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# Animal Rights Unraveled: Why Abolitionism Collapses into Welfarism and What it Means for Animal Ethics

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# ARTICLES

## **Animal Rights Unraveled: Why Abolitionism Collapses into Welfarism and What it Means for Animal Ethics**

LUIS E. CHIESA\*

### ABSTRACT

*Most people support laws that seek to reduce the suffering of animals. Yet animal cruelty statutes and other kinds of animal welfare laws are under sustained attack by the so-called abolitionists. Animal rights abolitionists claim that it is categorically wrong to treat animals as commodities, and animal welfare laws should be opposed because they do not alter the property status of animals. Abolitionists also claim that animal welfare regulations do not meaningfully reduce animal suffering. In fact, abolitionists argue that such statutes likely increase future animal suffering, either by delaying the advent of abolition or by soothing the conscience of those who want to continue consumption of animal products. This Article contends that this claim is false and in tension with the core philosophical commitments of abolitionism. There is simply no empirical evidence that supports the counterintuitive claim that animal welfare laws do not meaningfully reduce animal suffering. In fact, both intuition and the few empirical studies that exist suggest that animal welfare statutes do reduce animal suffering. If animal welfare regulations succeed in meaningfully reducing animal suffering, then abolitionists must confront what this Article calls the “abolitionist’s dilemma.” On the one hand, abolitionists could embrace animal welfare regulations, in which case their core opposition to laws that presuppose the property status of animals would be compromised. On the other hand, they could oppose animal welfare regulations that reduce animal suffering solely because they continue to commoditize animals. This would reveal that abolitionists are willing to sacrifice animal welfare in the present with the hopes of achieving an*

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\* Professor of Law and Director of the Buffalo Criminal Law Center, SUNY Buffalo Law School. I am indebted to the speakers and audience of the “Animal Ethics: Abolition, Regulation or Citizenship” conference held at Rutgers Law School on April 11, 2014, where I presented an earlier version of this Article. I am also thankful to Professor Leo Zaibert and the students in his Philosophy of Law seminar for allowing me to discuss my Article as part of the animal ethics component of the course. © 2016, Luis E. Chiesa.

*uncertain and unlikely abolition in the future. Not caring about present animal suffering would make the abolitionist position not only politically unpalatable, but also ethically unattractive in a most profound kind of way. As a result, abolitionists should embrace animal welfare statutes that meaningfully reduce suffering, even if doing so means that the abolitionist program as we know it would cease to exist.*

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#### INTRODUCTION

To the uninitiated, animal ethics may seem like a monolithic field. While obvious differences exist between the steak-eating, leather-wearing dog-lover who encourages all his friends to adopt rescue dogs; the vegan who stopped consuming meat-derived products for ethical reasons; and the unapologetic, card-carrying member of People for the Ethical Treatment of Animals (“PETA”); they all seem to be brought together by a deep commitment to reducing the suffering of nonhuman animals. Some focus on dogs, others want to put an end to animal experimentation, while others want to abolish the property status of all nonhuman animals. Putting aside the different objectives, all of these activists devote a considerable part of their lives to advancing the causes of nonhuman animals.

One would think that the steak-eating dog-lover and the ethical vegan have something in common. After all, both devote some part of their lives to promoting animal welfare. Upon closer inspection, however, there are significant differences between these groups of people. The differences are of such import that it would seem wrong to lump them together in the same group. Although both the dog-lover and the ethical vegan care about animal suffering, the ethical views that undergird their respective commitments to nonhuman animals are radically different. Three significant differences immediately come to mind. First, the dog-lover mostly cares about a particular species of animal, whereas the

ethical vegan cares about all nonhuman animals. Second, the dog-lover feels a strong personal and emotional connection to the animals that she cares about (dogs and perhaps other domestic animals), whereas she does not feel a particularly strong emotional bond with the animals that she cares less about (cows, chicken, pigs, etc.). The ethical vegan, in turn, abstains from consuming meat regardless of whether she feels personally and emotionally connected with the animals. Third, the dog-lover is primarily concerned with preventing the infliction of physical and emotional pain on the animals that she cares about. In contrast, ethical vegans frequently object to the legal and social practice of treating animals as commodities or resources, even if such treatment does not directly inflict physical or emotional pain.

The differences between the dog-lover and the ethical vegan reflect important philosophical differences amongst animal advocates. More specifically, these differences are reflective of the common divide between “welfarists” who advocate for increased animal welfare and “abolitionists” who advocate for abolition of the property status of animals.<sup>1</sup> While both welfarists and abolitionists believe that nonhuman animals deserve serious moral consideration because they are sentient,<sup>2</sup> they part ways in the implications that they draw from this basic insight.

For welfarists, the fact that nonhuman animals are sentient makes their suffering count as morally relevant.<sup>3</sup> As a result, welfarists strive to reduce unjustifiable inflictions of pain on all sentient beings, regardless of whether they are human or nonhuman. Although welfarists would prefer to eliminate all unjustifiable inflictions of pain on animals, they support any measure that incrementally reduces animal suffering, even if such measures do not completely eliminate it.<sup>4</sup> Furthermore, welfarists typically—although not necessarily—defend a consequentialist approach to morality in general and to animal ethics in particular. That is, welfarists believe that the right thing to do is whatever course of conduct produces the best consequences.

Abolitionists—like welfarists—believe that nonhuman animals with the capacity to feel pain are deserving of a special moral status. Unlike welfarists, however, abolitionists claim that sentient animals should not only be protected from

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1. For a discussion of the welfarist/abolitionist debate, see Corey Wrenn, *Abolitionist Animal Rights: Critical Comparisons and Challenges within the Animal Rights Movement*, 4 INTERFACE 438 (2012), <http://www.interfacejournal.net/wordpress/wp-content/uploads/2012/11/Interface-4-2-Wrenn.pdf>.

2. Arguably, some nonhuman animals are not sentient. That is, it is possible—even likely—that some nonhuman animals lack the capacity to feel pain. The most obvious examples would be insects. See VICTORIA BRAITHWAITE, DO FISH FEEL PAIN? 33, 40, 44–45 (2010) (stating that insects lack the ability to feel pain likely because they lack consciousness, which is likely, although inconclusively, the connection between nociception (“the unconscious recognition by the nervous system that damage is occurring somewhere”) and pain (“the emotional sensation that whatever is damaged is hurting”). Mollusks arguably also lack the capacity to feel pain, although this is increasingly being contested. *Id.* at 119, 121–22, 132–34.

3. Wrenn, *supra* note 1, at 445.

4. *Id.*

unjustifiable inflictions of pain, but also considered full-fledged members of the moral community. Therefore, abolitionists argue that sentient nonhuman animals are as deserving of moral consideration as human beings. Abolitionists are also committed to a deontological approach to morality grounded—at least in part—in Kant’s non-instrumental view of ethics. According to Kant’s categorical imperative, it is morally wrong to use human beings as a means to an end, regardless of how desirable achieving that end may be.<sup>5</sup> Because abolitionists believe human and sentient nonhuman animals are worthy of equal moral consideration, they argue that animals—like humans—should not be used as means to an end, for that would objectify them in a morally objectionable manner. As a result, abolitionists oppose treating animals as resources or commodities, in much the same way that anti-slavery abolitionists opposed treating humans as chattel.<sup>6</sup> This leads them to conclude that it is morally wrong to consume animals, even if the animals consumed never suffer.<sup>7</sup>

It is at this point that abolitionists and welfarists radically diverge. Abolitionists oppose animal ownership, even if the animal is treated humanely. The ownership of the creature is in and of itself morally objectionable because it objectifies the animal in a way that violates the imperative to treat sentient creatures as ends in themselves. In contrast, welfarists are not opposed—at least in principle—to ownership of animals, for they oppose inflicting needless suffering on the creatures, rather than their status as property.

Because abolitionists claim it is categorically wrong to treat an animal as property regardless of whether the animal suffers or not, it should come as no surprise that abolitionists oppose animal welfare laws, since these statutes continue to presuppose the property status of animals.<sup>8</sup> Interestingly, abolitionists routinely point out that they oppose animal welfare reforms not only because they presuppose the property status of animals, but also because such reforms are unlikely to reduce animal suffering. In fact, abolitionists argue that such statutes likely increase future animal suffering either by delaying the advent of abolition or by soothing the conscience of those who want to continue consuming animal products.

This Article contends that this claim is false and in tension with the core philosophical commitments of abolitionism. There is simply no empirical evidence that supports the counterintuitive claim that animal welfare laws do not

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5. IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 11 (Jonathan Bennett ed., 2008), <http://www.earlymoderntexts.com/assets/pdfs/kant1785.pdf>.

6. Wrenn, *supra* note 1, at 448.

7. This assumes that the animal lives a life free of suffering and is killed without pain or advance notice.

8. See, e.g., Gary L. Francione, *What to Do on Proposition 2?*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Sept. 2, 2008), <http://www.abolitionistapproach.com/what-to-do-on-proposition-2/#.VtMon-YIJ6I> (opposing California’s Proposition 2); see also Sherry Colb *Responds to My Post on Proposition 2*, ANIMAL BLAWG (Oct. 31, 2008), <https://animalblawg.wordpress.com/2008/10/31/sherry-colb-responds-to-my-post-on-proposition-2/> (also opposing Prop. 2).

meaningfully reduce animal suffering. In fact, both intuition and the few empirical studies that exist suggest that animal welfare statutes do reduce animal suffering.<sup>9</sup> If animal welfare regulations succeed in meaningfully reducing animal suffering, then abolitionists must confront what this Article calls the “abolitionist’s dilemma.” On the one hand, abolitionists could embrace animal welfare regulations, in which case their core opposition to laws that presuppose the property status of animals would be compromised. On the other hand, they could oppose animal welfare regulations that reduce animal suffering solely because they continue to commoditize animals. This would reveal that abolitionists are willing to sacrifice animal welfare in the present with the hopes of achieving an uncertain and unlikely abolition in the future. Not caring about present animal suffering would make the abolitionist position not only politically unpalatable, but also ethically unattractive in a profound way. As a result, abolitionists should embrace animal welfare statutes that meaningfully reduce suffering, even if doing so means that the abolitionist program as we know it would cease to exist.

The Article proceeds in four parts. Part I discusses the differences between abolitionists and welfarists. It identifies abolitionism with the core claim that it is categorically wrong to treat animals as property. In contrast, welfarists are unified by their commitment to reduce animal suffering rather than abolishing the property status of animals.

Part II explains why abolitionism falls prey to the so-called “abolitionist’s dilemma” once it supplements its core non-consequentialist opposition to animal welfare statutes with the view that animal welfare reform should also be opposed because it will likely increase future animal suffering. This claim reveals a fundamental tension in abolitionism that cannot be resolved unless abolitionism morphs into a kind of welfarism or is reduced to the eccentric view that animals should continue to suffer until their status as property is abolished. The first way out of the dilemma compromises the core philosophical commitment of abolitionism, whereas the second offers a profoundly unattractive approach to animal ethics.

Part III considers and rejects various “avoidance strategies” that abolitionists may put forth in order to avoid falling prey to the abolitionist’s dilemma. The Article concludes by pointing out that once abolitionism is collapsed into a form of welfarism, there is little reason for abolitionists to refuse to cooperate with welfarist reforms that meaningfully reduce animal suffering. This state of affairs is likely to be more conducive to the wellbeing of nonhuman animals than the current abolitionist-welfarist divide.

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9. See *infra* section II.A.

## I. ABOLITIONISM AND WELFARISM DISTINGUISHED

According to Francione, the central tenet of abolitionism is a “rejection of the notion that animal life has a lesser value than human life.”<sup>10</sup> Expressed in positive terms, the chief claim of abolitionism is that animal and human life are of equal value. After advancing this basic tenet, abolitionists go on to claim that animals and humans “are equal for the purpose of not being treated as resources.”<sup>11</sup> Given this claim, abolitionists argue that—just like it is universally considered immoral to treat humans as property—treating animals as property should be considered immoral as well.<sup>12</sup> Consequently, abolitionists argue that the ultimate goal of animal rights advocates should be the abolition of the property status of animals.<sup>13</sup>

Those who confront the abolitionist thesis for the first time will likely find the claim that human and animal lives are equally valuable as counterintuitive. Thus, the casual reader may ask why abolitionists believe animals and humans should have equal moral worth. The answer, as is usually the case with moral theories regarding animal rights, lies in the fact that animals, like humans, are sentient beings capable of feeling pain. In the words of Francione:

[A]ll sentient beings—human or nonhuman—are equal for the purpose of not being treated as resources, just as an intellectually gifted human and a mentally disabled human are equal for the purpose of not being used as a forced organ donor or as a non-consenting subject in a painful biomedical experiment.<sup>14</sup>

Furthermore—and perhaps more importantly—abolitionists deny there is any morally relevant distinction between the abilities diverse beings have for feeling different kinds of pain.<sup>15</sup> As a result, abolitionists believe that although some humans may have the ability to experience certain kinds of pain that animals cannot experience (for example, agonizing over how a future confrontation will go), this is not a *morally* relevant basis for discriminating between the two. Once again, in the words of Francione:

The rights/abolitionist position rejects the notion that any differences that may exist between human and animal minds mean that animals have no interest in continuing to exist or that the sentient experiences of nonhumans have a lesser weight than those of humans . . . . This deficiency or difference may be relevant for some purposes, but it does not allow us to conclude that a human lacking the

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10. GARY L. FRANCIONE & ROBERT GARNER, *THE ANIMAL RIGHTS DEBATE: ABOLITION OR REGULATION?* 5 (Gary L. Francione & Gary Steiner eds., 2010) [hereinafter *ANIMAL RIGHTS DEBATE*].

11. *Id.*

12. *See id.*

13. *See id.* at 4.

14. *Id.*

15. *Id.* at 15.

capacities that [some philosophers] identif[y] as giving value to life does not have an interest in continuing to live or that death is not a harm for her.<sup>16</sup>

According to Francione, the basic distinction between welfarists and abolitionists is that welfarists reject the claim that the lives of nonhuman animals and humans are of equal value.<sup>17</sup> More specifically, he claims that welfarists believe that human lives are worth more than animal lives.<sup>18</sup> Francione is certainly correct that Jeremy Bentham and John Stuart Mill believed animal lives were of less value than human lives.<sup>19</sup> As Francione points out, Mill believed that “[i]t is better to be a human being dissatisfied than a pig satisfied.”<sup>20</sup> Nevertheless, I think Francione is mistaken to equate the views of more modern welfarists with those of Bentham and Mill in this regard. The view of Peter Singer is demonstrative.

Singer argues that the basic interest of all beings, humans and animals, is to be free from suffering.<sup>21</sup> Furthermore, Singer claims that the interest humans and animals have against suffering is, *ceteris paribus*, equal.<sup>22</sup> Since Singer’s utilitarianism focuses on suffering rather than on death, his philosophy does not commit him to the broad conclusion that animal life is worth less than human life.<sup>23</sup> Properly understood, Singer’s philosophy leads to the conclusion that whether a being’s death causes more suffering than another being’s death depends on morally relevant features of the beings that are compared, rather than on the species of the compared beings.

Given that Singer’s philosophy would look at the morally relevant characteristics of the different beings in order to decide which has the stronger interests, his views will likely be very context dependent. Thus, for example, Singer is likely to conclude that the death of a normally functioning human is as harmful as the death of a normally functioning great ape. Great apes are highly intelligent beings with strong emotions and capacity to forge long-term relationships with family and unrelated members of their species.<sup>24</sup> They can also solve complex puzzles, learn hundreds of signs, construct grammatically correct sentences, and display a

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16. *Id.* at 15, 17.

17. *Id.* at 10.

18. *Id.*

19. *Id.*

20. *Id.* at 9 (quoting John Stuart Mill, *Utilitarianism*, in *UTILITARIANISM AND OTHER ESSAYS* 279, 281 (Alan Ryan ed., 1987)).

21. See generally PETER SINGER, *ANIMAL LIBERATION* (2d ed. 1990).

22. *Id.*

23. *Id.* at 18.

24. THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY (Paola Cavalieri & Peter Singer eds., 1994). See also *Genetic Evidence*, SMITHSONIAN NAT’L MUSEUM OF NAT. HIST. (Feb. 26, 2016), <http://humanorigins.si.edu/evidence/genetics> (discussing how the closeness of human and ape DNA translates to physical and mental characteristics); Seth Bornstein, *What Were They Thinking? Studies Reveal Animal Intellect*, NBC NEWS (June 24, 2012, 6:02 PM), [http://www.nbcnews.com/id/47940997/ns/technology\\_and\\_science-science/t/what-were-they-thinking-studies-reveal-animal-intellect/#.V7sY7GW8z8s](http://www.nbcnews.com/id/47940997/ns/technology_and_science-science/t/what-were-they-thinking-studies-reveal-animal-intellect/#.V7sY7GW8z8s).

sense of justice that leads them to resent those who do not reciprocate favors.<sup>25</sup> In sum, great apes display many mental and emotional features that greatly resemble our own. These traits reveal that great apes have both emotional and social needs.<sup>26</sup> They also reveal that great apes are capable of achieving a considerable degree of awareness, including some degree of self-awareness.<sup>27</sup> Given these similarities, Singer has argued that great apes should have rights to life, liberty, and freedom from torture and unjustifiable inflictions of pain.<sup>28</sup> These, of course, are basic rights that our society currently only affords to human beings. Therefore, at least as far as great apes are concerned, Singer's philosophy argues in favor of granting human and nonhuman animals the same kinds of fundamental rights.<sup>29</sup>

In some cases, a welfarist approach to animal ethics, such as the one espoused by Singer, may lead to giving some nonhuman animals a stronger claim to moral protection than some humans.<sup>30</sup> An example includes comparing the moral claims of a severely disabled human infant with the moral claims of a full-grown great ape. A welfarist may believe that the life of a great ape is worth more than that of the severely disabled child, given that the ape has a higher degree of self-awareness and can engage in more meaningful social relationships than the severely disabled infant can. Peter Singer has (in)famously advanced such an argument. According to Singer,

Adult chimpanzees, dogs, pigs, and members of many other species far surpass the brain-damaged infant in their ability to relate to others, act independently, be self-aware, and any other capacity that could reasonably be said to give value to life. With the most intensive care possible, some severely retarded infants can never achieve the intelligence level of a dog.<sup>31</sup>

For similar reasons, Singer argues that the lives of certain nonhuman animals are more valuable than the lives of humans with advanced senility:

[T]here will surely be some nonhuman animals whose lives, by any standards, are more valuable than the lives of some humans. A chimpanzee, dog, or pig, for instance, will have a higher degree of self-awareness and a greater capacity for meaningful relations with others than a severely retarded infant or someone

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25. Peter Singer, *Great Apes Deserve Life, Liberty and the Prohibition of Torture*, THE GUARDIAN, (May 26, 2006, 7:03 PM), <http://www.theguardian.com/commentisfree/2006/may/27/comment.animalwelfare>.

26. *Id.*

27. Self-awareness is defined as “[c]onscious knowledge of one’s own character, feelings, motives, and desires.” OXFORD DICTIONARIES, [http://www.oxforddictionaries.com/us/definition/american\\_english/self-awareness](http://www.oxforddictionaries.com/us/definition/american_english/self-awareness) (last visited Oct. 29, 2016). Some research suggests that there are several levels of self-awareness. See, e.g., Philippe Rochat, *Five Levels of Self-Awareness as They Unfold Early in Life*, 12 CONSCIOUSNESS & COGNITION 717, 717 (2003), <http://www.psychology.emory.edu/cognition/rochat/Rochat5levels.pdf>.

28. Singer, *supra* note 25.

29. *Id.*

30. SINGER, *supra* note 21, at 18.

31. *Id.*

in a state of advanced senility. So if we base the right to life on these characteristics we must grant these animals a right to life as good as, or better than, such retarded or senile humans.<sup>32</sup>

The same kinds of arguments are put forth by some welfarists to justify affording different value to the lives of different human beings. Singer has argued, for example, that not all human life is of equal value. More specifically, he contends that the lives of adult human beings are more valuable than the lives of infants.<sup>33</sup> The morally relevant difference between these beings is, once again, not their species. Rather, it is that adult humans have a capacity for rationality and self-awareness that infants lack. Singer is quite explicit in rejecting the notion that belonging to the *homo sapiens* race makes a difference in the moral calculus in this and other cases:

[T]he fact that a being is a human being, in the sense of a member of the species *Homo sapiens*, is not relevant to the wrongness of killing it; it is, rather, characteristics like rationality, autonomy, and self-consciousness that make a difference. Infants lack these characteristics. Killing them, therefore, cannot be equated with killing normal human beings, or any other self-conscious beings . . . . No infant . . . has as strong a claim to life as beings capable of seeing themselves as distinct entities, existing over time.<sup>34</sup>

Note that what is doing the work here is not the species of the being, but whether the being possesses certain cognitive capabilities. Some humans possess these cognitive capabilities and some animals possess them as well. This approach, while perhaps abhorrent to some,<sup>35</sup> is not, I believe, “specieicist,”<sup>36</sup> for the discrimination is not on the basis of species, but rather on the basis of other traits.

Many abolitionists invoke the famous Tom Regan example of a dog in a lifeboat<sup>37</sup> to highlight the differences between abolitionist and welfarist approaches to animal ethics. In this example, four adult humans and a dog are adrift in a lifeboat. The boat is taking in water and one being must be thrown overboard in order for the boat to stay afloat and the rest to survive.<sup>38</sup> Francione suggests that Singer in particular, and welfarist philosophy in general, are committed to

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32. *Id.* at 19.

33. PETER SINGER, *PRACTICAL ETHICS* 182 (2d 1993).

34. *Id.*

35. Even if the approach were conceptually coherent, many would be appalled by an ethical approach that claims that some human lives are more valuable than others.

36. Specieicism is unjust discrimination against members of a different species. See Hugh Lafollette & Niall Shanks, *The Origin of Specieicism*, 71 *PHILOSOPHY* 41, 41 (1996). The charge is typically leveled against humans who unjustly discriminate against nonhuman animals solely on the basis of species.

37. TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 324 (1983).

38. *Id.*

saving the humans at the expense of the dog.<sup>39</sup> In my opinion, the welfarist answer to the question is not necessarily “the human,” as Francione suggests. The answer is that it depends on what kind of human and what kind of animal. More information is needed. Between saving a newborn child or a dog, Singerian philosophy may very well lead to saving the dog as the right moral answer. This may be a shortcoming of the theory. It may be the wrong outcome. It is not, however, discrimination on the basis of species.

If one digs deeper into Francione’s actual criticism of Singer’s philosophy, it seems the biggest problem Francione has with welfarists like Singer is that the traits identified by Singer as morally relevant for distinguishing between the interests of different beings are actually not morally relevant. Francione takes issue, for example, with Singer’s claim that the capacity of self-awareness and projecting oneself into the future is morally relevant.<sup>40</sup> According to Singer, a being’s capacity to think about what is yet to come and to have expectations and desires about possible futures is of considerable moral significance.<sup>41</sup> In terms of comparing the value of the lives of beings who possess and lack this capacity, Singer argues that “there is greater significance in killing a being who has plans for the future—who wishes to accomplish things—than there is in killing a being who is incapable of thinking about the future at all but exists either moment to moment or within a very short-time horizon . . . .”<sup>42</sup> Therefore, Singer concludes that, other things being equal, it is “much less a tragedy to kill that sort of being than to kill someone who wants to live long enough to do the sorts of things that humans typically want to achieve over the course of their lives.”<sup>43</sup>

It is perhaps Singer’s emphasis on traits that allow beings to engage in the kind of thought processes and actions that humans typically engage in that leads Francione to believe that Singer privileges human beings over nonhuman animals.<sup>44</sup> While superficially plausible, this interpretation of Singer’s welfarist approach to animal ethics is mistaken. As Singer himself makes clear, the moral relevance of the capacities of self-awareness and projecting oneself into the future cut both in favor and against privileging humans over nonhuman animals.<sup>45</sup> It is true that welfarists like Singer generally believe that the lives of normally functioning adults who are capable of self-awareness are more valuable than the lives of the many nonhuman animals incapable of self-awareness. However, such welfarists also believe that the lives of nonhuman

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39. Gary L. Francione, *Peter Singer and the Welfarist Position on the Lesser Value of Nonhuman Life*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Mar. 16, 2009), <http://www.abolitionistapproach.com/peter-singer-and-the-welfarist-position-on-the-lesser-value-of-nonhuman-life/#.VtOaQ-YlJ6I>.

40. *Id.*

41. Peter Singer, *Speciesism and Moral Status*, 40 METAPHILOSOPHY 567, 576 (2009).

42. *Id.*

43. *Id.*

44. Francione, *supra* note 39.

45. Singer, *supra* note 41, at 576.

animals that possess self-awareness are as valuable as the lives of normally functioning humans and that the lives of humans who lack such self-awareness are less valuable than the lives of both human and nonhuman animals that possess such capacity. Singer is quite clear on this, as he argues that if one believes that it is justifiable to kill a humanely raised nonhuman animal for food because it lacks the capacity to project itself into the future, then the logical implication is to hold that it is justifiable to non-voluntarily “end[] the life of a profoundly cognitively disabled human being.”<sup>46</sup>

Finally, it is important to note that welfarists believe human and nonhuman animals should be treated alike for the purposes of being kept free from unjustifiable inflictions of pain.<sup>47</sup> Whether the animal is capable of self-awareness is irrelevant to this, as the only morally relevant consideration in this context is whether the being is capable of feeling pain. Thus, Singer argues that “pain and suffering are equally bad—and pleasure and happiness equally good—whether the being experiencing them is human or nonhuman, rational or nonrational, capable of discourse or not.”<sup>48</sup> The capacity for self-awareness is only relevant to welfarists when assessing the strength of a being’s interest in continued existence (i.e., not dying or staying alive).<sup>49</sup> Even then, focusing on this capacity does not automatically lead to giving more weight to human lives as compared to nonhuman animal lives. Rather, it privileges human and nonhuman animals that possess this characteristic over human and nonhuman animals that lack it. In sum, “death is a greater or lesser loss depending on factors like the extent to which the being was aware of his or her existence over time, and of course the quality of life the being was likely to have, had it continued to live.”<sup>50</sup> The distinction is thus drawn on the basis of morally relevant traits rather than on the basis of species membership.

Therefore, even if Francione is correct that welfarists like Singer believe that some nonhuman animals do not have a right to life because they lack self-awareness, it does not reveal that Singer is a speciecist. It only reveals that Singer is drawing incorrect lines between sentient beings *across the board* rather than between humans and animals. As numerous scholars have pointed out, Singer has drawn considerably more flack for his views regarding the different values of human lives (e.g. newborns versus adults), than he has for his views regarding animals.<sup>51</sup>

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46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. See, e.g., Rob Loftis, *Review: Refuting Peter Singer’s Ethical Theory*, 6 METAPSYCHOLOGY ONLINE REVIEWS, no. 29 (2002), [http://metapsychology.mentalhelp.net/poc/view\\_doc.php?type=book&id=1257&cn=135](http://metapsychology.mentalhelp.net/poc/view_doc.php?type=book&id=1257&cn=135) (reviewing SUSAN LUFKIN KRANZ, *REFUTING PETER SINGER’S ETHICAL THEORY: THE IMPORTANCE OF HUMAN*

In my opinion, what really binds *all* welfarists together is a commitment to consequentialist ethics that compels them to strive to reduce the suffering of sentient beings (humans and animals included), rather than a commitment to the principle that human life is worth more than animal life. While some welfarists believe that animal life is usually worth less than human life, there is no necessary connection between the consequentialist principle that commands to reduce suffering, and the conclusion that human life is worth more than animal life. Therefore, and contrary to what abolitionists like Francione argue, there is conceptual breathing room for a form of welfarism that does not accept as a central tenet the principle that human life is worth more than animal life.

If there is a significant difference between abolitionists and welfarists, it is not the relative value that they attach to human and animal lives. Rather, it is the different goals they pursue. Abolitionists believe the ultimate goal of animal advocacy should be to abolish the property status of animals. Welfarists, in contrast, believe the ultimate goal of animal advocacy should be to eliminate suffering of animals. These goals may, but need not, coincide.

## II. THE ABOLITIONIST'S DILEMMA

How should abolitionists react when confronted with a regulation that meaningfully decreases animal suffering? If they embrace such regulations, their core opposition to laws that presuppose the property status of animals would be compromised. On the other hand, opposition to such regulations solely because they continue to commoditize animals would reveal that abolitionists are willing to sacrifice animal welfare in the present with hopes of achieving an uncertain and unlikely abolition in the future. Abolitionists thus face what I call the "abolitionist's dilemma." Either they embrace effective animal welfare regulations, which risks collapsing the conceptual foundations of their position, or they oppose such regulation, which would reveal that their position is callous and insensitive. The remainder of this section is devoted to fleshing out in more detail this abolitionist dilemma.

Because the ultimate goal of abolitionism is to abolish the property status of animals, abolitionists believe it is morally objectionable to eat animals, regardless of how humanely they were raised.<sup>52</sup> As a result, abolitionists argue that veganism is the only lifestyle/diet that is not morally objectionable.<sup>53</sup> This lays the groundwork for the practical strategy of abolitionism. Since eating animals necessarily assumes that the creatures are property, abolitionists tend to oppose

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DIGNITY (2001)). The author points out that the "shocking aspect of Singer's beliefs" is illustrated by Singer's conclusion that "it is wrong to eat a cow, but it is sometimes ok to kill a baby." *Id.*

52. See ANIMAL RIGHTS DEBATE, *supra* note 10, at 199–200, 215–16, 255–56.

53. Gary L. Francione, *Abolitionist Animal Rights/Abolitionist Veganism: in a Nutshell*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Nov. 23, 2013), <http://www.abolitionistapproach.com/abolitionist-animal-rights-abolitionist-veganism-in-a-nutshell/#.VtOVg-YIJ6I>.

campaigns to enhance the welfare of animals that are nevertheless destined for the slaughterhouse.<sup>54</sup> Therefore, abolitionists argue that the only morally acceptable practical strategy is advocating for veganism.<sup>55</sup> This leads to a general reticence to support classic animal welfare causes, such as getting rid of battery cages.<sup>56</sup> Some abolitionists even oppose animal cruelty statutes in their current form, arguing that such laws serve mostly to soothe the conscience of those who want to continue to consume animal products.<sup>57</sup> Instead, these abolitionists suggest that animal advocates focus their efforts on promoting veganism rather than on enacting more animal cruelty statutes. Sherry Colb's thoughts on this matter are representative:

I wonder whether it would be better for nonhuman animals if there were no laws at all protecting them against cruelty. On the one hand, such laws . . . reflect the desire to do right by our fellow, sentient earthlings, an impulse that is worthy of praise and encouragement. On the other hand, we might be better off directing our animal-friendly feelings to letting people know how easy, enjoyable, and healthy it is to be a vegan . . .<sup>58</sup>

Abolitionists like Francione and Colb have refused to support almost all animal welfare reforms, arguing not only that they are morally objectionable because they continue to assume animals are property, but also that the reforms are useless and a waste of resources because they are unlikely to alleviate animal suffering in any significant way.<sup>59</sup> Abolitionists who take this view believe most proponents of animal cruelty legislation are not going to give up the consumption of animal products. As a result, they contend that animal welfare legislation—including animal cruelty statutes in their current form—will likely make people more comfortable with continuing to consume animals, given that the laws on the books that purport to protect animals make them feel better about the way in which the animals they consume are being treated. This, in turn, may very well lead to increased animal consumption and, therefore, increased animal suffering.<sup>60</sup> Once again, the views of Colb are illustrative:

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54. See, e.g., Sherry F. Colb, *An Empty Gesture to Soothe the Conscience: Why We Pass Laws Protecting Chimpanzees And Other Animals from Cruelty*, FINDLAW (Mar. 4, 2009), <http://writ.news.findlaw.com/colb/20090304.html>.

55. Francione, *supra* note 53.

56. See, e.g., Francione, *supra* note 8.

57. Colb, *supra* note 54.

58. *Id.*

59. See GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* 125–30 (1996) (arguing that the new welfarism erroneously relies on the requirement of necessity to be “sufficiently flexible” to reduce and eventually eliminate animal suffering because necessity leads to a balancing test between rightholders (humans) and nonrightholders (animals). In this test, the rightholder consistently wins, so the only way to alleviate animal suffering is to make them a rightholder by eliminating their legal status as property.); see also Colb, *supra* note 54.

60. Colb, *supra* note 54.

The overwhelming majority of people who support anti-cruelty legislation are strongly opposed to giving up the consumption of animals. Thus, rather than viewing the (several-years-in-the-future) modest enlargement of factory farm animal cages as a “first step” toward the dismantling of animal cruelty, many people are likely instead to view it as a reason to feel better about consuming animals. In other words, the symbolic gesture of anti-cruelty laws serves to calm some of the dissonance that people might have previously felt about eating, wearing and otherwise using tortured and killed animals.

If this is the case, then the likely effect of such legislation is to inspire people to consume more, rather than less, of what the animal industry has to offer, because they can now tell themselves that what happens to animals is no longer objectionable. Perhaps the role of such legislation as a salve to the troubled conscience explains why various actors within the meat, dairy, and egg industries actually support measures that purport to curb those very actors’ abuses. Laws that do little to change how business is done can provide free advertising for the idea of the so-called “conscientious omnivore.”<sup>61</sup>

There are at least two reasons why this abolitionist claim is problematic. First, the claim that animal welfare statutes will likely lead to increased animal suffering in the future is empirical. As such, the claim needs to be substantiated with empirical evidence and may be defeated by empirical evidence. To date, abolitionists have failed to provide any empirical support for their claim.<sup>62</sup> To make matters worse, what little empirical evidence is currently available tends to undermine the abolitionist claim rather than confirm it.

The second problem with the abolitionist claim is that, given the philosophical underpinnings of the movement, abolitionists could very well be content to oppose animal welfare legislation solely by pointing out that they run afoul of the abolitionist principle that nonhuman animals should not be commoditized. It is unclear what exactly abolitionists gain by making the additional—and controversial—claim that these laws do not do much to lessen animal suffering. In fact, I will argue that abolitionists feel the need to make this additional claim because a purely deontological version of abolitionism is too eccentric to serve as the linchpin of a pragmatic approach to animal advocacy.

In what follows, I will flesh out in more detail the two problems raised by the abolitionist claim that animal welfare statutes should be opposed because they will likely end up increasing animal suffering in the future. I will first focus on the lack of empirical support for this claim. This is followed by a discussion of how the claim highlights an inherent tension in abolitionist philosophy and how this tension threatens to unravel the edifice upon which abolitionism is erected.

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61. *Id.*

62. *See infra* Part II.A.

## A. LACK OF EMPIRICAL SUPPORT FOR ABOLITIONIST CLAIMS

Regardless of the confidence with which abolitionists make the claim that welfare measures today will increase future consumption of meat, this is an empirical claim that lacks empirical support.<sup>63</sup> Without solid empirical support, the abolitionist claim, while plausible, is pure speculation. Furthermore, the only empirical study on the subject actually points opposite to the prediction of abolitionists. A 2011 Kansas State University (“KSU”) study regarding the impact of welfarist advocacy on meat-eating patterns reported the following relevant findings: (1) media attention to animal welfare has significant, negative effects on meat demand in the United States; (2) the direct effects of media attention are primarily associated with pork and poultry demand; and (3) increasing media attention to animal welfare issues triggers consumers to purchase less meat, rather than to reallocate expenditures across competing meat products.<sup>64</sup> From these findings, the authors of the study drew two implications. First, that United States livestock producers and industry leaders must recognize that meat demand is affected by discussions and negotiations regarding legislatively triggered production practice requirements.<sup>65</sup> Second, that the influence of media on total meat expenditure suggests that beef, pork, and poultry producers may be well served by collaborating in recognizing and responding to changing societal pressures regarding animal welfare.<sup>66</sup>

In his blog, Francione suggests that this study is methodologically flawed,<sup>67</sup> but even if the study’s conclusions are ultimately unsound, the fact that the authors attempted to empirically test whether animal welfare efforts decrease animal suffering is a step in the right direction. Abolitionists and welfarists alike are making strong empirical claims that seem essential to many of the positions that both philosophical camps hold. In particular, abolitionists make two strong empirical claims: (a) welfare advocacy does not reduce animal suffering now; and (b) even if welfare advocacy does reduce animal suffering now, it delays future abolition and will therefore likely increase animal suffering in the long run.<sup>68</sup> To support these claims, abolitionists have suggested that when welfarists successfully target a particular meat industry, the demand simply switches to a

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63. The only empirical study to date that attempts to quantify whether animal welfare regulations increase future consumption of meat is Glynn T. Tonsor & Nicole J. Olynk, *Impacts of Animal Well-Being and Welfare Media on Meat Demand*, 62 J. AGRIC. ECON. 59 (2011). The study fails to find empirical support for the proposition that animal welfare laws increase future animal consumption.

64. *Id.*

65. *Id.* at 68–69.

66. *Id.*

67. Gary L. Francione, *Science Weighs In: Animal Welfare Reform is Useless*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Mar. 3, 2011), <http://www.abolitionistapproach.com/science-weighs-in-animal-welfare-reform-is-useless/#.VtTG5pMrJ24>.

68. See Colb, *supra* note 54.

different industry.<sup>69</sup> That is, while welfarists will perhaps succeed in reducing demand of meat product X now, it will only shift consumer preferences from meat product X to meat product Y, as opposed to shifting them to non-meat products.

The KSU study seems to be in tension with both abolitionist claims. This is not to say the findings are correct or that abolitionists cannot contest the tensions between the findings of the study and their claims. However, when confronted with an empirical study that relates to central issues in the abolitionist-welfarist debate, abolitionists must do more than simply dismiss the study. Instead, abolitionists should support their critiques with additional empirical studies. The ball is in their court.

This last point raises another important issue in this debate. It is what I call the “burden of proof” problem. Both abolitionists and welfarists are making empirical claims, but which side has the burden of proving their claims? Must abolitionists empirically prove (1) that welfare advocacy does not reduce animal suffering, and (2) that it delays abolition, thereby increasing future animal suffering, or may they legitimately require that welfarists first prove that their advocacy reduces animal suffering today? By the same token, must welfarists who claim that welfare advocacy reduces animal suffering now prove their claim empirically, or may they legitimately require abolitionists to prove empirically that their welfarist efforts do not reduce animal suffering now?

My sense is that the burden of proof is on the abolitionists, because their claim is more counterintuitive.<sup>70</sup> Consider Proposition 2 in California as an example.<sup>71</sup> Without additional information, a measure like Proposition 2 that requires calves raised for veal, egg-laying hens, and pregnant pigs to be confined only in ways that allow these animals to lie down, stand up, fully extend their limbs and turn around freely seems to intuitively reduce the suffering of animals subjected to the new treatment. It is counterintuitive to suggest otherwise. Therefore, those who make the counterintuitive claim that such measures do not reduce animal suffering have the burden of proving their claims.

Of course, there are reasons why Proposition 2 may not reduce animal suffering in the long run. Francione has pointed out many of them in his blog, but—once again—his claims are mostly empirical. For example, according to Francione (writing in 2008):

Proposition 2 will do *nothing* to reduce animal suffering in the short term. Proposition 2 will not even come into effect, if at all, until 2015. Proposition 2 has numerous exceptions and qualifications and even if it does come into effect

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69. *Id.*

70. For a defense of the argument that those who make counterintuitive claims have the burden of proving them, see FREDERICK FERRÉ, KNOWING AND VALUE: TOWARD A CONSTRUCTIVE POSTMODERN EPISTEMOLOGY 187–88 (1998).

71. Prevention of Farm Animal Cruelty Act, CAL. HEALTH & SAFETY CODE §§ 25990–25994 (Deering 2015).

at some point in the distant future, and even if it is enforced, it will result in no meaningful reduction in animal suffering.<sup>72</sup>

Francione's claims in the excerpted paragraph are bare bone conclusions without empirical support. He posits that Proposition 2 will not result in a meaningful reduction in animal suffering, but he does not explain why this is so.<sup>73</sup> Francione then asserts that Proposition 2 will only make people feel better about exploiting animals, thus increasing animal suffering in the future and delaying abolition.<sup>74</sup> This, too, is an empirical claim that requires empirical support. Given such strong, seemingly counterintuitive claims, certainly the burden is on Francione and other abolitionists to find and present supporting empirical studies.

Francione does offer one often repeated explanation. He says animal welfare has existed for 200 years, and its end result is that animal exploitation is now considerably higher than it was 200 years ago, before animal welfare activism. He believes this provides empirical support for his claim that animal welfare reforms do not reduce animal suffering.<sup>75</sup> With respect, this is a *non sequitur*. First, it is just as likely that without animal welfare advocacy, even more animals would be suffering today than those that are currently suffering. An empirical study would be welcome to test which of these two claims is more accurate. Second, Francione's statement might suggest a correlation between animal advocacy over the last 200 years and an increase in animal suffering, but not causation. It is entirely plausible that the increase in animal suffering over the last 200 years has been the product of factors that have little to do with animal advocacy. The most obvious cause is the emergence of new technologies that have made it incredibly easy and profitable to produce food in a way that mistreats animals.<sup>76</sup> In other words, the increased animal suffering may be a product of the emergence of the modern factory farm. Importantly, this is a development that emerged independently of any welfare activism, for farmers may have likely adopted these modern practices in the interests of efficiency. Whether this history is more plausible than the one offered by Francione remains to be seen. It is clear, however, that Francione's history does not amount to empirical proof about the failure of animal welfare.

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72. Francione, *supra* note 8.

73. *Id.*

74. *Id.*

75. Gary Francione, *The Abolitionist Approach and Farm Sanctuary Discuss "Happy Meat," Abolition, and Welfare Reform*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (Dec. 17, 2012), <http://www.abolitionistapproach.com/the-abolitionist-approach-and-farm-sanctuary-discuss-happy-meat-abolition-and-welfare-reform/#.V6ERUM6cFdg>.

76. Because of the rise of large-scale industrial agriculture and factory farming, meat production has tripled over the last forty years. See generally *Global Meat Production and Consumption Continue to Rise*, WORLDWATCH INSTITUTE (Oct. 11, 2011), <http://www.worldwatch.org/global-meat-production-and-consumption-continue-rise-1>.

In any case, even if we assume that welfarists, rather than abolitionists, have the burden of proof regarding their claims, the KSU study may very well meet the welfarist burden of proof. Therefore, the burden is still on abolitionists to show that animal advocacy—at least the kind of animal advocacy that was the basis for that study—does not reduce animal suffering now, or that it reduces animal suffering now but increases animal suffering down the road. This burden shifting occurs even if the study is flawed. The findings lend support to welfarist claims.<sup>77</sup> In response, abolitionists should submit countervailing empirical studies, not additional unsupported rhetoric.

B. CONTRADICTIONS IN THE ABOLITIONIST ARGUMENTS AGAINST  
ANIMAL WELFARE LAWS

Abolitionists believe that we should oppose animal welfare laws because they perpetuate the property status of nonhuman animals.<sup>78</sup> According to this view, legislation banning conventional battery cages should be opposed because such laws do nothing to change the status of caged animals.<sup>79</sup> After enactment of these statutes, the animals at issue remain commodities, just as they were before. This position is based on the deontological principle that it is categorically wrong to treat nonhuman animals as resources for human consumption. Deontological arguments cannot be defeated by pointing out that bad consequences will ensue from following the deontological rule. Therefore, insofar as these statutes continue to treat nonhuman animals as commodities, no amount of evidence tending to prove that animal suffering will decrease if these laws are enacted will suffice to defeat the deontological argument that it is categorically wrong to treat animals as property.

In contrast, the abolitionist argument—that we should oppose animal welfare legislation because it will probably end up increasing animal suffering in the future—is not based on the deontological principle that it is wrong to treat animals as resources. Instead, it is premised on a prediction that animal welfare legislation will end up increasing the suffering of animals rather than decreasing it,<sup>80</sup> as proponents of the legislation argue. That prediction may very well be wrong. This begs the question regarding why abolitionists decided to put forth a thesis that could be proved wrong when they can just rely on deontological arguments that cannot be falsified empirically. Unlike arguments based on the deontological principle that commands that animals not be treated as property, this argument for opposing animal welfare laws could be defeated by showing that such laws do, in fact, alleviate animal suffering in a meaningful way. It is

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77. Francione, *supra* note 53.

78. Wrenn, *supra* note 1.

79. Colb, *supra* note 54.

80. *Id.*

somewhat puzzling that abolitionists feel compelled to oppose animal welfare legislation by making the empirical claim that these laws are not likely to decrease animal suffering in the long run. Given the philosophical underpinnings of the movement, abolitionists could very well be content to oppose animal welfare legislation solely by pointing out that they run afoul of the abolitionist principle that nonhuman animals should not be commoditized. It is unclear what exactly abolitionists gain by making the additional—and controversial—claim that these laws do not significantly lessen animal suffering.

An analogy to the American anti-slavery abolitionist movement illustrates why it is somewhat puzzling for the animal ethics abolitionist to make an empirical argument against animal welfare laws. The standard claim of American anti-slavery abolitionists was that slavery was categorically wrong because it treated black persons as commodities. Doing so violated their human dignity and equality.<sup>81</sup> Abolitionists could find no morally relevant reason why the lives of white persons were more valuable than the lives of black persons. Therefore, morality required treating black and white persons equally. This, in turn, entailed abolishing the property status of black slaves.<sup>82</sup> Given that this argument appeals to the deontological principles of equality and basic dignity, abolitionists would oppose any law purporting to make slaves more happy on the basis of deontological principle rather than on consequentialist grounds. Any statute designed to increase the happiness of slaves would coherently be objected to by anti-slavery abolitionists because it presupposes exactly what they found morally abhorrent—the property status of blacks.<sup>83</sup> It would be quite puzzling for anti-slavery abolitionists to oppose laws designed to make slave lives happier by pointing out that such statutes would not really make slaves happier. The success of the anti-slavery abolitionist position would not be measured by whether its preferred outcome (freedom of slaves) reduced suffering. Instead, it would be measured by whether the preferred outcome restored the equality of blacks and whites. What it ultimately cared about, in sum, was status, not suffering.<sup>84</sup> This view is expressed quite forcefully in an 1839 abolitionist text entitled *Anti-Slavery Principles and Proceedings*:

The opposition of the abolitionists to slavery does not rest on the supposition that the slaves are not kindly treated, or that they are not happy. In many instances they undoubtedly experience all the kindness that is compatible with the unnatural condition in which they are placed by that act of fundamental unkindness, which dooms them from their birth to a state of bondage, “the continuance of which,” as William Pinkney said, “is as shameful as its origin.”

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81. Am. Anti-Slavery Soc’y, *Anti-Slavery Principles & Proceedings*, 25 THE CHRISTIAN EXAMINER & GEN. REV. 228, 234 (1839).

82. *Id.*

83. *Id.*

84. *Id.*

As for the alleged happiness of the slaves, the advertisements of runaway servants, blacksmiths, carpenters, cooks, &c. [sic], which crowd every Southern newspaper, might excite some doubts with regard to the fact. But if it be true indeed, it is so much the worse. For we hold with Edmund Burke, that “nothing makes a happy slave but a degraded man. In proportion as the mind grows callous to its degradation, and all sense of manly pride is lost, the slave feels comfort.” Abolitionists contend for the abolition of slavery, simply because it is absolutely wrong and morally impossible for a man to hold property in his fellow-man.<sup>85</sup>

This does not mean, of course, that anti-slavery abolitionists were indifferent to the suffering of slaves. Most believed that abolition would likely decrease suffering. Their abolitionist position, however, did not depend on whether freeing slaves actually ended up decreasing their suffering. Diminished suffering would be a salutary side effect of abolition, but abolition was an end in itself, not merely a means to the end of relieving suffering.<sup>86</sup>

Given the parallels between the anti-slavery abolitionist movement and the animal rights abolitionist movement, one would think that both abolitionists would adopt similar positions regarding the enactment of laws that are designed to reduce suffering while continuing to presuppose the property status that they are objecting to. In other words, it would seem sensible for the animal rights abolitionist to both oppose laws designed to reduce animal suffering without changing their property status *and* be mostly indifferent to whether such laws reduce animal suffering or not. Nevertheless, the animal ethics abolitionist—unlike the anti-slavery abolitionist—seems to care profoundly about whether laws designed to reduce suffering of the being they are trying to liberate actually do reduce suffering. This calls for an explanation. Why does the animal ethics abolitionist seemingly care so much about whether animal welfare laws actually do reduce suffering, when—like the anti-slavery abolitionist—she could simply point out that whether such statutes reduce suffering is entirely beside the point, since the ultimate objective of the movement is to abolish the property status of animals rather than reducing the suffering of the creatures?

The answer to this question is, I think, that abolitionists know—although they are not willing to publicly admit—that most people would likely perceive the basic deontological abolitionist claim as eccentric. The claim that owning animals is morally wrong simply fails to resonate with most people and, therefore, fails to mobilize them into taking action to protect animals.

It is not difficult to see why most people would fail to empathize with the claim that it is categorically wrong to own an animal. According to the latest statistical information, close to sixty-five percent of Americans own a pet dog or

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85. *Id.*

86. *Id.*

cat.<sup>87</sup> Most of these people care deeply about the pets they own. A considerable number of dog and cat owners love their pets so much that they consider them part of the family. Given the amount of interest that Americans show in their pets, the pet industry has blossomed into one of the country's most profitable industries. Specifically, the pet industry now ranks as the seventh largest retail industry in the United States.<sup>88</sup> In a recent survey, one hundred percent of pet owners reported giving their pets presents for Christmas or Hanukkah.<sup>89</sup> About ninety-four percent consider their pets to possess human-like personality traits.<sup>90</sup> A similar number reported they would risk their lives for their pet.<sup>91</sup> Close to two-thirds of those surveyed reported taking their pets with them on vacation, singing or dancing for a pet, and celebrating a pet's birthday.<sup>92</sup> Close to half of respondents stated they take time off from work to spend time with a sick pet.<sup>93</sup> A similar number of people reported that they prepare special meals for their pet.<sup>94</sup> Finally, about forty percent of those surveyed asserted that they would select a dog over a human as their sole companion on a deserted island.<sup>95</sup>

Telling this cohort of people that it is morally objectionable to own a pet dog or cat because it violates the deontological imperative that animals should not be treated as property is not likely to go over well. From a strategic perspective, it is probably ill-advised, given that this group of people accounts for more than half of America's population. Yet this is precisely what the fully committed abolitionist is required to do. In fact, Gary Francione has pointed out that pet ownership is incompatible with abolitionism and that a true abolitionist has to be committed to allowing domesticated animals—including dogs and cats—to go extinct:

As a practical matter, there is simply no way to have an institution of “pet” ownership that is consistent with a sound theory of animal rights. “Pets” are property and, as such, their valuation will ultimately be a matter of what their “owners” decide . . . . [I]f there were two dogs left in the universe and it were up to us as to whether they were allowed to breed . . . even if we could guarantee that all dogs would have [loving] homes . . . we would not hesitate for a second to bring the whole institution of “pet” ownership to an end.<sup>96</sup>

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87. *Pet Industry Market Size & Ownership Statistics*, AM. PET PROD. ASS'N (2015–2016), [http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp).

88. *The Pet Industry Services Today*, ZOOM ROOM, <https://www.zoomroomonline.com/the-pet-services-industry-today/> (last visited Feb. 28, 2016).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Gary L. Francione, “*Pets*”: *The Inherent Problems of Domestication*, ANIMAL RIGHTS: THE ABOLITIONIST APPROACH (July 31, 2012), <http://www.abolitionistapproach.com/pets-the-inherent-problems-of-domestication/#.Vr-egZMrLV0>.

This kind of rhetoric is unlikely to stir broad swaths of the population into coalescing around the abolitionist agenda. In fact, it is likely to do the opposite. This is likely to be the case with pet owners. If this is the case, the abolitionist will likely need to downplay the classic abolitionist argument against the property status of animals if she is to have any appreciable success in advancing her agenda.

This is where the consequentialist argument against animal welfare law fits with the abolitionist agenda. Although abolitionists would rather frame their opposition to animal welfare laws solely in terms of the wrongness of laws that continue to presuppose the property status of animals, pragmatic considerations give them reasons to supplement this claim with a consequentialist argument focusing on whether these laws actually decrease animal suffering. While the sixty-five percent of Americans who own pets are likely not going to be swayed by the claim that animal welfare laws should be opposed because they perpetuate animal ownership, they are considerably more likely to oppose such statutes by claims that their enactment would serve to increase animal suffering. In sum, the overwhelming majority of people are inclined to pay attention to abolitionists if they frame their thesis in terms of reducing animal suffering instead of framing it as abolishing the property status of animals.

An alternative explanation of why animal ethics abolitionists make use of consequentialist modes of argumentation is that—unlike the anti-slavery abolitionists—animal ethics abolitionists have little reason to think their preferred outcome is likely to come to fruition in the foreseeable future. Anti-slavery abolitionists calling for the abolishment of the property status of blacks were doing so with the reasonable belief that abolition could be achieved in the not so distant future, perhaps even in their lifetimes.<sup>97</sup> In contrast, it is doubtful animal rights abolitionists believe abolition of the property status of animals will happen in the near future, let alone in their lifetimes. If this is the case, animal rights abolitionists are likely to feel more compelled than anti-slavery abolitionists to address the question of whether suffering of beings they are trying to liberate can be reduced in the near future.

The following thought experiment illustrates why it is difficult for animal rights abolitionists to solely advocate for abolition of the property status of animals without also addressing the suffering of animals prior to abolition. Assume that Proposition X significantly reduces the suffering of nine billion chickens per year. The chickens will, nevertheless, still be killed for eventual human consumption.<sup>98</sup> Assume also that Proposition X significantly

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97. That abolition could be achieved in the not so distant future was particularly obvious because slavery was abolished in northern states starting in Delaware in 1787. See Douglas Harper, *Slavery in Delaware*, SLAVERY IN THE NORTH (2003), <http://slavenorth.com/delaware.htm>. Thus, black abolitionists were keenly aware that abolition could be achieved.

98. The number was not picked randomly. Approximately nine billion chickens are slaughtered for food in

reduces suffering according to whatever standards count as significant for abolitionists.

Would abolitionists oppose Proposition X? Unfortunately, it is unclear whether abolitionists would support or oppose a statute like this one. The abolitionist commitment to the deontological principle that it is morally abhorrent to treat animals as property would lead to opposing this proposition even if animal suffering is considerably reduced by its enactment. This basic abolitionist principle compels opposing the hypothetical statute because, although it reduces suffering, it does nothing to change the property status of animals. On the other hand, abolitionists often point out that they oppose animal welfare legislation not only because such laws continue to presuppose the property status of animals, but also because their enactment is not likely to significantly reduce animal suffering.<sup>99</sup> Since it is stipulated that Proposition X *will* significantly reduce animal suffering, abolitionists cannot oppose this hypothetical regulation by arguing that it will not decrease animal suffering.

Confronted with this hypothetical law, abolitionists face a dilemmatic choice. If they believe that the interest in upholding the basic deontological principle that proscribes treating animals as property outweighs the interest in reducing the suffering of animals, they must bite the bullet and oppose the hypothetical legislation. If, on the other hand, they believe that the interest in reducing animal suffering overrides the interest in not commoditizing animals, abolitionists must support the legislation. Both choices are problematic for abolitionists. Choosing to oppose the legislation although its enactment would reduce animal suffering would reveal that abolitionists really care about status and not suffering. In contrast, choosing to support Proposition X would show that abolitionists are not fully committed to the deontological principle that forbids treating animals as property. Either way, abolitionists are forced to considerably revise their public discourse regarding animal welfare legislation in particular and abolitionism in general.

From a strategic perspective, abolitionists should probably support a statute such as Proposition X. The general public will likely be quite puzzled if abolitionists adopt a position that would deliberately prolong animal suffering until abolition is achieved. This is especially the case when the prospects of animal abolition taking place in the not too distant future are quite slim. Therefore, abolitionists would surely gain strategic purchase by shifting their discourse from abolition of property status to diminution of animal suffering and supporting Proposition X. But this strategic advantage is gained by downplaying the essential deontological claim underlying abolitionist approaches to animal ethics.

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the United States every year. See Lorraine Murray, *Factory-Farmed Chickens: Their Difficult Lives and Deaths*, ENCYCLOPEDIA BRITANNICA: ADVOCACY FOR ANIMALS (May 14, 2007), <http://advocacy.britannica.com/blog/advocacy/2007/05/the-difficult-lives-and-deaths-of-factory-farmed-chickens/>.

99. Colb, *supra* note 54.

### III. ABOLITIONIST AVOIDANCE STRATEGIES

To avoid facing this dilemmatic choice, abolitionists may simply refuse to engage with the hypothetical. They could do so by claiming the hypothetical is unrealistic because no actual animal welfare law will result in a considerable reduction of animal suffering. A second option would be for abolitionists to claim that even if an animal welfare law reduces animal suffering in the near future, it is likely to increase animal suffering in the distant future because it is probable that such statutes will delay abolition of the property status of animals. Abolitionists could also attempt to sidestep the dilemma by claiming that they advance the consequentialist claim that animal welfare regulation increases suffering in order to engage with welfarists on their own terms. Under this view, the consequentialist claim would not be constitutive of the abolitionist position. As a result, nothing of much import rides on whether the claim turns out to be true. While superficially plausible at first glance, these avoidance techniques cannot withstand careful scrutiny.

#### A. CLAIMS ABOUT FUTURE SUFFERING ARE INHERENTLY UNCERTAIN

Claiming that no actual animal welfare law will significantly reduce animal suffering is simply a conclusory assertion that is at best unfalsifiable and at worst false. Asserting that animal welfare laws will likely increase future animal suffering by delaying abolition is similarly conclusory and either false or falsifiable. This claim also presupposes that abolition of the property status of animals will be achieved, which is a dubious assumption.<sup>100</sup> Finally, even if the assumption that animal abolition will be realized is credited, there is little reason to believe that it is true—as abolitionists routinely argue—that favoring animal welfare statutes that presently reduce animal suffering will end up producing a net increase in suffering in the future because these laws delay abolition.<sup>101</sup>

One problem with arguing that animal welfare laws will end up increasing future animal suffering is that the future is uncertain. For one, humans may be extinct in the distant future. As John Maynard Keynes famously said, “in the long run we are all dead.”<sup>102</sup> If this were the case, we should reduce the suffering of animals in the present, for there may not be a future. There are also new technologies being developed that may have a considerable impact on how much animals suffer in the future. For example, we may eventually devise ways of creating real meat without harming a real animal.<sup>103</sup> While this may sound like

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100. The assumption is even more dubious in light of the prevalence of pet ownership in America. *See* AM. PET PROD. ASS'N, *supra* note 87.

101. *See supra* Part II.A.

102. JOHN MAYNARD KEYNES, A TRACT ON MONETARY REFORM 80 (1st ed. 1923, reprinted 1924).

103. This may be done by painlessly harvesting cells from living animals. The result is so-called “cultured meat.” Cultured meat has already been produced, albeit in small quantities. *See, e.g., What is Cultured Beef?*, MAASTRICHT UNIVERSITY, <https://culturedbeef.org/what-cultured-meat/> (last visited Aug. 22, 2016).

science fiction, a group of scientists was recently able to create the first lab grown beef burger.<sup>104</sup> In August 2013, Professor Mark Post and his group of scientists at Maastricht University in the Netherlands unveiled a burger that was created from stem cells taken from a cow that were subsequently grown into strips of muscle and eventually pulled together to create a burger patty.<sup>105</sup> The burger was then cooked by a famous English chef and presented to a food critic for a tasting. After consuming the lab-grown burger, the critic remarked that “[t]here is really a bite to it, there is quite some flavour with the browning . . . it’s close to meat, it’s not that juicy, but the consistency is perfect.”<sup>106</sup> The critic concluded his review by asserting that “this is meat to me.”<sup>107</sup> As it turns out, cultured meat may not only one day prevent the slaughtering of animals for meat consumption, but it may also prove to have considerably less environmental impact than producing meat from real animals in farms and factories. A study published in 2011 concluded that, while there are many uncertainties inherent in the analysis, “the overall environmental impacts of cultured meat production are substantially lower than those of conventionally produced meat.”<sup>108</sup>

Given the potential environmental and ethical advantages of cultured meat over farmed meat, investors are paying increasing attention to the “test tube meat” phenomenon. The interest is such that on February 4, 2016, a startup company called Memphis Meats made its debut at a venture capital conference in San Francisco.<sup>109</sup> The company is already growing small quantities of real meat and they plan to offer hot dogs, sausages, burgers, and meatballs for sale in less than five years.<sup>110</sup> The CEO of the company boldly stated that they “plan to do to animal agriculture what the car did to the horse and buggy.”<sup>111</sup> He believes that “[c]ultured meat will completely replace the status quo and make raising animals to eat them simply unthinkable.”<sup>112</sup>

It is too early to tell if the cultured meat movement is a passing fad or has considerable staying power. Cultured meat producers will need to overcome several difficult obstacles, including scaling production so the product can be

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104. Pallab Ghosh, *World’s First Lab-Grown Burger is Eaten in London*, BBC NEWS (Aug. 5, 2013), <http://www.bbc.com/news/science-environment-23576143>.

105. *Id.*

106. Melissa Hogenboom, *What does a Stem Cell Burger Taste Like?*, BBC NEWS (Aug. 5, 2013), <http://www.bbc.com/news/science-environment-23529841>.

107. *Id.*

108. Hanna L. Tuomisto & M. Joost Teixeira de Mattos, *Environmental Impacts of Cultured Meat Production*, 45 ENVTL. SCI. & TECH. 6117, 6117 (2011).

109. See Erica Shafer, *Cultured Meat Comes to Memphis*, MEAT+POULTRY (Feb. 1, 2016), [http://www.meatpoultry.com/articles/news\\_home/Business/2016/02/Cultured\\_meat\\_comes\\_to\\_Memphis.aspx?ID=%7BA3012483-3E47-4ADC-94DF-A6453D16CBDC%7D&cck=1](http://www.meatpoultry.com/articles/news_home/Business/2016/02/Cultured_meat_comes_to_Memphis.aspx?ID=%7BA3012483-3E47-4ADC-94DF-A6453D16CBDC%7D&cck=1).

110. Bruce Friedrich, *Clean Meat Company Memphis Meats Profiled in Today’s Wall Street Journal, Makes Global Debut*, THE GOOD FOOD INSTITUTE (Jan. 31, 2016), <http://www.gfi.org/memphis-meats-cultured-meat-company-profiled>.

111. *Id.*

112. *Id.*

priced competitively, and convincing people to choose cultured meat over more “naturally” grown farmed meat.<sup>113</sup> Given this uncertainty, no one can be sure cultured meat will eventually replace what today we call “conventionally” grown meat. For the same reason, we cannot be sure that conventionally grown meat will not be replaced by cultured meat.

What we can be sure of, however, is that animal advocates have to give serious consideration to the impact that cultured meat may have on animal welfare. If cultured meat does end up replacing farmed meat, then the suffering of many—if not most—factory-farmed animals will come to an end. While it is difficult to tell the likelihood of this taking place, abolitionists cannot ignore this possible outcome when they assess whether animal welfare laws will generate a net reduction in future animal suffering. The likelier that this outcome becomes, the more difficult it is for the abolitionist to oppose present-day animal welfare reforms, given that whatever negative impact such reforms may have on future animal suffering would be clearly offset by the enormous reduction in suffering that replacing conventionally grown meat with cultured meat would generate.

B. INTERGENERATIONAL JUSTICE AND WHETHER IT IS BETTER FOR FACTORY FARMED ANIMALS TO NOT EXIST

Setting aside the somewhat futuristic scenario of cultured meat, another problem with the abolitionist claim that animal welfare laws will likely end up increasing suffering in the long run is that it is unclear how one should compare the relative value of suffering today with the value of suffering in the future. Opposing animal welfare regulations that reduce present suffering by arguing that these laws will lead to increases in future suffering raises the complex philosophical issue of “intergenerational justice.” Simply stated, the problem of intergenerational justice is determining whether present generations owe any duties to future generations.<sup>114</sup> If present generations do owe a duty to future generations, we must then assess the nature of our obligations to future generations. We must also determine how to balance the duties we owe to present generations with the obligations owed to future generations.<sup>115</sup>

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113. Given the public’s reaction to genetically modified organisms (GMOs), cultured meat producers have a tall hill to climb if they want to convince people to shift from naturally produced meat to cultured meat. For a discussion of public opposition to GMOs, see Stefaan Blancke, *Why People Oppose GMOs Even Though Science Says they are Safe*, SCIENTIFIC AMERICAN (Aug. 18, 2015), <http://www.scientificamerican.com/article/why-people-oppose-gmos-even-though-science-says-they-are-safe/>.

114. In more technical terms, intergenerational justice deals with “the equitable distribution of benefits and burdens across different generations.” Edward A. Page, *Intergenerational Justice of What: Welfare, Resources or Capabilities?*, 16 ENVTL. POL. 453, 453 (2007).

115. *Id.*

One of the biggest challenges in intergenerational justice is assessing whether it is morally wrong to bring a flawed being into existence.<sup>116</sup> In more concrete terms, the problem is whether it is best for a flawed being to exist than not exist. Abolitionists assume it is best that farm animals not exist at all. The lives of these animals are not worth living because they are full of suffering, pain, and even torture.<sup>117</sup> The validity of this claim presupposes that it is better to not exist than to live a life full of pain. But this is not necessarily true. Some argue that—from the perspective of the animal—it is better for farmed animals to exist—even in the condition in which they live—than for them not to exist.<sup>118</sup> Abolitionists would, of course, take issue with this claim. They would point out that given the suffering that factory farmed animals have to endure, it is better for these animals that they not exist than to live in the abhorrent circumstances in which they live.<sup>119</sup>

I happen to sympathize with the claim that some lives are not worth living and that factory-farmed animals are better off never having existed. Nevertheless, I believe—as I assume many do—that the lives of animals raised in non-factory farms *are* worth living even if the animal will end up being slaughtered for food. These animals by and large lead relatively normal lives.<sup>120</sup> It is unclear why it is better that these creatures not exist than for them to exist in these conditions. While the same cannot be said of most factory farmed animals today, it could be said of factory farmed animals in the future if animal welfare regulations are adopted that significantly reduce the suffering of factory farmed animals.

If this were the case, it is difficult to make sense of the abolitionist claim that animal welfare laws that reduce suffering today should be opposed because they would produce a net increase in future suffering. The claim presupposes that the increase in future suffering is due to the “soothe the conscience” effect of animal welfare regulation, which then leads to an increase in the amount of factory-farmed animals.<sup>121</sup> But why is it wrong to increase the number of factory-farmed animals when the living conditions in the factory farm of the future could be considerably better than the living conditions of present-day factory farms, precisely because of the effect of increased animal welfare regulation? It could be plausibly argued that—assuming increasingly stringent animal welfare regulation—the lives of future generations of factory farmed animals, unlike the lives

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116. See, e.g., John Harris, *The Wrong of Wrongful Life*, 17 J. L. & Soc’y 90 (1990).

117. See, e.g., Henry S. Salt, *The Logic of the Larder*, in THE HUMANITIES OF DIET: SOME REASONINGS AND RHYMINGS (The Vegetarian Soc’y 1914), <http://www.abolitionist.com/resource/logic-of-the-larder.html>.

118. See Robin Hanson, *Why Meat Is Moral, and Veggies Are Immoral*, ROBIN HANSON’S HOME PAGE (July 10, 2002), <http://mason.gmu.edu/rhanson/meat.html>.

119. Salt, *supra* note 117.

120. For a comparison of the lives of family farmed and industrially farmed animals, see *Industrial vs. Family Farms Comparison*, BEYOND FACTORY FARMING, <http://www.beyondfactoryfarming.org/get-informed/industrial-vs-family-farms-comparison> (last visited Sept. 6, 2016).

121. See Colb, *supra* note 54.

of present day factory farmed animals, will be worth living. If the lives of future factory farmed animals are likely going to be worth living, then objecting to animal welfare laws arguing that such statutes will likely increase future consumption of factory farmed animals loses most of its bite. Abolitionists are, of course, still free to object to these statutes on deontological grounds, but objecting to them on the basis that they are likely to increase future suffering is called into question by the foregoing analysis of intergenerational justice.

### C. NOT CARING ABOUT SUFFERING IS UNREASONABLE

A way for abolitionists to sidestep the “abolitionist’s dilemma” is to deny that the so-called consequentialist claim is essential to the abolitionist program. They could allege that they claim animal welfare laws should be opposed because they will end up increasing animal suffering as a way of engaging with welfarists on their own terms. Since the core abolitionist claim that animal welfare regulation should be opposed because it continues to presuppose the property status of animals is unlikely to convince welfarists, abolitionists may find it strategically beneficial to claim that animal welfare laws fail even on suffering-reducing welfarist grounds. Thus framed, abolitionists could argue that the claim that animal welfare laws should be opposed because they do not meaningfully reduce animal suffering is not essential to the abolitionist program. Once the claim is not viewed as essential to abolitionism, proving the falsity of the claim would not threaten the conceptual program of abolitionism. At most, it would undermine the abolitionist attempt to defeat welfarists on their own terms, but it would do little to undermine abolitionism itself.

This attempt to sidestep the abolitionist dilemma is problematic for two reasons. First, it is unclear if abolitionists can prominently feature suffering-reducing arguments in their writings while simultaneously minimizing the import of these arguments. Either the suffering-reducing argument is central to the abolitionist program or it is not. If it is essential to their program, then it is in tension with the core abolitionist claim that any measure that presupposes the property status of animals should be opposed regardless of consequentialist arguments to the contrary. If, on the other hand, suffering-reducing arguments are not essential to the abolitionist program because they are merely part of a strategy to engage with welfarists on their own terms, then the prominence with which these arguments are featured in abolitionist writings is puzzling. Why expend so much effort and resources arguing about whether animal welfare regulation meaningfully reduces animal suffering when this claim is of little consequence to the abolitionist program? This once again highlights the abolitionist’s dilemma. The most plausible explanations for why abolitionists spend so much time making suffering-reducing arguments are either that these arguments are an essential component of the abolitionist program or that abolitionists must make these kinds of arguments to remain politically relevant. Abolitionists cannot

escape the dilemma by pointing out that they care about suffering-reducing arguments solely as a way to prove welfarists wrong. Even if this claim is believed, the political palatability of the abolitionist program depends on whether they can, in fact, prove that welfarists are wrong. If welfarist regulations actually succeed in meaningfully reducing animal suffering, then abolitionists would only have two options. They could embrace animal welfare regulations, in which case their position would not be meaningfully different from welfarism, or they could oppose animal welfare regulations that reduce animal suffering solely because they continue to commoditize animals. The former position risks collapsing abolitionism into welfarism. The latter position risks turning abolitionism into a politically irrelevant program. The dilemma persists.

Second, an abolitionist program that cares about suffering-reducing claims for purely strategic reasons is normatively unattractive, if not downright unreasonable. Setting aside the desirability of abolishing the property status of animals, an approach to animal ethics that ignores the current suffering of animals is woefully unappealing. Even if the ultimate goal of abolitionism is to end the commoditization of animals, it stands to reason that abolitionists ought to care about how animals are treated between now and abolition. If so, abolitionists have non-strategic reasons to support animal welfare regulation that results in meaningful reduction of animal suffering, even if such regulation continues to presuppose the property status of animals.<sup>122</sup> Failure to do so would reveal that abolitionists prioritize philosophical purity over the actual wellbeing of nonhuman animals; it would demonstrate that abolitionists are willing to sacrifice animal welfare in the present with the hopes of achieving an uncertain and unlikely abolition in the future. It is simply unreasonable for an animal advocate to oppose welfare regulations that significantly improve the wellbeing of animals, even if the statutes do not advance the attainment of abolition.

An analogy further illustrates the point. Some criminal law scholars are “prison abolitionists.”<sup>123</sup> Prison abolitionists believe that state inflicted imprisonment is never justified. As a result, the ultimate goal of prison abolitionists is to abolish imprisonment.<sup>124</sup> In spite of their ultimate objective, it would be sensible for imprisonment abolitionists to support measures that meaningfully reduce the suffering of prison inmates even if such measures do little to abolish imprisonment. It would be unreasonable for imprisonment abolitionists to oppose such measures simply because they fail to advance the abolishment of imprisonment;

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122. Abolitionists could, of course, claim that they do not support animal welfare laws because they are not likely to reduce animal suffering in a meaningful way. For the reasons pointed out in parts II and III, there is no empirical support for this claim. There is, however, empirical support for the claim that animal welfare laws do, in fact, reduce animal suffering.

123. See generally ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003).

124. *Id.*

adopting this stance prioritizes a philosophical goal over the actual suffering of hundreds of thousands of human beings.

For the same reasons, it would be callous for an animal ethics abolitionist to oppose animal cruelty legislation that meaningfully reduces suffering solely because it continues to assume the property status of animals. Therefore, animal ethics abolitionists have no choice but to care in a non-strategic way about animal suffering and, consequently, about the effectiveness (or lack thereof) of animal welfare legislation. Not caring about animal suffering or caring about it only in a strategic way would make the abolitionist position not only politically unpalatable, but also ethically unattractive in a most profound kind of way. As a result, there are good reasons to consider the suffering-reducing argument an essential and non-strategic part of the abolitionist program.

#### CONCLUSION

I have argued that abolitionists cannot profess support or opposition to animal welfare statutes without either calling into question some of their most deeply held views or condemning abolitionism to political irrelevance. More specifically, I have argued that animal rights abolitionism in its current form cannot avoid either collapsing into a form of welfarism or retrenching into a politically unpalatable approach to animal ethics that is indifferent to actual animal suffering because it solely cares about abolishing the property status of animals.

It is best for abolitionism to collapse into a form of welfarism because the alternative of embracing a fully non-consequentialist approach to animal ethics is unappealing. This is because the view that it is a profound moral wrong to own animals regardless of how well the animals are treated is too eccentric to have any significant strategic purchase. Since abolitionism is a political movement, its success is measured by the amount of change it can effect in the world. Moreover, its success will inevitably be measured against the success that so-called welfarist animal advocacy groups have in pushing reforms that benefit animals. While abolitionists seek change by asking individuals to turn to veganism, welfarist groups have been busy pushing legal reforms designed to reduce animal suffering in many states. It is easy to see why welfarists seem to be doing much more to benefit animals than abolitionists. If abolitionism were purely a philosophical position, this would matter little. However, since abolitionism is ultimately a political program, abolitionists must feel compelled to explain to the public in general and to animal advocates in particular why—in spite of how busy welfarists look—welfarist reforms actually do little to benefit animals. Failure to address this issue is not an option for abolitionists, since people who care about animals would have little reason to turn to abolitionism and veganism if welfarist regulations were succeeding in meaningfully reducing animal suffering.

If abolitionists remained faithful to their philosophical commitments, they would simply oppose animal welfare reforms by pointing out that animal welfare

regulation is morally abhorrent because it continues to presuppose the property status of animals. They balk at doing so because the argument that owning animals is morally wrong simply fails to resonate with the vast majority of the population.<sup>125</sup> Therefore, they supplement their deontological claim with the much more palatable claim that welfarist reforms should be opposed because they will end up increasing animal suffering in the long run. In doing so, abolitionists have unwittingly hinged their political program on a consequentialist argument against animal welfare statutes that is subject to being proved or disproved empirically.

While necessary to gain political traction, this strategic move threatens to unravel abolitionism by shifting the locus of animal ethics from the abolitionist worry about the property status of animals to the welfarist concern about the suffering of animals. Ultimately, then, abolitionists are able to retain political relevance only by shying away from their core commitment to a deontological approach to animal ethics premised on the principle that it is morally abhorrent to treat animals as property. The end result is a watered-down version of abolitionism that rises or falls depending on whether they successfully demonstrate that welfarist reforms fail to make animals better off. This version of abolitionism is consequentialist in nature, as its success depends on whether the abolitionist program is better or worse than the classic welfarist program at reducing the suffering of animals. Abolitionism thus collapses into a form of welfarism that—for strategic reasons—cannot avoid putting forth consequentialist arguments in support or opposition to animal welfare regulations.

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125. See AM. PET PROD. ASS'N, *supra* note 87.