

# Against "Humanism":

## Speciesism, Personhood, and Preference

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"Speciesism," wrote Peter Singer in his seminal work *Animal Liberation*, "is a prejudice or attitude of bias toward the interests of one's own species and against those of members of another species."<sup>1</sup> He argues that it is wrong in a way that parallels racism and sexism: All three practices involve discrimination according to a characteristic that is not morally relevant. In an article that has been regularly anthologized with Singer's writings, Bonnie Steinbock objects: "There is . . . an important difference between racism or sexism and 'speciesism.' We do not subject animals to different moral treatment simply because they have fur and feathers, but because they are in fact different from human beings in ways that could be morally relevant."<sup>2</sup> More people share Steinbock's view than Singer's: Speciesism is not taken as seriously as racism or sexism. Consider the following from a recent book entitled *Social Ethics: A Student's Guide*: "Students influenced by personist philosophy teachers do not . . . consider the possibility that [speciesism] is a good 'ism' like (perhaps) egalitarianism and patriotism."<sup>3</sup> The book's author, Cambridge philosopher Jenny Teichmann, rejects what she calls "personism" (citing Singer as a paradigm "personist") and endorses what she calls "humanism" instead. Although Teichmann implies herself to be in the minority in the philosophical community, I think it safe to say that for many it is viewed as trivializing the wrong of racism to compare speciesism with it. Certainly Teichmann's humanism is shared by the vast majority of nonphilosophers.

In this paper, I shall argue that humanism is an indefensible moral position, and that speciesism, once properly analyzed, is indeed directly analogous to racism and sexism. The main reason why speciesism is not held to be as serious a wrong as racism or sexism, is, I think, because we now automatically assume that women and nonwhites are moral persons, on an equal footing with white males (in the sense of being entitled to the same basic set of rights and liberties) but assume that nonhumans are *not* persons in this sense. That is, the central disagreement between humanists and their critics is over the membership criteria for personhood. My paper reflects this concern, as I focus on issues of criteria of personhood to the exclusion of other issues that concern chauvinisms.

A simplifying assumption that I operate under is that personhood is an all-or-nothing concept: that is, that either one has the basic set of rights accorded all persons or one does not. While this view is widely shared, it can certainly be challenged: One might argue that there are a range of categories

of personhood, just as there are categories of, for example, British citizenship. However, if this is the challenge, then there are still boundaries between each category and the one above it, and boundary issues like those discussed here are relevant.<sup>4</sup>

Given, then, that I interpret both humanism and speciesism to be fundamentally concerned with personhood, I will compare speciesism with comparable racism or sexism only *on that issue*.<sup>5</sup> With that in mind, I make my case as follows. First, I contend that there is not just one humanism, but a range, of which I offer a taxonomy, from most extreme to most (apparently) reasonable. Presupposed by each form are a variety of key assumptions which, when challenged, cannot be defended. Furthermore, associated with each form of humanism is a variant of speciesism (primary, secondary, or tertiary) which is as morally (or factually) groundless as analogous claims about race or sex. I therefore conclude not only that is speciesism not a "good 'ism'," but that once properly understood it should be held with the revulsion that racist or sexist assumptions applied to the same issues would be.

### Necessary Humanism and Primary Speciesism

First, a crude definition of humanism:

H: All and only (innocent<sup>6</sup>) humans are moral persons.

Thus defined, humanism is the claim that membership in the species *Homo sapiens* is not only relevant, but decisive, to the issue of personhood. If Teichmann is representative, humanists would prefer to avoid the use of the term "person" in describing their view, taking the use of that term to be too much of a concession to the personist, and say instead simply "to be human is to have rights."<sup>7</sup> However, such terminology, besides being speciesist, leaves the door open to equivocation. One should recognize that "human" as a biological category (species) and "human" as a moral category are conceptually distinct. An archeologist examining a fossilized bone can say of it "it's human" without thereby implying that the bone has independent moral standing. Thus, to avoid confusion, I shall follow now-standard practice in reserving the term "person" for the moral category.<sup>8</sup> That said, I shall not attempt to analyze the concept of moral personhood in any depth in this paper. Suffice to say that persons are beings to whom rights can be ascribed or who have moral standing independent from the interests of others. Normal adult humans are incontrovertibly persons; hair and toenail clippings, however stuffed with human DNA, indubitably are not. Now on to humanism.

There are two possible versions of humanism as I have crudely defined it. The stronger of the two, *necessary* humanism, is as follows:

NH: All and only (innocent) biological humans are the only beings that could *possibly* be moral persons.

This view holds that the biological category "human" is both a necessary and sufficient condition of moral personhood: it is impossible to be a person

without having human DNA. Necessary humanism thus entails clear-cut speciesism. Because I will argue that there is a continuum of speciesisms, some less blatant than others, let us call this variant *primary* speciesism, defined as follows:

S<sub>1</sub>: The personhood of a being should hinge (wholly or in part) on its membership in a particular species or group of species.

There is nothing intrinsically contradictory about necessary humanism, but it is morally arbitrary, and I do not believe that the majority of people who might endorse it initially are truly committed to it. Consider E.T., who is rational, sentient, and highly intelligent, but also patently not human. Other things being equal, it is wrong to kill him.<sup>9</sup> Of course, most people accept that it is wrong to kill rare plants or a neighbor's dog. However, my intuition, and I have found it to be shared by the overwhelming majority of students I have canvassed, is that a stronger claim is true: It would be *as* wrong to kill E.T. as it is to kill normal innocent adult humans. It would be *murder*. Conceding this is to concede that E.T. possesses the moral standing of a *person*, despite being evidently nonhuman, and that therefore necessary humanism must be rejected. Furthermore, primary speciesism is undermined to the extent that no difference in personhood obtains between E.T. and an average human solely on account of their differing species.

The value of using the science fiction case of E.T. is that he represents a being equal to (or surpassing) humans in factors that we might deem morally relevant, so species is isolated as a factor. Viewed in this light, I maintain that primary speciesism is evidently wrong for the same reason that analogous claims about race and sex (or the usual trivial alternatives, eye color et al.) are wrong: Species *in itself* cannot be a determining factor in establishing your status as a person; it is not *morally decisive*<sup>10</sup> to the issue of personhood.

### Terrestrial Humanism and Secondary Speciesism

There is a second version of humanism that can perhaps accommodate our intuitions about the E.T. example. Call this view *terrestrial* humanism:

TH: All and only (innocent) biological humans are the only beings that in fact, in the world as we know it, are moral persons.

Philosophers often exasperate nonphilosophers by giving outlandish examples to prove points about necessity and sufficiency, and my E.T. example is just the sort to set eyes rolling. Terrestrial humanism, therefore, might be seen to be a sensible acknowledgment of things as we know them to be in the *real* world away from which philosophers are often taken to drift all too easily. However, terrestrial humanism, as stated, is unsatisfactorily arbitrary. *Why* is it the case that *all* humans are persons while *no* nonhumans are? What is it *about* the biological category "human" that makes it coextend (as far as we know) so neatly with the nonbiological, moral category of personhood? This

question must be answered, lest the terrestrial humanist also be guilty of primary speciesism.

A first pass at answering this question is to pick out the features of normal adult humans that clearly seem to be relevant to moral personhood and that also seem to set them apart as unique in the animal kingdom as we know it. So, for example, a certain degree of intelligence, a capacity for moral autonomy, an ability to reciprocate, are all features that make normal adult humans capable of being moral *agents*, and as such, these capacities seem obviously relevant to the moral category of persons.<sup>11</sup> The only sense in which such a view could be said to be speciesist is in the following sense:

S<sub>2</sub>: Species can be a helpful guide to personhood because the capacities necessary to personhood are, as a matter of contingent fact, possessed uniquely by certain species.

This *secondary* speciesism is more easily defended as unobjectionable than its primary variant. Thus one could say that it just so happens that (as far as we know) humans are the only animals capable of moral action by dint of a sufficient level of intelligence, self-motivated behavior, and rationality, and if we grant personhood only to beings with those features, we will end up granting personhood only to humans over all other terrestrial species. On this view "speciesism" is no more wrong than dismissing men out of hand as potential surrogate mothers, or only interviewing black men to portray Malcolm X in a film; it is discrimination, but not arbitrary or unjust discrimination.

However, if capacities such as moral autonomy are necessary conditions for personhood, then terrestrial humanism has not been defended; rather, it has been refuted. This is so because terrestrial humanism claims that *all* humans are persons, but clearly there are many humans who lack most or all of the features just mentioned. The most clear-cut examples are severely retarded humans and very young children.<sup>12</sup> Thus secondary speciesism, if used to justify granting personhood to *all* humans and no nonhumans, rests on a false generalization: It is *not* the case that the capacity of moral agency is a necessary feature of all humans. Once we acknowledge this fact, where does it leave us?

### Agentism

One option, which I will call *agentism*, is to bite the bullet and deny that the severely retarded and very young humans are persons. This option rests on the assumption of the necessity of agency for personhood:

NAP: One is not entitled to the kind of moral consideration that persons receive without the capacity for moral agency.

NAP need not entail a denial that nonhuman animals, human babies, and the severely retarded deserve *some* measure of consideration (because of their sentience, say), but it does require denying that they are *persons*.<sup>13</sup> Assuming that personhood is necessary for the possession of rights, we conclude that

babies and the retarded do not have rights and could conceivably, were the benefits strong enough, be used for experimentation, in the same way that animals are now. (Indeed, there would be distinct benefits to testing drugs on human nonpersons rather than animals. Thalidomide, for example, had no adverse effects when tested on nonhuman animals, but disastrous effects on the fetuses of pregnant women.)

However, the problem with hard-line agentism is that the majority of people find the idea of experimentation on babies or the handicapped appalling, and the notion that such a practice involves no violation of rights ridiculous. Admittedly, someone arguing, as I am, that most people are wrong to be humanists cannot consistently draw on majority opinion as support only when it is on his side. But it is worth noting that the majority support for humanism cannot be explained by widely held agentism. A defender of agentism, therefore, carries the burden of proof, and on the face of it, it is by no means obvious that agency is necessary for personhood. Although it begs the question to cite babies and young children as examples, the idea that there could be beings deserving of the respect accorded persons who cannot themselves act in moral ways is not unintuitive. After all, rights and duties are two different things, and agency is only clearly necessary to be capable of being accorded the latter.<sup>14</sup>

Let us recap. First I claim that primary speciesism is as untenable as blatant racism or sexism and for exactly analogous reasons (indecisiveness of each feature for moral personhood), and in this I claim the support of the many meat-eating humanists I have found to share the intuition that killing E.T. is murder. Second, I note that most people share the intuition that babies and the severely retarded should be accorded the basic set of rights given all innocent persons. On the face of it, these two factors appear to compel a rejection of agentism and an adoption of a less stringent set of criteria for personhood, perhaps Singer's standard of sentience. The humanist would find this objectionable, however, because it would mean that a wide range of nonhumans would qualify as persons. Is there instead a way to adapt agentism so that it has humanist implications without invoking primary speciesism?

There are two possibilities for such an adaptation, as I see it. On the first, we hold to NAP but argue that there are considerations that require us to treat human nonpersons *as if* they were persons. Call this beneficent agentism. Alternatively, we drop NAP and assume that moral agency is a *sufficient*, but not a *necessary*, condition of personhood, and that there are special circumstances whereby nonagents can acquire that status. The difference between the two approaches is that for the second, nonagent humans *are* persons, while for beneficent agentism, they are not. Let us examine the latter first.

### **Beneficent Agentism and Contingent Attitudinal Humanism**

Beneficent agentism holds to NAP, and therefore to the assumption that human nonagents are not persons, but includes the contention that it is entirely appropriate that we treat them *as if they were*, while failing to do the

same for nonhuman nonagents. If such a position were defensible, then we would have a nonobjectionable humanism. Defending such a position seems to require that we look for moral considerations that justify favoring human nonpersons over nonhuman nonpersons, and in the next section I will examine candidates for such considerations. But first I want to consider the view that no justification is required for treating human nonpersons better than nonhuman nonpersons. On this view, such favoritism is analogous to the favoritism already shown to domestic animals over animals raised as food: *If it is morally allowable to eat all nonhumans (because none is an agent) then there can surely be nothing wrong with granting privileged status to some nonhumans (pets) and being nicer to them than they deserve.* Steinbock appears to take such a view when she writes:

It is certainly not wrong of us to extend special care to members of our own species, motivated by feelings of sympathy, protectiveness, etc. If this is speciesism, it is stripped of its tone of moral condemnation. It is not racist to provide special care to members of your own race; it is racist to fall below your moral obligation to a person because of his or her race.<sup>15</sup>

Let us name the attitude toward babies and the severely retarded entailed in the view I have imputed to Steinbock contingent attitudinal humanism and define it thus:

CAH: There are humans who are not persons, but treating them *as if* they were (while not doing so for comparably intelligent nonhumans) is permissible and requires no justification (because it involves no injustice).

I am suspicious of claims that supererogatory treatment to particular groups alone involves no injustice, especially where the boundaries of the groups extend beyond those one immediately knows and loves. But even for those who do not share this suspicion, CAH, in holding to NAP, carries the implication that, since sparing human nonagents treatment that we inflict on nonhuman nonagents is giving them "special"—supererogatory—care, there is nothing immoral about *ceasing* to spare them in this way.<sup>16</sup> Indeed, if one's reasons for stopping the special care were from egalitarian motives, one might be *praised* for ceasing to provide special care for one's own kind. For example, let us assume that a certain degree of mercy in handing out speeding tickets (where the speeding was unlikely to endanger anyone) is admirable. It would nonetheless be true that a white police officer who showed mercy selectively only to white speeders would be less praiseworthy than one who refused to show mercy at all (thereby denying members of her race "special care").<sup>17</sup> If we apply these implications to our practices involving animals, CAH seems to allow that if we started experimenting on retarded humans tomorrow, we would be doing nothing immoral.<sup>18</sup> To the extent that this is an unpalatable conclusion, we see I think the *prima facie* implausibility of CAH.

A defender of CAH might draw on the supposed infanticidal practices of some Eskimo tribes for support. They might point out that many people are

loath to criticize such practices once it is suggested that the Eskimos lack the resources to care for all and conclude from this that the abhorrence of infanticide in our culture is a luxury, but one that does not demonstrate a wholesale rejection of agentism on the part of the public. There is something to be said for such an approach: When pushed, many people are prepared to rank the value of lives of individuals, placing those in the prime of life above the very young and the very old. However, although I do not have the time to enter into a discussion of the issue here, I believe that the implications of such a ranking system are such as to be unacceptable to those who claim to espouse it. Furthermore, if CAH is a defensible view, then wealthy Eskimos living in New York City would be doing nothing wrong in continuing to practice infanticide, and that is a view that will find far fewer supporters.

Thus the defender of beneficent agentism cannot rely on CAH and instead must provide moral considerations for favoring human nonpersons over nonhumans. Such considerations would mean that it *would* be wrong to cease to favor humans over nonhumans and would outlaw infanticidal practices in nonemergency situations. What sort of reasons would work?

The most obvious reason that applies to babies and young children is that they *will* become capable of moral agency soon, that is, they are *potential* agents. But, as has oft been noted in the literature on abortion, potential persons are still nonpersons in the same way that acorns are not oak trees, and just as potential voters do not have the rights of actual voters, so potential persons should not, merely by dint of their potentiality, be granted the moral status of persons. Thus potentiality is not sufficient for personhood.<sup>19</sup> Furthermore, humanity is not necessary for potentiality: Many primatologists argue that several species of primates already demonstrate moral agency, and assuming that correct training can enhance moral agency (because the lack of it in feral children seems to stunt such faculties), it might well be the case that with extensive training of the right kind, many primates could achieve a level of moral agency comparable to that of humans who qualify as fully fledged agents. Finally, if we agree that the severely retarded deserve person-like respect, then potentiality is not necessary for such treatment, as they lack it.

A justification for favoring humans that would cover the retarded as well is the idea that it would be dangerous to allow use of nonpersons who look like us in case it would lessen our respect or empathy for humans who *are* persons. Thus we have an indirect duty to respect human nonpersons because of the risks posed to human persons of *not* doing so. For such a risk to be serious, one must presuppose a psychological claim about humans that observation or knowledge of use or abuse of some humans will lead to lesser respect for all humans. This assumption seems to underestimate the remarkable elasticity in humans' empathic capacities that has been demonstrated time and time again (recent, particularly bloody examples, include the Balkan and Rwandan conflicts) in cases in which certain groups of humans have shown no compassion for other humans because of their loyalty to a different religion, tribe, or culture, without that lack of compassion apparently affecting their attitudes to their perceived kinsfolk.

Indeed, if we are to use folk-psychological claims, there is a competing one: Solidarity among humans is often strengthened by identifying some other humans as inferior or importantly different, as we have seen in the aforementioned cases and of course in the history of slavery through the ages.

A further psychological tendency that must be recognized if we are to follow this line of thought is the great propensity of humans to anthropomorphize, which, by analogous argument, would seem to caution against abuse of animals. (Indeed, Kant's reason for showing respect for animals was precisely that doing so was a good indicator of respect for humans.) In response to this point it might be objected that huge numbers of people happily eat meat who would be appalled by the slaughter of humans for food. However, I think this is more easily explained by the lack of exposure to the cruelty behind the sanitized end product coupled with a willing acceptance of entrenched cultural practices. Analogies with willing acceptance of slavery again spring easily to mind.

Even ignoring these implications, however, this is a consequentialist consideration, and can therefore be overridden, if the benefits of so doing outweigh the costs. Earlier I noted that there would be great consequential advantages to experimenting on humans, in particular because the safety and effectiveness of drugs could be more easily gauged. This in itself might be sufficient to override the risks posed by deadening of empathy, particularly if, like the majority of testing on animals, such experimentation is kept as secret as possible from the public. With this in mind, I'm sure genetic engineering could produce a steady supply of severely retarded humans, and perhaps it would be possible to breed them so that they were so unattractive that even the experimenters would find them so repellent that they could not identify with them.

I take this appalling suggestion to be a *reductio* of the empathy reason for favoring humans. Therefore, to recap: The two most promising reasons for favoring nonagent humans over nonagent nonhumans on the assumption (NAP) that agency is necessary for personhood were that nonagent humans are potential agents and that nonagent humans evoke feelings of empathy in a way that nonhumans do not. Both reasons, besides failing to be true of all humans, failed to provide adequate insurance for babies and the handicapped against intolerable abuse. Where can the humanist concerned to protect these nonagents then turn? Perhaps NAP is the problem, and instead of assuming that nonagent humans cannot be persons, we should instead broaden the scope of personhood so that it can include nonagents. That is, NAP should be replaced with a *sufficiency* claim, thus:

SAP: If one is a moral agent, one is automatically a person and entitled to the requisite kind of moral consideration.

This claim, unlike NAP, does not rule out the possibility that there may be nonagent persons, including babies and the severely retarded. The challenge then is to provide criteria of personhood for such nonagents. One can divide ways of enlarging the class of persons beyond agents into two main categories.



## Broadening the Scope of Personhood: The Two-Tiered View and Tertiary Speciesism

One strategy is to suggest that there are some criteria besides agency the possession of which by a being would be individually or jointly sufficient to grant personhood.<sup>20</sup> Since taking humanity as a criterion would, of course, be primary speciesist, and using “naturally hairless bipeds” would be a form of secondary speciesism, such criteria of personhood are no help to the humanist who defends the use of mammals like chimpanzees in experimentation but would not permit such experiments on humans. The most obvious criterion of personhood for those disinclined to allow that bacteria or trees are persons, but eager to grant personhood to human babies, is sentience, which is, of course, the criterion of moral standing favored by Peter Singer. I am inclined to think that something like Singer’s criterion is the closest to a morally defensible position, but this is of little comfort to the humanist, allowing as it does all sorts of nonhumans into the fold. Let us therefore turn to the alternative way to expand personhood beyond agents.

Recall that the main problem with beneficent agentism was that person-like treatment of nonagent humans was contingent on the good will of those around them, rather than compelled by their moral status. Perhaps the way to “fix” beneficent agentism is to have a two-tiered notion of personhood. Agents would be viewed as *automatic* or *natural* persons, while *honorary* personhood could be granted to some nonagents by those natural persons. On this two-tiered view, personhood is analogous to citizenship in a country. Just as some people automatically meet criteria for being U.S. citizens (being born within U.S. borders or being born to parents who are U.S. citizens), so some beings are automatically persons because they have the capacity of moral agency. Further, a second group can become citizens by meeting standards approved by those automatic citizens but can count themselves fortunate if they achieve citizenship, because it was not really theirs by automatic right. Thus foreign nationals can obtain U.S. citizenship if automatic U.S. citizens (by establishing standards through democratically controlled immigration agencies) deign to allow them in but cannot justifiably complain if they are excluded, because they do not have an automatic claim to citizenship. So, by analogy, all agents are persons, but, should the agents decide to do so, certain nonagents (like babies and the retarded) can be granted privileged status among other nonagents.

Mary Anne Warren has defended a kind of two-tiered view in writings on abortion,<sup>21</sup> distinguishing between *empirical* personhood (possession of criteria which include the requisites for moral agency) and *moral* personhood (possession of rights). Empirical personhood is sufficient but not necessary for moral personhood: Some sentient beings who lack moral agency (i.e., are not empirical persons) can be granted moral personhood provided doing so does not rob empirical persons of certain rights. Thus, to continue our citizenship analogy, empirical persons are like the U.S.-born citizens, while non-empirical moral persons are like naturalized immigrants. Without further qualification of the permissible reasons for bestowing personhood on nonagents, such a humanist could be either prochoice (as Warren is—she argues

that young children fall into the latter group but fetuses may not)<sup>22</sup> or antiabortion, depending on whether or not human fetuses are allowed into the class of honorary persons, so the view does not stand or fall on the abortion debate.

Clearly such a "personhood by the grace of agents" approach could accommodate humanism, because beings are not automatically persons merely by dint of sentience (i.e., we can keep chimpanzees out of the club), but equally we can choose to allow babies and the severely retarded in, thereby in effect producing a perfect overlap between the class of beings accorded personhood and the class of human beings.

Something close to the foregoing is, I think, the most sophisticated version of humanism, and one that at least attempts to mount a defense of the position without recourse to simple chauvinism. Holders of this view are appalled by racism and sexism and see it as an important task to defend humanism against the charge that it is comparable. They can agree that killing E.T. would be murder (and in this sense are obviously not *strict* humanists) because he is a *natural* person. Finally, in choosing to grant personhood to human non-agents but not to nonhuman nonagents, the natural persons are not guilty of either primary or secondary speciesism because they are not showing preference among beings who are *already* persons, they are choosing among nonpersons which to elevate in status. At worst, they are guilty of *tertiary* speciesism, defined as follows:

S<sub>3</sub>: In granting personhood among current nonpersons, favoring one's own species is permissible.

(Notice that this is weaker than most people would like. I think the average humanist would say that favoring one's own species is *morally required*, but we have not been able to find any moral principle that would justify so strengthening this claim.)

That said, a humanist variant of the two-tiered view of personhood appears plagued by old problems. The major criticism leveled against beneficent agentism has been displaced rather than defeated. While allowing that human nonagents can be fully fledged persons (honorary persons, while achieving personhood by a different route from natural persons, are no less persons once there), the two-tiered view still puts their status as such in the hands of human agents. Thus, should a group of persons decide *not* to grant personhood to, say, orphaned babies and retarded persons with no families, and to use them for experimentation, this would not be violating anyone's rights. Should the status of the severely retarded, for example, really be held to be contingent on the whims of "normal" humans?

A humanist sympathetic to this approach to personhood might retort that positivism about rights has a long and respectable history, and that the status of human nonagents on the two-tiered view is no worse than the status of *any* humans according to positivism, in that rights are merely societal constructs for them. Furthermore, species loyalty is evolutionarily inculcated, so it is extremely improbable that humans *would* resort to such practices. The following feelings, described by Steinbock, would (the

humanist could plausibly claim) be shared by the vast majority of human cultures:

[W]e feel a special obligation to care for the handicapped members of our own species, who cannot survive in this world without such care. Non-human animals manage very well, despite their 'lower intelligence' and lesser capacities. . . . [T]o subject to experimentation those people who depend on us seems even worse than subjecting members of other species to it. In addition, when we consider the severely retarded, we think, 'That could be me'. It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey. . . . We would be *horrified* by the use of the retarded in medical research.<sup>23</sup>

I have to say that I think this quote demonstrates a lack of imagination on Steinbock's part, and just the kind of lack of imagination that prevents humans from empathizing with the suffering of members of different cultures. Moreover, this response highlights the fact that there is not really a conscious decision procedure involved in the bestowal of personhood. Instead the "decision" is already made by customary practice or by human emotional responses. Just as few writers have taken seriously Locke's idea that societies are founded on the consent of the first members (on the model of a club or association), so one should doubt a "social contract" picture of the allotment of personhood to nonagents by agents (and therefore question the legitimacy of any current distribution of personhood that would be unjustified without such an original contract).<sup>24</sup> Steinbock seems content that the status of human nonagents should depend on acts of imagination or on gut feelings, but I do not think this is wise or defensible. If we were to imagine that there really were a group of parties empowered to determine the allotment of personhood to nonagents, along the lines of the parties to Rawls's social contract, I think we would be appalled to find them reasoning on the grounds she uses. Imagine one of the adjudicators saying, "Well, personally I find human children annoying and unappealing, but I'm a great pet lover. I move that my cat Tibbles and all like her be counted an agent, but no human infant." This reasoning would not be deemed acceptable grounds for a decision, I hope. What would Steinbock say to such a person? That she was unnatural in favoring her beloved Tibbles over her "own kind"? Steinbock would have to say that general preferences of humanity (presumably humanist) take preference over her "abnormal" inverse preferences. But besides its being a questionable assumption that there is a general preference (even evolution might allow one group to view another human group as competitor rather than with fellow feeling), we encounter again the arbitrariness of feelings of identification, and we get a hint of the wrong of even tertiary speciesism. To further illustrate, let us imagine one of our adjudicators demonstrating tertiary *racism* and reasoning as follows:

Look, we've got to have some experimental subjects for medicine to make advances, so we can't grant personhood to *all* nonagents, as the losses would

be too great for the agents. So I say that we grant personhood to all white nonagents, but not on all nonwhite nonagents. There can be nothing wrong with such favoritism, because after all, none of them *deserve* personhood, so there can be no objections. However, recognizing feelings of attachment by parents for their children as much as by pet owners for their pets, we will allow human experimentation only on nonwhite *orphan* babies, and have it done in secret, so as not to distress the public.

This example demonstrates, I hope, that even tertiary racism is unacceptable, and thus, because it is exactly analogous, so is tertiary speciesism. For this reason, even were SAP true, and the "grace of agents" a correct way to go about allotting personhood, those agents could not intentionally use speciesist reasoning to do so. Furthermore, by extension, we should deem the fact that our traditional practices condone such a speciesistic division in personhood as condemning those practices, and instead of using them as justification for speciesism, we should set about changing them. So falls the most reasonable attempt to justify humanism.

### Conclusion

In conclusion, I have tried to consider all intelligible versions of humanism, which I have interpreted as a thesis about moral personhood, and have found them all to be unjustifiable. To begin my paper I stated that many people find the comparison of speciesism with racism and sexism to be not only suspect, but an insulting belittling of the wrong of those latter two forms of chauvinism. Teichmann even suggested that speciesism might be a "good 'ism'."<sup>25</sup> However, I hope that the foregoing discussion has shown that this view (when it is not simply knee-jerk bigotry) rests in part on too simplistic an analysis of the "isms" involved. For example, recall Steinbock's claim that "[t]here is . . . an important difference between racism or sexism and 'speciesism.' We do not subject animals to different moral treatment simply because they have fur and feathers, but because they are in fact different from human beings in ways that could be morally relevant." The mistake that Steinbock makes here is in denoting by "racism and sexism" only *primary* racism and sexism, and by "speciesism" only secondary or tertiary speciesism. Were she to compare racism or sexism with speciesism of the comparable level, she could not make this claim. For example, denying E.T. the basic rights accorded normal human adults simply because he is not human would be exactly comparable with denying humans of a different race rights merely on the basis of that difference. Both are instances of what I have called the primary variants of their relevant chauvinisms.

We have instances of both secondary sexism and racism in our recent history. Stephen J. Gould's *The Mismeasure of Man* documents the efforts by white scientists to demonstrate racially sensitive differences in intelligence to justify differential favoring of whites. Similarly, voting was denied women on the grounds that they were considered too "emotional" or "hysterical" to be trusted with such a privilege. While there are considerably better grounds for claiming that humans *in general* have the prerequisites for moral agency that

nonhumans in general lack than in the cases of race or sex discrimination, it is still false to claim that all humans have such features and at best rashly premature to claim that all nonhumans lack them. Furthermore, moral agency is, as I have argued, only obviously relevant to *moral agency* and not to being worthy of the respect of other moral agents. In that respect, the agentism that is behind any attempt to justify a more sophisticated version of humanism than simple primary humanism is itself unjustified.

Finally, while Steinbock is perhaps justified in having tertiary speciesism in mind when she uses the term "speciesism" because so many of the nonhumans we actually encounter are almost certainly nonagents, she is wrong to imply that tertiary speciesism is not immoral. Showing favoritism among human nonagents on the grounds of race or sex is tertiary racism or sexism, and while rarer than primary variants, is nonetheless unjust, and there is no morally relevant difference between these chauvinisms and tertiary speciesism. Thus we can conclude that speciesism *as a range* of claims about personhood is exactly comparable, and no less bigotry, than sexism or racism so understood. In sum: Primary speciesism is simply untenable, and therefore so is necessary humanism. All other variants of humanism try to carve out a middle ground between strict agentism and a criterion of personhood that is loose enough to include many nonhumans.<sup>26</sup> However, there *is* no such middle ground: Either one accepts NAP (despite its apparent arbitrariness) and the conclusion that many humans are not persons, or one rejects NAP and is led to conclude that there are many persons who are not human. I believe that the latter is the more defensible option, and that this conclusion should be recognized in law with the outlawing of a vast number of currently legal uses of animals.<sup>27</sup>

*I would like to thank the many people who have commented on this paper in its various incarnations. A fledgling version was presented to a meeting of the Working Group on Law, Culture and the Humanities, March 12–14, 1999, at Wake Forest University. A second version, which benefited from the comments on the first, was then presented to the Society of Law and Philosophy, APA Central Division, April 2000, where Leslie Francis replied to it. Most recently, an anonymous reviewer for this journal provided a thorough and probing critique. None of the foregoing are to be blamed in any way for strange views that I persist in advocating.*

## Notes

<sup>1</sup>Peter Singer, "All Animals Are Equal," in *Animal Liberation*, 2nd ed. (New York: Random House), 1–24, at 6. Reprinted in *Contemporary Moral Problems*, 5th ed., ed. James E. White (St. Paul, MN: West, 1997), 456–64, at 459.

<sup>2</sup>Bonnie Steinbock, "Speciesism and the Idea of Equality," *Philosophy* 53 (1978): 247.

<sup>3</sup>Jenny Teichmann, *Social Ethics* (Oxford: Blackwell, 1996), 42.

<sup>4</sup>Alternatively, one could argue that the very notion of personhood is unhelpful, and that one should not categorize beings at all, but work on a case-by-case basis. However, our moral and legal schemes are so dependent on the notion of categories (rights bearer, victim, plaintiff, husband, adoptive parent, and so on) that themselves presuppose the notion of personhood (I cannot, for example, by law, marry a nonhuman) that removing the terminology of personhood would just require replacing it with a surrogate.

- <sup>5</sup>I do not, for example, discuss racism or sexism as an *emotional* issue, involving hatred, fear of, or contempt for members of other races or sexes to whom one nonetheless accords personhood. When I compare racism and sexism with speciesism, therefore, it is solely in the narrowly defined arena of demarcating personhood. Perhaps, were we to encounter nonhumans on a daily basis who clearly seemed our equal in all capacities usually thought relevant to moral personhood, emotional speciesism would be a more pressing concern. As it is, nonhumans are not even considered persons, and as such perhaps are less likely to be the targets of the hatred often directed at other races precisely because they are not seen as threatening in the same way. Speciesism is certainly not as *visceral* as racism or sexism, therefore, but nonetheless chilling for that. A racist who felt no animus for other races precisely because he did not view them as persons would be guilty of more fundamental moral failings than the racist who hated other races as equals.
- <sup>6</sup>It is possible to argue that one's immoral action can remove one from the realm of personhood: For example, if I murder someone I thereby cede the rights accorded to persons. However, I don't believe such a position is plausible. Although some fervent supporters of capital punishment appear to hold this view, even in states that practice the death penalty, the inhabitants of death row are still taken to possess a large subset of the rights accorded only persons: The right not to be killed by members of the general public, the right not to be experimented on against their will, and the right to a lawyer are just three.
- <sup>7</sup>John T. Noonan seems to presuppose this view in his much-anthologized paper "An Almost Absolute Value in History": "The most fundamental question involved in the long history of thought on abortion is: How do you determine the humanity of a being?" The correct answer, he concludes, is, "if you are conceived by human parents, you are human" (in *Contemporary Moral Problems*, 5th ed., ed. James E. White [St. Paul, MN: West, 1997], 117–22, at 117, 118).
- <sup>8</sup>One could reply that "human" is used in (at least) two distinct senses: the narrow, biological sense, usually taken as meaning having a certain DNA structure (the sense in which the bone is human), or a broader sense, usually as a noun, and synonymous with human *being*. That is, the bone is human but not a human, and only humans have rights. However, this distinction appears to mark a concession to the personist, in particular in discussions concerning the status of embryos, because it is very hard to defend their status as human *beings* without collapsing that category into the narrower, biological one, and so "human" in the second sense becomes another way of saying "person" (and E.T., in the following example, turns out to be "human").
- <sup>9</sup>Or if not, the determining factors (such as the risk E.T. poses by potentially transmitting interplanetary diseases) are ones that could also justify the killing of a human being.
- <sup>10</sup>I believe more strongly that species is not even morally relevant to the issue of personhood, as I hope later arguments will bear out.
- <sup>11</sup>See, for example, Steinbock, "Speciesism and the Idea of Equality," 252–53, where Steinbock suggests moral autonomy, capacity for reciprocity, and desire for self-respect as criteria affecting one's moral status.
- <sup>12</sup>A similar point was made by Locke to attack the "innatist hypothesis" that there are innate ideas common to all humans. That is, according to him there are no concepts possessed by *all* humans, because very young children do not even possess such apparently basic logical concepts as "whatever is, is." One might argue in response (along the lines that Leibniz did to Locke) that children *do* have the *capacity* to be moral agents, they just have not acquired the *skill*. However, this will not do: Apart from the fact that it is very possible that chimpanzees at least could develop moral agency if given the right kind of training (and that, perhaps, it is just as wrong to deny them such training as it is a retarded infant), this reply will not work for the severely retarded, who lack even a developmental capacity.
- <sup>13</sup>Here I am only concerned with hard-line agentism, in which to be granted personhood status one must now possess moral agency. This view has the advantage of being clearly defined and untroubled by metaphysical issues surrounding "potentiality."

However, later I discuss the grounds for considering babies and the moderately retarded persons because of their *potential* agency.

- <sup>14</sup>While it is clear that the possession of *some* rights is contingent on moral agency (for example, the right to be in charge of dangerous machinery, or the right to have one's contract honored), I believe that the common intuition that adults have both rights and duties, but that babies have rights without duties, makes the burden of proof rest heavily on those claiming that *all* rights are contingent on agenthood.
- <sup>15</sup>Steinbock, "Speciesism and the Idea of Equality," 256. This is contingent attitudinal humanism because "feelings of sympathy, protectiveness, etc." are contingent. Many groups, for example, have found it easy not to have such feelings for even the helpless members of other races.
- <sup>16</sup>A reviewer wrote that I am wrong to characterize care given to human nonagents as "superogatory" even if it is a "moral fiction" to regard them as agents: "with the moral fiction in place, the care is appropriate, regular . . . care. When courts initially entertained the legal fiction that corporations were persons (jural persons), they treated corporations as if they were human persons when clearly they were not. Consequent treatment of corporations as persons was not 'special' or 'superogatory' or 'privileged' treatment: it was just treatment insofar as the (legal) fiction were maintained." As I understand this point, it is like saying that once we accept that we are playing, say, chess, a rule that in the abstract might appear arbitrary (like only being able to move one's knight a certain way) is perfectly correct. However, I would argue that one should always continue to question the reasons for maintaining a particular fiction, especially where there might be compelling reasons not to maintain it. And chess players cannot insist that *everyone* follow the rules of chess, precisely because it is a game. There is a hint in the foregoing that once legal (or by extension, moral) fictions become entrenched, they cease to be fictions. That is, for example, it becomes generally accepted that corporations *are* jural persons, and not simply entities treated *as if* they were. What implications would this have for the personhood of human nonagents? Well, for one thing, if human nonagents simply *are* persons, then the view under consideration is no longer beneficent agentism, which holds to NAP, but some other view of personhood, such as those considered below. For another thing, I do not think that there ever was a point at which people said "babies are not really persons, but henceforth let us entertain the fiction that they are." I think it much more likely that unexamined feelings of affection for one's own are shaping our views on this matter. Finally, even if such an event happened, the passage from fiction to fact that presumably would have to have happened since is acceptable only on a "precedent" view of legal status, which, when applied to moral status, just smacks to me of conservatism (and would have undermined all civil rights advances).
- <sup>17</sup>Is the situation different if the police officer showing mercy to members of her own race is a member of a previously or currently oppressed race? Certainly some might argue that. I do not want to enter into that debate here, however, and as I am concerned with the actions of humans in regard to other species that they have dominated, it does not arise.
- <sup>18</sup>Ironically, Steinbock makes similar observations earlier in her article: "[A] Catholic charity's feeding hungry Catholics before feeding hungry non-Catholics . . . is simply a matter of taking care of one's own, something which is usually morally permissible. But, whereas we would admire the Catholic agency which did not discriminate, but fed all children, first come, first served, we would feel quite differently about someone who had this policy for dogs and children." Steinbock, "Speciesism and the Idea of Equality," 251. The problem with this example is that it focuses on doing good or the lack thereof. A better example, considering that we eat and experiment on nonhumans and that this is the behavior Steinbock defends, would involve inflicting harm or the lack thereof.
- <sup>19</sup>It is here that my assumption that personhood is "all or nothing" is most contentious. As a reviewer pointed out, it might be argued that potential persons should be viewed as, if not full persons, at least possessing some level of personhood higher than beings that lacked potential (but were otherwise comparably talented). This is a vexing issue (How

do you measure potentiality? Is a potential being harmed by contraception? If a fetus is aborted, does that mean a potential being has been harmed, or rather that what was destroyed was not in fact a potential human?). I am inclined to say that the potentiality might affect their *value*, to parents and possibly to states (in the same way that the rarity of Siberian tigers gives them more value than other comparably talented creatures) but would not grant them individual moral standing if they did not already have it by dint of their *actual* capacities.

<sup>20</sup>To respect SAP, of course, these criteria should only be ones that are met by all moral agents.

<sup>21</sup>See Mary Anne Warren, "The Abortion Issue," in *Social and Personal Ethics*, 2nd ed., ed. William H. Shaw (Belmont, CA: Wadsworth, 1996), 127–36, and "The Moral Status of Abortion," in *Social and Personal Ethics*, 4th ed., ed. William H. Shaw (Belmont, CA: Wadsworth, 2002).

<sup>22</sup>Warren thinks that to be a candidate for moral personhood one must at least be sentient: It is not possible even in theory to grant moral personhood to rocks or, more to the point, to embryos. Recall also that Warren argues that one cannot allot moral personhood to beings that are not empirical (i.e., in my terms natural) persons if in so doing one infringes on the rights of empirical persons. This means that one can't bestow moral personhood even on sentient human fetuses, because to do so would be to infringe on the rights of self-determination of the mothers.

<sup>23</sup>Steinbock, "Speciesism and the Idea of Equality," 255–56.

<sup>24</sup>An analogy: According to Nozick's entitlement theory of property (*Anarchy, State, and Utopia* [New York: Basic, 1974], chap. 7), a distribution of property is justified only if it results from legitimate transfers from an initially just starting point. Even if we agree with this account, we should be skeptical of any claim that the current distribution of property is justified precisely because of the unlikelihood of the current distribution's having resulted in that way.

<sup>25</sup>Ironically, to support this claim she compares it with patriotism. I share Erich Fromm's sentiment that "[n]ationalism is our form of incest, is our idolatry, is our insanity. 'Patriotism' is its cult." (Quoted by Anthony Grayling in "Nationalism," *Guardian*, February 26, 2000. Reprinted in *The Meaning of Things* [London: Phoenix, 2002], 77–79, quotation at 77.)

<sup>26</sup>Singer, as mentioned, forwards sentience as the relevant criterion but does not believe that sentience alone grants one any rights more than the right not to be caused pain unnecessarily (see "All Animals Are Equal," in *Contemporary Moral Problems*, 461–62). Tom Regan, on the other hand, suggests "inherent value" as the criterion of personhood and *does* believe that nonagent nonhumans have the same basic set of rights that adult humans do. See, for example, his "The Case for Animal Rights," in *Contemporary Moral Problems*, 5th ed., ed. James E. White (St. Paul, MN: West, 1997), 471–78.

<sup>27</sup>To be completely accurate, my conclusion is a demand for consistency, so it might turn out that certain kinds of practices—medical experiments, for example—are justified for both groups, and some for neither. Indeed, if one is completely convinced of the rectitude of experimentation on animals, one should be moved by my argument to legitimize such treatment for human babies and the severely retarded.



