Bernstein on Moral Status and the Comparative Value of Lives

MYLAN ENGEL JR.
Northern Illinois University, DeKalb, Illinois

The Moral Equality of Humans and Animals. By Mark H. Bernstein. (New York, NY: Palgrave MacMillan, 2015. 153 + xii pp. Hardback. $99.00. ISBN: 978–0–230–27662–8.)

By stipulation, the human superiority thesis consists of two claims: (a) the interests of humans should be given preferential consideration relative to the like interests of nonhuman animals, and (b) the lives of humans are more valuable than the lives of nonhuman animals. In his recent book, Mark Bernstein argues that both claims are false. I present and assess Bernstein's main arguments, pointing out where they succeed and where they fall short. I then suggest ways of shoring up and strengthening these arguments. So augmented, Bernstein's arguments provide a compelling case for rejecting both human superiority thesis claims.

Key Words: speciesism, human superiority, moral status, equal consideration, comparative value of lives

Mark Bernstein's book, *The Moral Equality of Humans and Animals*, opens with the observation that most people think that humans matter more morally than nonhuman animals. In particular, common "wisdom" has it that human interests are more significant and should be given greater weight than the like interests of nonhuman animals. Common wisdom also holds that human lives are more valuable than the lives of nonhuman animals. For proof, we need only look, as Bernstein does, at some of the ways we routinely treat animals:

> 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 . . . are tortured and murdered in animal experiments; no humans are so treated. (p. 1)

To treat humans in any of these ways would be condemned as morally outrageous. When asked to defend these ways of treating animals, apologists, as Bernstein notes, reply that

Journal of Animal Ethics 7 (2): 204–213

"humans are morally more important creatures than nonhuman animals" (p. 2). In short, most people think that humans are superior to animals and that our superiority justifies giving animals far less moral consideration than that owed humans. Bernstein's goal is to demonstrate that the human superiority thesis (HST) is false.

Before getting to my critical remarks, let me first stress that anyone interested in living a moral life—in particular a moral life where our relationships with nonhuman animals are concerned—should read Bernstein's book. He is challenging what is, without doubt, the overarching moral dogma of the day: namely, that humans morally matter more than nonhuman animals. If this dogma is false, as Bernstein argues, then our routine treatment of animals will need to be radically rethought and reformed.

Bernstein defines the HST as the conjunction of the considerability of interests principle (CI) and the value of life principle (VL), which he characterizes as follows:

> CI: The interests of humans deserve (are worthy of, merit, warrant, justify) preferential consideration relative to the similar interests of (nonhuman) animals (p. 2).
>
> VL: The lives of humans are more valuable than the lives of (nonhuman) animals (p. 2).

Bernstein's thesis is that HST is doubly false in that both CI and VL are false. The upshot of the falsity of HST is that we should *not* give preferential consideration to the interests of humans over the like interests of animals, and human lives are *not* more valuable than the lives of nonhuman animals. The practical import of these two conclusions is immense. The book has two parts. Part 1 argues against CI. Part 2 argues against VL. I will examine each part in turn.

PART 1: ON THE RELATIVE UNIMPORTANCE OF HUMAN INTERESTS

While I'm sympathetic with Bernstein's overall project, I'm not convinced that he has adequately refuted CI in all its permutations, and I think there are stronger arguments against CI that he has overlooked.

Bernstein begins his discussion of CI by noting that the term "humans" can be understood in a purely biological sense and it can be understood in a moral sense (a point regularly acknowledged in the abortion debate). On the biological reading (CIbiol), CI can be understood as follows:

> CIbiol: The interests of *Homo sapiens* deserve preferential consideration relative to the similar interests of animals of other species (pp. 4–5).

On the moral reading (CImoral), CI is to equivalent to:

> CImoral: The interests of *persons* deserve preferential consideration relative to the similar interests of nonperson animals (p. 6).

CI, in both of its versions (i.e., CIbiol and CImoral), can be understood as either placing moral demands on all impartial agents (CIimpart) or as only placing demands on humans (CIpart):

CIimpart: All else being equal, the interests of humans deserve preferential consideration relative to the similar interests of nonhuman animals from all impartial agents capable of dispensing preferential consideration to the interests of humans and animals (pp. 11–12).

CIpart: All else being equal, the interests of humans deserve preferential consideration relative to the similar interests of nonhuman animals from all and only (capable) fellow humans (p. 12).

Bernstein first looks at CI through the impartialist lens. Do human interests deserve preferential treatment from all impartial moral agents? Bernstein considers two ways an HST apologist might try to defend CIimpart, *primitivism* and *attributivism*.

Bernstein's distinction between primitivism and attributivism parallels James Rachels's (1989) more familiar distinction between *unqualified speciesism* and *qualified speciesism*. The unqualified speciesist thinks that species membership alone is morally relevant, or as Rachels (1989) puts it: "The bare fact that an individual is a member of a certain species, unsupplemented by any other consideration, is enough to make a difference in how that individual should be treated" (pp. 95–96). The qualified speciesist recognizes that if humans deserve greater moral consideration than nonhuman animals, there must be some morally relevant property possessed by the humans and lacked by the animals, which accounts for this difference in moral status. Moreover, the qualified speciesist admits that species alone is not morally relevant, but insists that species membership is correlated with other differences that are relevant to the amount of moral consideration a being is due (Rachels, 1989, p. 97).

Bernstein rejects the primitivist/unqualified speciesist defense of CIbiol both as question begging and on the grounds that it cannot accommodate the following case.

> Ned
> Suppose it's discovered that your closest humanoid friend Ned, whom you've known and respected your whole life, is actually Neanderthal (a test-tube baby created from recovered Neanderthal DNA). While every other humanoid on the planet has DNA H and is a member of *Homo sapiens*, Ned has DNA N and thus belongs to a different species. Surely, if Ned is as intelligent, conversant, and ethical as any other human being, he doesn't deserve less consideration than any other humanoid, simply because of his different DNA. (p. 23)

If the CI proponent tries to reject the Ned counterexample on the grounds that DNA H is necessary in order to possess certain morally relevant properties, the proponent has abandoned primitivism for attributivism. Consequently, Bernstein is right: The primitivist attempt to defend CI fails.

Perhaps the attributivist/qualified speciesist defense of CI will fare better. The CI proponent might (a) insist the DNA H is nomologically necessary for the capacity for rationality and (b) go on to insist that the interests of any being with the capacity for rationality deserve greater moral consideration than the interests of any being lacking that capacity.[1] The idea behind this CI defense is that the capacity for rationality is an *interest-preferencing attribute*: The interests of beings with the capacity for rationality

deserve preferential consideration over the like interests of beings lacking that capacity. If the capacity for rationality is an interest-preferencing attribute, then it is plausible to think that the capacity for irrationality is an interest-diminishing attribute (i.e., an attribute that reduces the amount of consideration its possessors are owed). Since every being with the capacity for rationality also has the capacity for irrationality, these attributes would seem to cancel each other out.[2]

Bernstein rejects this capacity-for-rationality-based defense of CI on two grounds. First, since humans are in no way responsible for having the capacity for rationality, their interests don't deserve preferential treatment on that basis. Second, since there is no morally relevant difference between a Being A with a never-instantiated capacity for rationality and a Being B without the capacity for rationality, merely possessing the capacity for rationality does not justify giving A's interests greater consideration than B's interests. It is here that I start to have worries about Bernstein's rejection of the attributivist defense of CI.

Worry 1

Bernstein formulates all versions of CI primarily in terms of the deontological notion of *desert*. He spells out the practical cash value of *deserving preferential consideration* (i.e., the practical implications of what it is for human interests to *deserve* greater consideration than the like interests of animals) as follows: If a human and a dog are experiencing exactly the same amount of pain and an ideal impartial moral agent had only one dose of painkiller, that moral agent would be objectively justified in giving the painkiller to the human.

At one point in the book, Bernstein suggests that it is a kind of category mistake to think that capacities could ground preferential consideration. I submit that it is a category mistake to think that interests could *deserve* consideration. *Interests* aren't the kinds of things that can deserve anything. *Interests* aren't agents. They haven't done anything to deserve anything. So, we have to be speaking metaphorically or elliptically when we speak of A's interests *deserving* more consideration than B's interests.[3] I mention this because one of Bernstein's main arguments against the capacities defense of CI is predicated on the *principle of legitimate desert* (PLD):

> 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 A's having L (p. 33).

I don't find PLD plausible. I'm not responsible for being a conscious, sentient living organism, and a plant is not responsible for being a nonconscious, nonsentient living organism. Suppose there is only one cup of water available and both the plant and I need the entire cup of water to survive. Any less than the full cup, and we will both die of dehydration. The fact that I'm conscious and sentient is a reason for privileging me over the plant even though I'm not responsible for being conscious and sentient.[4]

The fundamental question is not about desert. We want to know whether we are justified in treating A differently than B (not whether A deserves it). A man doesn't deserve

a prostate exam more than a woman, but a urologist is justified in giving him one and not giving a woman one. What we should care about is not CI per se. Rather, what we should care about is whether we are justified in treating animals differently (i.e., worse) than humans, and the latter needn't have anything to do with desert.

Worry 2

Bernstein criticizes the attributivist defense of CI on the grounds that capacities aren't the sorts of things that can justify preferential concern. Bernstein's argument plays off an ambiguity between instantiated and uninstantiated capacities. I agree with him that uninstantiated capacities aren't morally relevant, but what about instantiated capacities?[5] Most humans actually manifest rationality to some extent. Should we give greater weight to these humans' interests? Bernstein never addresses this pivotal question. The fact that those human beings who haven't manifested their capacity for rationality don't deserve to have their interests preferentially considered over the like interests of nonhuman animals does not show that those humans who have instantiated rationality don't deserve to have their interests preferentially considered over the like interests of animals.

Worry 3

Having argued that CIimpart fails, Bernstein considers whether CIpart might fare better. He thinks that certain kinds of morally significant associations can and do justify giving preferential consideration to the interests of one's fellow associationists. Obviously, not all kinds of associations justify such mutual privileging of members' interests. What kinds of associations justify such mutual privileging? Bernstein's answer is solidarity value associations (SVAs), which he defines as follows:

> A group is an (SVA) 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 the group. (p. 50)

Given this definition, Bernstein contends that the U.S. Army is an SVA, and he argues that it would be permissible (obligatory?) for an Army doctor to give preferential consideration to the interests of a wounded U.S. Army soldier over the like interests of an identically wounded U.S. Navy soldier (pp. 47–48). I find this conclusion morally repugnant. SVAs don't justify preferential consideration.[6] To see why not, consider the following counterexample:

> The American Philosophical Association
> The American Philosophical Association (APA) has positive objective moral value. Its goals are noble, and the means used to secure those goals are objectively virtuous. I'm committed to the APA's goals (protecting academic freedom, enhancing the profession, improving the climate for female and minority philosophers, enlightening the collective masses). I belong to the APA. Mark also belongs to the APA, and he happens to have a headache. Sociologist Sam also has a headache. I have only one indivisible aspirin.

Mark's APA membership gives me no reason to preference him over Sam. If I have only one aspirin, which would alleviate either Mark's or Sam's equally severe headache (but not both!), I should draw lots to decide who gets the aspirin.

Worry 4

Bernstein could have done more to refute CI. He concedes for the sake of argument that the capacity for rationality is possessed by all and only humans, and he explores whether this mere *capacity* could justify giving preferential treatment to humans over animals. As noted above, he rejects the appeal to the capacity for rationality on the grounds that uninstantiated capacities don't justify privileged treatment. But there is a bigger problem with the appeal to rationality as the basis of privileged treatment. As Rachels (1989) rightly notes, whether possessing a property justifies a difference in treatment depends on the treatment in question (p. 99). The fact that men have prostates and women don't justifies different treatment for men and women during their annual medical checkups, but it doesn't justify paying men more money than women doing the same work. The fact that humans are rational and animals are not, if it is a fact, is relevant regarding certain forms of differential treatment. Rational beings do deserve preferential treatment when it comes to whom we should hire as city planners and financial advisors and whom we should elect to public office. But rationality is irrelevant when it comes to whether or not we should drip bleach in a being's eyes. Dripping bleach in the eyes of humans is wrong, not because humans are rational, but because doing so causes them severe pain and permanent harm in the form of blindness. Since dripping bleach in rabbits' eyes also causes them severe pain and permanent harm in the form of blindness, it is wrong for the same reason, regardless of whether rabbits are rational or not.

PART 2: ON THE RELATIVE UNIMPORTANCE OF HUMAN LIFE

Most human beings embrace the VL:

VL: The lives of humans are more valuable than the lives of nonhuman animals.

In Part 2, Bernstein explores whether there are any plausible reasons to think that VL is true. As he correctly notes, the most prevalent reason philosophers have offered in support of VL is the disvalue of death argument (DDA):

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.
2. Death does not cause nonhuman animals harm by bringing about the irrevocable frustration of their future-directed mental states (because they lack such mental states).

3. Other than the harm that humans incur in 1, humans and animals are harmed equally in death.
4. So, death is an objectively greater harm to humans than it is to nonhuman animals.
5. If death is of greater disvalue to humans than it is to animals, then life is of greater value to humans than it is to animals.
6. So, life is of greater value to humans than it is to animals.
7. So, human lives have greater value than nonhuman animal lives (i.e., VL is true; pp. 76–77).

Bernstein concedes for the sake of argument that premises 1 and 2 are true and sets out to show that DDA is nevertheless unsound. I'll return to his refutation of DDA momentarily, but first I want to address a fundamental problem with DDA that Bernstein does not explore.

DDA is put forward by VL apologists to justify killing a nonhuman animal over a human in forced situations where we must kill one being or the other and to justify saving a human over a nonhuman animal in forced situations where we can save only one. With so much morally at stake, it's critically important that proponents of DDA, VL, and HST know that the premises of DDA are true, and they simply do not know that premise 2 is true. They assert that premise 2 is true with the confidence and fervor that only those with no reasons for their view could muster. Since neither Ruth Cigman (1980), nor Mark Rowlands (2002), nor Peter Singer (2011) has ever been a nonhuman animal, they simply have no way of knowing that nonhuman animals don't have future-directed mental states.[7] The problem with employing premise 2 is this: Moral reasoning is supposed to guide conduct. Picking an opaque property (i.e., a property such that the set of its possessors cannot be determined) as the morally relevant property for determining the value of lives and how we should treat the various beings living those lives undermines the *normative function* of moral reasoning. We can't get any normative guidance from an opaque property. If we can't tell which beings possess the property in question, we can't tell what the objective value of nonhuman animals is. Since we don't know whether animals have future-directed mental states, we aren't entitled to presume that animals have less value than humans.[8]

Bernstein's refutation of DDA focuses on premise 5. Premise 5 is true only if the following subargument is sound:

i. All else being equal, in death, those leading the human kind of life are harmed more than those leading a nonhuman kind of life. Therefore:
ii. All else being equal, those leading the human kind of life lead more objectively valuable lives than those leading nonhuman animal kinds of lives (p. 105).

Bernstein does a superb job demonstrating that the subargument is simply a non sequitur. How badly one is harmed by death is not a barometer of how objectively valuable one's life is. As Bernstein aptly puts it, "Value of life is not a function of what one loses when dead; it is a function of what transpires around you while you are alive" (p. 140). Rather than repeat the numerous compelling reasons Bernstein offers for rejecting premise 5 and

the subargument on which it is based (Better to let you discover them on your own!), I'll pile on by offering another case that illustrates the same point. Let's presuppose, as DDA does, that beings with future-directed mental states lose more and are harmed more by their deaths than beings with no future-directed mental states. Consider:

> The Lost Tribe of *Homo moralis*
> Suppose we discover on a remote island a new species of human beings, *Homo moralis*. These human beings differ from *Homo sapiens* in only two respects. First, they are maximally compassionate, wholly moral beings, who fully exemplify the *ahimsa* ideal of nonviolence. They are completely vegan. They harm no sentient beings. They devote themselves entirely to promoting the well-being of all sentient life. Second, members of *Homo moralis* are incapable of future-directed desires. They are entirely focused on the present and on how to make things better for those living in the present. Because they have no future-directed mental states, *ex hypothesi*, they are harmed less in death than are their kindred *Homo sapiens*, but it is obvious (at least to me) that their lives are objectively more valuable than the lives of *Homo sapiens*.

Hence, as Bernstein so aptly observes, how objectively valuable one's life is is not a function of how badly one is harmed by death.

Bernstein makes a compelling case that VL is false. Presumably, the falsity of VL should force us to embrace the equal value of life principle (EVL):

> EVL: The lives of humans and of nonhuman animals are equally objectively valuable.

But now I worry that the question of VL's truth value isn't the only question on which we should be concentrating. After all, even if we assume EVL, we can find ourselves in forced situations where we can save only one of two equally valuable beings, one a human and one a nonhuman animal. Whom should we save in such a situation?

Tom Regan (1983) is committed to the view that human and nonhuman subjects-of-a-life have *equal* inherent value. Nevertheless, he argues that in such forced situations, even though all parties involved are equally valuable, we should save the being who would be harmed more by death than the being who would be harmed less, so as to minimize harm. If Regan is right, I worry that Bernstein concedes too much when he concedes that those living the human kind of life are harmed more by their deaths than those living nonhuman animal kinds of lives. The results of that concession could have disastrous implications for animals. So, the question that still needs to be addressed is whether it is true that animals are harmed less by their deaths than humans are. Here I'm inclined to side with Evelyn Pluhar (2016), who argues that nonhuman animals who are living worthwhile lives aren't harmed less by their deaths. Their loss is "equally devastating" (Pluhar, 2016, p. 159). They lose everything. As Pluhar (2016) puts it, for both humans and animals living worthwhile lives, the harm of death is "catastrophic" (p. 158).

CONCLUSION

Despite the worries raised here, Mark Bernstein's book is a must read for anyone concerned with the moral status of nonhuman animals and the objective value of their lives.

While various philosophers have defended versions of the equal considerability thesis, few have attempted to defend the equal value thesis. Bernstein defends both. If you're currently confident that human lives are more valuable than the lives of nonhuman animals, reading Bernstein's book just may change your mind. If you currently believe that because humans are more *significant* than animals, it is permissible to eat, hunt, and vivisect them, you will have reasons to reconsider after reading Bernstein's book.

Notes

1. The first condition implausibly suggests that random genetic drift and natural selection could not have given rise to another species with the capacity for rationality anywhere in the universe, despite the widespread occurrence of convergent evolution. But, since this is the kind of unfounded conjecture that HST proponents often offer in support of HST, Bernstein plays along with the dubious nomological claim.

2. Bernstein identifies a different interest-diminishing attribute: Namely, the capacity to commit moral evil, a capacity had only by humans.

3. I grant that we do speak that way, but we must be speaking elliptically to mean: We are justified in giving greater weight to A's interests than to B's interests (i.e., we have some reason to prefer helping A satisfy A's interests over helping B satisfy B's interests). There is nothing essentially deontological about the latter.

4. If you think I am partly responsible for being conscious by my not having committed suicide, make it a choice between a conscious, sentient human infant (or a conscious, sentient dog), and a nonconscious, nonsentient plant.

5. Instantiated capacities seem analogous to the track athlete who has developed undeserved athletic capacities and who thus deserves to win the race.

6. The failure of associationism makes the case for CI worse, since the idea under consideration was that cospeciesism would prove to be an association that could justify humans in giving preferential consideration to human interests.

7. Various forms of animal behavior (e.g., nest building and the burying of food for later use) certainly suggest that many nonhuman animals have future-directed mental states, but I'll concede for the sake of argument that we don't know either way whether nonhuman animals have future-directed mental states.

8. Bernstein concedes premise 2 of DDA for the sake of argument, because his goal is to show that DDA is unsound even if he gives VL apologists their claims about animals' supposedly limited capacities. On the last page of the book, however, he comes clean:

> 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. (p. 146)

References

Cigman, R. (1980). Death, misfortune, and species inequality. *Philosophy and Public Affairs, 10*(1), 47–64.

Rachels, J. (1989). Darwin, species, and morality. In T. Regan & P. Singer (Eds.), *Animal rights and human obligations* (2nd ed., pp. 95–103). Englewood Cliffs, NJ: Prentice Hall.

Pluhar, E. (2016). Respecting rights-holders. In M. Engel Jr., & G. Comstock (Eds.), *The moral rights of animals* (pp. 141–162). Lanham, MD: Lexington Books.

Regan, T. (1983). *The case for animal rights*. Berkeley: University of California Press.

Rowlands, M. (2002). *Animals like us*. London, England: Verso.

Singer, P. (2011). *Practical ethics* (3rd ed.). Cambridge, England: Cambridge University Press.