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Animal confinement and use

Robert Streiffer^a and David Killoren^b

^aMedical History and Bioethics, Philosophy, University of Wisconsin-Madison, Madison, WI, USA;

^bInstitute for Religion and Critical Inquiry, Australian Catholic University, Melbourne, Australia

ABSTRACT

We distinguish two conceptions of confinement – the agential conception and the comparative conception – and show that the former is intimately related to use in a way that the latter is not. Specifically, in certain conditions, agential confinement constitutes use and creates a special relationship that makes neglect or abuse especially egregious. This allows us to develop and defend an account of one important way in which agential confinement can be morally wrong. We then discuss some of the account's practical implications, including its usefulness for decision-making in real-world contexts in which animals are confined.

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1. Introduction

Humans confine tens of billions of (non-human, sentient) animals on farms and in concentrated animal feeding operations, zoos, research laboratories, game preserves and national parks, animal sanctuaries, circuses, and in our own homes. Some of these animals are happy; others miserable. Some are better off than they would be otherwise; others worse off. But they all have their freedom of movement restricted in some way or other by human beings.

There are clear cases in which animal confinement is morally unacceptable. United States Department of Agriculture inspection reports of some so-called 'puppy mills' describe dogs sick and dying in horrendous conditions of squalor, in freezing temperatures, in unsafe cages, and in cages without any natural or artificial light for months on end (The Humane Society of the United States 2012). Quite generally, breeding dogs and dogs born in commercial breeding establishments appear to suffer from substantial neglect and abuse (McMillan, Duffy, and Serpell 2011; McMillan 2017). Everyone should agree that it is morally indefensible to confine dogs in such conditions.

CONTACT Robert Streiffer  rstreiffer@wisc.edu  1411 Medical Sciences Center, 1300 University Avenue, Madison, WI 53706, USA.

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But explaining the immorality of such abuse might not require claiming that confinement itself is a morally relevant factor. Indeed, the problems with puppy mills mentioned above could, in principle, be rectified compatibly with the dogs continuing to be confined. Perhaps if the conditions of the dogs' confinement were sufficiently improved, their confinement would be morally unproblematic.

The organizing question of this paper is whether confinement of animals is in and of itself morally significant. We will answer that question with a qualified 'yes'. In [Section 2](#), we distinguish two conceptions of confinement. Both involve external obstacles that limit an individual's freedom of movement, but *the comparative conception* focuses on the size relations between the area left accessible to the individual and the area rendered inaccessible to the individual whereas *the agential conception* focuses on the purposes for which the external obstacles are being used. In [Section 3](#), we argue that agential confinement bears a closer relationship to using an animal than does mere comparative confinement or mere exclusion. In [Section 4](#), we address the moral significance of using others. In [Section 5](#), building on our conclusions in earlier sections, we unveil a general principle that articulates one way in which agential confinement can be wrong. In [Section 6](#), we discuss some of the practical implications of this principle, including its usefulness for decision-making in real-world contexts in which animals are confined.

The present paper contributes to the growing literature on the ethics of human-animal relationships. Within that literature, many philosophers have recently defended the view that our duties to animals are determined not just by the animals' capacity-based moral status and interests but also by the special relationships that we bear to some, but not all, animals (Francis and Norman 1978; Rolston 1988; Anderson 2004; Steiner 2008; Palmer 2011; DeGrazia 2011; Gruen 2015). We find ourselves in broad agreement with that view.

More specifically, our project makes several novel contributions to the literature on the implications of confinement for the ethics of human-animal relationships (Rachels 1976; Taylor 1986; Jamieson 2002a, 2002b; DeGrazia 2002, 2011; Cochrane 2009; Gruen 2011a, 2011b). First, as we explain below, our argument in the present paper is sensitive to an important yet neglected distinction within the notion of confinement. This allows us to show that a certain kind of confinement (specifically, agential confinement for the purposes or interests of others) is morally relevant for reasons that need not apply to other kinds of confinement or to restrictions on freedom of movement more generally.

Second, while others have argued that confinement is morally relevant because of its inimical relationship to animal liberty, welfare, or dignity, we

ground the moral relevance of agential confinement in considerations about the moral relevance of use. Depending on the success of those other arguments, our arguments provide either a supplementary or alternative reason for concern about the plight of animals in zoos, research labs, agriculture, and other contexts in which humans agentially confine animals.

Third, we articulate a new structure for the kind of moral significance at issue. Other authors argue that the confinement of animals is *prima facie* wrong (Rachels 1976; Taylor 1986; Jamieson 2002a, 2002b; Gruen 2011a) or argue that confinement is either *pro tanto* or *all-things-considered* wrong when it fails to meet certain standards (DeGrazia 2011). We argue that agential confinement for the purposes or interests of others is always morally significant (in that it affects the confiner's duties to the confined individual), but that this is compatible with its not being even *pro tanto* morally wrong.

Fourth, the practical implications of our view depart from those of many of the other views in the literature. Many philosophers have endorsed what we will call *the wilderness baseline view* (roughly, the view that treatment of an animal is acceptable if it leaves the animal better off than the animal would have been in the wild) or what we will call *the proportionality baseline view* (roughly, the view that treatment of an animal is acceptable so long as any resulting harms to the animal are exceeded by some resulting benefits to the animal). We argue that both of these views have implausible implications when applied in particular contexts of animal confinement and we show that this can be explained by our view. Additionally, we show that our view can bolster some widely held and intuitively plausible judgments about certain forms of animal confinement (e.g., our view helps to explain why mistreatment of dogs in puppy mills as mentioned above is particularly abhorrent) while simultaneously providing reason to revise sanguine attitudes toward certain widespread practices involving animal confinement (e.g., our view provides a basis for especially strong objections to certain forms of confinement in industrial animal agriculture). In these ways, the position that we develop in this paper offers a new basis for critically reevaluating diverse forms of animal confinement in real-world contexts.

2. Two conceptions of confinement

Confinement involves external obstacles that limit an individual's freedom of movement, but not all such obstacles result in confinement. Consider Rex, a fox in a typical zoo. Rex is kept in an enclosure to provide a view for the zoo's visitors. Compare Rex's situation to that of one of the zoo's visitors. Both have their freedom of movement limited by Rex's enclosure – it prevents Rex from getting out and the visitor from getting in – but Rex is confined while the visitor is not. According to what we'll call 'the

comparative conception' of confinement, this difference lies in the fact that the area accessible to Rex (the area *inside* his enclosure) is smaller than the area inaccessible to Rex whereas the area accessible to the visitor (the area *outside* Rex's enclosure) is not smaller than the area inaccessible to the visitor (Streiffer 2014, 179–181).

But the comparative conception is not wholly adequate. Consider the following case:

Wanda's Self-Preservation: A bear has fallen out of a tree into Wanda's small backyard garden. There is a wall around the garden, but the bear could escape by going through Wanda's house. Wanda, inside the house, shuts the door to the garden and locks it. Now, the bear cannot leave the garden. Wanda's only purpose in locking the door is to prevent the bear from entering the house, where Wanda is safely ensconced. Wanda has no desire to keep the bear in the garden – in fact, Wanda wishes that the bear could scale the garden wall and leave.

According to the comparative conception, the bear is confined to the garden: the area accessible to the bear (the area inside the garden walls) is smaller than the area inaccessible to the bear. This implication, though, seems mistaken. Contra the comparative conception, it seems that Wanda is *merely excluding* the bear from her house – the bear's being unable to leave the garden is merely an unwanted side-effect of Wanda's action.

And consider the following case:

Wanda's Wildlife Assistance: The bear was injured when he fell out of the tree. Wanda has called the people at the wildlife center of her local humane society who have said they will come help the bear. Wanda is not worried about her own safety, but has locked the door specifically to keep the bear inside the garden until help for the bear arrives.

From the perspective of the comparative conception of confinement, *Wanda's Wildlife Assistance* is no different from *Wanda's Self-Preservation*: the relationship between the size of the accessible area and the size of the inaccessible area is the same. But this ignores a difference between the two cases that seems relevant to the idea of confinement: in *Wanda's Wildlife Assistance*, Wanda wants to keep the bear *in* a certain area, whereas in *Wanda's Self-Preservation*, Wanda wants to keep the bear *out* of a certain area.

When considering these sorts of cases, the comparative conception seems inadequate. We therefore suggest a second conception of confinement that incorporates the purposes of the agent doing the confining. An individual is confined, according to this conception, if there are external obstacles that prevent that individual from leaving a certain area and those obstacles are used by some agent for the purpose of preventing the individual from leaving that area. Let's call this 'the *agential conception*' of confinement.¹ Rex is confined, according to the agential conception, because the enclosure is being

used by the zoo for the purpose of preventing Rex from leaving his enclosure. The visitor is not confined because the enclosure is not being used by the zoo for the purpose of preventing the visitor from leaving the area outside the enclosure. The agential conception and the comparative conception both imply that the bear is confined in *Wanda's Wildlife Assistance* but, contrary to the comparative conception, the agential conception implies that the bear is not confined in *Wanda's Self-Preservation*.

It might be objected that the difference between the two *Wanda* cases isn't a difference between two conceptions of confinement, but between intentional confinement (in *Wanda's Wildlife Assistance*) and unintentional confinement (in *Wanda's Self-Preservation*). That certainly is a difference between the two cases, but a further difference also exists: the difference between intending to keep an individual *in* a certain area (in *Wanda's Wildlife Assistance*) and intending to keep an individual *out of* a certain area (in *Wanda's Self-Preservation*). The agential confinement conception captures the intuitive idea that confinement (as opposed to exclusion) has to do with the former, not the latter.

In light of the foregoing, we suggest that the agential conception of confinement captures a notion involved in many applications of the word 'confinement.' But we also think that the comparative conception is involved in some applications: a person trapped by a cave-in can still be confined, even though the external obstacles restricting their movement are not used by any agent for any purpose. Given this, we doubt there is just one correct notion of confinement. Hereafter, we'll simply use 'agentially confined' to mean 'confined according to the agential conception', and 'comparatively confined' to mean 'confined according to the comparative conception'.

3. Agential confinement and use

In this section, we argue that there is a tight relationship between agential confinement and use, thus making it clear that ethical concerns about use (developed in sections 4 and 5) are applicable to a broad range of cases of animal confinement.

Agential confinement isn't necessary for using an animal: some field research on animals and some hunting involve using animals without confining them. Nor is agential confinement sufficient for using an animal: in *Wanda's Wildlife Assistance*, Wanda agentially confines the injured bear until help can arrive, but she is not using the bear.

Yet agential confinement is often accompanied by use. Recall Rex, the fox in the zoo, who is kept in an enclosure for easy viewing. And consider mice kept in cages so that they can be easily retrieved for later use in research and pigs kept in pens in a concentrated animal feeding operation so that they can be fattened and slaughtered for food. In these examples, the animals are being agentially confined and it is clear that they are being

used. Contrast these situations with a person *merely excluding* feral pigs from their property. In such a case, the pigs are not agentially confined (they are merely excluded) nor are they being used.

Consider animals in national parks. Many national parks are enclosed by barriers. In some cases, the purpose of these barriers is solely to prevent animals from entering certain areas – e.g., nearby human communities. Then the barriers do not constitute agential confinement and there does not seem to be any sense in which the animals are being used. In other cases, these barriers are intended to keep the animals within the park, perhaps to play a certain ecological role, to contribute to the preservation of the species, to be available for field research, or to serve as entertainment for visitors. In each of these latter cases, the animals are being agentially confined and are being used.

These examples suggest that, despite being neither necessary nor sufficient for use, agential confinement is related to use in some more complicated way. We propose that when an animal is agentially confined *for the purposes or interests of others*, then that confinement amounts to using the animal. This explains which of the above cases of agential confinement involve use and which do not.

This marks an important difference between agential confinement and comparative confinement, for even when an animal is comparatively confined for the purposes or interests of others, if they are not also agentially confined, they are not necessarily being used. To see this, consider an Australian farmer who uses fencing to prevent kangaroos from entering his property. Suppose that, because of natural geographical barriers and other already existing barriers created by humans, the fencing has the effect that the kangaroos have access to only a relatively small area. Then the kangaroos are comparatively confined (because the area accessible to them is smaller than the area not accessible to them) but they are not agentially confined (because the farmer's intention is only to exclude the kangaroos from certain areas). Even though the farmer comparatively confines the kangaroos for his own purposes and interests, it seems clear that this confinement does not amount to using the kangaroos.

Thus, agential confinement differs from comparative confinement and mere exclusion in that, when done for the purposes and interests of others, agential confinement always constitutes use whereas comparative confinement and mere exclusion typically do not.

4. The moral significance of use

If agentially confining an animal for the purposes or interests of others amounts to using that animal, then ethical norms governing use apply to the relevant instances of animal confinement.

Even among humans, it is not always wrong or even morally problematic for one individual to use another. Business associates use one another to achieve their separate business objectives, and this is often morally justified, all things considered, and is often completely morally benign. Nevertheless, it can be wrong to use someone, and, intuitively, the fact that one individual uses another can *make it the case* that the user's behavior is wrong. When one claims to have been wronged and is asked to explain why or how one has been wronged, it can be correct to answer, 'You were using me.' But there are many different views about precisely *how* use might be morally significant.

The Kantian tradition suggests two different (closely related) ideas: that using someone is wrong when it amounts to treating them as mere means; and that using someone is wrong when it amounts to failing to treat them as an end-in-themselves (Quinn 1989; Kamm 2007).² But the first of these ideas is not particularly helpful for the present purpose. On a straightforward understanding of treating someone merely as a means, it will be trivial to avoid treating someone as a *mere* means: the user only has to show the usee some small kindness for the sake of the usee (Parfit 2011, 41–42).

According to the second idea, using someone is wrong when it amounts to failing to treat them as an end-in-themselves. What does it mean to treat an individual as an end-in-themselves? On one reading, to treat an individual as an end-in-themselves, the individual must be treated as a being who possesses intrinsic moral value and whose interests (therefore) matter independently of their relation to anyone else's interests. But, on this reading, the second idea is no more helpful than the first: it is easy for the user to ascribe a small amount of intrinsic value to the usee's interests.

An alternative reading is this: to treat an individual as an end-in-themselves, one must treat the individual as a being who possesses intrinsic moral value, *and* one must (therefore) act in a way that gives *due weight* to that individual's interests. (We intend to be ecumenical among consequentialists and deontologists about how to interpret due weight and its requirements.) On this view, treating an individual as an end-in-themselves means more than just acting in a way that accords *some* non-instrumental value to the individual's interests; it means acting in a way that accords *the right amount* of non-instrumental value to the individual's interests.

These reflections suggest the following principle:

The Due Weight Principle: If one individual S_1 uses another individual S_2 , then S_1 is therefore morally obligated to act in a way that gives due weight to S_2 's interests.

The Due Weight Principle is attractive, but it is not very informative. After all, it seems plausible that, in general, we are *always* obligated to act in a way that gives due weight to *anyone's* interests. For it seems plausible that the due weight of any individual's interests just is the amount of weight that

ought to be given to that individual's interests. This, in turn, implies that it is a trivial definitional truth that, for any two individuals S_1 and S_2 , S_1 is morally obligated to act in a way that gives due weight to S_2 's interests. And then the Due Weight Principle would merely be a special case of this trivial definitional truth.

The upshot of these points is that the Due Weight Principle doesn't seem to pick out any morally distinctive feature of use as such. What is missing from the Due Weight Principle, then, is an account of how use of one individual by another changes the user's moral obligations – and, in particular, changes how the user is obligated to look after the usee's interests. In what follows we'll develop such an account.

Consider two cases:

Failure to Provide for Research Rats: You are using rats for your research project. Some of the rats have developed a naturally occurring painful tumorous growth, a condition that is treatable by a veterinarian. You could easily afford to use your personal funds to cover the needed veterinary care, and this would not affect your research in any way. You decline to provide the veterinary care for no good reason. Consequently, the rats endure painful discomfort for the duration of the research project.

Failure to Provide for Shelter Rats: Your local animal shelter houses rescued domestic rats. Some of these rats have developed the same naturally occurring painful tumorous growth mentioned in the previous case. The shelter solicits an easily affordable donation from you that would enable them to cover needed veterinary care for the rats in the shelter. You decline to donate for no good reason. Consequently, the rats in the shelter endure painful discomfort for the duration of their time in the shelter.

Suppose that the welfare consequences for the animals and the minuscule burdens on you are the same in each case. Both cases are morally problematic, but *Failure to Provide for Research Rats* is more problematic than *Failure to Provide for Shelter Rats*. We propose that what explains the moral difference between these two cases is that use establishes a special relationship between the user and the usee, a special relationship that exists between you and your rats in *Failure to Provide for Research Rats* but that does not exist between you and the shelter's rats in *Failure to Provide for Shelter Rats*.

It might be objected that what explains the moral difference between these two cases is that in *Failure to Provide for Research Rats*, you caused the animal to be in need or to be dependent upon you, whereas in *Failure to Provide for Shelter Rats*, someone else played that causal role.³ While we do not need to deny that these kinds of causal connections can ground special relationships, they fail to explain the moral difference between these two examples: because the tumors are naturally occurring, you are not the cause of this particular need or of this particular way in which the animals are

dependent in either case. If the suggestion is that need or dependency, regardless of cause, grounds the moral difference, then the reply is that in both cases, the rats are equally in need of your assistance and dependent on you for assistance, for in both cases, the rats will not get the required veterinary care without your assistance.

Another possible objection is simply that the difference between the two cases is grounded in a difference in legal obligation: some current research regulations mandate that the researcher ensures that veterinary care (understood to include humane euthanasia) be provided in cases like *Failure to Provide for Research Rats* whereas there is no corresponding legal requirement to donate to shelters. In response, we can stipulate that this research is occurring in a context where those research regulations do not apply. The moral difference between the two cases remains.

Generally speaking, a special relationship can make a moral difference in at least two ways. First, it can ground additional duties. For example, the special relationship between spouses creates duties to each other that they do not have to others outside the relationship. Second, it can make an existing duty more stringent, as the special relationship between a parent and their child makes many general duties of care more stringent between the two. Such additional or more stringent duties make it more problematic, other things being equal, for the subject of the duty to fail to act in a way that gives due weight to the interests of the object of the duty.

Thus, a special relationship between the user and the usee could explain the moral difference between *Failure to Provide for Research Rats* and *Failure to Provide for Shelter Rats* by affecting the duties that you have to the rats in your research project in either of those two ways. Consequently, we propose that the following principle (which is more specific than the Due Weight Principle) governs one individual's use of another:

The Special Relationship Principle: If S_1 uses S_2 , this establishes a special relationship between S_1 and S_2 ; consequently, it is more morally problematic than it would be otherwise for S_1 to act in a way that fails to give due weight to the interests of S_2 .⁴

Before continuing, we'd like to quickly address one possible objection to the Special Relationship Principle. In some cases, an individual uses another individual in a morally unproblematic way *even though* the first individual never gives any thought to the second individual's interests. Such cases may seem to be counterexamples to the Special Relationship Principle. Here's an example: You place an order in a cafe and pay the barista for your coffee, never once considering his interests. In this scenario, you use the barista, and given that you do not think about the barista's interests at all, one might conclude that you could not have acted in a way that gives his interests due weight (or any weight at all). And yet there need be nothing

whatsoever morally problematic with the transaction. (Note that we aren't assuming that every commercial transaction constitutes use, only that this typical one does.)

To deal with this issue, we suggest that, for the purposes of interpreting the Special Relationship Principle, what matters with respect to whether one has acted in a way that gives due weight to the interest of another is not the intention of the agent, but rather the effects of the actions of the agent on the other's interests in light of the context in which the actions are taking place. In the case just described, you do not consider the barista's interests; but you conduct your transaction with the barista in the context of a larger society. When that society is structured in such a way that, in fact, due weight is given to the barista's interests (by ensuring an appropriate wage and benefits, safe working conditions, etc.), then your actions do, in a socially mediated way, give due weight to the barista's interests, and your using the barista need not be morally problematic. In this way, it may be possible to *outsource* the job of giving due weight to another's interests. The viability of this sort of moral outsourcing is a complex issue which we do not have the space to explore here. But this illustrates that there is at least one way to reply to the present objection.

5. The agential confinement principle

Let's now put the pieces together. In [Section 3](#), we argued that agential confinement bears a closer relationship to animal use than does mere comparative confinement or mere exclusion. Specifically, we argued that, unlike comparative confinement and mere exclusion, agential confinement for the purposes or interests of others always constitutes use. In [Section 4](#), we turned to the question of the moral significance of use, and we argued for the Special Relationship Principle: because use establishes a special relationship, use is especially problematic when the user acts in a way that fails to give due weight to the interests of the usee. Thus, we arrive at the following principle:

The Agential Confinement Principle: If S_1 agentially confines S_2 for the purposes or interests of others, this establishes a special relationship between S_1 and S_2 that makes it more morally problematic than it would be otherwise for S_1 to act in a way that fails to give due weight to the interests of S_2 .

This principle states a sufficient condition for morally problematic agential confinement and explains why a user's acting in a way that fails to give due weight to the interest of the usee is especially morally problematic. The Agential Confinement Principle does not imply that agentially confining animals or agentially confining animals for the purposes or interests of others is always wrong (all things considered), or even that there is always

a defeasible presumption against doing so. Our view is therefore compatible with (but does not imply) views according to which it is sometimes morally acceptable or even morally unproblematic to agentially confine animals for the purposes or interests of others (e.g., our view is compatible with Fischer and Milburn's view (2017) that the use of backyard chickens for eggs may be morally acceptable). Instead, our view establishes only that when we act in a manner that fails to give an animal's interests due weight, this is especially morally problematic in contexts in which we are agentially confining the animal for the purposes or interests of others.

Before continuing, we'll address a worry that some may have about our account. As we've seen, our account says that one form of confinement – namely, agential confinement for the purposes or interests of others – is morally significant in virtue of the fact that (i) such confinement amounts to use, and (ii) use is in and of itself morally significant. Given this, one might claim that the notion of use is doing all the heavy lifting in our account, and therefore our account is not really a full-fledged account of the moral significance of *confinement*. This would be an objection to our argument insofar as our advertised aim in this paper is to provide an account of the moral significance of confinement.⁵

To see why this objection is mistaken, consider an analogy with Scanlon's view of the ethics of promising (1998, 295–309). Scanlon argues, roughly, that promising acquires its moral significance from the fact that, in the appropriate circumstances, making a promise is an instance of intentionally inducing a certain kind of expectation. The fact that (on Scanlon's view) the moral significance of promising is derived from the moral significance of intentionally inducing an expectation is not, by itself, an objection to Scanlon's claim to have explained the moral significance of promising. Given that (on Scanlon's view) to make a promise *is* to intentionally induce an expectation, Scanlon's account is a full-fledged account of the moral significance of promising: it explains that moral significance in terms of the moral significance of intentionally inducing an expectation. Likewise, given that (on our view) agential confinement for the purposes or interests of others *is* a form of use, our account is a full-fledged account of one way in which one type of confinement is morally significant: it explains that moral significance in terms of the moral significance of use.

One advantage of our proposal to account for the moral significance of agential confinement in terms of the moral significance of use is that it allows our view to be compatible with the (reasonable) idea that the moral significance of use-constituting agential confinement is similar to that of other sorts of use. Imagine two cases: in one, an agent confines chickens to use their eggs; in the other, an agent takes eggs from chickens who are permitted to move about freely and are not in any way confined. Intuitively, the agent's obligations toward the chickens in the first case are similar to

the agent's obligations toward the chickens in the second case; our account is fully consistent with that intuition.⁶

Before we move on to discuss the implications of our view, we'll note some comparisons between our view and other views of the ethics of animal confinement. A number of philosophers have developed accounts of animal confinement that appeal to the importance of liberty. Dale Jamieson (2002a, 2002b) argues that there is a moral presumption against keeping animals in captivity because (among other reasons) there is a moral presumption against limiting their liberty, and captivity limits their liberty. Lori Gruen (2011a) holds a similar view, adding that the reason why there is a moral presumption against limiting liberty is that liberty is a constituent of living a good life, at least for animals possessing a certain degree of autonomy (143, 148–150). Similarly, James Rachels (1976) argues that keeping animals in captivity is presumptively wrong because it infringes their *prima facie* right to liberty.

Our argument is compatible with views that appeal to the importance of liberty, but it does not imply or require such views. This is an advantage for our account, because there are reasonable doubts about whether there is a general right to or interest in liberty (as opposed to rights to and interests in specific liberties). The moral significance of use-constituting agential confinement for which we have argued operates differently than the arguments from liberty offered by Jamieson, Gruen, and Rachels. According to our argument, agential confinement for the purposes or interests of others is analogous to the moral significance of promise-making: there is no moral presumption against promise-making, but if one makes a promise, this creates a special relationship that can make actions more morally problematic than they would have been otherwise. Similarly, while our argument is compatible with there being a general moral presumption against agential confinement, our argument doesn't by itself establish such a presumption.

Our view coheres with (but does not require) Gruen's (2015) entangled empathy approach, as we have argued that agential confinement for the purposes or interests of others gives rise to a morally significant relationship between the individual doing the confining and the individual being confined. Gruen defines 'entangled empathy' as 'a type of caring perception focused on attending to another's experience of well-being. An experiential process involving a blend of emotion and cognition in which we recognize we are in relationships with others and are called upon to be responsive and responsible in these relationships by attending to another's needs, interests, desires, vulnerabilities, hopes, and sensitivities' (2015, 3). Appropriately informed and calibrated entangled empathy can help the confiner to understand and to be motivated to respond to the concrete, practical implications of their enhanced duty to act in a way that gives the animal's interests due weight. This could result in the confiner improving the conditions of confinement in a way that

matters to the animal, or perhaps ending the confinement altogether. Our view is fully consistent with these sensible views.

Our view is also compatible with (but does not require) the sort of human exceptionalism defended by the likes of Roger Scruton (2000). For Scruton acknowledges that special relationships can augment our moral duties to animals, arguing that our attachment to companion animals generates additional obligations to them (2000, 44, 82–84), that our special ties to others affect our moral obligations (2000, 59–60), and that piety requires that we express ‘reverence to the world on which we depend,’ (2000, 64–68) which certainly includes many animals agentially confined for our own purposes. He also restricts his generally utilitarian approach towards animals to cases which concern only ‘animals to which we have no special duty of care’ (2000, 74). Although Scruton discusses the human use of animals (2000, 64–65), he does not mention any special obligations arising from use in his discussion of the typical contexts in which humans use animals (2000, 88–122). Scruton can augment his views along these lines, and modify his discussion of the practical implications of his views accordingly. However, as we will see below in [Section 6](#), Scruton’s view is at odds with a number of intuitively plausible judgments about cases, and our account can explain where Scruton’s view goes wrong in those cases.

It is also useful to compare our view to Clare Palmer’s. Palmer (2011) observes that human beings have, over the course of many generations, domesticated other species and have thereby put members of those species into a position of vulnerable dependency. And on the basis of that fact, Palmer argues that the duties of humans to the members of domesticated species are different from the duties of humans to other animals. Her view is importantly different from ours: her view centrally involves domestication, a relation of one species to another that develops over the course of many generations, and typically involves genetic alteration of domesticated species – whereas our view centrally involves use, a relation of one individual to another that need not involve multiple generations or genetic change. Yet there is no inconsistency between her view and ours, as far as we can see. If Palmer’s arguments are sound, it would simply follow that humans who agentially confine domesticated animals for the purposes or interests of others (such as the owners of farm animals, rats bred for research, and puppy mills) stand in multiple special relationships to the animals so confined.

Thus, our view is compatible with a number of views that are already extant in the literature. At the same time, however, the argument we’ve offered in this paper implies that those other views are incomplete and ought to be supplemented because they fail to give sufficient attention to considerations about use.

6. Implications

Our account of the ethics of agential confinement has several important practical implications. First, the fact that use is a special relationship that affects the duties the user has to the usee undermines one argument that is very often made for the permissibility of certain uses of animals. The argument we have in mind appeals to what may be called *the wilderness baseline*.

Bernard Rollin says that traditional animal agriculture was justified because, rare deviant behavior aside, it left the animals better off than they would have been in the wild. He says:

Humans provide food, forage, protection against extremes of weather and predation, and, in essence, the opportunity for the animals to live lives for which they were maximally adapted – better lives than they would live if left to fend for themselves. The animals in turn provided food, toil, fiber and power for humans. The situation was thus a win/win one, with both animals and humans better off in the relationship than they would have been outside it. ... The coincidence of ethics and self-interest was nearly perfect. (Rollin 1995, 5–6)

Similarly Scruton argues in support of continuing to harm and kill animals in agriculture and leather and furrier operations – contexts in which animals are typically agentially confined for the purposes or interests of others – on the grounds that nature would have treated them even worse since, he says, ‘there is a moderation and control in human unkindness of which nature knows nothing’ (2000, 48). (It should be noted that he later criticizes those who are indifferent to the conditions of factory farms, not on the grounds that factory farms violate obligations to the animals, but rather on the grounds that such a person has impoverished ‘his sense of the value of his own life by his indifference to the sight of life reduced to a stream of sensations’ (2000, 102).)

In the passages above, Rollin and Scruton each seek to justify certain uses of animals by appeal to the observation that these animals would be worse off if they were wild. Jeff McMahan articulates (without endorsing) the same idea; he writes: ‘Many people are opposed to factory farming because of the terrible suffering it inflicts on animals, yet see no objection to eating animals that are killed painlessly after having been reared in conditions that are at least no worse than typical conditions in the wild’ (McMahan 2008). McMahan calls this practice ‘benign carnivorism.’

Let’s say that a given practice *exceeds the wilderness baseline* when that practice treats animals in such a way that it leaves them better off than those animals would be in the wild. And let’s say *the wilderness baseline view* is the view that any practice that meets or exceeds the wilderness baseline is morally acceptable (at least in terms of the practitioner’s duties to the animals used in the practice; we are thus setting aside concerns about the

environment or about humans). Rollin and Scruton appear in the passages above to affirm some version of the wilderness baseline view. The wilderness baseline view is very often used – by both philosophers and by ordinary people – to argue in defense of a wide range of different practices in which animals are agentially confined for the purposes or interests of others.

But the wilderness baseline view sets an implausibly low standard. For example, if an animal is being confined and used in a research laboratory, then allowing the animal to die of starvation would typically be impermissible, even if the animal would likely have starved to death if that animal had been wild and free. (See (DeGrazia 2011, 742) for a similar point.) The wilderness baseline view implies otherwise; therefore, the wilderness baseline view is mistaken. Our account can explain why the wilderness baseline view is mistaken – because our account explains why treatment that might be permissible in the absence of use can nevertheless be impermissible in light of the special relationship that arises from use. More generally, our account undermines any view that takes our duties to wild animals (or other animals to whom we have no special relationship) as a complete model to follow in determining our duties to animals that we are confining for the purposes or interests of others.

Here it is useful to consider a related idea, also suggested by Scruton, that the use of an animal is morally acceptable as long as ‘the utilitarian balance...is in the animal’s favor’ (2000, 67). The idea (or one version of it) is that treating an animal in a certain way is not wrong so long as the resulting benefits to the animal exceed the resulting harms to the animal. Call this the *proportionality baseline view*.

Such a view is subject to counterexamples. This can be seen by revisiting the *Failure to Provide for Research Rats* case. Suppose the rats in that case are harmed in various ways but also receive benefits sufficiently large to ensure that the proportionality baseline view is satisfied, but just barely so (i.e., the magnitude of the benefits to the rats is ever so slightly greater than the magnitude of the harms to the rats). Some additional significant benefit (such as veterinary care) can be easily provided to the rats at little or no cost.

In such a case, if laboratory managers decide not to provide the additional benefit, it seems highly plausible that the animal is thereby wronged, even though the requirement specified in the proportionality baseline view is satisfied. Thus, the proportionality baseline view is at odds with this type of case.

Our account can explain these cases. We can say that in failing to provide such additional low-cost benefits to the confined animal, the laboratory managers fail to give due weight to the animal’s interests, and that this is particularly morally problematic precisely because the laboratory’s

confinement of the animal for research purposes establishes a special relationship between the animal and the laboratory. So this is a point where our account represents an improvement on the account developed by Scruton.

A further implication of our arguments has to do with decision-making in contexts where animals are confined in some way (whether agentially or comparatively). As we noted in the introduction, animal confinement is widespread: it occurs on farms and in circuses, zoos, research laboratories, game preserves and national parks, animal sanctuaries, and in our own homes – to name just a few examples. Our arguments suggest that anyone who is involved in confining an animal should ask herself the following questions: (1) Is the animal agentially confined? and (2) If the animal is agentially confined, is this done for the purposes or interests of others? If the answer to the second question is ‘yes’, which it very often will be, then the confiner ought to recognize that they have an especially weighty responsibility toward the confined animal to look after that animal’s interests, and ought to act accordingly.

Now, in some cases, the answers to (1) and (2) will be clear. It is clear, for example, that zoos, with their primary purposes of entertainment, education, research, and species conservation (Association of Zoos and Aquariums 2017; Hutchins, Smith, and Allard 2003; World Association of Zoos and Aquariums 2005), will typically agentially confine animals for purposes and interests other than the animals’ own. In other cases, though, it will be considerably easier to answer (1) than to answer (2). Consider that a fence surrounding a wildlife preserve typically has at least two effects: it prevents the animals from accessing certain areas, such as an urban environment near the preserve, and it prevents the animals from leaving the area within their enclosure. The first effect may be desirable because it protects the animals from harm; the second effect may be desirable because it keeps the animals available for recreation, hunting, or conservation efforts. But which of these effects represents the preserve’s aim? To address this question, we can deploy a counterfactual test: What if the animal could somehow access a third area – say, a wilderness area where the animal would be safe but out of sight and inaccessible to people? Would the preserve officials want to prevent the animal from going into that third area? If so, then this supports the view that preventing the animals from leaving the preserve is among the preserve’s aims, which in turn supports the view that the preserve enclosure amounts to agential confinement.

Yet, even once it is established that the animals in a preserve are agentially confined (thus providing an affirmative answer to (1) above), it may still be difficult to determine whether this is done *for the purposes or interests of others*. This is because the establishment and maintenance of a preserve is a collaborative project, the result of actions taken by many

different people, who may each have different ideas about the purpose of the preserve. Some may be interested in species-conservation; some may be interested in the particular individuals who are alive now; and others may have yet other purposes. Although a similar counterfactual test may give us evidence as to the intentions of individuals within the group (e.g., would a particular individual continue to support the preserve if it no longer served any useful role in species conservation), it may still be difficult to ascertain the collective intention of the group as a whole. Given this, we may be unable to straightforwardly determine whether the animals are being used for others' purposes or interests as against being protected for their own sake (thus making this case analogous to the case of *Wanda's Wildlife Assistance*).

And so, in the context of a preserve (and in many other contexts as well) it may be fairly straightforward to determine that an animal is *agentially confined*, but difficult to determine whether the animal is agentially confined *for the purposes or interests of others*. In such cases, we think that decision-makers ought to see agential confinement as defeasible epistemic evidence that some kind of morally important use of an animal could be involved, even if this turns out to be difficult to determine with certainty. In this way, agential confinement can serve as an epistemically useful warning sign: those who agentially confine animals should be alert to the possibility that they may have especially stringent duties to provide for the animals' interests and that failure to adequately respect those interests may be especially morally problematic.

Yet another implication of our view is that it may, along with other moral principles, help to explain why certain commonly held attitudes about our obligations towards animals are correct. Return to the case of puppy mills discussed above. Puppy mills receive an extraordinary amount of negative attention from animal activists and from the general public. Puppy mills are surely harmful, but so are many other human interactions with animals. There are perhaps one hundred thousand breeding females in puppy mills in the United States (The Human Society of the United States 2016), whereas about one and a half million deer are struck by cars in the United States each year (Mastro, Conover, and Frey 2008; Rice 2011). Yet puppy mills inspire an especially intense degree of outrage, while the number of deer fatalities on our roadways is commonly seen as regrettable but not outrageous. This may seem to be an unjustifiable imbalance in our common sympathies. But our analysis may go some distance toward vindicating this apparent imbalance. After all, puppy mills involve agential confinement of animals for others' purposes or interests, which means that owners of puppy mills use their dogs in a way that makes it especially morally problematic for those owners to fail to give due weight to the dogs' interests. By contrast, no such special relationship exists between a deer and the driver of a car.

Deer certainly have their habitat restricted for the purposes and interests of others, but this amounts to mere exclusion and, as argued earlier, does not entail use in the way that agential confinement does. Consequently, when puppy mill owners neglect the interests of their dogs, we may be justified in regarding this as especially egregious from a moral point of view.

We've pointed out that our arguments can provide some support for some commonly held attitudes about our obligations toward animals, but it also bears emphasizing that our arguments may also go some distance toward *undermining* certain other commonly held attitudes. Animals in farms and in laboratories (and numerous other contexts) are agentially confined for the purposes and interests of others. Thus, according to our analysis, it is especially morally problematic when livestock owners or animal researchers fail to give due weight to the interests of animals in their care. And this, in turn, suggests that we ought to be at least as outraged when the poor treatment of livestock animals and research animals occurs, as we are when the equally poor treatment of dogs in puppy mills occurs. To the extent that this is not the case, we are in some sort of moral error. Generally speaking, then, while our arguments have the potential to provide some justification for some commonly held attitudes, our arguments also have the potential to require revision of some (other) commonly held attitudes about obligations toward animals.

Notes

1. An agent who aims to prevent an individual from leaving a certain area could have this aim either *instrumentally* or *non-instrumentally*, but in general, the aim of keeping the animals from leaving an area would be instrumental to some further aim.
2. Kant, of course, thought that these principles only apply to humans. But it is arguable that, barring some hard-to-defend form of speciesism, a plausible version of Kant's theory would extend to some animals as well (Korsgaard 2005, 2011, 2012).
3. Thanks to an anonymous reviewer for suggesting that we consider whether being the primary cause of need could explain the difference between these two cases. Scruton discusses the plausible idea that causing dependency can create duties to animals (2000, 86).
4. We take "morally problematic" to refer to a deontic property that is familiar from ordinary moral discourse and which is such that, if act A_1 is more morally problematic than act A_2 , then A_1 is more seriously pro tanto morally wrong than A_2 . Although it is not required for our purposes, one could presumably further explain whether A_1 is more seriously pro tanto morally wrong than A_2 in terms of a comparison of the moral reasons concerning A_1 and A_2 .
5. Thanks to an anonymous reviewer for pressing us on this point.
6. We're grateful to an anonymous reviewer for asking us to consider this example.

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Notes on contributors

Robert Streiffer is an associate professor with a joint appointment in the Department of Medical History and Bioethics and the Department of Philosophy at the University of Wisconsin-Madison. His research interests include the ethics of biotechnology, food ethics, and animal ethics.

David Killoren is a postdoctoral research fellow at Australian Catholic University in Melbourne. He works on a range of topics in metaethics, ethical theory, and applied ethics.

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