

RIGHTS OF ANIMALS-THE QUESTION IS NOT ‘CAN THEY REASON?’ NOR ‘CAN THEY TALK?’ BUT ‘CAN THEY SUFFER?’

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Abstract

Do animals have rights for themselves? Almost everybody believes in rights for animals, although in minimal sense. The question is what that expression actually means. While exploring the question, it is feasible to provide a clear sense of the lay of the land to show the range of possibilities, to delve into the issues, the theory and fact of the separate reasonable people. On a careful thought, the spotlight must be placed squarely on the issues of suffering and wellbeing. The stance requires rejection of some of the most root claims by advocates of animal rights, particularly those who stress the autonomy of animals to any human control and use of it. But the status has intrinsic implications of its own. It strongly recommends that there should be extensive regulations of the use of animal in scientific experiments, agriculture and entertainment. It also recommends that, there is a strong debate in principle for bans on use of animals.

Keywords: Animal Rights, Suffering and wellbeing, Autonomy, Human control, Regulations.

CATS AND DOGS PRINCIPLE

There are more than 60 million domestic dogs across the globe which is owned by over 36 million households. Among these over half of them give Christmas presents to their dogs. Millions also celebrate their dog's birthday. Now if a family's dog were forced to live a painful and short life, the family would feel some combination of rage and grief. What is said about dog owners is also said about cat owners who are still more numerous. But through their behavior, people who love pets and care about their welfare help ensure painful and short lives for billions of animals that cannot be distinguished from cats and dogs. Now should people change their behavior? Should the animals have legal rights? Should law promote animal welfare? In order to answer these questions, there is a need to step back a bit.

There are many people who think that the idea of animal rights is implausible. Recommending that animals are neither self-aware nor rational, Immanuel Kant said of animals as 'man's instruments', which deserves protection only to help human beings in their relation. The one who is cruel to animals becomes hard also in his dealings with men.¹ Jeremy Bentham had a different approach which suggests that mistreatment of animals was akin to racial discrimination and slavery. A day might come when the rest of the animal creation might acquire those rights which never could have been retained from them but by the hand of tyranny. It has already been discovered that the blackness of the skin is no excuse why a human being should be deserted without redress to the caprice of a tormentor. A grown-up dog or a horse is beyond comparison a rational as well as conversable animal than an infant of a day, a week or a month old. Now suppose the case was otherwise, what would it provide? The question isn't, if can they talk? Nor if can they reason? But if can they suffer?² Then John Stuart Mill agreed to repeat the analogy to slavery.³ Many people reject that analogy. Since past 10 years, the question about animal rights has to move from the periphery towards the center of legal and political debate. It is an International Debate. In the year 2002, it was Germany that became the first European Nation to vote to assure animal rights in its constitution, which added the word 'animals' to a clause that obliged the state to protect and respect the dignity of human beings.⁴ A great deal was done by the European Union to reduce animal suffering. In the United States consumer pressures have been improving their conditions for animals that are used as food.⁵ Regardless of growing appeal, the notion of animal rights has been rejected with extraordinary intensity. Some animal rights advocates are of the opinion that their rivals are cruel, selfish, unthinking and morally blind. Those who oppose animal rights are of that the advocates are bizarre and fanatical willing to trample on human interests for the sake of rats, mice and salmon.

WHAT RIGHTS ANIMALS MIGHT ENTAIL?

¹ Immanuel Kant, lectures on ethics, trans. Louis Infield (New York: Harper Torch books, 1963), at 240

² Jeremy Bentham, the principles of morals and legislation, Chap – XVII, section IV (1781)

³ John Stuart Mill, Where well on moral philosophy, in John Stuart Mill & Jeremy Bentham Utilitarianism and other essays 228, 252(Alan Ryan ed., 1987)

⁴ John Hooper, German Parliament votes to give animals constitutional rights, the Guardian (London) May 18 2002, the Guardian home pages, pg-2

⁵ Chicago Tribune, June 26, 2002, p.9, John Kiel Man, Food Retailers Press for Human Farming, Industry Animal Activists reaching some suppliers

Status Quo

When we comprehend ‘rights’ to be legal protection against harm, then animals already do have their rights, and the notion of animals is not controversial. Now when we take rights to mean a moral claim to such protection, it is a general acceptance that animals have rights of certain kinds. There are some people including Descartes are of the opinion that animals are like robots which lack emotions and that people should be allowed to treat them however they choose to.⁶ And then again to some people including sharp critics of animal rights movement, this stance seems unacceptable. Many people accept that people should not be allowed to torture animals and to engage in acts of neglect and cruelty. We can build on existing laws to define a minimal position in favor of animal rights. The law must prevent acts of cruelty to animals.

State Anticruelty Laws in the United States, prohibits beating, injuring and imposes affirmative duties on people with animals in their care. Then in New York, there is a representative set of provisions. Penalties are imposed on the people who transport animals in an inhuman and cruel manner or in a way which is subject to suffering and torture.⁷ People who transport animals on railroad and car are required to let the animal out for relaxation, feeding and water every five hours.⁸ The non owners who have confined an animal are expected to provide food, shelter, water and good air.⁹ People who abandon an animal in public places including pets face criminal penalties.¹⁰ Also a separate provision forbids people from killing, maiming, beating and torturing any animal.¹¹ It is generally a crime not to provide necessary sustenance, shelter, food, water and protection from severe weather.¹² Like most other states, New York also forbids overworking an animals or using it for work when he or she is not physically fit.¹³ California statute imposes criminal liability on neglect, international overworking, overdriving and torturing of animals.¹⁴ Torture is not defined in its layman language but includes any act or omission whereby unjustified or unnecessary suffering or physical pain is caused or permitted.¹⁵

If it is all taken seriously, then the provision of this kind would do a great deal to protect animals from injury, suffering and premature death. But the animal rights recognized by the state laws are limited for two major reasons-

- 1) Enforcement can occur only through public protection. For example – if cows and horses are being beaten at a farm and if greyhounds are forced to live in small cages, protection will only come if the prosecutor decides to provide it. Indeed, prosecutors have limited

⁶ Gray B. Introduction to Animal Rights 2, 73 (2000)

⁷ NY AGRI & Mkt. 359

⁸ NY AGRI & Mkt. s 359

⁹ NY AGRI & Mkt. 356

¹⁰ NY AGRI & Mkt. 355

¹¹ NY AGRI & Mkt. 353

¹² Griffith v. State, 43 SE 251 (1903); Common wealth v. Lufkin 7 Allen 579; State v. Gross Close, 171 (1946); Reynolds v. State, 569 (1991)

¹³ Common Wealth v. Wood, 111 mass 408 (1873); State v. Good all, 175 p. 857; State v. Prince 94A 966

¹⁴ Cal. Penal Code 597b

¹⁵ Cal. Penal Code 599b

budgets and animal protection is a high priority thing. So, ultimately the result is that violation of state law takes place every day and there is no way to prevent it.

- 2) The Anticruelty provisions of state law contain extraordinary huge exceptions. They do not forbid hunting and also do not regulate hunting designed in a way to protect the animals against suffering. They are not applied to the use of animals for scientific and medical purposes. Also to a larger extent, they do not apply to the use and production of animals as food. In the U.S, this exemption is the most important. Around 10 billion animals are killed for food annually. 24 million chicken and around 323,000 pigs are slaughtered every day.¹⁶ At the state level, the abusive and cruel practices which are generally involved in contemporary farming are largely unregulated.¹⁷ The coverage of anticruelty law is actually very narrow because the overwhelming majority of animals are used and produced for food.

Enforcement of existing laws

If the suffering of animals really matters and every reasonable people seems to give a thought that it does, then when should be highly troubled by such limitations and the least controversial response would be to narrow the enforcement gap, allowing private suits to be brought in cases of neglect and cruelty. Reforms must be adopted with finite purpose of stopping conduct that is against the law. Here again we can find a minimal understanding of animal rights. According to this, representatives of animals must be able to bring private suits to assure that anticruelty and other related laws are actively enforced.

In a sense, it would be a dramatic proposal as it might well be understood to intend that animals should be allowed to sue in their own name and whosoever is the nominal plaintiff, there should not be any question that the suit was being brought to protect animals and not human beings. The idea might seem absurd, but it is more simple and conventional than it appears. This is true that any animal will be represented by human being just like any other litigant who lacks ordinary competence.

It might make sense to build on the idea by allowing suits on behalf of animals too. A question arises that why should anyone object an effort to encourage greater enforcement of the laws already in existence by supplementing the prosecutor's ability with private lawsuits. The best answer lies in a fear that many of those lawsuits would be frivolous and unjustified. Representatives of animals would bring a flurry of suits not because of neglect, cruelty or any kind of violation of law, but because of some form of ideological commitment for improving animal welfare, such that, it might go well beyond what law actually means. If this is genuinely a risk then it might make sense to respond by not banning those lawsuits but by forcing those who bring inappropriate ones to pay the defendants' attorney fees. Though there might be issues in deciding the selfhood of representatives as well as choosing the people who would pick them, yet, we are not in controversial territory. Those who ridicule the idea of

¹⁶ David Wolf Son, Animals, AGRI Business and the law: A modern American fable, Forthcoming in animal rights: Law and Policy

¹⁷ Peter Singer, Animal Liberation- 95-158 (revised ed. 2002)

animal rights believe in anticruelty laws and they should support efforts to guarantee that those laws are actually enforced.

Increased regulation of farming, hunting, science and more

We should not just focus on the enforcement gap but also on the areas where existing laws offer little or no protection. In other words, law should impose further regulation on scientific experiments, hunting, entertainment and farming to ensure against animal suffering. It is so convincing to think of some initiatives that would do a great deal and indeed the European Nations have just moved in this direction.

Federal laws might require scientists to justify experiments on animals by showing it before some kind of board or committee that-

- i. Such experiments are actually promising or necessary and that
- ii. Animals involved will be subjected to minimal and less suffering.

Steps have already been taken in this direction, but it would be satisfactory to go much further. Like for example- if chimpanzees or dogs are to be used to explore some kind of medical treatment, then it should be necessary to assure that they would be decently housed and fed. Some similar controls might be imposed on agriculture as well. If hens, pigs, cows are going to be raised for the use as food, then they should be decently treated in terms of space requirements, food and overall care. The European Nations have taken some significant steps of this sort. For example- it has decided to ban wire cage for hens and for that they be provided with access to perch and nesting box for laying eggs.¹⁸ Now if we focus on sufferings that I believe we should, as it is not impermissible to kill animals and use them as food but it is entirely impermissible to be negligent of their interests while they are alive, which is also applicable for animals in farms too when they are being used for benefits of human beings. For example- If sheep is going to be used for clothing then their conditions must be conducive to their welfare. We must ban hunting altogether if its sole purpose is human reaction. Should animals be killed and hunted simply because people enjoy killing and hunting them? This issue might be different if killing and hunting could be justified as having important functions such as protection of human beings against animal violence or control of population.

As a small reform step, it would even be possible to think of a system in which industries disclosed their practices either as a part of mandate or voluntarily. Industries that protected animals from suffering and neglect and assured decent conditions might publicize the fact and attempt to receive a market boost from the practices.

I believe that such reformation steps in this direction might make a great deal of sense. But things become far more controversial here. Why is this so? Partly it might be because of sheer ignorance or the part of the people about what actually happens to animals in for example scientific experimentations and farming. I am confident that greater regulation would be

¹⁸ Peter Singer, *Animal Liberation* (revised ed. 2003)

actively sought if existing practices were widely known. The controversy is a product of political power of relevant interests which intensely resist regulation. Then again, some legitimate questions might be raised about these regulatory strategies. The legitimate interests of human beings and legitimate interests of animals are in conflict in some of the areas. Like elsewhere, here additional regulation would be burdensome and costly. It is possible to fear that regulating the scientific experiments on animals would lead to minimal scientific experiments on animals and hence to minimize in the way of medical and scientific progress when farms will be regulated, the prices of meat will increase and people will be able to eat less meat. Therefore, it is necessary to weigh the gain to animal welfare against the human harms. If the human health could be seriously compromised by regulating the experiments on animals, then there is some balancing before supporting the regulation.

Eliminating the practice of meat eating

Now turning to some radical suggestions, if we continue to believe that animal suffering is the issue that should bother us that we want to use the law to encourage animal welfare. Certain practices cannot be defended and not be allowed to continue in practice. Mere regulation will inevitably be insufficient and in practice if mere regulation that the level of animal suffering will remain very high. For such arguments to be convincing, it would be helpful to argue not only the harms to animals are serious but also the benefits to human beings of the practices are too small to justify the continuation of those practices. People who urge radical steps, one who think for example- people should not eat meat, do so because they are of the opinion that without such steps the extent of animal suffering will be severe.

To evaluate such arguments, there is no other choice but to go area by area. Considering greyhound racing, they live in miserable condition, and many of them are put to death after their career in racing is over. If possible, then I believe that the preferred step should be to use the law to assure that greyhounds are given decent lives and also to hope that the racing industry will agree with law that has the goal. But, then if it proves to be impractical for a law to guarantee that greyhounds live minimally decent lives, then I believe that greyhound racing should be abolished. For some people, the entertainment gain cannot justify significant suffering. The largest issue involves eating meat. Again I believe that eating meat would be acceptable if decent treatment is given to animals used as food, killing of animals whether or not troublesome is less troublesome than suffering. As a practical matter, animals which are used for food are inevitably going to endure terrible suffering, and then there is a good debate that people should not eat meat to a range that a refusal to eat meat will lessen that suffering. A legal ban on meat eating would be extremely radical. Like prohibition, it would create black markets and have a set of huge and bad side-effect. Though the principle seems clear, people should be less inclined to eat meat if their refusal to do so would prevent suffering.

There is an objection by the Utilitarian in spirit to the steps of this kind. If people give up on eating meat or take other steps to prevent animals from suffering the unavoidable result will be to ensure that fewer animals exist. It is also objectionable to protect animals through measures that reduce the number of animals. It is even better for animals to have lives, though difficult ones than to have no lives. But in my opinion, this objection is weak. We must

increase the likelihood that animals will have good lives. We must not try to ensure that there are as many animals as possible.

Animal autonomy

People might not only focus on the relief of suffering. In one's view, animals have rights that should not be subjected to human use and control. It is a sort of suggestion that animals deserve to have a kind of autonomy. The suggestion goes well beyond the view which seems correct to me that animals should be seen as ends rather than means. Person who use horses for racing or chimpanzees in zoos or entertainment, do not consider the animals to be mere means to human ends. They accept that animals have instrumental as well as intrinsic value. Those who think that animals should not be subject to human control tend to object all these uses. They just want all animals to be able to make their own choices free from human control.

This raises many questions. In the end it seems to me unconvincing mostly because it neglects the possibility that animals might have bad lives under natural condition and better lives under human control. Those who believe in animal autonomy will accept the idea that people can considerably control animals which have been bred to live with them. Till now, the argument on autonomy would apply only to wild animals, prohibiting human beings from trapping, hunting and confining them.

What if certain practices like confinement in zoos, science laboratories and other facilities be undertaken in a way that ensure good lives for the animals? What if animals like elephants and dolphins do well under human control? Sometimes nature can be very cruel on them. Good zoos have breeding programs that protect the endangered species, provide a good care to animals and also serve an important function in educating people about the worth of animals. We could also imagine that lions, dolphins, elephants and giraffes could have better lives with human assistance even though confined than within their own habitat. Now if this is so, it may be easy to see what kind of response is made by those who believe in animal autonomy. Although autonomy advocates might disagree on the facts and think it highly unlikely that wild animals can have decent lives under the control of human. I personally do not believe them to be correct on the facts. The claim for animal autonomy in the end must in any case depend on an assessment of what will give animals good lives.

ARE ANIMALS A PROPERTY?

I have not explored the continuing debate over the status of animals as property yet. This is the most vigorous debate of all.¹⁹ What highlights the debate?

No single answer to it. People who insist that animals should not be seen as property may be making a modest and a simple claim that human beings should not treat animals however they wish.

¹⁹ Steven Wise, *Rattling the cage* (2000)

A central goal of the Modern Animal Rights Movement which eliminates the idea that animals are property can be taken in a modest way as an attempt to remove legal status that unavoidably promotes sufferings. Again the goal can be taken more ambitiously as an attempt to say that animals must have rights for self-determination and a certain kind of autonomy. Therefore, some people urge that a few animals at least are persons and not property and that they should have legal rights that human beings have. Although this does not mean that those animals can vote or run an office. Its status would be akin to that of children whose status commensurate with their abilities. At a minimum, it would seem to imply protection against battery, torture and even confinement.

However, there is a puzzle here. What does it exactly mean to say that animals are property that can be owned? As stated above, even if owned, animals cannot be treated however the owner wishes. The law already prohibits neglect and cruelty. Ownership is only a label connoting a certain set of rights and duties, and without knowing about them, we cannot recognize those rights and duties. A state can do a great to stop animal suffering without banning ownership of animals. Even animals can be granted a right to bring suit without claiming that animals are in general sense persons and not property. In context of children's rights, the affirmation that children are not property is accepted universally but it appears not to have added anything to debates over how parents may treat their children.

Now when there are real stakes in the argument over whether animals are property, it is thought necessary to demolish the idea of ownership in order to make a statement that the interest of animals count and have weight independent of the interest of animals count and have weight independent of interests of human beings. The idea of property in my view fit very poorly with how people should think on reflection about other living creatures. The debate over whether animals are property is actually a debate over more specific issues as discussed above. Getting rid of the idea that animals are property helps reducing suffering then one must get rid of the idea that animals are property.

DO ALL ANIMALS HAVE RIGHTS?

Every people do not see all animals in the same way. Some may agree that human beings should protect the interests of cats, dogs, dolphins and horses, but they are unlikely to think the same about mosquitoes, cockroaches, ants, mice, squirrels and rats. Usually it is objected to those who believe in animal rights that their stand would lead to ludicrous conclusions.

The claim needs to be taken as extreme or radical. If mosquitoes and ants have no claim to human concern when they can be killed at our whim then it is because they suffer little or not at all. We have some empirical questions here about the capacities of creatures of various sorts. We should certainly be willing to engage a degree of balancing. When human beings are at a risk of disease or illness from rats and mosquitoes, then they have a strong justification or even one self-defense for relocating or eliminating them.

CONCLUSION

Every rational person believes in animal rights. The critics of animal rights also support the anticruelty laws. My suggestion is that the simple moral judgment behind these laws is that sufferings of animals matters. And this judgment supports a significant amount of reforms. Private suits should be permitted to prevent illegal neglect and cruelty. There is no reason to give public officials a monopoly on enforcement which is a recipe for continued illegality. The anticruelty laws should be expanded to those areas that are now exempted from them including farming and scientific experiments. There is also no reason to permit the extent of suffering that is now being experienced by billions of living creatures.

The doubts about the radical idea that animals deserve to have autonomy has been raised by the author. In the view of the author, the actual question involves suffering and animal welfare. And human use and control may be compatible with decent lives for animals. Again the emphasis on suffering and on decent lives itself has a significant implications. Although it is appropriate to consider human interests in the balance and may be sometimes over interests would over weigh those of other animals. The worst part is that most of the time, animal's interests are not counted at all and when they are counted, our practices cannot possibly be justified. The author believes that in the long-run, the willingness to subject animals to unjustified suffering will be seemed a form of unconscionable barbarity which in many ways be morally akin to slavery and mass exemption of human beings.