Utilitarian Killing, Replacement, and Rights

EVELYN PLUHAR

Department of Philosophy
Penn State University, Fayette Campus
Uniontown, PA 15401

Abstract  The ethical theory underlying much of our treatment of animals in agriculture and research is the moral agency view. It is assumed that only moral agents, or persons, are worthy of maximal moral significance, and that farm and laboratory animals are not moral agents. However, this view also excludes human non-persons from the moral community. Utilitarianism, which bids us maximize the amount of good (utility) in the world, is an alternative ethical theory. Although it has many merits, including impartiality and the extension of moral concern to all sentient beings, it also appears to have many morally unacceptable implications. In particular, it appears to sanction the killing of innocents when utility would be maximized, including cases in which we would deliberately kill and replace a being, as we typically do to animals on farms and in laboratories. I consider a number of ingenious recent attempts by utilitarians to defeat the killing and replaceability arguments, including the attempt to make a place for genuine moral rights within a utilitarian framework. I conclude that utilitarians cannot escape the killing and replaceability objections. Those who reject the restrictive moral agency view and find they cannot accept utilitarianism’s unsavory implications must look to a different ethical theory to guide their treatment of humans and non-humans.

Keywords: utilitarianism, the replaceability argument, prior existence view, total view, rights.

It is commonly believed that animal life is not equal in value to human life. The breeding, confinement, and use of animals for human purposes in agriculture, product testing, and research is generally justified by appeal to the high degree of rationality, intelligence, autonomy, or moral sensitivity exhibited by humans in comparison to animals. It is often said that we humans, unlike animals, are persons or moral agents, and that this higher degree of development warrants our exploitation of "lower" life forms. One major difficulty with this widely-held view, as several have
pointed out, is that these "superior qualities" are not shared by all humans. The very young and the seriously mentally disabled are not "persons" in the above sense; thus, the reasoning above would license us to exploit them as we do animals.

I. Utilitarianism: An Alternative to the Moral Agency View

One moral theory proposed to avoid this very disturbing consequence is utilitarianism. Classical utilitarianism does not tie moral considerability or moral significance to personhood or moral agency. It bids us instead to maximize overall non-moral goodness; i.e. utility. Utilitarians may have different views on what counts as utility, of course. The theory as originally proposed and developed by Jeremy Bentham (1945) identifies utility with pleasure and disutility with pain, but a utilitarian need not embrace a hedonistic or even a monistic theory of value. Some contemporary utilitarians, such as L.W. Sumner (1987) allow for a pluralistic theory of value, and speak of maximizing welfare. Regardless of any differences in value theory, utilitarians generally agree that the utility to be maximized is not to be restricted to "superior" individuals. Any being with a welfare, be he or she Albert Einstein, Sojourner Truth, Hulk Hogan, Baby Jane Doe, Lassie, or Chicken Little, counts morally.

Peter Singer's appeals to "the equal consideration of interests" of all sentient beings (Singer, 1975: chap. 1) follows consistently from the utilitarian moral tradition. Much of utilitarianism's moral force is due to its rigorous impartiality: there is no room here for bias against individuals who happen not to share one's sex, colour, species, or intellect. In this sense, utilitarianism is said to be "no respecter of persons." Persons and non-persons alike, human and non-human, all are due equal consideration in relevantly similar circumstances. Singer has argued eloquently that we humans are morally obligated to forego the advantages of routine animal exploitation. Moreover, unlike the moral agency view, utilitarianism implies that very young or seriously mentally disabled humans are due the same moral consideration (although not the same treatment) as normal humans. Utilitarianism seems to imply that the lives and welfares of both persons and sentient non-persons are due protection. But is this really the case?

II. Utilitarianism and Inadequate Individual Protection

Utilitarianism's impartiality has not been questioned, but its ability to warrant adequate protection of individual life and well-being has been seriously doubted. Since total utility is to be maximized, innocent individuals should have their lives and welfare sacrificed if no alternative course would create an equal amount of utility. This would hold even if the gain would be small. Classical utilitarianism seems to have no room for what we call "rights." Rights act as constraints on the pursuit of goals; hence, they would seem to be inconsistent with the pursuit of maximum utility. A moral theory that would sanction the serious harming or killing of an innocent individual for the purpose of increasing overall utility seems highly unacceptable.

Utilitarians have gone to great lengths to overcome this fundamental objection.
For example, they have argued that we must take "side effects" of utility-maximizing actions into account, and that when we do, killing or harming innocents would not be routinely justified. A society which commonly sacrificed innocents would engender great disutility: fear, insecurity, anger, etc., on the part of those aware of the practice. Moreover, those who are sacrificed usually have relatives or friends who care about them: we must also factor in their distress. Critics reply that secret killings, particularly of beings for whom no one has deep feelings, would still be justified by utilitarianism, provided that no alternative course of action would create at least an equal amount of utility. Admittedly, such cases would be rare, but they could still occur.

Some utilitarians respond to this by accepting the implication. Singer (1986: 369) accepts it in the case of very young and very mentally disabled humans, as well as animals who are not persons, and we shall see that consistency requires him to accept it for normal persons as well. Other utilitarians recoil from the implication, at least as far as humans are concerned, and propose that, instead of acting simply to maximize utility, we should follow the moral code which, if generally accepted, would maximize utility (Brandt, 1971: 324–44). Proponents of "acceptance utilitarianism" reason that most humans would abhor any moral code which sanctioned the secret (or public, for that matter) sacrifice of innocents, even of innocents who are loved by no one. Hence, they argue that their form of utilitarianism is immune to the standard criticism.

Acceptance utilitarianism seems much more palatable than the bullet-biting approach that the classical utilitarian would take. Unfortunately for utilitarians, however, the theory is not particularly successful. It has been contrived specifically for the purpose of avoiding implications which many of us find morally repugnant, and the contrivance seems contrary to the very spirit of utilitarianism. Acceptance utilitarianism concedes that most of us are not utilitarians: we do not believe that the welfare and lives of innocents should simply be factored into overall utility, to be overridden when utility would thus be maximized. Building our anti-utilitarian sentiments into a revamped utilitarian theory has an unmistakably ad hoc air. As the criticism is so often put, acceptance utilitarianism gets the right answer for the wrong reason. The committed utilitarian with the courage of his or her convictions should instead, it would seem, work for public enlightenment. R.G. Frey takes this approach in defending the vivisection and killing of defective humans in order to greatly benefit others:

There are, of course, the likely side-effects of such experiments. Massive numbers of people would be outraged, society would be in an uproar . . . It must be noted, however, that it is an utterly contingent affair whether such side-effects occur, and their occurrence is not immune to attempts – by education, by explaining in detail and repeatedly why such experiments are being undertaken, by going through yet again our inability to show that human life is always more valuable than animal life, etc. – to eliminate them. (Frey, 1983: 116)
This approach lacks the hypocritical, contrived air of acceptance utilitarianism. While it accepts implications that many find deeply repugnant, it can at least avoid acceptance utilitarianism's flaws. Nevertheless, many of us, pending re-education, will remain anti-utilitarian in our sentiments.

III. The Replaceability Argument

Utilitarians might regard the above as a prejudiced view. However, utilitarianism has other alleged consequences which even its most dedicated advocates will balk at stomaching. They develop from an implication which many humans (although I am not one of them) find unobjectionable and even proper: the replaceability of animal life. As we shall see, the reasoning used to support this implication cannot be prevented from applying to human life too.

According to utilitarianism in its classic form, it would be right to raise, use, and kill an animal if:

a) the animal would not otherwise have existed;

b) the animal has a pleasurable life;

c) the death of the animal causes it no pain, fear, or other disutility;

d) those close to the animal (e.g., mothers, mates) are not allowed to suffer as a result of its use and killing; and

e) the animal is replaced at death by another animal for whom conditions (a)–(e) hold. 3

Before considering all the implications of this argument, let us focus on its import for the animals we routinely use. Although the replaceability argument sanctions the breeding, use, and killing of animals for purposes of agriculture, research, fur garments, and even recreation (for example, combination zoo-hunting "parks"), it is obvious that it would by no means justify these practices as they currently exist (with the possible exception of some wildlife confined for hunting). Life on the factory farm, the fur farm, and in most research labs, is no bowl of cherries. However, practices can be modified.

For example, current U.S. law requires that primates who are research subjects must be provided with conditions which promote their psychological well-being, and that dogs are to be provided with exercise. Anesthetics and analgesics are to be used whenever possible. None of these requirements existed before 1987, and if they are ever enforced (as of 1990, the U.S. government still has not seen fit to allocate any funds for this purpose), they should greatly improve the quality of life for some laboratory animals. 4 Great Britain and Canada have gone further than the U.S. in their concern for the minimization of pain for animal research subjects. All these efforts do not go nearly far enough to alleviate suffering and make life pleasurable for laboratory animals, but they do take a step in that direction, and could obviously be extended along the lines suggested by the replaceability argument.

The lot of farm animals could also be considerably improved. Sweden has taken unprecedented steps to do just that. In July 1988, a law was passed to phase out factory farming within the next several years. 5 According to the Swedish government (which is indeed enforcing the law), the purpose of the action is to ensure that
"animal rearing in the future will be geared towards keeping animals healthy and happy." In terms of this law, cattle are given the right (the law actually uses that term!) to graze, pigs the right to be untethered, and both are given the right to straw, litter, and (for pigs) food areas separate from their sleeping areas. Chickens are to be released from their cramped cages and allowed to enjoy the life a chicken has evolved to enjoy. Animals are to be subjected to antibiotics and other drugs only if these are necessary to treat disease, not to accelerate growth. Slaughtering procedures are also to be reformed in such a way as to minimize terror and pain. If Sweden succeeds in its "rights program," it will have created a model of utilitarian legislation. If more humans took the replaceability argument to heart, the lives of the animals we routinely exploit would add considerably to the sum of utility in the world. "Humane exploitation" maximizes utility while preserving the common belief that human life is more valuable than animal life – or so it seems.

IV. Human Replaceability

In fact, the replaceability argument applies to any individual with a welfare, including human beings. This is because classical utilitarianism implies that individuals are of secondary moral importance only: it is their experiences which count as valuable in themselves. As Singer has put it, classical utilitarianism

\[ \ldots \text{regards sentient beings as valuable only in so far as they make possible the existence of intrinsically valuable experiences like pleasure. It is as if sentient beings are receptacles of something valuable and it does not matter if a receptacle gets broken, so long as there is another receptacle to which the contents can be transferred without any getting spilt. (Singer, 1979a: 100)} \]

In this sense, individuals, human or otherwise, are interchangeable, provided that their capacities for various experiences are commensurable.

More recently, Singer has regretted the "receptacle" terminology as misleading, because it suggests that experiences and individuals can be separated in the way that wine may be emptied from a bottle and poured into another. While an individual is having an experience, the two are not separable. In this sense, the experiencing individual, not just the experience, can be said to be intrinsically valuable. However, the continued existence of that individual is not morally mandated by classical utilitarianism if another similar individual can be created to take his or her place, picking up where the other life stops (Singer, 1987a: 8–9). Hence the interchangeability of like individuals remains, and experiences – not individuals – are clearly assumed to be of primary moral value.

The prospect of human replaceability distresses even those utilitarians who accept the justifiability of killing without replacement when utility would be maximized. The notion of breeding, using, and killing even the happiest of humans, then promptly replacing them, is rather unsavory. It would also be permissible to kill humans who have not been bred for the purpose, provided that we do so without
causing pain or fear to them or their loved ones, and that we replace them by beings who are similar. Indeed, it would be obligatory to do so if the replacement would have a better life than the replacee!

Perhaps we need intensive utilitarian re-education so that we may find all of this acceptable. Alternatively, we could try to show that utilitarianism can be plausibly reconstrued in such a way that the replaceability argument can be rejected, at least in the case of normal humans, and perhaps in its entirety. If this approach fails, we must choose between utilitarianism with its upsetting implications and a non-utilitarian view.

V. The Prior Existence View

Peter Singer originally rejected the replaceability argument in its entirety. He agreed with Henry Salt, who rejected an early version of the argument in 1892 with this diagnosis of an allegedly fatal flaw:

The fallacy lies in the confusion of thought which attempts to compare existence with non-existence. A person who is already in existence may feel that he would rather have lived than not, but he must first have the terra firma of existence to argue from: the moment he begins to argue as if from the abyss of the non-existent, he talks nonsense, by predicking good or evil, happiness or unhappiness, of that of which we can predicate nothing. (Salt, 1980: 186)

The replaceability argument is held to have an absurd consequence: by counting the utility the non-existent life would have, then weighing that hypothetical utility against the utility generated by existing beings, it allegedly makes a nonsensical comparison. If this is correct, classical utilitarianism errs in including future beings in its utility calculations. (Singer calls this utility-calculating approach "the total view"). If we only count the utility which can be generated by existing beings (thereby adopting what Singer calls "the prior existence view"), the replaceability argument is obviously defeated. The utility lost by killing an existent being could not be equalled or outweighed by the utility a non-existent replacement would bring into the world.

As Singer later recognized, however, this way of trying to defeat the replaceability argument loses its appeal on closer inspection. Singer does not directly mention this point, but Salt's objection would imply that we speak nonsense whenever we discuss that which, strictly speaking, does not exist. When we speak of the future, are we babbling "of that of which we can predicate nothing?" Polluting industries that object to environmental regulations intended to unfool the air on some glorious future day might find this argument appealing, but no one else will. Salt's "prior existence view" also makes a hash of the moral obligations we believe we have to future generations. If it makes no sense to talk about future beings, we can certainly have no duties to them.

It is worth pausing a moment to consider the ethical implications of Salt's "prior
existence" view. If I secretly bury toxic wastes in the sandbox my neighbours have installed for the child they will have in a year's time, the only moral wrong I am committing is against my present neighbours! Unfortunately, this is not an unrealistic example. Were those responsible for the disaster at Love Canal morally innocent of any crime against the unborn children of its unwitting inhabitants? Moreover, to mention another horrifyingly realistic example, if we deposit highly toxic waste products in containers which will break down after 150 years, poisoning millions of animals and humans, but endangering no one living now, we would do no wrong at all!

VI. The Extended Prior Existence View

Even the early Singer does not go this far. After saying that the very phrase "non-existent being" is self-contradictory, and that consequently we can neither harm nor benefit "it," he adds in parentheses:

The only qualification required is that we can benefit or harm beings who will exist in the future, which is why it is wrong to damage the environment, even when the effects of the damage will not be apparent for fifty years. (Singer, 1975: 241).

If Salt (and the early Singer!) had been correct, this qualification could make no sense. If we can talk about beings who will exist, we are talking about "non-existent beings," and we appear to be making perfectly good sense when we do so.

Unlike Singer, S.F. Sapontzis, who supports the prior existence view, has argued that there would be no problem in accepting the implication that we have no obligations to future generations (Sapontzis, 1987: 194). However, fully aware of many individuals' reluctance to do this, he notes that

... it would not be inappropriate to require that prior existence utilitarians include among their moral deliberations a concern with the likely effects of their actions on the enjoyment or fulfillment of future generations. Since those generations are (ceteris paribus) definitely going to exist, it could reasonably be claimed that, for utilitarian purposes, they already do have a sort of existence and must be included in our moral deliberations. (Sapontzis, 1987: 195)

There is warrant for doing this, but it requires that we reject the highly restrictive prior existence view following from Salt's objection to the replaceability argument. Although Singer does not say so directly, at some point he must have gone through the same reasoning. After reconsidering his agreement with Salt, he describes the prior existence view as follows: "The second approach is to count only beings who already exist, prior to the decision we are taking, or at least will exist independently of that decision" (Singer, 1979a: 87). This "extended prior existence view," as Sapontzis has called it, distinguishes between beings who will exist regardless of the par-
ticular action we are now contemplating (including our own future children, as long as we are not now deciding about whether to conceive them) and those beings whom we are now considering creating. L.W. Sumner (1981: 209) terms them "independent" and "dependent" beings, respectively.

The extended prior existence view is certainly an improvement over its predecessor. It nullifies the replaceability argument while avoiding Salt's and (early) Singer's Parmenidean perplexities about "non-existent" beings and allowing for obligations to future generations. The distinction between beings who will exist no matter what we decide and those whose existence depends on our decisions does not appear to be contrived. Surely it is less arbitrary to include independent beings in our moral deliberations than to leave them out. It seems that we would do well to modify classical utilitarianism by replacing its total view with the extended prior existence view. The old problems about harming or killing innocents when utility would thus be maximized would remain, but at least the utilitarian would no longer be required to accept the replaceability of individuals. Why then does Singer go on to reject the extended prior existence view?

VII. The Case of the Wretched Child

He rejects it because it has an implication which seems deeply mistaken. The extended prior existence view implies that it would not be wrong for a couple to conceive a child who they know will be afflicted with a horrible disease, a disease which will condemn it to a brief, wholly wretched existence (Singer, 1979a). Since the child-to-be is a dependent being, its future misery simply does not count. Both Derek Parfit (1984: 134–6 and L.W. Sumner (1981: 209–21) have been driven back to the total view for the same reason. Sumner puts the objection especially well, after noting that the non-total view would make it wrong for the couple not to kill the child once it has begun to suffer:

> But what plausibility is there in a theory that gives a woman no moral reason to avoid creating a child whose life will be intolerable but does give her a reason to kill such a child once it has been created? (Sumner, 1981: 220–21)

Sumner reasons that "the case of the wretched child" brings out the arbitrariness of the extended prior existence view, making it obvious that the theory violates a principle rightly sacred to utilitarianism: impartiality (Sumner, 1981: 214). He seems to be quite correct. Why should the utilities of dependent beings who do not yet exist count for less (for nothing, in fact) than the utilities of independent beings who do not yet exist? Why is it wrong for me to bury toxic wastes in my neighbours' sandbox in order to poison their future child, but not wrong for me knowingly to conceive my own wretched child?

The best reply an advocate of the extended prior existence view could give, Singer believes, is that the prospective parents wrong themselves in initiating such a project. Once the suffering child exists, it should mercifully be put to death in order to
Utilitarian Killing

decrease total disutility. However, mercy killing is very traumatic. The parents would have spared themselves this trauma if they had foregone the conception in the first place. Whatever disutility might be created by the frustration of their wish to have such a child would perhaps be outweighed by their pain as child-killers. If this is the case, it would be wrong to conceive a child one knows will be wretched (Singer, 1979a: 87–88).

This is not a good reply, as Singer (1979a: 87) himself is the first to say. Although he does not explain his assessment, it is not difficult to do so. Parents who would not be particularly troubled by the act of killing their child are very easy to imagine: we know that such people exist. Whatever pleasure they derive from conceiving a wretched child would certainly outweigh any transitory "unpleasantness" mercy killing might bring (let us assume that they have no reason to fear any legal sanctions). These "monster parents" would be maximizing utility by carrying through their project, on the extended prior existence view: far from being wrong, they are wholly justified. On the other hand, parents who would suffer great anguish in carrying out the mercy killing of their suffering offspring would be creating more disutility for themselves by deliberately conceiving such a child. Thus, the more sensitive, concerned parents would act wrongly in initiating the pregnancy, whereas the "monster parents" would be justified in doing so! Far from saving the extended prior existence view, the suggested reply starkly underscores its unacceptability.

VIII. The Total View and Its Implications

Perceiving the weakness of his reply, Singer rejects the view he formerly supported. The very reasoning which leads to the rejection of the extended prior existence view returns him to the total view of classical utilitarianism, with its own distressing implications. If the misery of a child-to-be is a reason for not bringing it into existence, isn't the happiness of a child-to-be a reason for bringing it into existence? Are we not then obligated to bring as many happy beings into this world as we can? The most efficient way of generating utility seems to be to create utility-generators. If so, those who practise contraception when they would be able to produce happy children act wrongly. Moreover, they act just as wrongly as those who secretly kill a happy child in its sleep. Anyone who does not balk at this will likely balk at the upsetting implication of classical utilitarianism which is our present primary concern: it implies that any individual can in principle be killed and replaced by another. The prior existence view, both in its original and its extended form, would have allowed us to avoid these implications. Has Singer then accepted them? As we shall now see, although he denies that every individual is in principle replaceable, he does accept many of the remaining implications.

IX. Preference Utilitarianism and Replaceability

Singer's partial rejection of the replaceability argument is due to his partial rejection of classical utilitarianism. While that theory appropriately identifies the utility generated by merely conscious beings with pleasurable experiences, hedonism of this
sort is not appropriate, he holds, in the case of self-conscious beings. The latter are not simply blobs of experiencing protoplasm: as beings who are aware of themselves as existing over time, they have preferences, including, in most cases, a preference for continued existence. Singer believes that classical utilitarianism ignores this dimension entirely. Utility in the case of self-conscious beings is a matter of bringing about what they prefer to have happen, whether or not this results in pleasurable experiences. Although classical utilitarianism is justified in the case of sentient beings who merely float from one experience to the next with no awareness of doing so, preference utilitarianism, Singer holds, is the theory of choice in the case of self-conscious individuals.11

How does this bear on the replaceability argument? When we kill and replace a merely conscious being by another we are just changing film reels, as it were. One stream of consciousness has stopped and another begun. It makes not the slightest difference to the replacee, since he or she is incapable of desiring to live, and the same holds for the merely conscious replacement. All we need to do as utilitarians is to see to it that the total number of pleasurable experiences is maximized. On the other hand, when we kill a self-conscious being and replace him or her with another, we are not just changing film reels: we are destroying the last reel of one film in order to bring on an entirely different creation. The lives of self-conscious beings are coherent wholes, unlike the lives of merely conscious beings. Bringing a complex, coherent life to an end generates disutility, other things being equal.

According to preference utilitarianism, Singer thinks, we would not be maximizing the fulfillment of preferences by killing and replacing the self-conscious. Instead, we would be frustrating the preference to continue living. Indeed, all those preferences which presuppose continued life would be frustrated. This would be the case even if the individual dies in a state of blissful ignorance about our actions. Singer concludes that non-self-conscious life is replaceable, but that self-conscious life is not:

To this extent, with non-self-conscious life, birth and death cancel each other out; whereas with self-conscious beings the fact that once self-conscious one may desire to continue living means that death inflicts a loss for which the birth of another is insufficient compensation. (Singer, 1979a: 102–3)

Neither the replaceability argument nor classical utilitarianism are rejected: they are simply restricted to those sentient beings who are incapable of caring whether they live or die. In this way, Singer believes he has avoided the implication which many humans mind the most: the idea that persons like themselves may be killed and replaced.

X. Who Would be Replaceable?

The class of self-conscious beings is much larger than the class of moral agents. Which beings are self-conscious and which beings are not is an empirical question.
Normal human babies over the age of (roughly) 18 months can recognize themselves in the mirror. So can Koko, the gorilla who has been taught the basics of American Sign Language. (Koko also takes pictures of herself as she appears in the mirror, and has no problem identifying the subject of her 35 mm snapshots. When asked "Are you an animal or a person?," Koko once signed "Fine Animal gorilla."). One is probably self-conscious before being able to perform the mirror feat, although this is difficult to determine. In any case, Singer thinks that it is safe to say that normal humans past the stage of infancy would have protection from the replaceability argument. So, he believes, would all the other adult mammals whose behaviour clearly indicates that they have no tendency to confuse their body parts with those of their fellow creatures. Singer (1979a: 99) suspects that reptiles, fish, and birds lack self-consciousness, as do infant mammals of any species. Humans (and other mammals) with severe enough mental deficiencies also fail to be self-conscious. According to Singer, all of these merely conscious beings are replaceable.

Humans who are fond of eating flesh or who support vivisection may find this result agreeable. If Singer is right, one need have no compunction about raising, killing, and eating chickens or turkeys (provided that we allow them pleasant lives and painless, fearless deaths, which assuredly does not happen now on factory farms), then replacing them with new birds. Infant mammals (e.g., calves, lambs) could also be raised humanely, eaten, and replaced, although adults could not. We could also humanely conduct research on these animals, even vivisect them, if we can somehow manage to keep their lives pleasant (we may have to kill the mammals before they reach adulthood, since then they would no longer be replaceable).

Of course, it would also follow that we could do the same with severely mentally deficient humans. Singer (1979b: 153) does not flinch from drawing this conclusion: "The position applies equally to members of our own species who lack the relevant capacity [self-consciousness]." R.G. Frey agrees, as we saw earlier. From a purely clinical point of view, normal humans would frequently be benefited more by experimentation on members of their own species than by experimentation on animals. Would not utility be maximized by the practice of vivisecting non-self-conscious humans? Most humans do not find this an agreeable result at all, but as Frey has argued, intensive education and explanation may well change these attitudes (Frey, 1988: 196–7).

Frey never discusses raising non-self-conscious humans for food, but the same applies here. Cannibals reportedly have said that, of all the meat sources they have feasted upon, "the long pig" (guess who?) is the most delicious. Jonathan Swift's savage satire, "A Modest Proposal for Preventing the Children of Poor People from Being a Burthen to Their Parents or Country, and for Making Them Beneficial to the Publick," puts forth the suggestion that poor eighteenth century Irish babies be bred, farmed and sold for food:

I have been assured by a very knowing American of my acquaintance in London, that a young, healthy child well nursed is at a year old a most delicious, nourishing, and wholesome food, whether stewed, roasted, baked, or boiled ... when the family dines alone, the fore or hind quarter
will make a reasonable dish, and seasoned with a little pepper or salt
will be very good boiled on the fourth day, especially in winter. (Swift,
1976: 236)

Swift must have been depressed by the fact that some readers thought he had made
an excellent proposal. Perhaps the numbers of such folk could be increased by extra-
diligent exposure to the replaceability argument and preference utilitarianism. (In
these health-conscious times, we could add to the appeal by feeding the stock only
organic food and by keeping them lean, so that they would not be loaded with pesti-
cides or too high in cholesterol.)

Let there be no mistake: Singer's view implies the replaceability of normal human
infants as well as some mentally damaged humans. H.L.A. Hart has pointed out that
this would mean that the parents of a normal infant would be justified in killing it,
provided that no one else wanted to adopt it into a good home and they undertook
to replace it by conceiving another infant to whom they could give a happier life.
Even more shocking, parents who kill a normal infant and don't replace it because
they do not want the burden of parenthood are no more wrong than a couple with
the same motive that refuses to conceive a child in the first place! (Hart, 1980: 31).
The latter implication follows from the total view's awarding of equal moral status
to dependent beings and independent beings. In his reply to Hart, Singer fully ac-
cepts these implications about normal infants, including the equivalence of killing
and failing to conceive a child (Singer, 1980: 53).

XI. Are Self-Conscious Beings Really Irreplaceable?

One might argue that these implications are the price one must pay for the utilitar-
ian exemption of self-conscious life - the sort of life we have - from the replaceabil-
ity argument. However, as we shall now see, this is not the case. Singer does not
make a case for the irreplaceability of self-conscious life.

Hart (1980: 29–30) was one of the first to say this, and others (myself included)
independently came to the same conclusion. Why cannot preference utilitarianism
sanction the killing and replacement of self-conscious beings? Granted: the re-
placee's preference for continued life would be frustrated. However, a new self-con-
scious being who would not otherwise have existed, with his or her own preference
for continued life, would take the place of the original. On what grounds can pref-
erence utilitarianism disallow this?

XII. Singer's Prior Existence Defense of Irreplaceability

Singer tries to provide such grounds, but his efforts in this regard are truly perplex-
ing. For example, he sometimes argues that the preference for continued life which
the replacement will have does not count so long as the replacement does not yet
exist. The replacee's preference to go on living does count; hence, we reduce utility
by killing him or her. He puts the point this way in his reply to Hart:
There is a difference between killing living, self-conscious beings who desire to go on living, and failing to bring into existence a being which, since it is unborn, can have no desire to come into existence. (Singer, 1980: 53)

According to this line of argument, only the preferences of existing beings are to be included in the utility calculation. Future preferences simply do not count. But is this not just the prior existence view again, the very view which Singer earlier rejected?

Indeed it is: Singer says so explicitly, offering a "compromise" between the total and prior existence views:

We might grant that the total view applies when we are dealing with beings that do not exist as individuals living their own lives . . . When we switch our attention to self-conscious beings, however, . . . we are justified in concerning ourselves first and foremost with the quality of life of people who exist now or, independently of our decisions, will exist at some future time, rather than with the creation of possible extra people. 15

To be precise, this is the extended prior existence view. Why is it acceptable in the context of preferences but not acceptable in the context of the hedonistic theory of value held by classical utilitarians?

The reader might recall that Singer rejected the classical extended prior existence view because it did not imply that it would be directly wrong for a couple deliberately to conceive a wretched child. Singer shares the widespread intuition that the future misery of the child should be counted, even before the child exists. If we count future misery, however, it certainly seems that we should also count future unsatisfied preferences. On the extended prior existence view, it would not be wrong to conceive a being whose preferences (except perhaps for death) will be systematically thwarted by a life of suffering. If these future unsatisfied preferences should be counted after all (and surely anyone who thinks future misery ought to count would hold this), the extended prior existence view is wrong. Therefore, Singer, of all people, cannot appeal to this view to support the irreplaceability of self-conscious life.

XIII. Singer's Total View Defenses of Irreplaceability

On the other hand, Singer sometimes seems to be presupposing the total view in arguing for the irreplaceability thesis. Instead of dismissing a replacement's preference for continuing to live on the grounds that the replacement does not yet exist, he claims that creating a new preference is like going into debt. The debt is allegedly erased when the preference is satisfied. Hence, creating a new being with a preference for going on living, then allowing that being to live, would add up to zero. Thwarting the replacee's existing preference creates disutility, however. So, it seems
that replacing an existing self-conscious being cannot maximize utility (Singer, 1980: 53).

Singer has since rejected this view. For example, it implies that it would be wrong to bring any children into the world if they would have even one unsatisfied preference in their lives! Even if all their other preferences were satisfied, their lives would have a minus utility value (Singer, 1987b: 166). (So, of course, would ours.) We must join Singer in rejecting any view with this implication.

Another of Singer's total view defences of the irreplaceability thesis seems more promising. He suggests that the killing of a self-conscious being introduces an extra disutility which cannot be counterbalanced or outweighed by the creation of a replacement utility generator whose satisfied preferences receive positive values. The extra disutility is the frustrated preference for continued life. He expresses the point this way in a recent article:

... Killing an individual who prefers to go on living is not justified by creating a new individual with a preference to go on living. Even if the preference of the new individual will be satisfied, the negative aspect of the unsatisfied preference of the previous individual has not been made up by the creation of the new preference plus its satisfaction. (Singer, 1987a: 9)

This approach has the merit of being consistent with his rejection of the extended prior existence view. According to this total view reasoning, we may regard satisfaction of the replacement's preference for continued life as equal in value to satisfaction of the replacee's preference, but the disutility created by thwarting the replacee's preference gives a negative value to the exchange.

However, this defence of the irreplaceability of self-conscious life will not do as it stands. Unless a being has ceased to have a preference for continuing to live, death will always thwart that preference. The resulting disutility implied by preference utilitarianism will be created in any case, whether the being dies "naturally" or is killed (without distress to him or herself or to loved ones). Killing merely alters the timing of the unavoidable disutility. So long as the replacement being would have satisfied preferences comparable to those the replacee had and would have had, the killing and replacement is justified. If we could create a being that would have more preferences satisfied than the predecessor, the exchange is obligatory!

Singer came to recognize that more must be said. He has most recently supplemented this total view defence by sketching a very interesting account of preference satisfaction in self-conscious life (Singer, 1987b: 165–9). As we mature, he argues, we develop a set of long-range preferences to guide our actions. Typically, we endure considerable hardship for a number of years in order to satisfy these preferences (e.g., getting a terminal degree, writing a book, becoming a poet, solving the riddles of the universe, alleviating world hunger, ameliorating animal and human suffering). If we were to be killed prematurely, before the big "pay-off," a futile mockery would have been made of our lives. The fact that new lives, with new long-range preferences, would replace ours would not counterbalance the huge loss imposed on
Utilitarian Killing

us. Suppose one individual is killed prematurely and replaced by another who in turn develops long-range preferences he or she struggles to satisfy. If the replacement is allowed to live long enough to satisfy these preferences, utility is created, but there is still a net loss in utility. As Singer says, "There will be the hardships of two journeys [i.e., struggles], and the rewards of only one" (Singer, 1987b: 167). If the replacement is, like the predecessor, not allowed to reap the rewards, the net loss is even greater. Surely, then, it does matter when death occurs. The premature death of a self-conscious being is not counterbalanced by the birth of another.

Has Singer finally shown that the killing and replacement of self-conscious beings cannot be justified? I am afraid that he has not. First of all, according to the reasoning above, we would be justified in killing and replacing an individual after "the big pay-off" has arrived. The individual would die enormously satisfied, would not have anticipated or experienced the killing (if we do the job correctly), and would never suffer from post-pay-off disappointments. The individual who has "peaked" may not wish to go gently into that good night, but he or she can be assisted gently thither, never to slide downhill. The years of decline would be traded for the hope and promise of the replacement life. The policy of systematically replacing older, post-pay-off people with youngsters may maximize (preference) utility, as Sapontzis has pointed out in a related context (Sapontzis, 1987: 188). (Some people have actually thought that this is a good idea. The former dictator of Romania, Nikolai Ceausescu, demanded that elderly people – other than himself and his wife Elena – be refused medical treatment. He simultaneously boosted the birth rate by outlawing contraceptives and abortions, in order to keep the population young. Of course, his methods were far from utilitarian, although replacement was his goal.)

Secondly, and more fundamentally, Singer's "hardship/pay-off" model of self-conscious life simply does not apply to many self-conscious beings. Children, some mentally deficient humans, and many adult non-human mammals (except perhaps for whales and dolphins) do not fit this mold at all. Are they then replaceable at any time, contrary to Singer's thesis? Paradoxically, their lives may be filled with far more preferences that are satisfied than the lives of those devoted to the work ethic. (I am certain that this holds for our two companion cats.) Moreover, why assume that the typical adult human life consists of years of struggle, ideally capped by one major pay-off fairly late in life? This is not true of many people, nor is it at all clear that it ought to be true, especially in preference utilitarian terms. It seems that a life in which struggle is rewarded by frequent pay-offs, rather than one which is primarily devoted to hardship in the service of a distant goal, would contain more utility. Interrupting a life like this, then replacing it with a similar one, does not turn a lifetime of hardship into an exercise in futility. Singer's reasoning, ingenious as it is, shows at most that we should not replace a "workaholic" with another workaholic!

None of Singer's various strategies has defeated the replaceability argument for self-conscious beings. What are utilitarians to think at this point? Whether they are preference utilitarians or hedonistic utilitarians, if they accept the total view, they are apparently committed to holding that present and future individuals are interchangeable in the right circumstances. The extended prior existence view would avoid this implication by not counting the utility or disutility which would be
generated by beings who would not exist independently of our decision to create them (dependent beings). But doesn’t "the case of the wretched child" bar utilitarians from accepting the extended prior existence view, as we saw earlier?

XIV. Return to the Case of the Wretched Child

It is now time to take a closer look at that argument. Sapontzis (1987: 190-4) argues that the wretched child case does not, after all, refute the extended prior existence view. If he is correct, Singer and other like-minded utilitarians can avoid all of the many difficulties posed by the total view. It would follow that no sentient beings, human or non-human, are replaceable, be it on the farm, in the laboratory, or in their own homes.

Sapontzis begins by observing that it is difficult to take the case of the wretched child terribly seriously. He finds it almost inconceivable that an actual couple would deliberately conceive a child who would have only a brief, agony-filled life. He believes that a view’s acceptability should not hinge on such an outrageously far-fetched example (Sapontzis, 1987: 190–1).

I am sorry to say, however, that the case is not particularly far-fetched at all. Newspapers are filled with accounts of "monster parents" who systematically abuse child after child horribly, often killing them in the process. It hardly stretches the imagination to picture them deliberately conceiving children whose genes, rather than parental abuse, will hand them horrible, brief lives. There are other, less repulsive parents who would do the same thing. There are people who believe that they were meant to procreate ("if God didn't want us to have our own kids, we would have been born wearing underwear!"), who are deeply opposed to abortion, who, knowing beforehand that the child will have a brief, miserable life, would chalk it all up to God’s will and joyfully go about fulfilling their purpose in the Grand Plan. The case of the wretched child is far too close to reality for comfort, unfortunately.

Sapontzis takes the argument seriously enough to try to refute it, of course. He argues that, upon reflection, we can see that the objectionable nature of the wretched child case leaves the extended prior existence view untouched. He believes that we need not count the disutility which would be generated by a wretched but not yet existing being in order to see why it would be wrong to plan having such a child. The plan really has three stages: (1) intending to have the child; (2) conceiving the child; and (3) keeping the child until it dies "naturally." Serious, grievous wrong occurs only at stage (3), when great harm is done to an innocent being. However, at that stage the child exists, and the disutility generated by its life is fully countable according to the extended prior existence view. Those of us who are inclined to say that wrong is also done at stages (1) and (2) are not really counting the non-existent child’s misery, according to Sapontzis; we are making a character judgment instead:

But if such people did exist, they would have a perverted idea of reproducing and parenting and would show, by keeping the child alive for its two miserable years, their willingness to use others merely as a means to their own satisfaction. Consequently, this whole project of
parenting would express a kind of demented character that would give the project a strong immoral value... Prior existence utilitarianism can account for this intuition, since this is an evaluation of character, and prior existence utilitarianism no more precludes making character evaluations than does the total population view. (Sapontzis, 1987: 191)

At all stages, then, the (extended) prior existence view can allegedly account for our revulsion.

Sapontzis is correct in saying that any form of utilitarianism can license the making of character judgments. However, the grounds for a bad character evaluation are not the Kantian ones he suggests. Utilitarians can judge character traits to be good or bad solely by reference to their consequences. Specifically, one must ask how much harm (disutility) such traits are apt to cause. As Sumner, himself a utilitarian, says: "For utilitarians the future matters; indeed it is all that matters" (Sumner, 1981: 222). For a utilitarian, the bad characters of the parents do not 'give the project a strong immoral value': it is the completed project which makes their characters bad.

What gives rise to the bad character evaluation is the enormous disutility which the life of the wretched child will generate, a disutility which far outweighs the satisfaction of the parents' desire to create the child. A total view utilitarian has no problem making such a judgment. However, an extended prior existence utilitarian cannot make such a character evaluation before the project is completed! To do so would be to count the disutility generated by the as yet non-existent child. (One might try to argue instead that a couple that gets enormous satisfaction from setting such a project in motion would probably be a menace to independent beings, and can be judged to have bad character for that reason, but this would be a very weak response. Cases of individuals with one obsession in otherwise unremarkable lives are not uncommon. Our couple might easily fall into this camp. Indeed, the planning and execution of their dearly wished project might make them extra pleasant to those around them!)

On the extended prior existence view, then, there are no grounds for saying that a couple initiating the project of creating a wretched child are deficient in good character until the wretched child exists. This means that we cannot say that what they have done prior to that point is wrong, even indirectly.

Returning to the case of the wretched child has given us even more grounds for doubting utilitarianism. Readers may agree with me in finding correct Sapontzis' Kantian character assessment of the would-be parents of a wretched child. Their willingness to sacrifice the interests of an innocent child in order to please themselves is odious: they are treating the planned child as a mere means rather than as an end in itself. The accidental still-birth of the child would not change our judgment in the least, although it would cause us to heave a sigh of relief. This seems to be a decidedly non-utilitarian character assessment.

Singer has objected that utilitarians can agree that individuals should be treated as ends and not merely as means: they are not to be regarded as mere instruments for our satisfaction, since their lives generate intrinsic value (utility) (Singer, 1987a:
This is true, but only in a narrow sense which fails to capture what seems to be wrong in planning to have a wretched child. Singer is saying that utilitarians are required (on the total view only) to count the utility and disutility a wretched child would bring into the world. Ignoring this and concentrating only on one's own satisfaction would be wrong. But what if the couple does not ignore their duty in this regard? Suppose they plan to kill it after it is born, so that it will not suffer. In a narrow sense, they are not regarding the child merely as a means, but in another sense that is exactly what they are doing: the child's very existence is intended only to satisfy their overwhelming procreative urge. They cannot be faulted on utilitarian grounds for anything they have done. Their characters cannot even be attacked, since the project, including its termination, maximizes utility. Are they not actually morally praiseworthy? Such an assessment seems dreadfully wrong. Even though the child's misery (disutility) is being counted in the total, they are still using the child. Either those of us who find this morally objectionable are wrong, or utilitarianism, as it has so far been understood, is wrong.

Therefore, the extended prior existence view has not been rescued from the case of the wretched child. There seems to be no utilitarian escape from the replaceability argument. We are left with total view utilitarianism, which seems morally unacceptable as well.

XV. Total View Utilitarianism and Rights

Let us now consider one final attempt to rescue utilitarianism from the charge that it has morally unacceptable implications. We could show that sentient beings, or at least self-conscious beings, are not replaceable, and that innocent beings in general should not be sacrificed whenever utility would be thus maximized, if room could be found in utilitarian theory (which we now know must take the total view) for rights. Utilitarian theory has traditionally been hostile to rights, but some utilitarians believe that this is based on a misunderstanding. If concern for the overall maximization of goodness could be combined with a commitment to individual (and possibly collective) rights, it seems that we would have an impartial, highly plausible moral theory, one that is much less restrictive than the moral agency view mentioned at the beginning of this paper.

Making a place in utilitarian theory for rights is no easy matter, however. Utilitarian R.G. Frey is decidedly unenchanted by the prospect, but suggests a way in which it might be done. Humans tend to be disturbed by the notion that innocent individuals may be killed whenever this will create more good than alternative actions. A code of rights which would protect babies, retarded or otherwise very mentally deficient people, and normal adults of our species would have, as Frey puts it, "high acceptance- and observance-utility" (Frey, 1983: 73). Thus, maybe people would be happier and more secure (i.e. maybe more utility would result) with such a code of rights. Utilitarians could increase the utility which observance of the code would generate by fashioning extra sanctions against those who violate it (Frey, 1983). In this way, a utilitarian case for rights can be made.

It is not a very satisfactory case, however. Paradoxically, as we saw in our discus-
Utilitarian Killing

Utilitarianism earlier, it builds people's anti-utilitarian sentiments into the calculation of overall utility. Surely re-educating the people would be better than acceding to their "prejudices." Building in extra sanctions to increase the disutility of violating a code of rights is highly artificial and questionable in utilitarian terms. Why would a utilitarian be interested in buttressing biases?

There is no question that biases (not just anti-utilitarian sentiments) would be buttressed by such a scheme. It is doubtful that members of other species would gain protection, for example, since humans typically have much less concern for them than for members of their own species. Many societies, as Helga Kuhse and Peter Singer have pointed out, have also had no compunction about killing newborns (Kuhse and Singer, 1985: chap. 5). The same holds for defects humans. It would not maximize utility to extend the special protection of rights to them in those societies (although on utilitarianism, they would have to be treated "humanely"). All of this clearly undercuts utilitarian impartiality.

Finally, the secret killing of individuals in order to maximize utility (recall Singer's case of parents secretly killing their normal child in order to conceive a child who would have an even happier life) would still be the right thing to do according to this scheme. As James Nelson (1986: 75) has argued, a society in which people generally observe rights (in accordance with their non-consequentialist leanings) and in which intelligent utilitarians secretly violate those rights when utility dictates it might actually maximize utility. Frey's scheme will not convince skeptics that utilitarianism is compatible with genuine rights.

Frey himself is aware of this. In a utilitarian theory, utility ultimately trumps rights. Hence, "rights" in a utilitarian theory can only be what Frey calls "mere shadows of the rights of rights theorists" (Frey, 1983: 87). As such, they have no real force:

The real point is this: this combination of the above factors makes moral rules and rights at best mere appendages to a theory of right and wrong. If moral rules and rights are not basic in the theory, and so do not form part of the theory's account of what makes right acts right, they are dispensable. All that prevents this happening are the practicalities of our human situation, which can and often do alter. (Frey, 1983: 87)

Are all attempts to find a place for genuine rights in utilitarianism doomed, as Frey suggests?

XVI. Sumner's Utilitarian Case for Rights

Sumner disagrees with Frey's contention. I believe that he has made the best case that can be made for genuine rights within a utilitarian framework. In his earlier book, Abortion and Moral Theory, Sumner made an embryonic attempt, as it were, to reconcile his utilitarianism with his defence of a right to life for sentient beings (Sumner, 1981: chap. 5). Dissatisfied with the result, he has since devoted another book to the topic. In The Moral Foundation of Rights, he argues that in an ideal
world, in which all moral agents were omniscient, scrupulously impartial, and flaw-
lessly logical, all talk of rights would indeed be superfluous (Sumner, 1987: 197). In such a world, he holds, we would always follow the direct utilitarian strategy of acting so as to maximize utility. However, as anyone can plainly see, we live in no such world. We make too many mistakes when we pursue the direct strategy, making case-by-case decisions. He argues that we will have a better chance of achieving the goal of maximizing utility if we above all pursue the indirect strategy, which calls for us to constrain our goal-directed behaviour by extending prima facie rights to certain individuals (Sumner, 1987: 187-8).

The purpose of these rights is to constrain actions in pursuit of utility maximization: they are to be genuine checks, not mere "shadow rights." For example, researchers testing a new drug on human volunteers may be very tempted not to inform their subjects of certain possible side effects. Suppose the side effects would be extremely serious, but the chance of their occurring is judged to be extremely low. Suppose that the drug, if it works, would save many lives. A direct strategist, fearing that no one will volunteer when given full information, might resort to deception in order to maximize utility. An indirect strategist would reflect that she might be wrong in her estimate of the risk-benefit ratio. Although deception might work out best in this case, we are apt to cause much more harm than good by acting this way each time we believe we are justified. Overall, the goal of utility maximization might be better served by extending and observing the right of informed consent to subjects.

Presumably, a similar case can be made for all the other standard rights. In accordance with utilitarian impartiality, Sumner thinks that the theory, when worked out, will show that all beings with interests, including many animals, sentient fetuses, infants, and severely mentally deficient sentient beings, would be extended the prima facie rights appropriate for them (Sumner, 1987: 204-6).

Sumner's case for rights within a utilitarian framework has a number of merits. The rationale for extending rights does not depend on the prejudices humans happen to have, nor does it depend on their having anti-utilitarian sentiments, in contrast to Frey's rationale. It does not require artificial, disutility-generating sanctions in order to stack the deck against violating rights for the sake of a marginal utility gain. As a version of total utilitarianism, it is still subject to some of the startling implications discussed earlier, however: it entails that couples have a duty to reproduce, so long as doing so maximizes utility. It also seems not to allow us to favour a post-sentient fetus over a pre-sentient conceptus: it appears that the latter's future interests must be given the same weight as the former's present interests (Sumner, 1987: 207-8). But are the acts of killing a just-fertilized egg and of killing a sentient being really morally equivalent? Are these implications a price that we should be willing to pay for a utilitarian theory which offers protection to innocent beings against utility-maximizing killing and/or replacement?

XVII. Utility is Still Allowed to Trump Rights

I think not. Unfortunately, a good part of this promised protection dissolves upon
closer examination. This is because, despite all that has been said, utility still ultimately trumps rights in Sumner's view.

First, he holds that society should make utility calculations to decide which specific rights to extend:

a conventional right is (strongly) justified just in case the policy of recognizing it in the appropriate rule system will better promote some favoured consequentialist goal [i.e. the maximization of utility] than will any alternative social policy. (Sumner, 1987: 174)

Sumner is very open in saying that it will be an extremely difficult matter to calculate this. He does not attempt to make a case for a specific set of rights (Sumner, 1987: 200). We are entitled to wonder whether the right central to our discussion of killing and replaceability, the right to life, would really make the list.

Second, once the hard work of determining a set of specific rights has been done, the distribution of that right must also be decided by utility calculation. For example, suppose we do decide that a right to life can be justified. We must then determine who should have it (e.g., a pre-sentient conceptus). The answer depends on which extension scheme would maximize utility: "In a consequentialist framework the distribution of a right is a policy question" (Sumner, 1987: 208). Once again, Sumner fully admits that the task of determining distribution is extraordinarily difficult, choosing only to guess about what the results might be. Whatever is decided depends on overall utility: there is no built-in constraint here to protect individuals.

Third, once we have finally determined which rights to extend and to whom to extend them, it does not follow that we should not violate them. Traditional rights theories also have this implication (e.g., they generally allow killing in self-defence); however, rights would be violated more readily in Sumner's theory. He does not propose that we pursue the "indirect strategy," which lets rights trump utility in particular cases, instead of the "direct strategy": he realizes that utility would be maximized if we pursued a "mixed strategy." Although we error-prone moral agents should not leap to do this, sometimes we should let utility trump rights. Whether the right of an innocent individual should be violated, once again, depends on a calculation of overall utility. For example, even if we have decided that sentient animals have a right to have their interests respected, a case could be made in these terms for painful, fatal experimentation on them if overall utility would be maximized. (For those who are not perturbed by this, remember that the same would apply to humans.) But why should the benefit for others count for so much? How much protection does an individual really have on this view? Not enough, as we shall see below.

Sumner believes it likely that at least one right (assuming it has been shown justified by a utilitarian judgment procedure), the right not to be tortured, cannot be overridden. This would be good news for every sentient being, but note the reasoning used to support his belief. He thinks that the cases in which utility truly would be maximized by torture are probably so exceedingly rare, so very exceptional, that we would run the risk of torturing mistakenly (i.e. not maximizing utility) if we
regarded the right not to be tortured as defeasible (Sumner, 1987: 212-13). In short, we probably would cause much more harm than good if we did this. However, in times of war, particularly when many lives are at stake and the weapons to hand are exceptionably horrible, cases where torturing an innocent person maximizes overall utility may not be rare at all. It seems that we would be justified in pursuing the direct strategy here (although maybe we should return to the indirect strategy during peacetime). Once again, benefit to others all too readily trumps rights.

The failure of Sumner's excellent attempt to make a case for genuine rights within a utilitarian framework indicates that Frey was correct in holding that "utilitarian rights" must be at best "shadow rights." For utilitarians, utility must trump rights: otherwise, they would not be utilitarians!

XVIII. Conclusion

Utilitarians, then, must accept the fact that their view, despite its considerable merits, has implications for killing, replaceability, and the harming of innocents in general that are at best unsavory and at worst morally unacceptable. Those who reject the highly restrictive view that only moral agents can be morally considerable or maximally morally significant, and who choose not to bite the utilitarian bullet with Frey and (to a lesser extent) Singer, must look to another moral theory. When they do so, they will find, I believe, that there is much to change in their treatment of sentient beings.

Notes

1. However, as we shall see, in another context Frey seems to support an acceptance utilitarian approach.
2. For an excellent discussion of other problems facing acceptance utilitarianism, and other forms of utilitarianism designed to avoid unwelcome implications, see Feldman (1978: chap. 5).
3. This argument is freely adapted from a statement of "The Replacement Argument" in Ethics and Animals 3 (1), 1982, p. 2.
4. For an excellent discussion of current law concerning laboratory animals, see Rollin (1989: chap. 7).
6. For further discussion of what can and should be done to improve the lot of farm animals, see Hurnik and Lehman, (1988).
7. Of all the utilitarians I have read on the subject of replaceability, only R.G. Frey (very courageously) accepts the implications for humans. See Frey (1983: 161-72).
10. Singer (1979a: 87). Also see p. 101. Even worse, it seems that the total view utilitarian is faced with what Derek Parfit (1984: chap. 17) has called "the repugnant conclusion". The conclusion is that, for any population of happy, utility-rich beings, there is another possible world containing many more beings whose lives are just barely worth living. Due to their
numbers, however, they generate more overall utility than is to be found in the world of happy individuals. It seems that the miserable world would have to be judged the better world; thus, if we live in a happy world and are classical total utilitarians, we ought to over-populate it! Singer actually accepts this conclusion in his later work, because he sees no way around the total view. See Singer (1987b: 170).

11. Singer (1979b: 151). According to Singer, preference utilitarianism is the form of utilitarianism that Hare believes universalizability implies. Cf. R.M. Hare (1976). See also Practical Ethics, chapters 4 and 5.


13. Birds, however, may be brighter than he thinks. This amateur bird-watcher is continually astonished by their behaviour. Parent birds will spend most of their time at feeders stuffing their fledglings. Late in the summer, the offspring become fatter than their exhausted parents, and are perfectly able to feed themselves, yet they still beg for seeds. The parents will still pop in the occasional seed, but for the most part, they consistently turn away from their giant babies, seemingly so as not to see the begging motions. The babies then hop or fly to stand directly in front of their parents, begging hard, until the adult birds, often after giving in, once again hop away and turn their backs. None of the parties involved in this "drama" seem to be unaware of their separate identities. Perhaps those who are familiar with reptiles and fish would say the same.

14. See Pluhar (1982: 101). James White also makes this point in his "Are Sentient Beings Replaceable?" in the same issue, p. 93. See also Sapontzis (1982: 64.) He has revised this article in chapter 10 of his Morals, Reasons, and Animals. See also Lockwood (1979: 157–69).

15. Singer (1979a: 103). Also see pp. 101–2. (Singer refers Hart to these pages in his reply.)


17. He does not endorse this view, of course.


19. A.I. Melden, a nonutilitarian, agrees with this view of utilitarian character judgments (Melden, 1988: 35).

20. Should preference utilitarians like Singer modify their view such that "demented" (to use Sapontzis’ word) preferences are not counted? Our couple would not be maximizing utility by satisfying their procreative preference, regardless of how irresistible it is and how great their fulfillment would be, if their preference is demented or irrational. The trouble here is that it is hard to imagine a utilitarian account of what counts as "demented" apart from consequences. How can a view whose basic principle is the maximization of utility do this? The couple's views may be unusual (one hopes), but no utilitarian would discount them for that reason. The best attempt at an account has been made by utilitarian Richard Brandt, who has suggested that an irrational preference is one which would be extinguished by repeated, vivid reflection on relevant information, in accordance with logic (A Theory of the Good and the Right, Oxford, 1979, p. 113.) However, the parents we are imagining are all too vividly aware of the ramifications of what they are doing. (For a discussion of Brandt’s view and some of its difficulties, see my "Speciesism: A Form of Bigotry or a Justified View?", Between the Species 4 (2), 1988, pp. 92–94.)

21. See Nelson’s excellent discussion of utilitarianism and rights on pp. 73–75.

22. Sumner argues for the more general thesis that rights can be given a consequentialist foundation. A fortiori, if he is right, they can be given a utilitarian foundation. Sumner himself remains a utilitarian.

23. Here he is following the "interest model" of rights. On the "choice model" of rights, only autonomous beings would have rights. This does not mean that we would not owe non-autonomous sentient beings full protection, however, Sumner emphasizes. The protection would simply not be protection based on their ability to choose.

24. Sumner (1981: 218–9) argues that, in fact, we would be maximizing utility by having extra children only in certain circumstances, such as in times of "baby busts" in countries with
rich resources. Only at those times would we have a duty to reproduce. His reasoning has a certain plausibility. During other, more typical times (at least in the West), we might do better to use the resources we would spend on a child ($100,000 in the U.S., on the average, per pre-college child) to increase utility for existing beings. Making people happy need not mean making more happy people. Nevertheless, some of us find it difficult to believe that we would have a duty to reproduce in times of rich resources and dwindling human population. He, quite consistently, holds that sanctions would be appropriate in such circumstances, though he doubts they would really be needed (p. 219). I, for one, find this very hard to accept. This was Ceausescu’s rationale for jailing women who, denied contraceptives, had illegal abortions at a time when Romania’s birth-rate was considered dangerously low. Sumner no doubt would have proceeded more humanely, but sanctions against women who do not want to reproduce still stick in the craw.

25. Sumner thinks that it would not be an easy matter to defeat this implication, and he does not try to do so here.
27. Frey expresses his doubt that a Sumner-type scheme (he does not refer directly to Sumner) can ever work in Rights, Killing, and Suffering, op.cit. p. 89.
28. See Pluhar (1988a). For some reflections on the form which such a theory might take.
29. This paper was conceived and written during spring 1990, when I was freed from teaching duties by my appointment as the 1990 Pennsylvania State University ’Helena Rubenstein Endowed Fellow in the Humanities.’

References