare of animals devote space to the 'mentality' of animals, trying to identify which, if any, mental states animals can possess. A very concise, accessible discussion occurs in Mark Rowlands, *Animals Like Us* (Verso, 2002). For my purposes, I need only to attribute the capacity to experience suffering and pleasure (roughly, sentience) to some animals for my arguments to find traction. Only the most Cartesian among us should demur.
3. The literature on the *marginal case argument* is quite large. One of the earliest and clearest expositions of the argument is Lawrence Becker, 'The Priority of Human Interests', in *Ethics and Animals*, ed. H. Miller and W. Williams (Humana, 1983). There are two full-length monographs with the marginal case argument as its focus: Evelyn Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Duke University Press, 1995) and Daniel Dombrowski, *Babies and Beasts: The Argument from Marginal Cases* (Illinois University Press, 1997).
4. In Chapter 2, I will speak at some length about the role that (the possession of) capacities plays in determining the value of lives.
5. Many have discussed this principle under various guises. For a clear, short discussion, cf. Rowlands, *Animals Like Us*, Chapter 2.
6. Two recent monographs on loyalty can be highly recommended. Although quite different in tone and content, Troy Jollimore, *On Loyalty* (Routledge, 2013) and Simon Keller, *The Limits of Loyalty* (Cambridge, 2007) are cogent, accessible reads. Probably the *locus classicus*, at least in the twentieth century, is Josiah Royce, *The Philosophy of Loyalty* (Vanderbilt, 1995) originally published in 1908.
7. An anthology I hold in high regard is *Partiality and Impartiality: Morality, Special Relationships and the Wider World*, ed. B. Feltham and J. Cottingham (Oxford University Press, 2010). I would especially recommend N. Kolodny's contribution, 'Which Relationships Justify Partiality?'

(pp. 169–193). Also well worth consulting is J. McMahan, 'The Limits of National Partiality', in *The Morality of Nationalism*, ed. R. McKim and J. McMahan (Oxford University Press, 1997), pp. 107–138. It may be useful to compare my account of associationism with their proposals.

8. This and the subsequent quotation is in McMahan, 'The Limits of National Partiality', p. 107.
9. See Aristotle's *Nicomachean Ethics*, Books 8, 9, and, although authorship is not a settled matter, *Magna Moralia*.
10. Perhaps the best introduction to the contemporary disgruntlement with the Aristotelian 'natural state' model is Elliot Sober, 'Philosophical Problems for Environmentalism', in *Environmental Ethics*, ed. R. Elliot (Oxford University Press, 1995), pp. 226–247.
11. This and the following quotation come from Bernard Williams, 'The Human Prejudice', *in Peter Singer Under Fire: The Moral Iconoclast Faces His Critics*, ed. J. Schaler (Open Court, 2009), p. 91.
12. Ibid., p. 95.
13. Ibid., p. 95.

2 On the Relative Unimportance of Human Life

1. T.M. Scanlon, *What We Owe to Each Other* (Harvard University Press, 1998), p. 11.
2. Ruth Cigman, 'Death, Misfortune, and Species Inequality', *Philosophy and Public Affairs*, 10(1) (Winter 1980), pp. 47–64.
3. Mark Rowlands, *Animals Like Us* (Verso, 2002), chapter 4, pp. 70–97.
4. Peter Singer, *Practical Ethics* (Cambridge University Press, 2011), third ed. While the entire collection is masterful, especially relevant for our discussion are chapters 2–5, pp. 16–123.
5. Singer, *Practical Ethics*, p. 92.
6. Singer's devotion to preference utilitarianism may have waned. In his very recent *The Point of View of the Universe: Sidgwick and Contemporary Ethics* (Oxford University Press, 2014), co-authored with Katarzyna De Lazari-Radek, Singer apparently has switched allegiances to a Sidgwickian hedonistic utilitarianism.
7. Cf. Singer, *Practical Ethics*, p. 80. As we will see, I think that the notion that, for persons, death makes much of one's ante-mortem behavior 'nonsense' plays a more important role in speaking about the relative value of lives than perhaps even Singer does.
8. Tom Regan, *The Case for Animal Rights* (University of California Press, 1983), p. 314.
9. Jeff McMahan, *The Ethics of Killing* (Oxford University Press, 2002), p. 195. On p. 190, he also claims that it is 'uncontroversial that the killing of an animal is normally less seriously wrong than the killing of a person'. As a matter of received opinion, McMahan is doubtlessly right. My monograph may be read as argument for the unjustifiability of this assuredness and complacency.

10. I will offer a bit of a defense of this later, but the 'argument' basically consists in an appeal to ordinary language; when we are asked about the identity of a particular kind, or queried about how one kind of X differs from another kind of X, we naturally refer to capacities.
11. Singer, *Practical Ethics*, pp. 21–23.
12. The classic discussion of the explanatory direction of the Source and Authority (i.e., God) and the rightness of actions is given in Plato's Euthyphro. If God is the ultimate cause of the rightness of actions, i.e., if there is no reason why, e.g., God made it right that we should honor our parents, then, *prima facie*, it seems as though His decision was arbitrary or capricious. If, on the other hand, God commanded us to honor our parents because this type of behavior was (independently of God) right, then it seems that, conceptually, morality is independent of divine authority; God is delegated to a publicist. The dilemma is that neither option is appealing to many people.
13. Rowlands, *Animals Like Us*, p. 72, when speaking about how to even approach the question of what gives human life value (he thinks it obvious that it has value), suggests that we may begin by asking the question '*what's so bad about dying*' (his emphasis). This way of starting a discussion is a more substantive maneuver than Rowlands and others may realize; in thinking that the relationship between the harm (disvalue) of death and the good (value) of life is straightforward as can be, we are I believe, being seduced by our language.
14. (*Mill**) is based on comments that Singer makes in *Practical Ethics*, pp. 90–93. Singer attributes, as do I, this way of framing the question of the relative value of human and nonhuman animal life to Mill.
15. We bracket, here, my already noted disenchantment with (the possession of) capacities, in and of itself, grounding value.
16. This invites a discussion of the 'replacement argument', an invitation that I must decline at this time. Its recent incarnation owes its existence to Derek Parfit, *Reason and Persons* (Oxford University Press, 1986), and Singer discusses it somewhat briefly in *Practical Ethics*, pp. 108ff.. Perhaps the most detailed discussion of the argument can be found in Tatjana Visak, *Killing Happy Animals: Explorations in Utilitarian Ethics* (Palgrave Macmillan, 2013). In the briefest and roughest of terms, the argument (tentatively and provisionally) defends the idea of permissibly (and perhaps even obligatorily) bringing lives into existence and then (painlessly) ending them as long as this is necessary for bringing into existence other individuals who will lead lives at least as happy as those that have been destroyed.

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