

# Legal and ethical aspects to consider when applying a request for animal experiments

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## Part I. Ethical aspects



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# Summary

1. A controversial topic
2. Some data
3. Ethical theories concerning animals
  - A. Some historical considerations
  - B. Animal's moral status
  - C. Four ethical approaches

**I. A controversial topic**

## Maladies génétiques?



**Aucune n'est guérissable  
par l'expérimentation animale.**

A cause des différences fondamentales entre les espèces et leurs métabolismes, les expériences sur les animaux ne permettent pas de déductions utiles et fiables pour les humains. En outre, une «maladie» induite artificiellement et de force à un animal n'est pas comparable à une maladie génétique qui survient naturellement et spontanément chez un humain. En fait, la fixation sur l'expérimentation animale inutile et non fiable garantit que les maladies génétiques restent incurables.

2006

“No genetic illness can be  
cured through animal  
experimentation.”

2010

**Association pour l'Abolition des Expériences sur les Animaux**  
Président: Dr méd. Dr phil. Christopher Andereggschütz, Ostbühlstr. 32, 8038 Zurich, Tél. + Fax: 044 482 73 52  
Fondée en 1979 sous le nom de CIVIS-Schweiz, www.animalexperiments.ch, Compte postal 87-84848-4



**Où sont les guérisons  
des maladies génétiques?**

Chaque décembre depuis 1988, des dons sont récoltés à travers toute la Suisse romande pour financer, entre autres, des projets d'expérimentation animale dans la recherche sur les maladies génétiques. Avec quel résultat?

► En Suisse, environ 10 000 personnes souffrent d'une maladie génétique comme la mucoviscidose et la dystrophie musculaire. Malgré d'intensives recherches sur les animaux et de nombreuses annonces de succès par les expérimentateurs, **aucune maladie génétique n'est guérissable sur la base des expériences sur les animaux.**

► A cause des différences fondamentales – et insurmontables – entre les humains et les animaux, les expériences sur les animaux ne permettent pas de déductions fiables pour les humains. En fait, **la fixation sur l'expérimentation animale inutile garantit que les maladies génétiques restent incurables.**

► Afin de réaliser de vrais progrès dans la guérison des maladies génétiques, les chercheurs doivent utiliser des méthodes utiles et fiables qui s'appliquent directement aux humains. Visitez notre site Internet afin d'en apprendre plus sur ces méthodes.

# Ordonnance du DFE sur les formations à la détention d'animaux et à la manière de les traiter

Formation des expérimentateurs (art. 24):

- I. La partie théorique permet d'acquérir les connaissances de base suivantes sur les espèces animales utilisées couramment en expérimentation animale:
  - a. principes de la législation sur la protection des animaux et règles spécifiques aux expériences sur animaux;
  - b. principes éthiques relatifs à l'utilisation d'animaux à des fins scientifiques, à leur dignité et à leur importance;

# Verordnung des EVD über Ausbildungen in der Tierhaltung und im Umgang mit Tieren

Ausbildung für versuchsdurchführende Personen (art. 24):

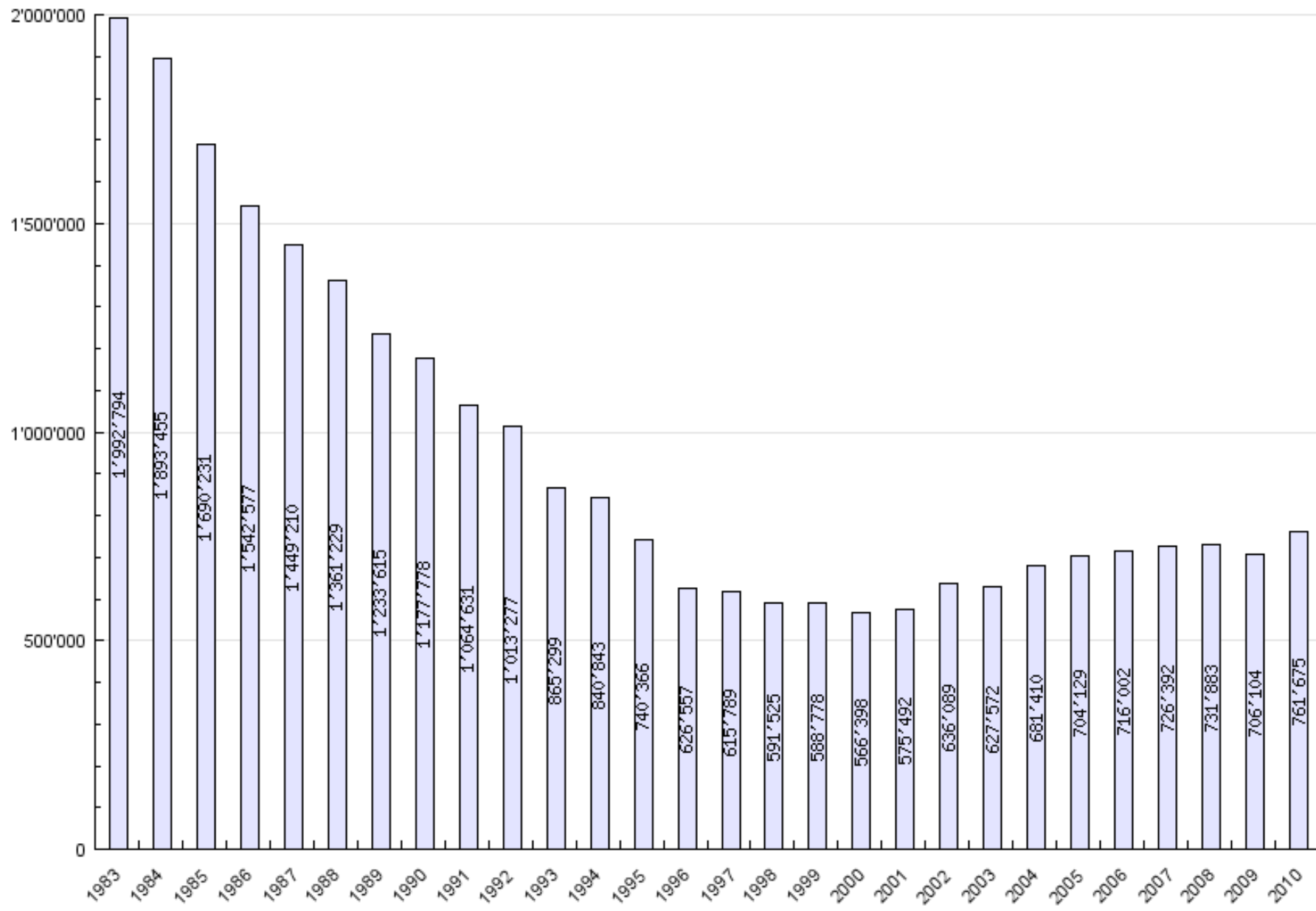
- I. Der theoretische Teil vermittelt Grundkenntnisse über häufig verwendete Versuchstierarten in folgenden Bereichen:
  - a. Grundsätze der Tierschutzgesetzgebung und tierversuchsspezifische Vorschriften;
  - b. ethische Grundsätze in Bezug auf die Nutzung von Tieren zu wissenschaftlichen Zwecken, ihre Würde und ihren Stellenwert;

5 septembre 2008

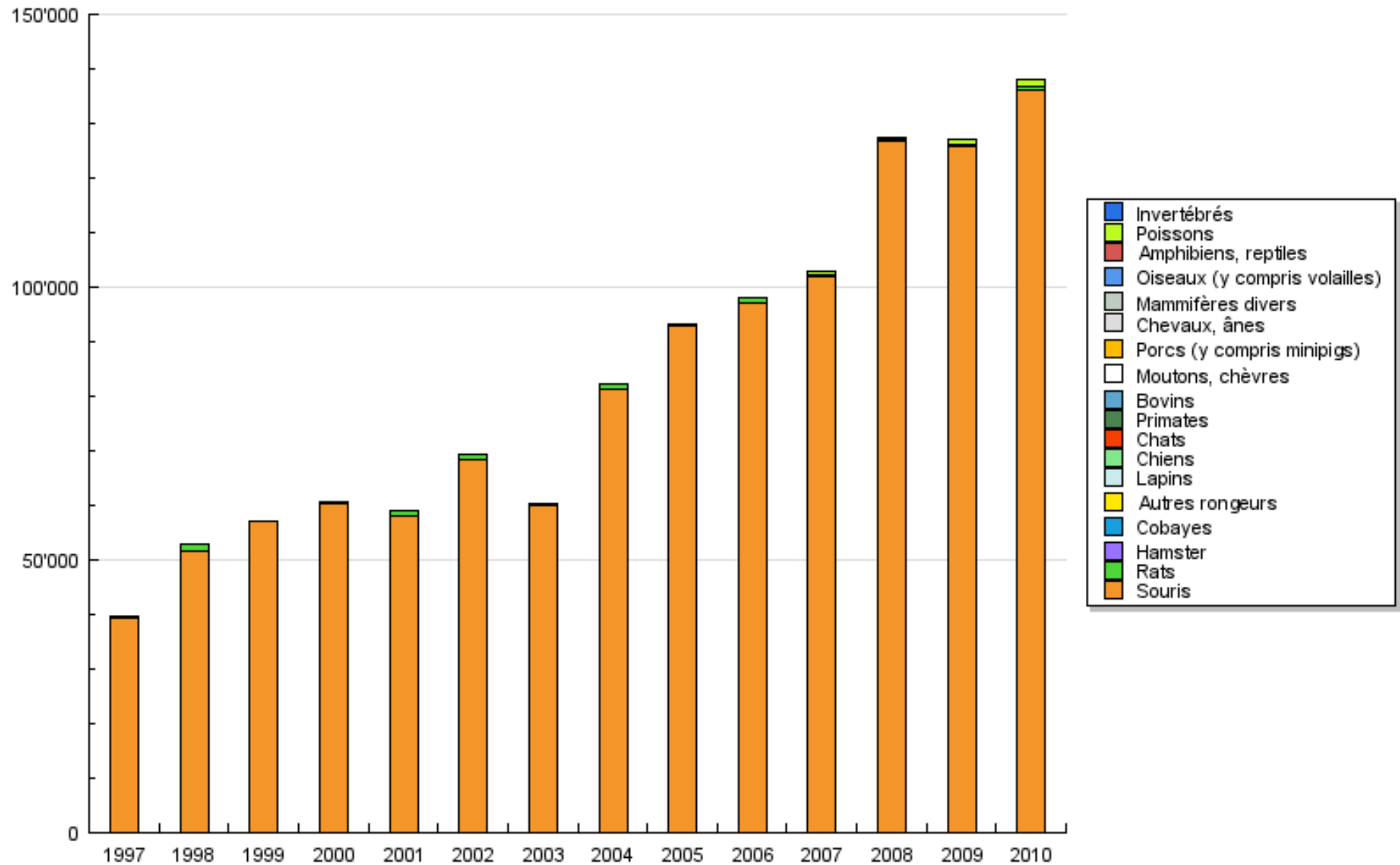
# 2. Some data

## 2010

<http://www.tv-statistik.bvet.admin.ch/BasicStatistics.php>



# Genetically modified animals



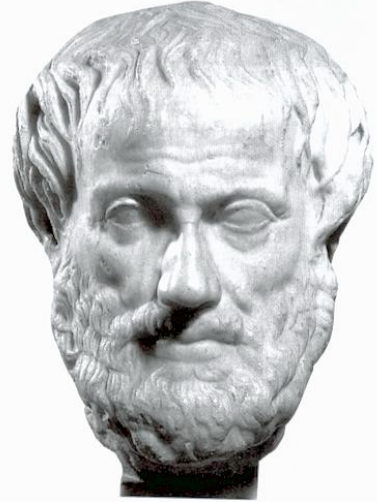


# A paradox

“Rodent control is a serious issue, since as many as 20 million rodents are killed each year in the UK alone. Rat and mouse control potentially affects the welfare of innumerable animals worldwide. In comparison, approximately 2.72million animals (mostly rodents) were used in scientific procedures in the UK in 2003.” (Bastiaan G Meerburg, Frans WA Brom and Aize Kijlstra, The ethics of rodent control, 2008)

# **3. Ethical theories concerning animals**

# A. Some historical considerations



384-322

# Aristotle

Plant	vegetative soul	reproduction and nutrition
Animal	sentient soul	sensation and desire
Human being	rational soul	reason and will



121-180

# Marcus-Aurelius (a Stoic)

“Is it not plain that the inferior exists for the sake of the superior? But the things which have life are superior to those which have not life, and of those which have life the superior are those which have reason.” (*The Thoughts of Marcus Aurelius Antoninus*, V, 16)

# Augustine of Hippone

“And so some attempt to extend this command even to beasts and cattle, as if it forbade us to take life from any creature. But if so, why not extend it also to the plants, and all that is rooted in and nourished by the earth? For though this class of creatures have no sensation, yet they also are said to live, and consequently they can die. [...] Must we therefore reckon it a breaking of this commandment, ‘You shall not kill’, to pull a flower? [...] Putting aside these ravings, if, when we say, You shall not kill, we do not understand this of the plants, since they have no sensation, nor of the irrational animals that fly, swim, walk, or creep, since they are dissociated from us by their want of reason.” (*The City of God*, I, xx)



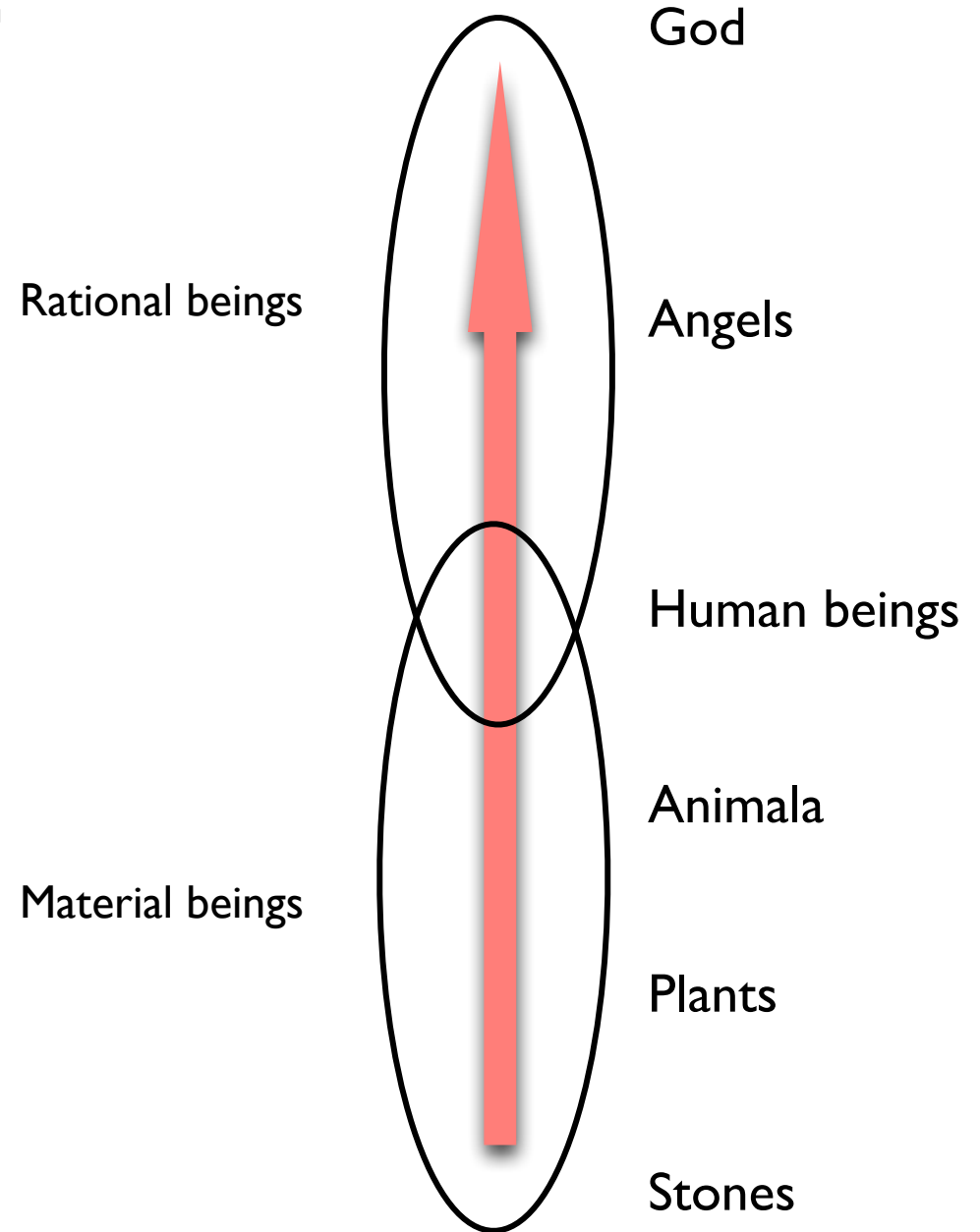
1225-1274

# Thomas Aquinas

«All animals are naturally subject to man. [...] The imperfect are for the use of the perfect; as the plants make use of the earth for their nourishment, and animals make use of plants, and man makes use of both plants and animals. Therefore it is in keeping with the order of nature, that man should be master over animals.» (*Summa Theologica*, Ia, q96, a1)

# A hierarchy of beings

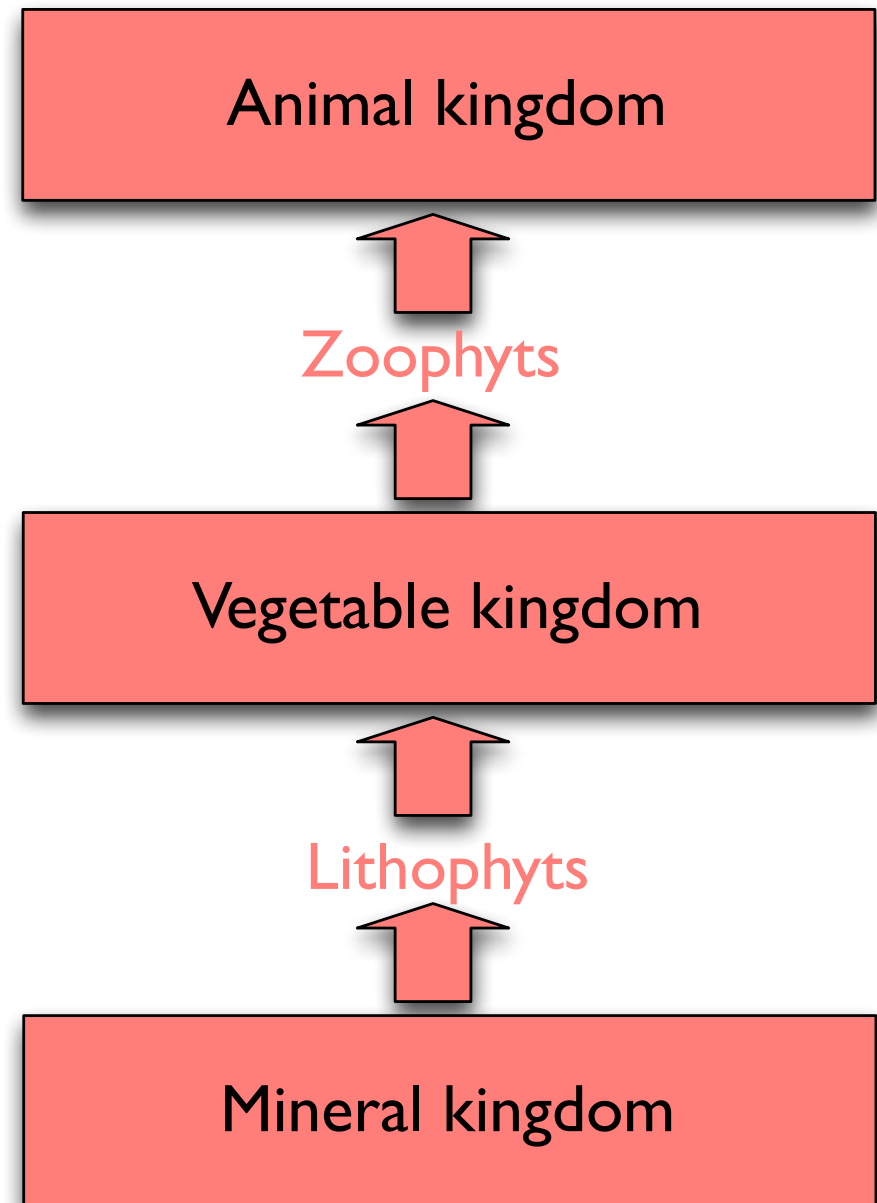
From the Middle Ages...





# ...to the 18<sup>th</sup> century

“The universe is a big machine where everything is linked with everything, and where every living being is placed above or beneath another living being, separated from it by imperceptible degrees only.” (*Encyclopédie*, art. Animal)



## B. Animal's moral status



# What does it mean, to have a moral status ?

«To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please» (Marie Anne Warren).

# Jeremy Bentham

“The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognized that the number of the legs, the villosity of the skin, or the termination of the os sacrum are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they reason?, nor Can they talk? but, Can they suffer?”

# The morally relevant property

- Sentience: the capacity to suffer and to be happy

«The question is not, Can they reason?, nor Can they talk? but, Can they suffer?»

“Sentience seems to be a general condition for every criterium: it is necessary to be sentient in order to move, to feel emotions ou to be rational.” (J.-B. Jeangène Vilmer)

## However



“Neither rationality nor the capacity to experience pleasure and pain seem to me necessary (even though they may be sufficient) conditions on moral considerability. [...] Nothing short of the condition of being alive seems to me to be a plausible and nonarbitrary criterion.” (Kenneth Goodpaster, On Being Morally Considerable, p. 310)

Sentience is the criterium of moral considerability

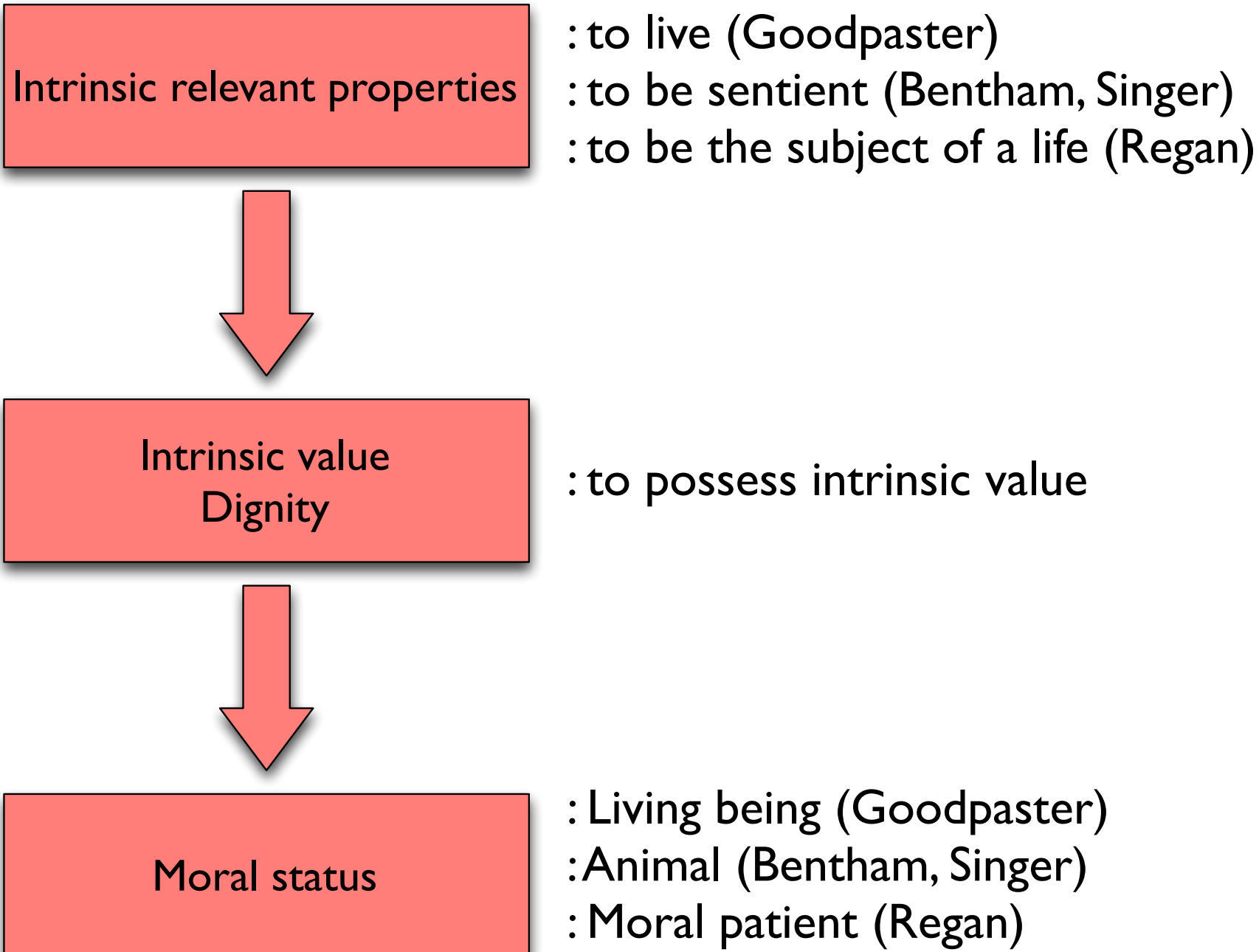


pathocentrism

biocentrism

Being living is the criterium of moral considerability

# Which intrinsic properties?





Swiss Constitution goes even further:

## Federal Constitution (art. 120)

The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.

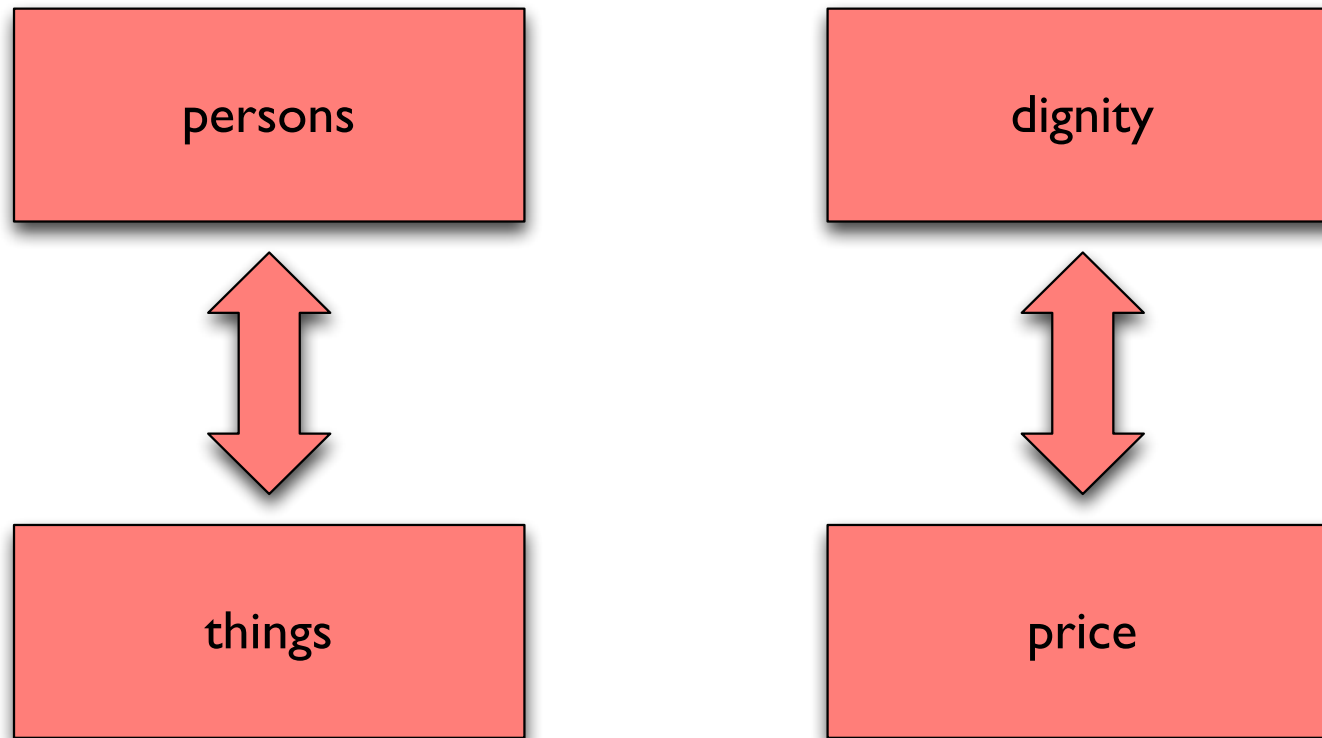
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La Confédération légifère sur l'utilisation du patrimoine germinal et génétique des animaux, des végétaux et des autres organismes. Ce faisant, elle respecte l'intégrité des organismes vivants et la sécurité de l'être humain, de l'animal et de l'environnement et protège la diversité génétique des espèces animales et végétales.

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Der Bund erlässt Vorschriften über dem Umgang mit Keim- und Erbgut von Tieren, Pflanzen und anderen Organismen. Er trägt dabei der Würde der Kreatur sowie der Sicherheit von Mensch, Tier und Umwelt Rechnung und schützt die genetische Vielfalt der Tier- und Pflanzenarten.

Traditionnally, dignity has been kept for human persons.



“Everything has either a price or an intrinsic value [Würde]. Anything with a price can be replaced by something else as its equivalent, whereas anything that is above all price and therefore admits of no equivalent has intrinsic value.” (Kant)

Nowadays, we do not agree anymore:

# Swiss Civil Code

Art. 641a

II. Animals

1. Animals are not objects.

2. Where no special provisions exist for animals, they are subject to the provisions governing objects.

# Daniel Dennett

“We are the only species with language, and art, and music, and religion, and humor, and the ability to imagine the time before our birth and after our death, and the ability to plan projects that take centuries to unfold, and the ability to create, defend, revise, and live by codes of conduct, and – sad to say – to wage war on a global scale. The ability of our brains to help us see into the future, thanks to the culture we impart to our young, so far surpasses that of any other species, that it gives us the powers that in turn give us the responsibilities of moral agents.” (in US President’s Council, *Human dignity*, p,. 45)

# C. Four ethical approaches

(a) Ethical gradualism

Aristotle + 

(b) Indirect duties

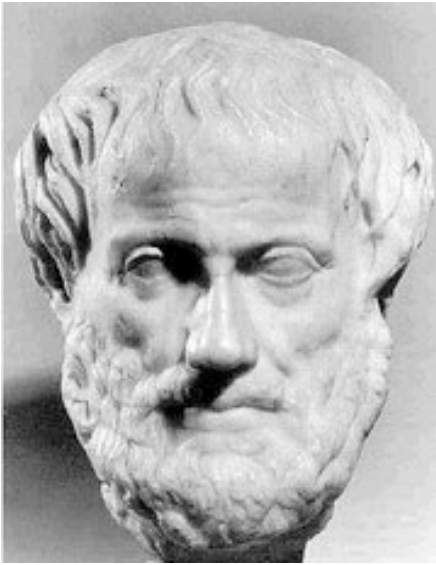
Immanuel Kant

(c) Equality of interests

Peter Singer

(d) Animals rights

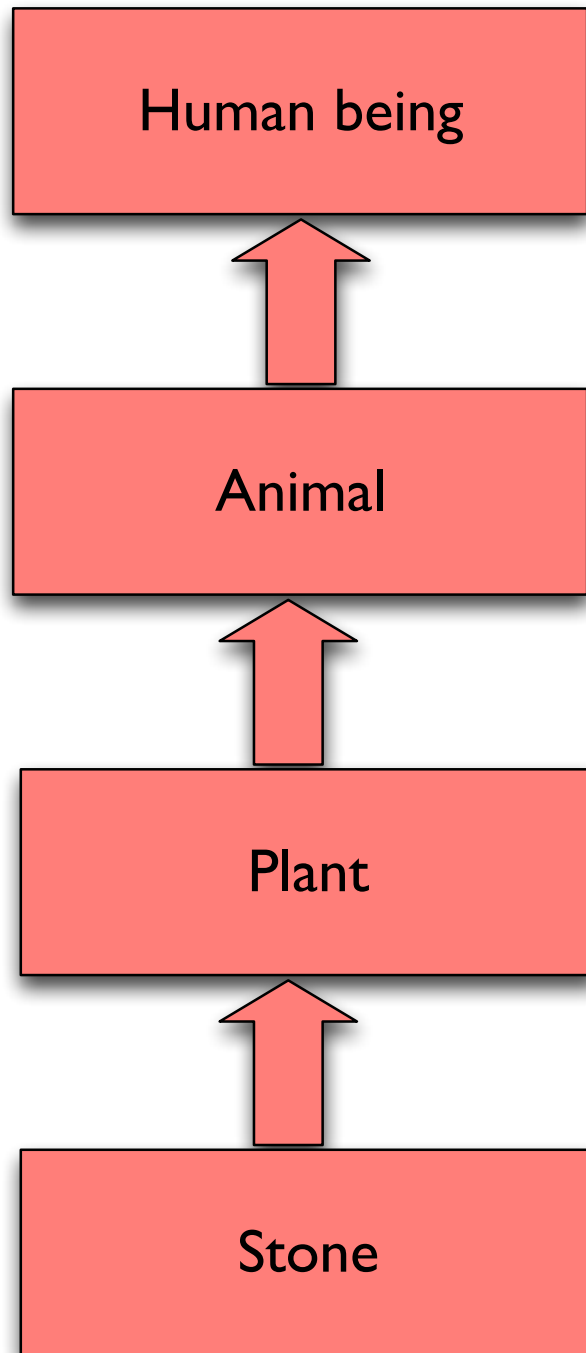
Tom Regan



384-322

# (a) Ethical gradualism

Aristotle + 



intrinsic value

# A hierarchy of beings

The concept of a hierarchy of beings is widespread, included in legal documents. Nuffield Council states that it is better to use a swine than a chimpanzee for xenotransplantation. The Swiss parliament asks that the hierarchy of specieses be respected, “an unicellular weighing less than an insect in the evaluation of interests, and an insect weighing less than a mammal”.





Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**Les autorités fédérales  
de la Confédération suisse**



# Swiss Law

# Swiss Federal Act on Animal Protection of March 9, 1978

Art. 16 The Carrying Out of Experiments Subject to  
Authorization

<sup>3</sup> Experiments must not be carried out with higher types of animals such as mammals, unless the aim of the experiment cannot be achieved with lower types of animals.

# Loi fédérale pour la protection des animaux – Tierschutzgesetz (art. 3)

Au sens de la présente loi, on entend par:

a. dignité: la valeur propre de l'animal, qui doit être respectée par les personnes qui s'en occupent; il y a atteinte à la dignité de l'animal lorsque la contrainte qui lui est imposée ne peut être justifiée par des intérêts prépondérants; il y a contrainte notamment lorsque des douleurs, des maux ou des dommages sont causés à l'animal, lorsqu'il est mis dans un état d'anxiété ou avili, lorsqu'on lui fait subir des interventions modifiant profondément son phénotype ou ses capacités, ou encore lorsqu'il est instrumentalisé de manière excessive.

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In diesem Gesetz bedeuten:

a. Würde: Eigenwert des Tieres, der im Umgang mit ihm geachtet werden muss. Die Würde des Tieres wird missachtet, wenn eine Belastung des Tieres nicht durch überwiegende Interessen gerechtfertigt werden kann. Eine Belastung liegt vor, wenn dem Tier insbesondere Schmerzen, Leiden oder Schäden zugefügt werden, es in Angst versetzt oder erniedrigt wird, wenn tief greifend in sein Erscheinungsbild oder seine Fähigkeiten eingegriffen oder es übermässig instrumentalisiert wird.

# Federal Ethics Committees

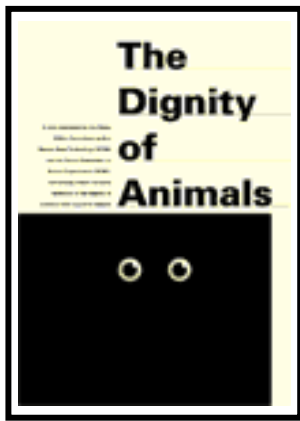
We disregard an animal's dignity if we fail to make the possibility of violation the subject of an evaluation of interests, i.e. if we give it no consideration and take it for granted that human interests take precedence.

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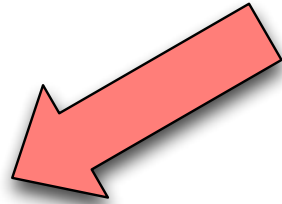
Nous portons atteinte à la dignité d'un animal dès lors que le préjudice que nous pourrions lui causer ne fait pas l'objet d'une pondération des intérêts en présence, et que ce préjudice n'est pas pris en compte, les intérêts de l'être humain ayant été jugés naturellement prioritaires.

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Wir missachten die Würde eines Tieres, wenn wir sein allfällige Beeinträchtigung nicht zum Gegenstand einer Gutabwägung machen, ihr also nicht Rechnung tragen, sondern selbstverständlich von einem Vorrang der Interessen des Menschen ausgehen.

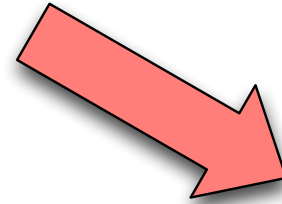


# How to understand it?



human dignity

Human interests should never be subordinated to third-parties' interests.



animal's dignity

The dignity of an animal is respected if violation of its dignity is considered justifiable on the basis of a careful evaluation of interests.

# Disregard of animal's dignity according to ECNH

\* Unjustified constraints:

1. Pain or harms
2. Anxiety and humiliation
3. Manipulations of abilities
4. Excessive instrumentalisation

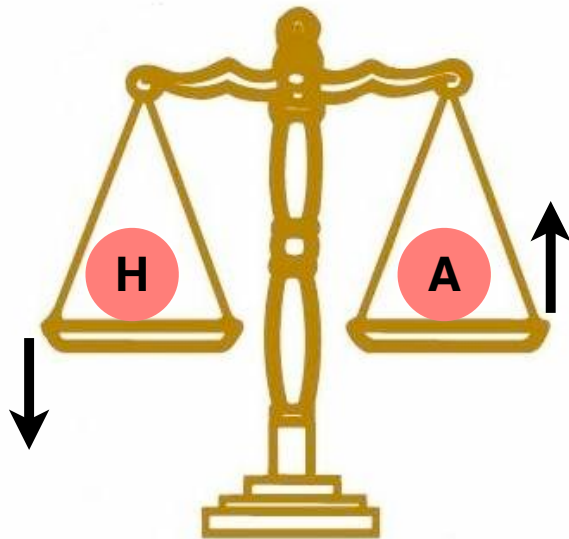
# Animal Welfare Ordinance

## Ordonnance sur la protection des animaux (art. 25)

1. Breeding shall be designed to produce healthy animals that are free of characteristics and traits that would offend their dignity.
2. Breeding objectives that result in restricted organ and sensory functions and deviations of species-typical behaviour are only permitted if it is possible to compensate for the deficits without the need for measures in the care, husbandry or feeding of the animals that would expose them to stress, without surgical procedures on the animals and without regular medication.
3. The following are prohibited:
  - a. the breeding of animals in which body parts or organs for species-typical use can be expected to be genetically absent or malformed and that pain, suffering or harm will be inflicted on the animals as a result;
  - b. the breeding of animals with deviations of species-typical behaviour, which make it very difficult or impossible for them to live together with animals of the same species.

# An ambiguity

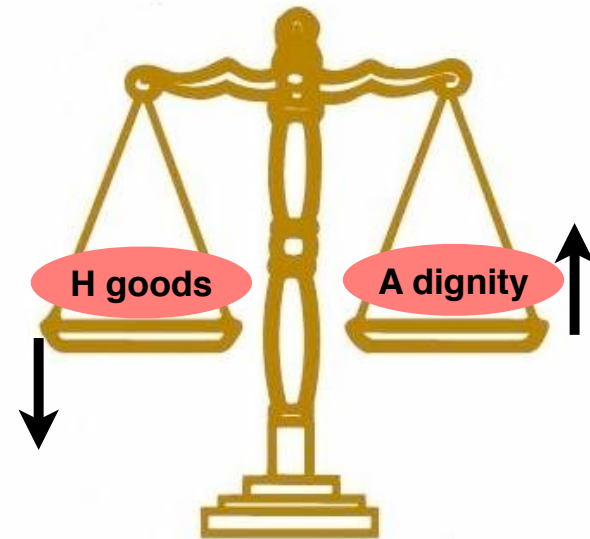
dignity is inviolable



Weighing of interests

dignity is respected

dignity is violable



Weighing of goods

dignity is rightfully violated





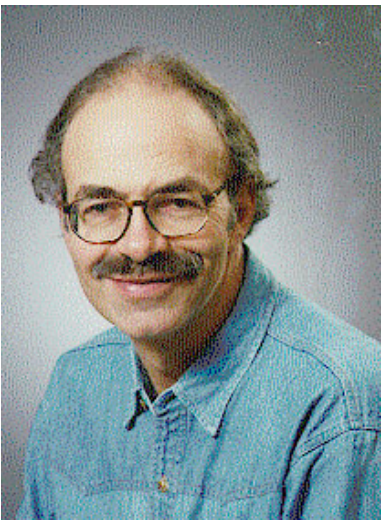
1724-1804

# **(b) Indirect duties**

## **Immanuel Kant**

«The fact that man is aware of an ego-concept raises him infinitely above all other creatures living on earth. Because of this, he is a person [...]. He is a being who, by reason of his preeminence and dignity, is wholly different from things, such as the irrational animals, which he can master and rule at will.» (*Anthropology from a Pragmatic Point of View*)

«In regard of the animated but irrational part of the creation, it is undoubted that a savage and cruel treatment of them is yet more inly repugnant to what man owes to himself; for it blunts and obtunds our natural sympathy with their pangs, and so lays waste, gradually, the physical principle which is of service to morality, and assists greatly the discharge of our duty towards other men.» (*The Metaphysics of Ethics*)



born in 1946

# (c) Equality of interests

## Peter Singer

Reminder

# The morally relevant property

- Sentience: the capacity to suffer and to be happy

«The question is not, Can they reason?, nor Can they talk? but, Can they suffer?»

# Pathocentrism

1. Equal consideration of interests

⇒ All human beings are equal

2. Animals have interests, too

⇒ Equal consideration of all interests

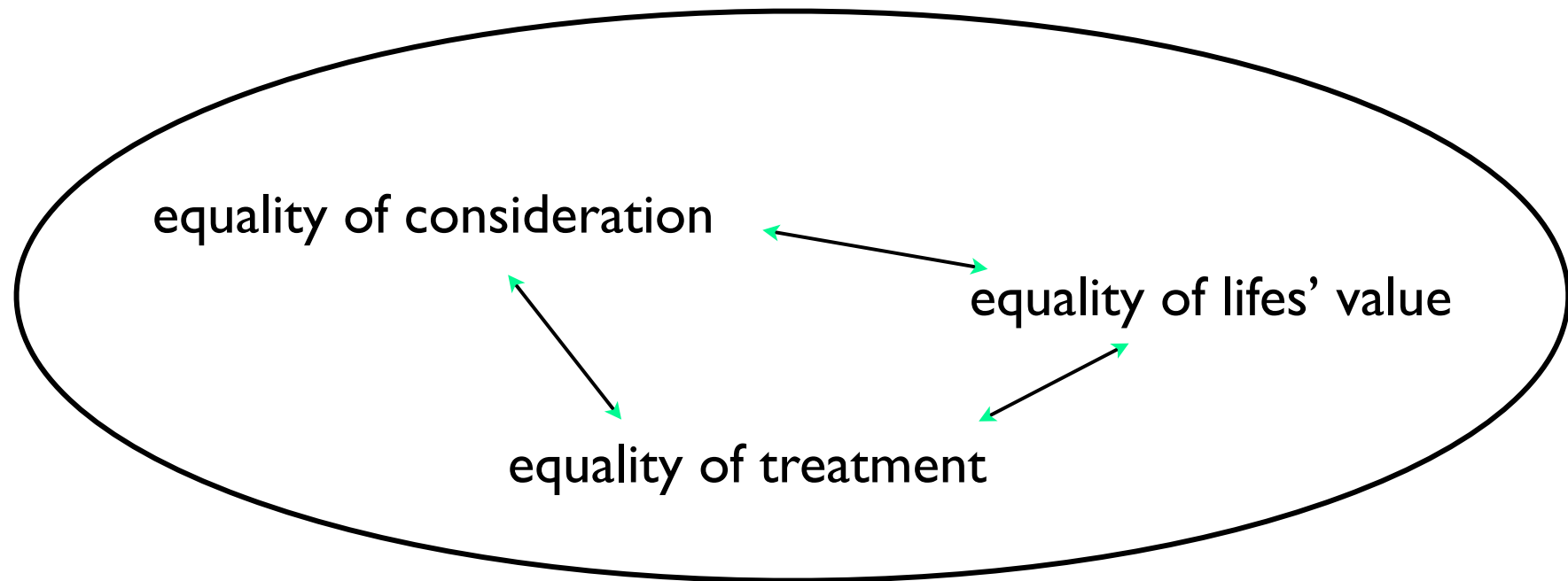
Reformism

- Racists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race.
- Speciesists violate the principle of equality by giving greater weight to the interests of members of their own species when there is a clash between their interests and the interests of those of another species.

# However:

«If it is true that we can make sense of the choice between existence as a mouse and existence as a human, then – whichever way the choice would go – we can make sense of the idea that the life of one kind of animal possesses greater value than the life of another.»

(P. Singer)



# The difficulties of interests weighing

interest in itself

interest in living

=

interest in living

pleasure in eating  
meat

<

interest in living

interest of a being



interest in living

>



interest in living



pleasure in eating  
meat

<or=or>



interest in living





born in 1938

# (d) Animals Rights

## Tom Regan

# Autonomous beings

Moral patients	<ul style="list-style-type: none"><li>• They possess preferences</li><li>• They act intentionnally</li><li>• They are the subject of their life</li></ul>
Moral agents	<ul style="list-style-type: none"><li>• They are able to movate their acts through reasons</li><li>• They possess conscience</li><li>• They are the subject of their life</li></ul>

All autonomous beings do possess rights

“A right or claim is the legal position created through the imposing of a duty on someone else.” (M. Kramer, p. 9)

# Against animal experimentation

1. “The right to fair treatment of our naturally caused maladies is an acquired right we have against those moral agents who acquire the duty to offer fair treatment”, that is against physicians. This cannot justify a violation of basic rights of other individuals, like animals.
2. “Risks are not morally transferable to those who do not voluntarily choose to take them”. In other words, if it is wrong to sacrifice a person or to experiment on her without her consent for the benefit of someone else, it is wrong to do the same things to an animal.
3. We are not allowed to use beings endowed with an intrinsic value like mere resources for other beings.

# Baby Fae

Baby Fae was born on October 12, 1984, at Barstow Memorial Hospital in California. The pediatrician diagnosed a hypoplastic left heart syndrome (HLHS). In HLHS, the normally powerful left side of the heart and aorta are underdeveloped and too weak to pump blood. HLHS kills 1 in 10,000 babies, almost always within 2 weeks. Four days later, Leonard Bailey, chief of pediatric surgery called the mother to discuss a xenograft. On October 26, Bailey transplanted a heart from a young baboon named Goobers into 15-day-old Fae. Nine days after the operation, with Fae seemingly doing fine, Bailey predicted that Fae might celebrate her 20<sup>th</sup> birthday. He predicted that Goobers' heart would grow as Fae grew. Eleven days later, Fae died. (G. Pence, *Classical Cases in Medical Ethics*, 1990, p. 251-253)

# Regan's commentary

“Those people who seized [Goobers'] heart, even if they were motivated by their concern for Baby Fae, grievously violated Goobers' right to be treated with respect. That she should do nothing to protest, and that many of us failed to recognize the transplant for the injustice that it was, does not diminish the wrong, a wrong settled before Baby Fae's sad death.” (The Other Victim, *Hastings Center Report*, 1985/2, p. 9-10)