

THE WEEKEND ESSAY

# WHAT WOULD IT MEAN TO TREAT ANIMALS FAIRLY?

*Each year, billions of animals die for human ends. In two new books, Martha Nussbaum and Peter Singer insist that we stop the suffering.*

**By Elizabeth Barber**

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Illustration by Ricardo Edwards

 Save this story

A few years ago, activists walked into a factory farm in Utah and walked out with two piglets. State prosecutors argued that this was a crime. That they were correct was obvious: The pigs were the property of Smithfield Foods, the largest pork producer in the country. The defendants had videoed themselves committing the crime; the F.B.I. later found the piglets in Colorado, in an animal sanctuary.

The activists said they had completed a “rescue,” but Smithfield had good reason to claim it hadn’t treated the pigs illegally. Unlike domestic favorites like dogs, which are protected from being eaten, Utah’s pigs are legally classified as “livestock”; they’re future products, and Smithfield could treat them accordingly. Namely, it could slaughter the pigs, but it could also treat a pig’s life—and its temporary desire for food, space, and medical help—as an inconvenience, to be handled in whatever conditions were deemed sufficient.

In their video, the activists surveyed those conditions. At the facility—a concentrated animal-feeding operation, or CAFO—pregnant pigs were confined to gestation crates, metal enclosures so small that the sows could barely lie down. (Smithfield had promised to stop using these crates, but evidently had not.) Other pigs were in farrowing crates, where they had enough room to lie down but not enough to turn their bodies around. When the activists approached one sow, they found dead piglets rotting beneath her. Nearby, they found two injured piglets, whom they decided to take. One couldn't walk because of a foot infection; the other's face was covered in blood. According to Smithfield, which denied mistreating animals, the piglets were each worth about forty-two dollars, but both had diarrhea and other signs of illness. This meant they were unlikely to survive, and that their bodies would be discarded, just as millions of farm animals are discarded each year.

During the trial, the activists reiterated that, yes, they entered Smithfield's property and, yes, they took the pigs. And then, last October, the jury found them not guilty. In a column for the *Times*, one of the activists—Wayne Hsiung, the co-founder of Direct Action Everywhere—described talking to one of the jurors, who said that it was hard to convict the activists of theft, given that the sick piglets had no value for Smithfield. But another factor was the activists' appeal to conscience. In his closing statement, Hsiung, a lawyer who represented himself, argued that an acquittal would model a new, more compassionate world. He had broken the law, yes—but the law, the jury seemed to agree, might be wrong.

**A** lot has changed in our relationship with animals since 1975, when the philosopher Peter Singer wrote "Animal Liberation," the book that sparked the animal-rights movement. Gestation crates, like the ones in Utah, are restricted in the European Union, and California prohibits companies that use

them from selling in stores, a case that the pork industry fought all the way to the Supreme Court—and lost. In a 2019 Johns Hopkins survey, more than forty per cent of respondents wanted to ban new CAFOs. In Iowa, which is the No. 1 pork-producing state, my local grocery store has a full Vegan section. “Vegan” is also a shopping filter on Sephora, and most of the cool-girl brands are vegan, anyway. Wearing fur is embarrassing.

And yet Singer’s latest book, “Animal Liberation Now,” a rewrite of his 1975 classic, is less a celebratory volume than a tragic one—tragic because it is very similar to the original in refrain, which is that, big-picture-wise, the state of animal life is terrible. “The core argument I was putting forward,” Singer writes, “seemed so irrefutable, so undeniably right, that I thought everyone who read it would surely be convinced by it.” Apparently not. By some estimates, scientists in the U.S. currently use roughly fifteen million animals for research, including mice, rats, cats, dogs, birds, and nonhuman primates. As in the seventies, much of this research tries to model psychological ailments, despite scientists’ having written for decades that more research is needed to figure out whether animals—and which kind of animals—provide a useful analogue for mental illness in humans. When Singer was first writing, a leading researcher created psychopathic monkeys by raising them in isolation, impregnating them with what he called a “rape rack,” and studying how the mothers bashed their infants’ heads into the ground. In 2019, researchers were still putting animals through “prolonged stress”—trapping them in deep water, restraining them for long periods while subjecting them to the odor of a predator—to see if their subsequent behavior evidenced P.T.S.D. (They wrote that more research was needed.) Meanwhile, factory farms, which were newish in 1975, have swept the globe. Just four per cent of Americans are vegetarian, and each year about eighty-three billion animals are killed for food.

It's for these animals, Singer writes, "and for all the others who will, unless there is a sudden and radical change, suffer and die," that he writes this new edition. But Singer's hopes are by now tempered. One obvious problem is that, in the past fifty years, the legal standing of animals has barely changed. The Utah case was unusual not just because of the verdict but because referendums on farm-animal welfare seldom occur at all. In many states, lawmakers, often pressured by agribusiness, have tried to make it a serious crime to enter a factory farm's property. The activists in Utah hoped they could win converts at trial; they gambled correctly, but, had they been wrong, they could have gone to prison. As in 1975, it remains impossible to simply petition the justice system to notice that pigs are suffering. All animals are property, and property can't take its owner to court.

Philosophers have debated the standing of animals for centuries. Pythagoras supposedly didn't eat them, perhaps because he believed they had souls. Their demotion to "things" owes partly to thinkers like Aristotle, who called animals "brute beasts" who exist "for the sake of man," and to Christianity, which, like Stoicism before it, awarded unique dignity to humans. We had souls; animals did not. Since then, various secular thinkers have given this idea a new name—"inherent value," "intrinsic dignity"—in order to explain why it is O.K. to eat a pig but not a baby. For Singer, these phrases are a "last resort," a way to clumsily distinguish humans from nonhuman animals. Some argue that our ability to tell right from wrong, or to perceive ourselves, sets us apart—but not all humans can do these things, and some animals seem to do them better. Good law doesn't withhold justice from humans who are elderly or infirm, or those who are cognitively disabled. As a utilitarian, Singer cites the founder of that tradition, the eighteenth-century philosopher Jeremy Bentham, who argued that justice and equality have nothing to do with a creature's ability to reason, or with any of its abilities at all, but with the fact that it can suffer. Most animals suffer. Why, then, do we not give them moral consideration?

Singer's answer is "speciesism," or "bias in favor of the interests of members of one's own species." Like racism and sexism, speciesism denies equal consideration in order to maintain a status quo that is convenient for the oppressors. As Lawrence Wright has written in this magazine, courts, when considering the confinement of elephants and chimpanzees, have conceded that such animals evince many of the qualities that give humans legal standing, but have declined to follow through on the implications of this fact. The reason for that is obvious. If animals deserved the same consideration as humans, then we would find ourselves in a world in which billions of persons were living awful, almost unimaginably horrible lives. In which case, we might have to do something about it.

**E**qual consideration does not mean equal treatment. As a utilitarian, Singer's aim is to minimize the suffering in the world and maximize the pleasure in it, a principle that invites, and often demands, choices. This is why Singer does not object to killing mosquitos (if done quickly), or to using animals for scientific research that would dramatically relieve suffering, or to eating meat if doing so would save your life. What he would not agree with, though, is making those choices on the basis of perceived intelligence or emotion. In a decision about whether to eat chicken or pork, it is not better to choose chicken simply because pigs seem smarter. The fleeting pleasure of eating any chicken is trounced by its suffering in industrial farms, where it was likely force-fed, electrocuted, and perhaps even boiled alive.

Still, Singer's emphasis on suffering is cause for concern to Martha Nussbaum, whose new book, "Justice for Animals," is an attempt to settle on the ideal philosophical template for animal rights. Whereas Singer's argument is emphatically emotion-free—empathy, in his view, is not just immaterial but often actively misleading—Nussbaum *is* interested in emotions, or at least in animals' inner lives and desires. She considers several theories of animal rights, including Singer's, before arguing that we should adopt

her “capabilities approach,” which builds on a framework developed by the Nobel Prize-winning economist Amartya Sen, and holds that all creatures should be given the “opportunity to flourish.” For decades, Nussbaum has adjusted her list of what this entails for humans, which includes “being able to live to the end of a human life of normal length,” “being able to have attachments to things and people outside ourselves,” and having “bodily integrity”—namely, freedom from violence and “choice in matters of reproduction.” In “Justice for Animals,” she outlines some conditions for nonhuman flourishing: a natural life span, social relationships, freedom of movement, bodily integrity, and play and stimulation. Eventually, she writes, we would have a refined list for each species, so that we could insure flourishing “in the form of life characteristic to the creature.”

In imagining this better world, Nussbaum is guided by three emotions: wonder, anger, and compassion. She wants us to look anew at animals such as chickens or pigs, which don’t flatter us, as gorillas might, with their resemblance to us. What pigs do, and like to do, is root around in the dirt; lacquer themselves in mud to keep cool; build comfy nests in which to shelter their babies; and communicate with one another in social groups. They also seek out belly rubs from human caregivers. In a just world, Nussbaum writes, we would wonder at a pig’s mysterious life, show compassion for her desire to exist on her own terms, and get angry when corporations get in her way.

Some of Nussbaum’s positions are more actionable, policy-wise, than others. For example, she supports legal standing for animals, which raises an obvious question: How would a pig articulate her desires to a lawyer? Nussbaum notes that a solution already exists in fiduciary law: in the event that a person, like a toddler or disabled adult, cannot communicate their decisions or make sound ones, a representative is appointed to understand that person’s interests and advocate for them. Just as organizations exist to help



certain people advance their interests, organizations could represent categories of animals. In Nussbaum's future world, such a group could take Smithfield Foods to court.

Perhaps Nussbaum's boldest position is that *wild* animals should also be represented by fiduciaries, and indeed be assured, by humans, the same flourishing as any other creature. If this seems like an overreach, a quixotic attempt to control a world that is better off without our meddling, Nussbaum says, first, to be realistic: there is no such thing as a truly wild animal, given the extent of human influence on Earth. (If a whale is found dead with a brick of plastic in its stomach, how "wild" was it?) Second, in Nussbaum's view, if nature is thoughtless—and Nussbaum thinks it is—then perhaps what happens in "the wild" is not always for the best. No injustice can be ignored. If we aspire to a world in which no sentient creature can harm another's "bodily integrity," or impede one from exploring and fulfilling one's capabilities, then it is not "the destiny of antelopes to be torn apart by predators."

Here, Nussbaum's world is getting harder to imagine. Animal-rights writing tends to elide the issue of wild-animal suffering for obvious reasons—namely, the scarcity of solutions. Singer covers the issue only briefly, and mostly to say that it's worth researching the merit of different interventions, such as vaccination campaigns. Nussbaum, for her part, is unclear about how we would protect wild antelopes without impeding the flourishing of their predators—or without impeding the flourishing of antelopes, by increasing their numbers and not their resources. In 2006, when she previously discussed the subject, she acknowledged that perhaps "part of what it is to flourish, for a creature, is to settle certain very important matters on its own." In her new book, she has not entirely discarded that perspective: intervention, she writes, could result in "disaster on a large scale." But the point is to "press this question all the time," and to ask whether our hands-off approach is less noble than it is self-justifying—a way of protecting ourselves from following our ideals to their natural, messy, inconvenient ends.

The enduring challenge for any activist is both to dream of almost-unimaginable justice and to make the case to nonbelievers that your dreams are practical. The problem is particularly acute in animal-rights activism. Ending wild-animal suffering is laughably hard (our efforts at ending *human* suffering don't exactly recommend us to the task); obviously, so is changing the landscape of factory farms, or Singer wouldn't be reissuing his book. In 2014, the British sociologist Richard Twine suggested that the vegan isn't unlike the feminist of yore, in that both come across as killjoys whose "resistance against routinized norms of commodification and violence" repels those who prefer the comforts of the status quo. Wayne Hsiung, the Direct Action Everywhere activist, was only recently released from jail, after being sentenced for duck and chicken rescues in California. On his blog, he wrote that one reason the prosecution succeeded was that, unlike in Utah, he and his colleagues were cast as "weird extremists."

It's easy to construct a straw-man vegan, one oblivious to his own stridency, privilege, or hypocrisy. Isn't he driving deforestation with all his vegetables? (No, Singer replies, as the vast majority of soybeans are fed to farm animals.) Isn't he ignoring food deserts or the price tag on vegan substitutes, which puts them out of the reach of poor families? (Nussbaum acknowledges that cost can be an issue, but argues that it only emphasizes the need for resourced people to eat as humanely as they can, given that the costs of a more ethical diet "will not come down until it is chosen by many.") Anyone pointing out moral culpability will provoke, in both others and themselves, a certain defensiveness. Nussbaum spends a lot of time discussing her uneasiness with her choice to eat fish for nutritional reasons. (She argues that fish likely have no sense of the future, a claim that even she seems unsure about.) Singer is eager to intervene here, emphasizing that animal-rights activism should pursue the diminishment of suffering, not the achievement of sainthood. "We are more likely to persuade others to share our attitude if we temper our ideals with common sense than if we strive for the kind of purity that is more appropriate to a religious

dietary law than to an ethical and political movement,” he writes. Veganism is a boycott, and, while boycotts are more effective the more you commit to them, what makes them truly effective is persuading others to join them.

Strangely, where Singer and Nussbaum might agree is that defining the proper basis for the rights of animals is less important, at least in the short term, than getting people not to harm them, for any reason at all. Those reasons might have nothing to do with the animals themselves. Perhaps you decide not to eat animals because you care about people: because you care that the water where you live, if it’s anything like where I live, is too full of CAFO by-products to confidently drink. Perhaps you care about the workers in enormous slaughterhouses, where the pay is low and the costs to the laborer high. Perhaps you believe in a God, and believe that this God would expect better of people than to eat animals raised and killed in darkness. Or perhaps someone you love happens to love pigs, or to love the idea that the world could be gentler or more just, and you love the way they see the future enough to help them realize it. Nussbaum, after all, became interested in animal rights because she loved a person, her late daughter, an attorney who championed legislation to protect whales and other wild animals until her death, in 2019. Nussbaum’s book is dedicated to her—and also, now, to the whales. ♦

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