

## Valuing humane lives: Two-level utilitarianism and animal welfare

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**Abstract.** I examine the two-level utilitarian case for humane animal agriculture and argue that it fails, not on first-order grounds, but as a result of internal tensions. The case presupposes that, at the level of intuitive rules, animals raised for food would be replaceable yet owed respect. Drawing on empirical psychology and the idea of commodification, I rebut the claim that humanely raising and killing animals for food can be justified at the intuitive level without generating dissonance and negative spillover, and I consider alternative routes that do not presuppose a rejection of two-level utilitarianism. Indeed, I show that two-level utilitarians do not provide satisfactory evidence that the particular intuitive rules they recommend are the ones that their theory recommends. The central concern of this paper is whether humane lives are appropriately valued in the two-level utilitarian theory by its own lights. They are not, but I suggest ways in which they could.

### Introduction

In *Personhood, Ethics, and Animal Cognition* (2012), Gary Varner offers a detailed reading and defense of two-level utilitarianism, as articulated by R. M. Hare in *Moral Thinking* (1981). In a nutshell, two-level utilitarianism distinguishes between the “intuitive” and “critical” levels of moral thinking, whereby the latter justifies, on act-utilitarian grounds, the best intuitive rules that should govern normal human behavior in most ordinary circumstances. Relying on a large body of empirical research in moral psychology and animal cognition, Varner examines how Hare’s theory, when combined with this research, can inform our treatment of nonhuman animals. This paper uncovers an internal tension behind the promise of two-level utilitarianism, as defended by Hare and Varner. By accommodating folk psychology, the theory aims to make utilitarianism more appealing and less demanding, combining an effective decision-procedure with fundamentally utilitarian commitments. But I show that, as it

stands, two-level utilitarianism generates incoherent psychological attitudes. The central concern of this article is whether the lives of humanely raised and killed animals—what I’ll call ‘humane lives’—are appropriately valued in the two-level utilitarian theory that Varner articulates and the subsequent case for “humane sustainability” (2012, chapter 10; see Varner 2010 for a prior iteration). More specifically, are they appropriately valued *by the lights of the theory itself*? I argue that they are not. In Section 1, I start by briefly reconstructing Varner’s application of Hare’s to animal ethics. Section 2 introduces the ‘replaceability argument,’ which I suggest underlies much of the case for humanely raising and killing animals. Section 3 addresses Varner’s idea of “utopian visions” and the possibility of alternative visions for reducing suffering. Section 4 draws on recent empirical work on moral cognition which, I argue, undermines the purported descriptive adequacy of Varner’s theory and subsequently his choice of “intuitive-level rules”. Finally, in Section 5, I rely on the notion of commodification to ask if such rules can justifiably commodify animals while requiring that they be treated humanely. Together, I conclude, these objections cast doubt on the theoretical and practical prospects of the case for humane sustainability.

## 1. Two-level utilitarianism and animals

### *1.1. Rules*

A central feature of Hare’s view is a distinction between the “intuitive” and “critical” levels of moral thinking. The distinction allows Hare and Varner to defend utilitarianism against common objections (e.g. demandingness or separateness of persons). In *Moral Thinking*, Hare not only notes that we do, but also argues that we should, rely on relatively simple moral heuristics for the purposes of everyday decision-making, given our cognitive (psychological and epistemic) limitations.

In psychology, so-called ‘dual-process’ theories posit that cognition operates following two independent systems. ‘System 1’ (fast, automatic, emotional, stereotypic, subconscious) and ‘System 2’ (slow, effortful, deliberative, rational, conscious) roughly correspond to Hare’s intuitive and critical levels (Kahneman 2011; see Greene 2013 on “point-and-shoot” vs. manual modes). One is used frequently; the other less so. Heuristics draw on a readily available—intuitive—cognitive system, which most agents use most of the time or under time or cognitive pressure. The “critical level,” on the other hand, consists of a set of rational decision-making skills, the use of which is more demanding, costly, and subsequently infrequent. While the intuitive level is convenient, which intuitive rules are justified from the utilitarian standpoint is determined at the critical level. The two levels are like complementary sides of a unified theory of moral psychology, reflecting the dual aspect of human cognition. In fact, the descriptive part of Hare’s two-level theory *predicts* that our intuitions will resist the verdicts of the critical level, and, in most circumstances, this is much welcome. Then, normatively, objections to utilitarianism can be explained away by noting that some intuitions, which the adoption of good intuitive rules leads us to have, are only as robust as required by the circumstances.

In most ordinary circumstances, “intuitive-level system” (ILS) rules are meant to lead to better outcomes than relying on critical thinking. Two-level utilitarian agents are thus “sophisticated consequentialists” (Railton 1984) in that they generally not think like utilitarians precisely to reflect their commitment to promoting the best outcomes. By the same token, however, and because two-level utilitarianism is not an instance of *rule*-utilitarianism, special circumstances call for exceptions to this division of labor. In some cases, the intuitive rules that have been internalized can either fail to provide sufficient guidance or be expected to yield clearly suboptimal outcomes. This can occur in novel cases not covered by the rules, or when rules conflict, or when they are outdated. Then, when we have enough information, time and cognitive resources, critical thinking (i.e. act-utilitarianism)

should supplement ILS rules to determine the best course of action; we might be justified in violating the rights of some people for the greater good. But such circumstances are by definition exceptional, such that rights-infringing behavior can only be justified, critically, if it is unlikely to be replicated. Accordingly, such behavior is prohibited by ILS rules.

ILS rules include rules of personal morality, common morality, professional ethics, and law. ILS rules work best most of the time precisely because they are intuitive and yield quick and easy answers. General though they are, ILS rules can be fine-grained enough to accommodate different individual “temperaments” and “capacities” (this is “personal morality”) as well as the particular circumstances of different societies (e.g., through law and common morality). For different individuals or societies, different sets of rules should be internalized. ILS rules should be general enough to release individuals of the burden of critical thinking, yet fine-tuned enough to address the specifics of particular categories.

Moral thinking, on Hare’s account, involves universalization, which he argues entails maximizing total utilitarianism (as opposed, respectively, to person-affecting and average utilitarianism). And the account includes possible people among the beings whose welfare counts (Hare 1993; 1999): we ought to “maximize the total amount of preference-satisfaction that is had in the world ... and distribute it impartially” (1999, 239). Even persons can be sacrificed for the sake of other persons or even non-persons, whether actual or possible. In practice, though, good ILS rules include strong constraints against harming persons given the expected costs of allowing practices such as torture, slavery, or murder. Rules that have a “deontological flavor” are more likely to be optimistic given what we know about the world and human psychology. Even two-level utilitarianism therefore entails a relatively sharp distinction between persons, who are *not* replaceable at the intuitive level, and most other animals, which are replaceable at both the critical and the intuitive levels.

In the next section, I briefly canvas Varner's distinctions among different types of animals, as it informs his case for humane sustainability.

## ***1.2. Animals***

Animals are replaceable when the harm of ceasing to exist can be offset by the benefits of causing new beings to exist, or at least the benefits contained in a pleasant life. Varner divides animals into persons, near-persons, and merely sentient, and outlines the possible sets of rules that should govern our interactions with them. He reviews detailed evidence that most if not all vertebrates, as well as cephalopods, are most likely to be sentient, that is, have “the capacity for phenomenally conscious suffering and/or enjoyment” (Varner 2012, 108). All sentient beings are morally considerable for purposes of designing ILS rules. Most animals currently raised and slaughtered for food fall under this category, which means contemporary factory farming, including the fishing industry, does not treat animals in accordance with what good ILS rules would require (for evidence, see Jones 2013). Varner also identifies an intermediate position between persons and merely sentient animals: “near-persons.” The three distinct, if fuzzy, tiers reflect a spectrum of cognitive complexity and yield a corresponding three-tier account of moral status. And in line with most forms of utilitarianism, how we should treat animals depends on the relative *value of animals' lives*, that is, on the expected contribution of their lives to intrinsically valuable *states of affairs*.

Sentient animals are worthy of moral consideration, that is, their interests should count in our deliberations. But no nonhuman species, according to the evidence reviewed by Varner, qualifies for personhood, which requires a narrative or biographical sense of self. A person is rational, self-conscious and autonomous, and in order to construct self-narratives must have concepts that require a natural language (self, birth, death, personality). Persons can tell their own life stories and those of

others, can desire to be a certain kind of person, and can have a unique interest in how their “lives-as-a-whole” go. This means not only understanding oneself as having desires and being the subject of a story pursuing them, but also having desires about one’s desires and seeing oneself as shaping one’s own story. These capacities give the lives of persons greater moral significance. Persons’ higher moral status is translated into ILS rules in terms of rights: valid side-constraints on the way one may be used for the sake of the good.

Other animals, according to Varner, lack that sort of “narrative self-constitution” (see Schechtman 1996). Yet some of them sit in between the merely sentient and persons insofar as they have ‘autonoetic awareness,’ i.e. a sense of self through time. Chimpanzees, dolphins, elephants and scrub jays are near-persons; rats, monkeys and parrots might be. While these animals cannot tell stories about themselves, they do engage in forward- and backward-looking thinking. They can anticipate and remember future and past states of the world as well as their own experiences in context (i.e. the ‘What,’ ‘Where,’ and ‘When’ features of experience). They engage in what Tulving (1985) called “mental time travel” and demonstrate episodic memory, mirror self-recognition and/or mindreading. Because autonoetic awareness allows individuals to consciously re-experience past events and to make future plans that matter to them, as will their achievement or frustration, this adds moral significance to their lives. Their lives are more “morally charged” because they contain more opportunities for conscious pleasant or unpleasant experiences. They can thus be harmed or benefitted in more ways and to a greater extent.

Varner’s recognition of a middle ground between persons and non-persons has limited scope, though—on at least three counts, I think. First, most of the animals we currently use and interact with are neither persons nor near-persons and belong to the inferior category of the merely sentient

(although, for some nuance, see e.g. Singer 2011 and Jones 2013<sup>1</sup>). Insofar as their lives are the least morally charged among the sentient, the recognition of near-personhood bears comparatively little practical weight as far as *numbers* of animals used (around 70 billion land animals are killed for food globally every year, probably trillions if we count aquatic species). Arguably, it does matter for many species kept in zoos, circuses, labs, and wildlife reserves, where most near-persons are likely to be found. Yet the overwhelming majority of animals we interact will not be affected by this recognition (98% of which are farm animals; Wolfson and Sullivan 2004).

Second, even near-persons can be used or killed despite their higher moral standing, albeit pending stronger reasons. Varner suggests that, in biomedical research and wildlife management, considering near-persons as irreplaceable, and therefore granting them a right to life, would have great opportunity costs. The potential benefits of medical research and the costs of overpopulation outweigh the harm of killing near-persons (Varner 2012, 249). Admittedly, Varner justifies use and killing of near-persons in few cases, since the benefits accrued from replacing them must be high enough to offset the harms. Still, some biomedical studies are bound to justify even invasive, painful, and lethal experiments provided they can be expected to benefit a large number of persons, or an even larger number of non-persons.

Third, auto-noetic awareness enhances the value of a life, but it only does so insofar as the addition of pleasant experiences is impersonally good, not because the animals matter *for their own sake*. Varner accounts for the capacities that matter in explicitly utilitarian terms and rejects person-affecting restrictions on harms and benefits. The realization that animals deserve protection *only* because this is

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<sup>1</sup> Singer, in the latest edition of *Practical Ethics* (2011), gives the benefit of the doubt to a wider range of species than Varner, attributing many animals currently raised for food capacities (to some degree) for planning, anticipation and forward-looking preferences.

impersonally better might be upsetting to people sincerely concerned with the welfare of animals *qua* individuals, even more so concerning near-persons. I return to this problem in later sections.

Varner's account implies incremental yet significant reforms in factory farming, which pave the way for more humane and sustainable agriculture. His three-tier framework and two-level utilitarianism together entail that some forms of animal husbandry are not just permissible; they are optimific. He suggests that the principle "Don't kill sentient animals unnecessarily" should be incorporated into the ILS rules of all societies (Varner 2012, 229). Yet the principle does not specify exactly *when* killing animals is permissible or required. So, an ILS prohibition against unnecessary killing does not apply to practices that, on balance, produce more happiness than suffering. Banning the raising and killing farm animals for food at the intuitive level is indeed suboptimal, according to Hare and Varner, precisely for that reason. To see why this might be true, let's now turn to the so-called 'Replaceability Argument.'

## 2. The replaceability argument

Some early version of the argument can be traced at least back to Bentham (1907 [1789]) and Stephen (1896). These versions were later dubbed "the logic of the larder" by the early animal rights writer Henry Salt (1914). Most people agree that inflicting unnecessary suffering upon animals is wrong. Varner thinks this supports the implementation of ILS rules that reflect this judgment. But many fewer people, even among animal ethicists, agree that the painless killing of animals is always wrong. The most commonly cited reason is that, when slaughtered without pain, fear or distress, animals are not harmed by death in a morally significant way. Animals that are not persons, that is, lack a morally significant interest in continuing to live.

At the same time, authors such as Hare (1999), Varner and Singer (2011) (see also Lazari-Radek and Singer 2014) argue that existence itself can be a benefit insofar as one's life is worth living. For animals, a good life can offset a quick premature death. It follows that breeding happy animals that will be (prematurely) killed can be good on balance. In a slogan: we should not just breed *happier* animals, but also *more happy* animals (of course, there's a limit to how many more happy beings we can create while providing them with happy enough lives, not just lives barely worth living). Insofar as production costs and markets make it economically sustainable to raise new animals who would otherwise not exist, it is all-things-considered better to raise and kill animals that will have lives worth living—better for consumers, animals, and the world impersonally.

Hare (1999, 239) wrote that “happy existing people are certainly glad they exist, and so are presumably comparing their existence with a possible non-existence”. It is better, “for an animal to have a happy life, even if it is a short one, than no life at all.” Given the choice between the life of a trout in a small farm in the English countryside, Hare would “prefer the life, all told, of such a fish, to that of almost any fish in the wild, and to non-existence.” (240) And, “assuming, as we must assume if we are to keep the ‘killing’ argument distinct from the ‘suffering’ argument, that they are happy while they live”, Hare concludes that “organic” (humane) husbandry<sup>2</sup>, is permissible, perhaps required, especially on marginal lands, i.e. parts of the world and soils where crops cannot be grown. Assuming there are no uncompensated harms, the permissibility of killing thus depends on “how many live animals, of different species including the human, we ought to cause there to be” or, more accurately, the number of quality-adjusted life years (QALYs) (Hare 1999, 239).

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<sup>2</sup> Recently, ‘conscientious’ or ‘compassionate’ omnivores have (unknowingly) echoed utilitarian commitments (e.g., Pollan 2006; cf. Singer and Mason 2006, 252). On the other hand, deontologists object to utilitarians that, in treating individuals as interchangeable receptacles of value, it fails to recognize and respect their inherent value (Regan 1983).

The replaceability argument is controversial (AUTHOR), so much so that we may wonder if ILS rules should reflect it as a justification of animal agriculture. Because an all-things-considered justification depends on a host of empirical factors, including how much different cross-sections of society stand to benefit from the practice, and how their psychology affects their response to different practices, the formulation, implementation, and internalization of good ILS rules should reflect this array of factors. Indeed, “humane sustainable agriculture” will vary depending on the economic and technological conditions, consumer preferences, and traditions of different societies; its standards are time- and place-sensitive. In Chapter 10, Varner offers another three-tier framework for assessing farming techniques, to which I turn now. I will explain how the framework can be used against Varner’s case of humane sustainability.

### 3. Humane visions

Varner (2012) lays out three types of “visions” that each come with different standards assessment: pre-lapsarian visions, contemporary visions, and utopian visions. I consider them in turn.

Hundreds of years ago, Native Americans may have been justified in hunting bison in ways that caused great suffering and sometimes prevented them from using all of the animals killed, yet we would not be justified in using their techniques today. In the circumstances of industrialized Western countries, *pre-lapsarian visions* are incompatible with the best science and standards of animal welfare. These visions reflect past states of our societies or non-industrial societies. Two-level utilitarianism explains why such treatment would be wrong in our circumstances while permissible for indigenous people.

Nowadays, *contemporary visions* make animal welfare reforms accessible and scalable. Contemporary husbandry and slaughter practices constitute significant improvements relative to past practices. They are by no means optimal, even by the standards of ILS rules, but certification programs for humane

husbandry and slaughter, new regulations, and changes in common attitudes together pave the way for the approximation, through ILS rules, of an appropriate vision of humane sustainability.

*Utopian visions* consist of radical changes relative to contemporary visions and motivate greater long-term progress by “shifting the goal-posts of common morality”, enabling wide-scale shifts in people’s perceptions of animals and their moral significance. Utopian visions facilitate the incremental internalization of new ILS rules that better reflect the verdicts of critical thinking.

For reasons already discussed, Varner does not think that even utopian visions should disallow the killing of animals. Thus, “a reasonable case can be made for eating small quantities of meat from extensively reared ruminants (e.g. cattle) as a form of demi-vegetarianism” (Varner 2012, 283). To see how this reflects a thoroughgoing commitment to replaceability, let us consider in further detail what Varner considers a utopian vision.

Consider Ernest Callenbach’s (1996) “buffalo commons” proposal,<sup>3</sup> in which Varner see an “example of a truly utopian vision” of demi-vegetarianism:

Callenbach proposed that dwindling populations in rural areas of the Great Plains be supported by a combination of electric wind farms and bison ranching on a truly grand scale. Callenbach claims that native prairie grasses are well adapted to the natural grazing habits of bison ... and that bison move almost constantly, grazing an area heavily, but then leaving it alone for a long time before returning [1996, 24]. This causes bison on “suitably large unfenced ranges” [29] to naturally achieve the effects of Allen Savory’s highly management-intensive

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<sup>3</sup> Callenbach borrowed the term from Popper and Popper (1987).

(and fence-intensive) rotational grazing system for cattle [Savory and Butterfield 1999] (Varner 2012, 274)

Bison being merely sentient on Varner's account, her finds the proposal "highly appealing aesthetically" and suggests that that "bison rearing and slaughter could be made tremendously humane, given their natural behavior and resilient health, and modern carcass-processing technologies" (*in-situ* selective slaughter, with minimal pain, stress or herd disruption) (ibid.). In fact, the Wild Buffalo Ranchers, a consortium in South Dakota, "claim to do just this" (ibid.).<sup>4</sup> Even though bison meat is still is a "niche market", the buffalo commons proposal is utopian in its "grand scope ... a vision of humane sustainability that can be seen as inspiring to contemporary consumers and producers. Just describing it goes some small way toward moving the goal posts of our common morality." (275)

On its face, this utopian vision is consistent with total utilitarianism, given assumptions about economics, ecology, and welfare. It surely improves on most contemporary forms of animal agriculture by contributing to land restoration, allowing for more humane slaughter, and, ultimately, benefitting local communities, after accounting for transition costs. Given the replaceability argument, the verdict of critical thinking is that both a vegan utopia and factory farming are impermissible since in both cases (possible or actual) animals are denied pleasant lives.

The difference between contemporary and utopian visions is a matter of time and perspective. Visions are utopian insofar as they need time to be successfully implemented and their overall benefits are to be assessed in the long run. Contemporary visions, on the other hand, are designed to deliver short-

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<sup>4</sup> See <http://www.wildideabuffalo.com>.

term results effectively given the present circumstances. So, how plausible is humane sustainability by the two-level utilitarian's lights?

Varner's characterization of different types of visions remains succinct, but we can make a few plausible assumptions. First, visions focus not just on individual behavior, but on the factors causing or facilitating behavior. They do so through ILS rules and the social, political, and institutional infrastructures. The process goes both ways: new attitudes support higher-level changes, and vice versa. Thus, behaviors tend to express and indirectly spread attitudes and can be reinforced by these attitudinal and higher-level changes. On these assumptions, a vision aimed at producing good ILS rules should include a timeline and a specification of its targets (consumers, legislation, public policies, social media, memes...). My question is whether Varner's utopian visions do not threaten to undermine the perception that sentient animals, perhaps even near-persons, are morally considerable (that is, have interests that do not merely matter instrumentally). The worry is that utopian visions might inadvertently foster the type of attitudes they are designed to suppress, by setting as the ultimate standard of respect or moral consideration the permissible use of sentient creatures for food—their perception as essentially *edible* (I return to this point shortly).

For the argument's sake, let us assume that visions like the buffalo commons proposal would bring about significant benefits<sup>5</sup>—e.g. by restoring grasslands, increasing biodiversity, enriching soil quality, and enhancing carbon sequestration; by giving pleasant lives to animals that could be harvested humanely with efficient slaughter techniques and mobile processing plants; finally, by enabling sustainable agricultural practices that benefit farmers and local communities. Using the same land for other purposes, whether it be untouched grasslands, less sustainable extensive ranching, or growing

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<sup>5</sup> As Varner acknowledges, the cost-benefit analysis of any given form of agriculture is highly dependent on complex, and sometimes uncertain, empirical considerations. See Matheny and Chan (2005) for a good example.

crops, would *not* produce more value. Let us also assume that, assessed *at the critical level*, such proposals contribute to more net total happiness than all alternative visions. Even so, the comparative benefits of different rules depend on the consequences of internalizing and enforcing them. In other words, Varner must show that, *at the intuitive level*, associating humane sustainability with the continuation of using animals as sources of food and ecological services is optimistic. Could it be that Callenbach's proposal is more likely to convert people to demi-vegetarianism than, say, promoting vegetarianism? Perhaps, but Varner adduces little evidence to this effect, and evidence is what we need (as Varner is keen to stress when discussing animal cognition). We need evidence that demi-vegetarian utopian visions can foster a larger reduction in suffering than alternatives.

At this juncture, one might object that humane sustainability, a niche market, would involve very few animals, so the problem is effectively negligible. By the same token, however, the alleged benefits would also be negligible. Scaling up would likely involve a decrease in humaneness and sustainability. So, the marginal gain to be expected is relatively low. On the other hand, the spillover effects of promoting replaceability through ILS rules could be widespread given the very large number of animals to which they apply. Even minor violations of the best animal welfare standards would then adversely affect disproportionately animals. We need further evidence that Varner's utopian visions will not make these seem acceptable even by our contemporary standards.

One must also distinguish *advocating* from *implementing* visions. There is significant empirical disagreement about effective tactics and strategies in animal advocacy (for an overview, see Sebo and Singer 2018). Even if we granted that advocating, say, reductarianism (i.e. cutting down on one's consumption of animal products) had more impact than advocating veganism, this would not entail that practicing reductarianism has more impact than practicing veganism. Varner argues at the level of practice, which, we saw, involves empirical uncertainty, but we should likewise consider the

expected consequences of promoting specific ILS rules. For all we know, vegan advocacy might cause more people to decrease their consumption of animal products, and by greater margins, than humane visions. Even if *veganism as a practice* would not be *optimific* by Varner's lights, its promotion might further a greater reduction in suffering than alternatives. These are empirical questions, but they highlight an inherent tension in ILS rules, namely, that they could in principle have to be opaque, if there is likely to be a gap between their explicit contents and the actual effects of their internalization. Because of the intuitive/critical distinction, some ILS rules will be justified, not because their contents (the practices they allow or require) are *optimific*, but because their very promotion is expected to lead to *optimific* states of affairs (which could diverge from such practices).

Now, suppose that a sufficiently large number of people have internalized the constraints set by utopian visions of humane sustainability. Many such people may then be more likely to be moved by the goalpost-shifting appeal of new utopian visions. For instance, Gruen and Jones (2015) argue for "veganism as an aspiration," expressing both the inevitability of causing harm and the idea that sentient animals are not edible. Whether or not one endorses replaceability at the critical level, it could be that such visions foster respect more effectively than humane sustainability. This possibility follows directly from the temporality of visions I sketched above.

Indeed, in the book's conclusion, Varner considers Singer's suggestion that, even if raising merely some sentient animals for food may be justifiable at the critical level (Singer endorses the replaceability argument), good ILS rules differ:

at the level of practical moral principles, it would be better to reject altogether the killing of animals for food, unless one must do so to survive. Killing animals for food makes us think of them as objects that we can use as we please ... How can we encourage people to respect

animals, and have equal concern for their interests, if they continue to eat them for their mere enjoyment? To foster the right attitudes of consideration for animals, including non-self-conscious ones, it may be best to make it a simple principle to avoid killing them for food. (Singer 1993, 133-4; quoted by Varner 2012, 288-9)<sup>6</sup>

Varner does not share Singer's suspicion, although he considers it an open empirical question; he is more confident in our ability to draw fine-grained distinctions among animals that are (ethically) good to eat and those that are not. Yet, pending evidence either way, at least in the US and comparable western countries, the case for humane sustainable agriculture rests mainly on the argument that the "merely sentient" are replaceable according to ILS rules. Crucially, the argument presupposes that replaceability is consistent, intuitively, with concurrent efforts to increase respect and equal consideration for animals. But since replaceability sees them as fungible subjects of experience, or receptacles of value, *cognitive dissonance* is likely to arise.

The expected benefits of Varner's visions are therefore contingent on a few crucial assumptions: first, that killing sentient animals causes them little if any all-considered harm; second, that it is not normally *perceived* as a direct harm to them. (Discussing the first assumption is beyond the scope of this paper, yet serious disagreement exists even among utilitarians; see Višak and Garner 2016.) More importantly

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<sup>6</sup> See also: "Singer acknowledges that some audience will be more receptive to demi-vegetarianism than they will be to 'full' vegetarianism (let alone veganism). For that reason, he allows that 'It is probably a good thing if different people and organizations promote each of these goals' [1999, 325], but he says that 'No more finely grained dietary stance could have been as effective a symbol of my rejection of our conventional attitudes and practices towards animals' [327]". (Varner 2012, 273) Singer's "let a thousand flowers bloom," according to Varner, is an acknowledgement "that appropriate ILS rules will be different for different cultures, or that individuals' personal moralities can, legitimately, differ." (290) Some animal activists argue that, by focusing on short-term gains, incremental welfare campaigns (e.g. cage-free eggs and Meatless Mondays) fail to sustain a profound and durable shift in attitudes. The present costs of off-putting tactics like direct action, confrontation, and radical abolitionist messages are, they claim, outweighed by the overall benefits in the long run of promoting a society built upon compassion for all rather than speciesist exploitation and killing. But these tactics may not be mutually exclusive. Simultaneous advocacy for multiple ideals may achieve the best outcome. Like different sets of ILS rules, different tactics may be more effective than others on different categories of people and in different circumstances. See Sebo and Singer (2018).

for the purposes of formulating ILS rules, Varner's view makes moral status conditional on circumstances, including consumer preferences and ecological impact, which may arguably fail to foster the radical changes in common morality that he expects from utopian visions. This is, in large part, due to the utilitarian axiological focus on the value that lives contain in lieu of their value for the individuals who live them. Varner is building a utilitarian axiology into proposed rules of intuitive morality, but there is little reason to think that most people intuitively conceive of the values of lives in this way. How can most people take into consideration animals' interests in their own right, and how can ILS rules reflect this, while acknowledging that they are replaceable? Humane agriculture as a utopian vision simply compounds the "meat paradox" (Bastian et al. 2012; Bastian and Loughnan 2017; Loughnan et al. 2014) by inducing cognitive dissonance among omnivores. I turn to this problem in the next section.

#### 4. Moral psychology

In this section, I argue that Varner's conception of the value of lives conflicts with standard analyses of moral status and the moral cognitive templates that constrain good ILS rules.<sup>7</sup>

On one influential and explanatorily powerful account, moral cognition consists in the perception of two minds. Roughly, people attribute moral properties on the basis of *mind perception*. Attributions of moral standing track, quite closely, perceptions of 'mindedness', typically along two dimensions: Experience (e.g. suffering, feelings, emotions) and/or Agency (e.g. thinking, memory, planning, self-control) (Gray et al. 2007). Human beings typically score high on both dimensions, but the more they are perceived as victims, the less they are perceived as agents, and vice versa. These two roles

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<sup>7</sup> This is of course not to say that no agent could possibly be equipped with the relevant psychology. But such is not the point of designing descriptively adequate, or psychologically plausible, ILS rules.

constitute a *moral dyad*, a pairing of a (harmful, blameworthy) agent and a (vulnerable) patient: say, a villain torturing a kitten; a hero rescuing an old lady. The core of the theory is that the moral dyad constitutes the fundamental template for perceiving moral violations (Gray et al. 2012; Gray and Wegner 2011; Wegner and Gray 2016). The phenomenon of *dyadic completion* explains how we attribute experience or agency, and subsequently rights and responsibilities. Perceptions of harm require agency, and vice versa. Dyadic completion predicts that attributions of victimhood will be completed by attributions of agency and blame, since harms must be the result of harmful agency. These psychological processes are at work with all sorts of entities, including other animals, and a growing literature on the psychology of eating animals has confirmed the role of mind perception in the regulation of behavior—and, in fact, the denial of animals’ moral standing.<sup>8</sup>

The “meat paradox” (Bastian et al. 2012; Bastian and Loughnan 2017; Loughnan et al. 2010) consists, roughly, in the well-documented psychological fact that most people (claim to) care about animals yet (believe that it is permissible to) eat them. Most people eat meat and yet believe it is morally wrong to harm creatures who are capable of suffering. As a result, meat-eaters tend to experience cognitive dissonance, when holding both attitudes concurrently. In order to reduce the discomfort, they have two options: “one can reject meat consumption, bringing one’s behaviors into alignment with one’s moral ideals, or one can bring one’s beliefs and attitudes in line with one’s behavior through various psychological maneuvers.” (Piazza et al. 2015, 114) One such maneuver, a form of *motivated cognition*, consists in denying that animals have the psychological features that ground their moral status (Bastian et al. 2012) or that they deserve moral concern to begin with (Loughnan et al. 2010). Most people obviously choose the latter option, but the fact that they engage in motivated cognition in order to

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<sup>8</sup> This is true at least at a certain level of (perceived) cognitive sophistication, humanlike-ness, charisma, or other factors that influence mind perception (Kasperbauer 2017). The latter matches at best imperfectly animals’ actual capacities—especially in the case of fish—because of its bidirectional relation with (lack of) moral concern. Obviously, most people do consider animals of many species replaceable—for food, research, conservation, and entertainment.

reduce dissonance, for instance when prompted to consider eating meat, is itself suggestive of their underlying tendency to attribute a mind, and subsequently moral standing, to other animals. More generally, omnivores are motivated to adopt a range of rationalizations for their behavior, including the so-called “4Ns”: that eating meat is *natural*, *normal*, *necessary*, and *nice* (i.e., pleasant) (Piazza et al. 2015).

These lines of research point to several core features of ordinary morality: the (often bidirectional) relation between mind perception and morality, the dyadic structure of mind perception and morality, and the pervasive influence of motivated reasoning. If these features constrain the way most normal people perceive moral violations, ILS rules should reflect them.<sup>9</sup> One might ask, though: Isn’t the job of System 2 to overcome our biases and intuitions, when time and cognitive resources are not scarce? Yes, but precisely because two-level utilitarianism purports to align its two levels with dual-process cognition, ILS rules must be sensitive to deeply entrenched constraints of ordinary moral cognition, even if System 2 could sometimes help us think more carefully.<sup>10</sup> At the very least, dyadic morality would figure into the ILS rules that would be designed for most people.

In practice, though, the prospects of a smooth articulation of the two levels are unclear. For Varner recommends both that we strive for more respectful attitudes toward sentient creatures and that we

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<sup>9</sup> Of course, one can also question the explanatory adequacy of dual-process theories. Likewise, one can question dyadic theory. A major rival is the Moral Foundations Theory (MFT) (Graham et al. 2012; Haidt et al. 2015). Still, on both MFT and dyadic theory, harm plays a central role across cultures, although the two theories disagree about its scope and relative priority (MFT posits other templates, or foundations—fairness, loyalty, authority, and sanctity—that can compete with harm- and care-based judgments).

<sup>10</sup> Note that Gray et al. (2014) argue that dyadic morality cuts across the divide between affect and cognition posited by dual-process theories. In typical scenarios, both types of processes interact and overlap. Also see Railton (2014), who questions the picture of “the affective system or ‘System 1,’ according to which it is an ‘automatic,’ ‘relatively inflexible,’ ‘point-and-shoot’ system of ‘simple likes and dislikes,’ ‘flashes’ of emotion triggered by simple schemas, or ‘gut feelings’ that cannot handle statistics and are incapable of ‘deriving conclusions about individual cases from properties of categories and ensembles,’ and therefore congenitally lacks System 2’s capacity for balanced, forward-looking cost-benefit decision making.” (833)

implement rules allowing humane animal agriculture. However, as should now be clear, we must then assume that the perception of replaceability does not undermine that of moral considerability.

Varner is aware of the potential pitfalls of building too much explicit utilitarian thinking into ILS rules. Recently, he has argued for ILS rules “the internalization of which disposes one *not* to think like a utilitarian during the moment-to-moment management of many interpersonal relationships,” and that similar rules should apply to our relationships with our pets (Varner 2017, 77). Indeed, because of the overall benefits of positive relationships with pets, he argues, pet-keepers should not see them as replaceable. For “loving another sentient being requires you not to think of it as ‘replaceable’ the way everyone and everything is when you are doing explicitly utilitarian thinking.” (ibid.) The ILS rules governing our relationships with farm animals are different. But, if Varner is correct about pets, the replaceability of farm animals precludes a range of attitudes that foster mutually beneficial relationships with them (of the sort, arguably, that advocates of humane meat commonly claim to promote).<sup>11</sup>

In this section, I have argued that Varner understates the potential impact of alternative utopian visions (e.g., seeing animals as non-edible) as well as the potentially adverse long-term effects of building replaceability into ILS rules. Because the intuitive level is by design sensitive to facts about cognition, these considerations should give the advocate of humane sustainability pause. Still, Varner might be right about the ability of our intuitive system to respect animals while eating them. In the next section, I raise a final objection, drawing on Elizabeth Anderson’s account of commodification, and argue that our intuitive system is in fact ill-equipped to do just that.

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<sup>11</sup> In fact, Varner’s (2002) own conception of “domesticated partnerships” might provide the right sort of utopian visions. Non-edible companion animals could generate revenue (tourism, therapy, hiring of veterinarians...), be engaged in non-exploitative, mutually rewarding relations that would exercise their faculties and possibly provide ecological benefits (e.g. with horses and formerly farmed animals...).

## 5. Humane commodification

### *5.1. Anderson's account of commodification*

Clipsham and Fulfer (2016) have recently defended an “anti-commodification defense of veganism” where they argue that, when applied to animals, Anderson’s account of commodification (1990; 1993) can explain the moral wrongness of some of the ways in which we treat animals. To the extent that we commodify them, we act wrongfully in addition to the other ways in which we harm them. Granted, persons, and probably near-persons, cannot be commodified at the intuitive level, but the merely sentient would still be, since the value of their lives is partly determined by their value on humane markets. So, the question is whether the moral status of the merely sentient is compatible with valuing and treating animals as commodities. ILS rules allowing humane farming would induce viewing the merely sentient as commodities of some sort. They would then foster dissonance—humane sustainability would reinforce rather than resolve the tension, by promoting two mutually inconsistent perceptions of animals, as deserving respect and as commodities for human enjoyment. Our question now is whether the sort of commodification that humane sustainability condones reinforces the rationalizations mentioned above (the 4 N’s). For, if it does, it is plausible that people’s reluctance to cause animals to suffer will be numbed in proportion to the appeal of visions of humane sustainability.

Anderson defines commodification as follows. For a thing to be a commodity means that “the norms of the market are appropriate for regulating its production, exchange, and enjoyment” (Anderson 1990, 72), which Clipsham and Fulfer (2016, 286) reformulate as follows:

X commodifies Y when X treats Y as the sort of thing for which it is appropriate for the norms of the market to entirely regulate Y’s production, exchange, and enjoyment.

To the extent that the rules pertaining to humane sustainability meet this criterion, sentient animals humanely raised and killed for human consumption are in effect commodified. For, even though moral considerations may influence the content of market norms, the “production, exchange, and enjoyment” of these animals are entirely regulated by these very norms, and *market norms* tend to signal values altogether different than the *social norms* ILS would otherwise promote.<sup>12</sup> “Most actions that involve buying, selling, and facilitating a transaction of some Y involve commodifying that Y, in that many of these acts tend to involve treating Y as the sort of thing whose production, exchange, and enjoyment can be appropriately regulated by market norms.” (Clipsham and Fulfer 2016, 287) Humane sustainability presupposes efficient markets whereby standards of welfare are reflected in higher prices, but not so high that they would discourage consumption—niche markets need not work at scale but they must still match supply and demand. Otherwise, their products would simply fail to generate the expected value (in terms of enjoyment and revenue) that is key to justifying their production on utilitarian grounds.

Anderson’s argument against the commodification of certain goods is that the latter are governed by norms whose *expressive* power is incompatible with treating them according to market norms—goods of that sort have non-instrumental value. As we saw, Varner seems to think that good ILS rules in

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<sup>12</sup> A cost-benefit analysis (CBA) of commodification will not do, because market norms and social norms are different. Psychologist Dan Ariely aptly captures the worry: “When we keep social norms and market norms on their separate paths, life hums along pretty well. Take sex, for instance. ... When social and market norms collide, trouble sets in. Take sex again.” (Ariely, 2008: 68-69) That’s because different norms govern different types of relationships. “[I]ntroducing market norms into social exchanges ... violates the social norms and hurts the relationships. Once this type of mistake has been committed, recovering a social relationship is difficult.” (76) Likewise, Kuenzler and Kysar (2014, 773-4) write that in a society “too heavily fixated on welfare economics and CBA ... the economic approach begins increasingly to shape and create the culture within which its value is produced and, for that very reason, to perpetuate the conditions of its own flourishing ... By creating and recreating expectations about what one should value and not value ... market relationships normalize certain practices of thought and action and make others deviant. ... Thus, the systematic use of CBA to evaluate the environment—rather than thinking explicitly about knotty issues of value incommensurability or intergenerational sustainability—already marks a regulatory approach as a certain type of institutional setting that promotes a particular view of the environment and reflects an insufficient desire to leave space for other types of assessments.” As Anderson (1993) would put it, market norms and the commodification of public and environmental goods undermine the *expressive* power of certain social norms.

regard to humane sustainability will involve valuing animals non-instrumentally insofar as they are themselves deserving of respect. Yet again, to the extent that the critical level generates ILS rules that make it permissible to treat animals as things “whose production, exchange, and enjoyment can be appropriately regulated entirely by those factors deemed relevant by market norms, such as the non-moral preferences of consumers”, then ILS rules can be effective only by failing to promote the sort of consideration animals are owed.<sup>13</sup> But if this is correct, ILS rules are not in fact optimistic since they end up promoting attitudes to animals that are likely to increase, not minimize, their suffering.

Clipsham and Fulfer consider the possibility that a “universal proscription against human commodification” could be based on consequentialist considerations, albeit not *act*-utilitarian grounds. They first consider Hare’s argument in favor of a universal prohibition of slavery. Hare believes it would be reasonable to “always vote for the abolition of slavery, even though I can admit that cases could be *imagined* in which slavery would do more good than harm, and even though I am a utilitarian” (Hare 1979, 117; Clipsham and Fulfer 2016, 289-90). They then show that a similar argument can be constructed against animal commodification, beginning “with the plausible claim that the practice of treating animals as commodities will, in our world, inevitably lead many people to completely (or nearly completely) disregard the interests of those animals.” Thus, “this line of reasoning would suggest that the commodification of animals should be universally rejected, regardless of whether any specific acts of commodification will produce suffering or maximize welfare.” (290) This is partly an empirical question, but I have already offered grounds to suspect humane sustainability could lead to

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<sup>13</sup> I am not assuming that sentient animals have an interest in life or continued existence. Varner does provide arguments for this view throughout the book. On his account, the merely sentient lack the capacities required to ground a sustained interest in life (i.e. categorical desires or future-directed preferences combined with a sense of self). Animals are not denied the consideration they are owed when they are killed, if Varner is correct—the principle of equal consideration of interests does not rule out the killing of animals who do not have an interest in life. My point is different. By entrenching replaceability at the intuitive level, ILS rules foster a conception of the merely sentient as having lesser moral status than they have *even on Varner’s view*. If so, ILS rules do not promote the consideration that these animals are owed by his own admission.

comparable consequences. If so, then Varner's preferred ILS rules fail by the lights of his own theory.

## ***5.2. Axiology***

Before concluding, a note on axiology will bring forward the relation between psychology and commodification as they pertain to my core objection. Two-level utilitarianism considers sentient beings as constituents of valuable states of affairs rather than as valuable for their own sake. Utilitarian agents should act in order to, or in accordance with rules that, promote the best consequences—based on a ranking of states of affairs. Utilitarians operate with a Moorean conception of intrinsic value, one which Anderson rejects.<sup>14</sup>

Ben Bradley (2006) has argued that there are two distinct concepts of intrinsic value, playing two distinct roles. Roughly, the Moorean conception is axiological whereas the Kantian conception is normative.<sup>15</sup> He writes:

We may wish to come up with principles that will tell us the values of possible worlds, human lives, or other interesting things. . . . [Or] we may be interested in defending a view concerning how people, or animals, or other things ought to be treated. By saying that something has intrinsic value, we are saying that it is not permissible to treat that thing in any way one sees fit, or to treat it as something with merely instrumental value. (Bradley 2006, 123)

While there are ways to bridge the two domains, what has intrinsic value in one sense does not

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<sup>14</sup> "It makes sense for a person to value most [states of affairs] only because it makes sense for a person to care about the people, animals, communities, and things concerned with them. This follows from the fact that our basic evaluative attitudes – love, respect, consideration, affection, honor, and so forth – are non-propositional. They are attitudes we take up immediately toward persons, animals, and things, not toward facts." (Anderson 1993, 20).

<sup>15</sup> The Kantian concept owes little, substantively, to Kant's actual normative views. Regan (1983, 235-43), who is not a Kantian, distinguishes the bearers of "inherent value" and moral status, i.e. "subjects-of-a-life," from the (Moorean) intrinsic value of their experiences.

straightforwardly tell us what has intrinsic value in the other sense. What makes the world good or bad, better or worse, is simply a different question than how we should treat concrete objects like humans, persons, animals, trees, species or ecosystems. Bradley thinks “Anderson is running together two distinct concepts” (117):

*Moorean Intrinsic Value:* The bearers of intrinsic value are fine-grained entities like states of affairs, propositions, or facts.

*Kantian Intrinsic Value:* To be intrinsically valuable is to be the immediate object of basic rational evaluative attitudes. Because states of affairs are not the immediate objects of such attitudes, they are not intrinsically valuable. States of affairs *derive* their values from the values of concrete objects and people.

It is beyond the scope of this paper to assess the claim that there are, or that we should have, two distinct concepts of intrinsic value. The point is this: the fact that disagreement about intrinsic value can be traced back to two plausible yet distinct *concepts* rather than substantive views of intrinsic value suggests that, psychologically, people may be valuing things, including *humane lives*, in two distinct senses. And if one concept turns out to be psychologically more prevalent, then the Moorean concept may be used to design ILS rules, but the Kantian concept is the one they should build *into rules themselves*. Put differently, two-level utilitarians should take care to avoid cross-contamination. If Anderson’s conception of value tracks (part of) our psychology and sees commodification as unfitting for some types of objects, then good ILS rules should disallow the commodification of such objects in order to foster optimistic attitudes. Humane sustainability is one such form of impermissible commodification. It is impermissible both by lights of an extended account of commodification and by the lights of Varner’s two-level utilitarianism. Valuing humane lives thus requires not seeing them

as replaceable.

## Conclusion

ILS rules are by their very nature context-sensitive. Varner makes a case for humane animal agriculture that entails the replaceability of many animals. Drawing on a range of considerations about advocacy, psychology, and axiology, I have cast doubt on the prospects of this case. Two-level utilitarianism tackles many objections commonly leveled against utilitarianism while preserving a unique degree of flexibility. Varner also provides one of the most robust defenses of humane animal husbandry, but I have argued that, despite these strengths, his case fails by its own lights, pending further evidence. A thoroughgoing commitment to the effectiveness of ILS rules, combined with empirical evidence, indicates that optimistic utopian visions may not be the ones that make it permissible to eat nonhuman animals that are “merely sentient”. I have also argued that Varner’s account is at odds with psychological constraints that robustly constrain the set of acceptable ILS rules given the welfare-maximizing aims of the theory. I have questioned several premises of Varner’s case for humane sustainability, but it should be noted that none of my objections purport to undermine the *intrinsic* merits of two-level utilitarianism. I have simply argued that the two-level utilitarian case for humane meat failed *by its own lights*.

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