

## Desert-Adjusted Utilitarianism, People, and Animals

### 1. Introduction

Recent decades have witnessed a surge in philosophical attention to the moral standing of non-human animals (hereafter just *animals*) and whether our practices regarding animals are morally justifiable. Kantians, Neo-Kantians, utilitarians, and radical animal rights theorists have staked their claims in the philosophical literature. Here I want to throw another position into the fray: Fred Feldman's desert-adjusted utilitarianism.

After briefly canvassing the prominent competitors in the dialectic, I will develop a conception of an overall moral ranking (relative to a moral choice scenario) consonant with, and inspired by, desert-adjusted utilitarianism. Then I will explore the conception's implications regarding the particular locations of individual people and animals in such rankings across various scenarios. Ultimately, I will argue that when it comes to evaluating whether or not some benefit (or burden) morally ought to be bestowed upon some specific person or animal, this new conception of an overall moral ranking is sensitive to a wider range of morally relevant phenomena than its more prominent competitors and thus deserves consideration as a viable candidate in the animal ethics literature.

### 2. Some Prominent Competitors

Immanuel Kant classified everything in the world into two categories: rational entities and things. On his view, only rational entities (or people) have moral standing. We have moral obligations and owe moral respect only to people:

Beings whose existence depends, not on our will, but on nature, have none the less, if they are non-rational beings, only a relative value as means and are therefore called *things*. Rational beings, on the other hand, are called *persons* because their nature already marks them out as ends in themselves—that is, as something which ought not

be used merely as a means, and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence).<sup>1</sup>

Despite denying animals any moral standing, Kant believes we have serious moral obligations involving animals, which he views as indirect moral obligations to people:

But since all animals exist only as means, and not for their own sakes, in that they have no self-consciousness, whereas man is the end...it follows that we have no immediate duties to animals; our duties towards them are indirect duties to humanity.<sup>2</sup>

There are at least three Kantian reasons why we have moral duties involving animals. The first is spelled out in Kant's *Lectures on Ethics* where he claims we should avoid treating animals cruelly, because treating animals cruelly results in our developing within ourselves cruel dispositions and inclinations to treat people cruelly. We should treat animals with kindness so that we develop within ourselves kind dispositions:

Lest he extinguish such qualities, he must already practise a similar kindness towards animals; for a person who already displays such cruelty to animals is also no less hardened towards men.<sup>3</sup>

Kant's moral prohibition against treating people as mere means suggests two more sources of moral obligations involving animals. Kant writes that "attempts on the freedom or property of others" are instances of treating people as mere means. Because Kant regards many animals as the property of people, harming these animals amounts to treating people as mere means.<sup>4</sup>

In his discussion of the charity example, Kant argues that if we are flourishing as well as enjoying leisure time and superfluous resources while others are in serious need—need we could alleviate with our resources—then failing to do so constitutes treating those people as mere means. If we diminish someone's chances for happiness while we ourselves are

prospering with excess resources, we treat that person as a mere means. It is clear that in a wide range of cases animals reduce suffering or introduce a tremendous amount of happiness into peoples' lives. Damaging these animals is generally forbidden by the second formulation of the categorical imperative, because anyone who engages in such action diminishes people's prospects for happiness and thus treats them as mere means.

Some Neo-Kantians hold less austere positions regarding the moral standing of animals, suggesting that we do in fact have some direct moral obligations to them. Christine Korsgaard maintains that opportunities to relieve pain—regardless of the type of entity suffering—always carry some moral weight. The possibility of relieving pain is always a morally relevant factor.<sup>5</sup> Still, Neo-Kantians—as well as others—hold that the rational, reflective, responsible will possesses a special type of moral value, one that boosts the moral standing of its bearers above those who lack it in important ways.<sup>6</sup> I will return to this in an upcoming section.

Utilitarians believe that all sentient beings—those capable of experiencing pleasure or pain—enjoy moral standing. All of their potential pleasures and pains must be included in the utilitarian calculus when attempting to identify the normative status of a line of action, or the possible implementation of a policy. Jeremy Bentham writes: “The question is not, Can they *reason*? nor Can they *talk* but, *Can they suffer*?”<sup>7</sup> Peter Singer argues that many of our institutions and personal policies are morally unjustifiable because they result in part from irrational denials of animals' moral standing, which—according to utilitarians—is grounded in their capacities to experience pleasure and pain.<sup>8</sup> I will discuss factors utilitarians consider relevant to the moral rankings of people and animals (relative to choice scenarios) in an upcoming section.

Some philosophers endorse even more extreme positions than the utilitarians. Tom Regan might be included in the category of radical animal rights theorists. Regan believes that (most) sentient entities are subjects of lives. He maintains that anything that is a subject of a life—something that can experience positive or negative welfare states—is a bearer of inherent value. Inherent value allegedly does not come in degrees; no entity has more inherent value than any other entity that possesses it. On Regan’s view, morality requires us to respect the inherent value of any creature that would be affected by any given action. Regan seems to place people and many animals on equal moral ground, claiming that many of our practices involving animals are thereby absolutely morally unjustifiable.<sup>9</sup>

Now let us turn our attention to desert-adjusted utilitarianism.

### **3. Desert-Adjusted Utilitarianism**

Fred Feldman introduces desert-adjusted utilitarianism in his confrontation with “the most profound moral objection to act utilitarianism—the objection from justice.”<sup>10</sup> Objections from justice are perhaps the most popular objections against classical utilitarianism in the literature. Philosophers have been moved to reject the classical view after contemplating upon prominent thought experiments that are used to bring attention to the classical view’s shortcomings on the justice front: the Small Southern Town (or telishment example),<sup>11</sup> the Organ Harvest,<sup>12</sup> the Coliseum,<sup>13</sup> various slavery and trolley scenarios, unequal labor scenarios, etc. Classical utilitarianism seems unable to register certain aspects of justice as morally relevant. A completely forward-looking theory, the classical view is insensitive to certain facts about what people morally deserve.<sup>14</sup>

Feldman attempts to absorb the objection from justice by producing a new consequentialist theory, a mutation of classical act utilitarianism anchored by a desert-adjusted hedonism, which replaces the classical hedonistic axiology. Desert-adjusted

hedonism—the novel axiological component of Feldman’s moral theory—is also used in his response to Derek Parfit’s repugnant conclusion.<sup>15</sup> Here I will articulate Feldman’s desert-adjusted utilitarianism so that we can apply it to controversies regarding the moral rankings of people and animals. Here is the theory:

**DAU:** An act, *A*, is morally right iff *A* maximizes **desert-adjusted** utility.

DAU is a species of act consequentialism. An act, *A*, maximizes some value just in case no alternative to *A* has more of that value than *A* has. DAU requires that we do the best we can for the world, where the notion of what is best for the world is cashed out in terms of desert-adjusted hedonism. Given its infancy, it is not surprising that the central concept of DAU—desert-adjusted utility—is still a source of theoretical inquiry. Roughly, according to DAU the value of the consequence (or outcome) of an action is the value of a specific function that takes as its arguments (i) the hedono-doloric value of the consequence (how much pleasure minus pain is contained in the consequence) and (ii) the extent to which individuals are getting what they deserve in the consequence. Philosophers have proffered competing articulations of the nature of this function. It would take me too far afield to describe the function in detail, and a precise characterization of the function will not be required in our efforts to understand many of DAU’s implications regarding people and animals. We just need to keep in mind that according to DAU sometimes traditional utility concerns trump justice concerns, and sometimes justice concerns trump traditional utility concerns.<sup>16</sup>

In order to get DAU off the ground, a conception of moral desert is required. Here are some likely (or popularly accepted) sources of desert (or “desert bases”):

1. excessive or deficient past receipt of goods or bads
2. innocent suffering

3. conscientious effort towards morally attractive goals
4. moral worthiness<sup>17</sup>

The extent to which anything morally deserves some good or bad is determined by facts about that thing involving desert bases, like those above. In some respects, DAU is an incomplete theory or perhaps a genus of moral theories of which there are many species. Just as Feldman writes, a complete theory of moral desert requires much more than a list of some popularly endorsed desert bases:

There are undoubtedly other factors that may influence the extent to which a person deserves some good or evil, and in a full exposition of the theory of desert, each of them would be described in detail. Furthermore, in real-life cases several of the factors may be jointly operative. The ways in which the factors clash and harmonize so as to yield an overall desert-level must also be investigated.<sup>18</sup>

Different theories of desert can be plugged into DAU's consequentialist structure to yield specific species of desert-adjusted utilitarianism. I will set many of these issues aside here and focus instead upon how these desert bases might generate moral desert rankings of people and animals. Because it is clear that desert bases (1) and (2) are relevant both to people and animal cases, I will focus on desert bases (3) and (4), particularly (4): moral worthiness. But first, let's turn to traditional utility considerations and possible moral ranking schemas grounded in such considerations.

#### **4. Traditional Utility Rankings of People and Animals**

Traditional utilitarians believe we are morally required to usher the greatest possible balance of happiness over unhappiness (or positive welfare over negative welfare) into the world. Such utilitarians should embrace a relativized conception of a moral ranking: a moral ranking relative to an action (or a moral alternative) in a moral choice situation.<sup>19</sup> Classical

utilitarianism imposes a ranking upon all sentient entities potentially affected by some act or policy. A person's location in this kind of utilitarian ranking can shift from context to context. In one choice scenario some particular person might outrank everyone else, but in another scenario that very same person might be outranked by someone else. At least a few factors contribute to how this might happen.

An individual's capacity for well-being is a central factor relevant to that individual's location in a moral ranking on a classical utilitarian scheme.<sup>20</sup> We might think of this capacity as the extent to which an individual can efficiently convert resources into personal well-being. The greater the capacity for well-being of some entity, the higher the location in utilitarian moral rankings, holding competing considerations fixed. When presented with the option of providing a benefit or opportunity to someone (or something) rather than another, we should provide the opportunity to whoever has the highest capacity for well-being, other things being equal, so that the most can be made of the benefit or opportunity. Value cannot be squandered on a utilitarian scheme.<sup>21</sup> Many believe that people generally enjoy higher locations than animals on utilitarian moral rankings because we have greater capacities for well-being.<sup>22</sup> I will address this soon.

Dispositions to utilize one's abilities to impact the world in positive ways as well as dispositions to develop and improve many such abilities are also central factors contributing to the location in a moral ranking of some entity or other on this scheme. Again: Value cannot be squandered. Those who develop morally worthwhile abilities and dispositions to utilize those abilities to make positive impacts upon the world generally enjoy higher locations in utilitarian rankings than those who lack such abilities and dispositions. These individuals are effective converters of resources into positive value. They use their resources to benefit the world and thus ought to be preferred in moral choice situations on this scheme,

other things being equal. Many believe that people outstrip animals in these respects, and thus generally enjoy higher locations on utilitarian moral rankings than the beasts.

Of course, utilitarians realize that other features might demand that someone or something be preferred in some particular context. Perhaps a specific skill or attribute relevant to the circumstance might require that someone lacking the qualities above be preferred in some moral choice scenario so that utility can be maximized. Still, the capacity for well-being and the development of fruitful abilities and morally attractive dispositions play a dominant—if not predominant—role in determining when we ought to bestow a benefit or a burden upon one individual rather than another on classical utilitarian schemes.

Empirical considerations suggest that people generally enjoy higher positions in classical utilitarian moral rankings than animals. Suppose one were wondering in a general sort of way whether a serious benefit (necessary means for continued life) or burden (death) should be distributed to a person or some other mammal, perhaps a sheep (or a dog).<sup>23</sup> Four utilitarian considerations speak in favor of preferring people in such situations. First, people have a much longer average lifespan than the sheep's mere six to eleven years. Thus, people are capable of experiencing much more happiness than sheep could ever dream of. Second, human intellectual abilities and social institutions enable people to experience vaster, richer, more varied forms of happiness than sheep. We have greater capacities for well-being, higher likely potential for well-being too. Even if sheep's life spans were comparable to ours, the intellectual, moral, and aesthetic pleasures accessible to us (in addition to the sensual, beastly pleasures we share with animals) make for happier lives on the whole. Third, people's abilities to better the world are vastly superior to those of sheep. We can reason about problems and cooperate through (at least somewhat clear) communication.<sup>24</sup> Finally, it is likely that the death of person—imagine a beloved child, parent, or friend—would introduce



much more pain and suffering into the world than would the deaths of a couple of sheep.

These considerations constitute empirical utilitarian reasons (grounded in human nature itself) for a general moral preference for people over sheep (as well as many other animals).

Generally, it seems then, people enjoy higher locations in moral rankings than sheep on classical utilitarian schemes.

But general considerations do not tell the whole story. Classical act utilitarianism is a species of act consequentialism, and its corresponding conception of a moral ranking is a relativized one: utilitarian moral rankings are always understood as relative to some moral choice. Utilitarian rankings are imposed upon individuals who can be potentially affected by particular acts relative to some moral choice situation. These rankings can shift with different choice contexts, especially because individuals potentially affected by an act can differ from context to context. And in particular choice contexts, sometimes animals enjoy higher locations in moral rankings than people do on this traditional utilitarian account.<sup>25</sup>

Some people do not have much of a capacity for positive welfare. Failure to develop personal potential, pessimistic attitudes, poor physical health, psychological problems, bitterness—all of these (plus who knows how many other factors) can result in people whose capacities for positive welfare are far outstripped by millions of members of the (non-human) animal kingdom. These people are simply unable to convert resources into personal well-being in efficient ways, if at all. But some horses and dogs beam with happiness throughout most of their lives. Stumbling upon river otters in the wild results—often times—in witnessing pure, unadulterated exuberance. Many such animals enjoy greater capacities for positive welfare than perhaps even millions of people: They are far more efficient converters of resources into individual well-being than so many people are.

Many people also lag far behind their animal counterparts when it comes to developing dispositions to utilize one's abilities to impact the world in positive ways. The same can be said about dispositions to develop and improve abilities that prove fruitful for the world. So many domesticated animals provide such wonderful labor to the world. Service animals are—in many cases—utilitarian dream beings: happy, hard-working, value generators. And millions of animals in the wild pull their own weight as self-sufficient creatures contributing positively (at least in many cases) to healthy ecosystems.

While many people are greater utilitarian heroes than animals, millions are not. Lazy leeches bathing in petty selfishness abound. Pathetic prodigal punks suck valuable resources from the world, contributing far less—if anything at all—in return. Scores of folks do not even strive for self-sufficiency. Many others are committed to stripping the world of potential value for selfish or otherwise deplorable reasons. A utilitarian tragedy. And plenty of people just are not competitive with their animal counterparts when it comes to generating value for the world. This is due to a variety of reasons: physical ailments, psychological problems, lack of access to important resources, etc. Animals outrank such folk in a plethora of moral choice situations; animals enjoy higher locations in traditional utilitarian moral rankings in such scenarios.

### **5. Moral Desert Rankings of People and Animals**

Many will be unsatisfied with the traditional utilitarian account of a moral ranking. We have seen that many believe rationality or reason—whatever is required for moral responsibility—is somehow relevant to the moral status of whatever possesses it. Do not bearers of a morally responsible, rational will enjoy (other things being equal) higher positions in moral rankings than those who lack such a will? We—or at least many of us—bear the burden of moral normativity; the beasts do not.<sup>26</sup> This is a serious moral difference

between (many) people and animals, one that has led philosophers to endorse the view that there is something morally special about those with rational, responsible wills. But to what extent does possessing such a will bear upon the moral status of whatever possesses it? Moral rankings (relative to choice scenarios) consonant with desert-adjusted utilitarianism (DAU) do not seem to entail that bearers of rational, responsible wills automatically enjoy higher locations in such rankings than those lacking such wills. But—at least given standard, popular assumptions—such an account seems to entail that bearers of such wills are in position to boost their locations in such moral rankings through the operation of their wills in ways that beasts cannot. Only rational, morally responsible agents are capable of accruing certain kinds of moral desert, or so many seem to believe.

According to the theory of moral desert undergirding DAU, every morally relevant being potentially affected by some action in a moral choice scenario is morally deserving of either benefits or burdens to a certain extent. A moral desert ranking is imposed upon all such individuals, one that serves to establish—at least in part—which of these beings morally ought to be benefitted (or burdened) in some choice scenario or other. Other things being equal, those enjoying higher moral desert ratings ought to be preferred in such scenarios. Here I want to focus specifically upon moral desert rankings of people and animals generated via the last two desert bases in DAU: conscientious effort towards morally attractive goals and moral worthiness. The two seem to be conceptually related; perhaps they cannot even be completely conceptually parsed. Leibniz even seems to think that conscientious effort towards morally attractive goals and moral worthiness generated through obtaining virtue are the only desert bases:

It is impossible in this matter to find a better standard than the very law of justice, which dictates that everyone should take part in the perfection of the universe and in

his own happiness in proportion to his own virtue and to the extent that his will has thus contributed to the common good.<sup>27</sup>

We can now imagine another route by which DAU might generate the implication that people generally enjoy higher locations in moral rankings (relative to choice scenarios) than animals. People are capable of conscientious effort, of reflectively and intentionally engaging in laborious activities in efforts to achieve morally attractive goals. And people are capable of accruing moral worthiness through striving to perform morally praiseworthy acts, through developing moral virtue to the greatest degree possible. Thus, people are capable of being more morally deserving in ways that (many?) animals cannot.<sup>28</sup> On the assumption that animals have a neutral status (neither positive nor negative) with respect to moral desert generated via conscientious effort and moral worthiness, DAU secures a moral preference for people over many animals in a wide array of scenarios.

Note, however, that just as people are capable of accruing positive moral desert, so are they capable of accruing negative moral desert, unlike most animals. Many people do not engage in laborious activities to achieve morally attractive goals: Many people are lazy; many pursue morally heinous goals. Millions of people wallow in moral vice: laziness, rashness, intemperance, prodigality, excessive selfishness, cowardice, pettiness, etc. Their moral desert levels fall far below those of animals with neutral moral desert status and thus so do their locations in moral desert rankings. Many of these people accrue little or no positive moral worthiness over their lives, and they (sometimes happily) embody moral vices without ever attempting to develop any redeeming, virtuous qualities.

Recall that a massive percentage of these people are also tragedies on traditional utilitarian rankings. They contribute nothing (or very little) of positive value, yet they suck up vastly more valuable resources than do their animal counterparts. They may not even be

worthy of the scarce, valuable resources they consume. Most animals (probably) enjoy higher positions than such people in a wide range of both traditional utilitarian rankings and moral desert rankings. Moral preference should be afforded to those animals over such people according to DAU. Some philosophers seem comfortable giving animals short shrift, urging us to prefer the morally vicious and those who contribute less to the world than they consume over animals that contribute to the world in positive ways. Such a position seems indefensible. But perhaps more can be said in favor of the wretched, ignoble, and—it seems in many cases—ignorant human inhabitants of our planet.

There is a rich tradition in moral philosophy suggesting that moral virtue can be developed—and moral worthiness can be accrued—only by those who possess a bit of philosophical knowledge and commit themselves to acting in ways grounded in such knowledge. Some of the ancient Greeks seemed to think along these lines. In some of Plato's earlier dialogues, Plato's Socrates suggests that virtue is a species of knowledge—knowledge of good and evil—and that the virtuous are restricted to those who can distinguish between good and evil by way of a defensible, rational principle.<sup>29</sup> Aristotle thinks similarly:

Virtue, then, is a state of character concerned with choice, lying in a mean, i.e. the mean relative to us, this being determined by a rational principle, and by that principle by which a man of practical wisdom would determine it.<sup>30</sup>

And so does Kant, who claims that moral worth can be generated only within those who act from the motive of moral duty and act in the ways that they do because they realize that acting in such ways is compatible with the moral law.<sup>31</sup>

So perhaps DAU's implications regarding those who live their lives (through no fault of their own) in ignorance of moral knowledge and rational moral motivation are less exacting than what is suggested above. Perhaps it is not fair to deem all of these people morally

blameworthy for whatever morally unattractive character traits they embody. And then there are those who lack the cognitive capacities or educational opportunities to develop minds capable of clear philosophical reflection on moral matters. They simply lack access to a life guided by a defensible, rational moral principle (or principles). Many such people are in dire straits, struggling just to survive, incapable of much other motivation, driven by instinct and desperation—similar in many respects to millions of their animal counterparts. Others are (at least occasionally) unwitting ideologues who believe it is safer (or at least more comfortable, or something) to adopt (blindly?) some institution's positive morality. Mere rule followers (to the extent that they really embrace and follow such rules). But many animals are good rule followers too.

This puts us in an interesting philosophical circumstance. There is something attractive about the conceptions of moral virtue and moral worth embraced by some of the ancients and Kant, among others. If they track the truth, then it seems that huge swaths of the human population occupy the same position as animals when it comes to moral desert generated through obtaining moral virtues and accruing moral worthiness. While many people rank well above animals on these moral desert rankings—and perhaps just as many well below—millions will occupy neutral ground shared with the beasts. The theory of moral desert undergirding DAU might imply that such people are (at least generally) no more deserving or undeserving than their animal counterparts, and thus do not enjoy higher locations in moral desert rankings than the beasts. Again, the beasts have been given short shrift.

But perhaps these conceptions of moral virtue and moral worth endorsed by the ancients and Kant are simply too stringent. Millions of people have attractive dispositions to behave in fruitful ways even if they are not motivated by a commitment to rationally

defensible moral principles. Perhaps that is all that is required for acquiring virtue and any moral worthiness generated via virtue development. (Some virtue consequentialists might embrace this sort of view.<sup>32</sup>) After all, many such people are diligently working towards morally attractive goals even if they are not justified in believing that such goals are in fact morally attractive.

But the same goes for (probably) millions of animals. On this sort of account, my dogs are more benevolent, courageous, trustworthy, temperate, and patient than most of the people with whom I interact. They have attractive dispositions to behave in fruitful ways; they work towards morally attractive goals despite having no clue as to what makes such goals morally attractive. They are well-trained, just like some people are. (*Mutatis mutandis* about moral vice.)

Once again we find ourselves in an interesting dialectical situation. If we reject the account promoted by the ancients and Kant, and instead embrace something like the less stringent account described above, then people who—through no fault of their own—are not motivated by the rational acceptance of defensible moral principles can still obtain virtue (or vice) and accrue moral worthiness (or worthlessness). But then by parallel reasoning, so can animals. They too can work hard, make sacrifices, enhance the value of the world through beautiful, fruitful traits of character.<sup>33</sup> Recall those utilitarian dream beings—the service animals. Nonetheless, perhaps animals cannot accrue the same amount of positive moral worthiness that people can on this less stringent account. People are plagued with a much wider range of temptation. People—not animals—stare into the face of the problem of normativity and experience existential despair. And millions of people are—in some sense—robbed of their (at least potential) philosophical and moral autonomy by brainwashing ideologues. There is probably a myriad of other relevant factors as well. Still, if animals are

able to accrue any amount of moral worthiness, then that is a whole lot more than can be said about a whole lot of people.

So either intellectually responsible commitment to rationally defensible moral principles is required for moral virtue and the accrual of positive moral worthiness, or it is not. If it is, then millions of people stand the same ground in moral desert rankings as the beasts: neutral ground. If such commitment is not required, then it appears that animals are capable of accruing positive moral worthiness. Either way, it seems that a significant number of philosophers have neglected phenomena relevant to the locations of animals (as well as people) in moral desert rankings (relative to various choice scenarios) and have unjustifiably perched people's locations above those of animals in a range of such scenarios.

While I comfortably embrace the dilemma above and its implications, others might be more reluctant to do so. Some might declare it a false dilemma, arguing that there is some theoretically attractive, intermediate area of conceptual space between the two possibilities I posit. Someone might be tempted to adopt what I consider to be an extreme view: the view that most people, but only people, can obtain moral virtue and accrue positive moral worthiness; animals cannot. Such a theorist would have to craft and defend a conception of moral virtue that rules out the possibility of any animals enjoying moral virtue or accruing any positive moral worthiness while providing most people access to moral virtue. On such a view, animals would never be able to elevate themselves above a neutral moral desert status. Without the possibility of accruing positive moral worthiness, animals would be unable to secure positive desert ratings—only people would be able to do so.

Note that this kind of view faces significant theoretical challenges, the most serious of which involves the degree of intellectualization in the best theory of the moral virtues. If the intellectual bar to obtain moral virtue is set high—perhaps in the ways suggested by Plato,



Aristotle, Kant, and others—then animals will not be capable of accruing moral virtue. But neither will many—perhaps even most—people. If the intellectual bar to obtain moral virtue is lowered in such a way to allow for most people to have access (at least in principle) to moral virtue, then it seems that many animals will qualify for the possibility of becoming morally virtuous as well, especially if moral virtue is best understood as a gradable concept. This possibility cannot be ruled out *a priori*. It may remain a point of dispute as to whether animals can accrue positive moral worthiness, but this point should remain firm: Animals with neutral moral desert ratings enjoy higher locations on moral desert rankings than those of morally vicious people.

## 6. Assessing the Theoretical Competitors

We can think about various choice scenarios in which we must distribute benefits or burdens to individuals. Consider an example discussed by Richard Posner.<sup>34</sup> Suppose you are driving on a dark night. Emerging from a long curve, you see three beings in the road: a person and two animals. Suppose you can evade only the person or the animals. You must crash into either the person or the animals. It is a forced choice: You have no other options. What do we need to know in order to show proper moral respect to these beings in such a case?<sup>35</sup>

Richard Posner seems to think that the answer is simple and that evaluating what morally ought to be done in this case would stymie only the morally benighted:

...there is something amiss in a philosophical system that cannot distinguish between people and sheep. In utilitarian morality, a driver who swerved to avoid two sheep and deliberately killed a child could not be considered a bad man, since his action may have increased the amount of happiness in the world. This result is contrary to every ethical intuition we have.<sup>36</sup>

The foregoing discussion should indicate that I am skeptical that the evaluation of these sorts of cases is as simple as Posner would have us believe. The following questions should help further clarify and parse the competing positions regarding what morally ought to be done in cases like this involving both people and animals:

1. Are any of the beings rational?
2. Who will be harmed most by death?
3. Who will be benefitted most with continued life?
4. Whose continued existence would most benefit the world?
5. Who is more deserving?

Posner's position may well be grounded in Kantian intuitions. Recall that according to Kant, the most important thing we need to know in this case is whether either of the three beings is a *rational* being—a bearer of a reflective, rational will. If only one of them is rational, then Kant would have us avoid the rational being—the person in this case—at all costs. Note that of all the questions above, only question (1) is relevant to evaluating what morally ought to be done from a Kantian perspective.

Neo-Kantians recognize the moral relevance of pain and suffering in all of its guises—and some even regard animals as ends in themselves<sup>37</sup>—but Neo-Kantians reason in ways similar to Kant when it comes to decisions concerning whether to bestow serious burdens (like death) upon a person or an animal. Rationality trumps. The person—the bearer of a reflective, rational will—is to be preferred over the beasts (at least in the vast majority of cases). Again, the answer to question (1) is of utmost importance in the moral evaluation of this case on Neo-Kantian accounts. Perhaps in extreme cases, Neo-Kantians might consider the answers to questions (2) and (3) to be morally relevant to some degree as well, but it is not entirely clear how Neo-Kantians would use the information provided in those answers to

adjudicate tricky cases involving people and animals in theoretically satisfying ways. The answers to questions (4) and (5) seem to play virtually no role at all in adjudicating what morally ought to be done in cases like ours on Neo-Kantian accounts.

Regan's egalitarian theory does not privilege rationality in ways that Kantian theories do. Unlike Kant and the Neo-Kantians, the answer to question (1) does not seem to be of all that much importance to Regan in evaluating what morally ought to be done in our tragic case. According to Regan, the first thing we need to know about cases like this is whether any of the beings in the road is a subject of a life—a being that can experience positive or negative welfare states. Both the person and the animals (we may suppose) are subjects of lives; thus, on Regan's view all three beings are bearers of inherent value. Recall that inherent value does not come in degrees. The rights of any bearer of inherent value must be respected on Regan's egalitarian, rights-based view.

Regan claims that every bearer of inherent value has a right not to be harmed. In tragic cases like ours, Regan argues that a person's right not to be harmed generally overrides an animal's right not to be harmed.<sup>38</sup> Regan utilizes a "worse-off principle" to adjudicate cases of rights conflicts. The worse off principle entails that when we are in situations where we must violate some being's rights, we should violate the rights of the being that will be least harmed by the rights violation. General utilitarian considerations suggest that a person will usually be harmed more by death than an animal: The death of a person (usually) deprives that person of so much more than what the death of an animal deprives the animal of. But what about cases like ours where two (or more) animals must be sacrificed to save the person? Would the person be harmed more by death than two animals would, or three, or four, or...? And recall the discussion of classical utilitarian moral rankings in section 4. In many cases, continued life would benefit a couple of animals much more so than it would a person.

Sometimes death would harm an animal more than it would a person. Regan's view seems to take this into account: The answers to questions (2) and (3) play primary roles in determining who morally ought to be sacrificed in our case. But note that the answer to question (4) plays no role in evaluating what morally ought to be done on Regan's scheme. The extent to which the continued existence of some being would benefit the world is not a morally relevant consideration on Regan's account. Also note that while Regan believes that the guilty deserve punishment,<sup>39</sup> his view is not sensitive to other features of moral desert considered here.<sup>40</sup> The answer to question (5) plays at most a limited role in Regan's moral evaluation of our case.<sup>41</sup>

Classical utilitarians need more information to determine what morally ought to be done in our tragic case than the other theorists canvassed thus far. Every consideration relevant to a being's location on a classical utilitarian ranking (relative to a choice scenario) must be taken into account: access to personal happiness, capacity for well-being, the extent to which an individual can efficiently convert resources into personal well-being, dispositions to use one's abilities to impact the world in positive ways, dispositions to develop and improve many such abilities, life spans, and any other impacts that the continued life or the death of an individual would have upon the sentient entities of the world—in short, everything that accounts for the expected utility of the continued life or the death of some being. The answer to question (1) plays at most an indirect role in the classical utilitarian's moral evaluation of our case: Rationality itself is not a bearer of some kind of special moral value, but rationality enables us to do so much more than we could otherwise. It is not rationality itself, but what we do with it (or what we would do with it) that matters according to classical utilitarianism.

Information provided by the answers to questions (2), (3), and (4) is sufficient to generate classical utilitarian evaluations of cases like ours. As argued in section 4, animals outrank people in a wide range of cases on this classical utilitarian scheme and thus morally ought to be preferred to people in such cases according to the classical account. There are (seemingly) rich, morally relevant, principled grounds on which animals ought to be morally preferred over people in many tragic cases like ours, grounds that Kantians, Neo-Kantians, and many animal rights activists (like Regan) disregard. Recall, however, that the answer to question (5) plays absolutely no (direct) role whatsoever in classical utilitarian evaluations of morally tricky cases. Classical utilitarianism is insensitive to matters of moral desert. Whether the beings in our case strive for virtue or wallow in vice is of no (direct) concern to the classical utilitarian. Only classically-interpreted utilities are. In (even more unlikely) cases like ours in which the expected utility of continued life of the person is identical to the expected utility of continued life of the two animals, the classical utilitarian may as well flip a coin to decide who lives and who dies. The extent to which these individuals are morally deserving—that is, the extent to which these beings strive to achieve morally attractive (or unattractive) goals, or the extent to which they strive to and succeed in developing moral virtue (or vice)—is normatively irrelevant on classical utilitarian schemes once the (classically interpreted) instrumental values of these behaviors and character traits are cashed out.<sup>42</sup> Moral desert levels of people and animals are at most only indirectly relevant to how people and animals morally ought to be treated on classical utilitarian schemes.

Desert-adjusted utilitarians demand even more information than their theoretical competitors. In order to determine what morally ought to be done in tragic cases like ours, desert-adjusted utilitarians require all the classical utilitarian information in addition to all the information that accounts for the locations of each of the beings in the moral desert ranking

relative to the choice scenario under consideration. This includes—but is not limited to— (i) the extent to which these beings have expended conscientious effort towards morally attractive goals and (ii) the moral worthiness these beings have accrued over their lives thus far. Insofar as reason is required to acquire moral virtue (and vice), the answer to question (1) plays an important albeit indirect role in a desert-adjusted utilitarian evaluation of our case. And unlike our other theorists, desert-adjusted utilitarians require all of the information provided by the answers to the remaining questions—(2), (3), (4), and (5)—to determine what morally ought to be done in cases like ours.

As argued in section 5, there are many choice scenarios in which people are outranked by animals in particular moral desert rankings. Many people simply are not interested in expending conscientious labor towards morally attractive goals. Many people are morally vicious. Many animals are not. Holding classical utilitarian considerations fixed, desert-adjusted utilitarianism (DAU) requires that we prefer the animals over the person in many cases like ours. DAU requires much more information than its theoretical competitors when determining what morally ought to be done in tragic cases involving people and animals. In fact, DAU requires much more information than any of its competitors when attempting to determine what morally ought to be done in *any* case where benefits or burdens must be distributed to people or animals.

## **7. Conclusion**

According to our DAU-inspired account, two classes of phenomena are responsible for generating (or grounding) the location of any individual in the overall moral ranking relative to the context of some moral choice: (i) the features responsible for an individual's location in the traditional utilitarian ranking in the context and (ii) the features responsible for an individual's location in the moral desert ranking in the context. Precisely how the two classes

interact to impose an overall moral ranking of individuals potentially affected in some moral choice scenario is tricky conceptual business.<sup>43</sup> But this much appears to be true: In a multitude of choice situations, droves of animals outrank many people on both moral rankings. And depending upon the exact nature of moral worthiness and the role that moral worthiness plays in generating moral desert levels, there probably are numerous choice scenarios in which people share the same locations in moral desert rankings as animals yet are outranked by them on traditional utilitarian schemes. This DAU-inspired account implies that in all such cases, it is the animals that enjoy the higher moral ground and ought to be preferred from a moral perspective.

I consider Feldman's DAU to be a serious competitor in the normative ethics of behavior, and its corresponding account of an overall moral ranking relative to a choice scenario seems to enjoy serious theoretical advantages over its prominent competitors when it comes to articulating what is morally due to individual people and animals in moral choice scenarios. Our DAU-inspired theory is sensitive to a much wider range of morally relevant phenomena than those proposed by Kant, the Neo-Kantians, and animal rights theorists like Regan. Classical utilitarians provide a remarkably robust account of what is morally at stake in cases involving people and animals, but they too seem unable to provide the complete story. The new account is theoretically attractive in many respects. If it is closer to the truth than its conceptual competitors, then the common general belief that people are perched upon a privileged moral place above the animals is unwarranted in a wide of range of cases. Those animals should be shown more moral respect.

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<sup>1</sup> Kant (1993): 96.

<sup>2</sup> Kant (1997): 212.

<sup>3</sup> Kant (1997): 212.

<sup>4</sup> Kant (1993): 97.

<sup>5</sup> Korsgaard (1996): 153.

<sup>6</sup> Korsgaard discusses the requisite properties of beings who face the problem of normativity in her (1996); see, e.g., p. 93. Also see Vallentyne (2005): 406. Korsgaard develops her position further regarding the moral respect due to animals in her (2018). There she argues that sentient animals should be understood as ends in themselves, though she continues to embrace a distinction relevant to moral respect and moral standing between those who enjoy a rational, reflective, responsible will and those creatures that do not.

<sup>7</sup> Bentham (1789): Ch. XVII.

<sup>8</sup> See Singer's (1975).

<sup>9</sup> See Regan (1983), (1985), and (2001).

<sup>10</sup> Feldman (1997): 151.

<sup>11</sup> See Rawls (1955).

<sup>12</sup> See Thomson (1976).

<sup>13</sup> See Sen (1982)

<sup>14</sup> Note that Feldman (1995a) argues that certain facts about the future might also be relevant to what a person deserves at a time.

<sup>15</sup> See Feldman (1995c).

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<sup>16</sup> Those who are interested in Feldman's thoughts about the nature of the function should study the graphs in his (1995b) and (1995c). See Carlson (1997), Arrhenius (2006), Arrhenius (2007), and Skow (2012b) for other attempts to articulate the function in theoretically satisfying ways.

<sup>17</sup> Feldman (1997): 203. Also see Feldman (1997): 161f. We might think of the moral worthiness of a person as the moral praiseworthiness minus the moral blameworthiness that the person has accrued thus far over her life.

<sup>18</sup> Feldman (1997): 203f.

<sup>19</sup> This concept of a location in a moral ranking is similar in many respects to the relativistic conception of moral standing Peter Vallentyne introduces in his (2005): 427. Vallentyne claims that his conception of moral standing (relative to an action) is similar in some respects to the conception of moral standing employed by Elizabeth Harman in her (1999).

<sup>20</sup> Cf. Vallentyne (2005).

<sup>21</sup> Note that there is a flip side to this capacity for well-being: the capacity to bear burdens in lighter ways than others. Individuals who can bear burdens and absorb blows better than others generally occupy lower positions on classical utilitarian moral rankings (holding competing considerations fixed) when burdens must be distributed. Other things being equal, disvalue must be minimized on classical utilitarian schemes. Another objection from unfairness (or injustice) might be levelled against classical utilitarian implications arising from these two types of capacity.

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<sup>22</sup> An individual's (possible) future capacities for well-being as well as the likelihood of those capacities obtaining also frequently plays a salient role in that individual's location in utilitarian moral rankings. Cf. Vallentyne (2005): 429.

<sup>23</sup> Richard Posner considers a utilitarian response to this question in his (1979): 112. We will take a brief look at Posner's commentary in an upcoming section.

<sup>24</sup> Mary Anne Warren makes this point in her (1987).

<sup>25</sup> Cf. Bernstein (2015), who also argues that investigating the values of human and (many) nonhuman lives is best done on a case-by-case basis.

<sup>26</sup> Or at least many of the beasts do not. Mark Rowlands argues that some animals "can act on the basis of moral reasons" in his (2012: 35). Asia Ferrin argues that some animals probably do bear the burden of moral normativity in her (2019). Also see de Waal and Lanting (1997) for possibilities of reflective, morally normative behavior in (non-human) primate cultures.

<sup>27</sup> Leibniz (1989): 154. Moore (2000) and Kristjánsson (2003) present arguments supporting the claim that moral virtue is the sole desert base for moral desert. Also see Skow (2012a).

<sup>28</sup> Eric Moore makes this point in his (2002): 306-7.

<sup>29</sup> See, for example, Plato's *Laches* and *Charmides*. Knowledge also plays a prominent role in the later accounts of virtue Plato develops in *Phaedo* and the *Republic*.

<sup>30</sup> *Nicomachean Ethics* 1106b36

<sup>31</sup> See Chapter 1 and the beginning of Chapter 2 of Kant's *Groundwork of the Metaphysics of Morals*. Also see Hills (2015), especially pp. 35-36.

<sup>32</sup> See, for example, Driver (2001) and the position presented in Bradley (2005). Plato distinguishes a "higher" intellectually grounded conception of virtue from a "lesser" non-

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intellectual conception of virtue in the *Phaedo* and the *Republic*, suggesting that only those with some philosophical knowledge can obtain higher virtue. Lesser virtue, though, is capable of being obtained by the ignorant.

<sup>33</sup> Asia Ferrin goes even further than this in her (2019), arguing that some nonhuman animals are morally responsible for their behavior. Evidence for such a position might be found in the socially rich culture of the bonobos. See de Waal and Lanting (1997). Also see Rowlands (2012).

<sup>34</sup> This is a slightly generalized version of the example discussed in Posner (1979): 112.

<sup>35</sup> Some might be put off or irritated by forced choice (or trolley-style) scenarios. Readers are encouraged to provide their own cases involving both people and animals where limited benefits or burdens must be distributed. There is a surfeit of real-world cases that are germane: vegetarianism, animal testing, working animals, etc. The present analysis is, I believe, relevant to these issues. I focus on the simple thought experiment to extrapolate away from many of the complications of such real-world cases.

<sup>36</sup> Posner (1979): 112.

<sup>37</sup> Again, see Korsgaard (2018).

<sup>38</sup> See Regan's discussion of a lifeboat case involving people and a dog in his (1983): 286-287.

<sup>39</sup> Regan (1983): 290.

<sup>40</sup> Eric Moore makes this point in his (2002): 306. It should be noted that Regan's theory (like classical utilitarianism) could be modified in ways that incorporate other features of moral desert.

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<sup>41</sup> Serious objections have been leveled against Regan's theory in the literature. Mary Anne Warren points out that Regan's theory makes use of the mysterious, unexplained concept of inherent value in her (1987). In his (1983), Regan seems to articulate his notion of respecting the inherent value of an entity in terms of a cluster of moral rights principles. Moore (2002) argues that Regan's view entails inescapable rights conflicts. Also see Jamieson (1990) for a robust critique of Regan's theory of moral rights.

<sup>42</sup> Cf. Ross (1939): 138, where Ross compares two worlds identical in hedonic value. In one world the virtuous enjoy pleasant lives while the vicious suffer. In the other, the vicious enjoy pleasant lives while the virtuous suffer. Ross argues that the first world is better than the second: If we had the ability to actualize one, but only one, of the two worlds, we morally ought to actualize the first world.

<sup>43</sup> Again: some of Feldman's graphs might illustrate a way forward, and so might the positions developed and defended in Carlson (1997), Arrhenius (2006), Arrhenius (2007), and Skow (2012b).