

overcome, for them, the habits and forces behind their systematic oppression. All great movements, it is written, go through three stages: ridicule, discussion, adoption. It is the realization of this third

stage, adoption, that requires both our passion and our discipline, our hearts and our heads. The fate of animals is in our hands. God grant we are equal to the task.

### NOTE

1. Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

### STUDY QUESTIONS

1. How is Regan's position on animal rights different from Singer's? Explain.
2. What are Regan's reasons for granting animals equal moral rights?
3. Does Regan allow for experimentation on animals? If we have to test a dangerous vaccine, on whom should we test it?

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# A Critique of Regan's Animal Rights Theory

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*Warren reconstructs Regan's argument for animal rights and criticizes it for depending on the obscure notion of inherent value. She then argues that all rational human beings are equally part of the moral community since we can reason with each other about our behavior, whereas we cannot so reason with an animal. She puts forth a "weak animal rights theory," which asserts that we ought not to be cruel to animals or kill them without good reason.*

Tom Regan has produced what is perhaps the definitive defense of the view that the basic moral rights of at least some non-human animals are in no

way inferior to our own. In *The Case for Animal Rights*, he argues that all normal mammals over a year of age have the same basic moral rights.<sup>1</sup>

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Non-human mammals have essentially the same right not to be harmed or killed as we do. I shall call this "the strong animal rights position," although it is weaker than the claims made by some animal liberationists in that it ascribes rights to only some sentient animals.<sup>2</sup>

I will argue that Regan's case for the strong animal rights position is unpersuasive and that this position entails consequences which a reasonable person cannot accept. I do not deny that some non-human animals have moral rights; indeed, I would extend the scope of the rights claim to include all sentient animals, that is, all those capable of having experiences, including experiences of pleasure or satisfaction and pain, suffering, or frustration.<sup>3</sup> However, I do not think that the moral rights of most non-human animals are identical in strength to those of persons.<sup>4</sup> The rights of most non-human animals may be overridden in circumstances which would not justify overriding the rights of persons. There are, for instance, compelling realities which sometimes require that we kill animals for reasons which could not justify the killing of persons. I will call this view "the weak animal rights" position, even though it ascribes rights to a wider range of animals than does the strong animal rights position.

I will begin by summarizing Regan's case for the strong animal rights position and noting two problems with it. Next, I will explore some consequences of the strong animal rights position which I think are unacceptable. Finally, I will outline the case for the weak animal rights position.

### REGAN'S CASE

Regan's argument moves through three stages. First, he argues that normal, mature mammals are not only sentient but have other mental capacities as well. These include the capacities for emotion, memory, belief, desire, the use of general concepts, intentional action, a sense of the future, and some degree of self-awareness. Creatures with such capacities are said to be subjects-of-a-life. They are not only alive in the biological sense but have a

psychological identity over time and an existence which can go better or worse for them. Thus, they can be harmed or benefitted. These are plausible claims, and well defended. One of the strongest parts of the book is the rebuttal of philosophers, such as R. G. Frey, who object to the application of such mentalistic terms to creatures that do not use a human-style language.<sup>5</sup> The second and third stages of the argument are more problematic.

In the second stage, Regan argues that subjects-of-a-life have inherent value. His concept of inherent value grows out of his opposition to utilitarianism. Utilitarian moral theory, he says, treats individuals as "mere receptacles" for morally significant value, in that harm to one individual may be justified by the production of a greater net benefit to other individuals. In opposition to this, he holds that subjects-of-a-life have a value independent of both the value they may place upon their lives or experiences and the value others may place upon them.

Inherent value, Regan argues, does not come in degrees. To hold that some individuals have more inherent value than others is to adopt a "perfectionist" theory, i.e., one which assigns different moral worth to individuals according to how well they are thought to exemplify some virtue(s), such as intelligence or moral autonomy. Perfectionist theories have been used, at least since the time of Aristotle, to rationalize such injustices as slavery and male domination, as well as the unrestrained exploitation of animals. Regan argues that if we reject these injustices, then we must also reject perfectionism and conclude that all subjects-of-a-life have equal inherent value. Moral agents have no more inherent value than moral patients, i.e., subjects-of-a-life who are not morally responsible for their actions.

In the third phase of the argument, Regan uses the thesis of equal inherent value to derive strong moral rights for all subjects-of-a-life. This thesis underlies the Respect Principle, which forbids us to treat beings who have inherent value as mere receptacles, i.e., mere means to the production of the greatest overall good. This principle, in turn, underlies the Harm Principle, which says that we



have a direct *prima facie* duty not to harm beings who have inherent value. Together, these principles give rise to moral rights. Rights are defined as valid claims, claims to certain goods and against certain beings, i.e., moral agents. Moral rights generate duties not only to refrain from inflicting harm upon beings with inherent value but also to come to their aid when they are threatened by other moral agents. Rights are not absolute but may be overridden in certain circumstances. Just what these circumstances are we will consider later. But first, let's look at some difficulties in the theory as thus far presented.

### THE MYSTERY OF INHERENT VALUE

Inherent value is a key concept in Regan's theory. It is the bridge between the plausible claim that all normal, mature mammals—human or otherwise—are subjects-of-a-life and the more debatable claim that they all have basic moral rights of the same strength. But it is a highly obscure concept, and its obscurity makes it ill-suited to play this crucial role.

Inherent value is defined almost entirely in negative terms. It is not dependent upon the value which either the inherently valuable individual or anyone else may place upon that individual's life or experiences. It is not (necessarily) a function of sentience or any other mental capacity, because, Regan says, some entities which are not sentient (e.g., trees, rivers, or rocks) may, nevertheless, have inherent value (p. 246). It cannot attach to anything other than an individual; species, ecosystems, and the like cannot have inherent value.

These are some of the things which inherent value is not. But what is it? Unfortunately, we are not told. Inherent value appears as a mysterious non-natural property which we must take on faith. Regan says that it is a *postulate* that subjects-of-a-life have inherent value, a postulate justified by the fact that it avoids certain absurdities which he thinks follow from a purely utilitarian theory (p. 247). But why is the postulate that *subjects-of-a-life* have inherent value? If the inherent value of a being is completely independent of the value that it or anyone

else places upon its experiences, then why does the fact that it has certain sorts of experiences constitute evidence that it has inherent value? If the reason is that subjects-of-a-life have an existence which can go better or worse for them, then why isn't the appropriate conclusion that all sentient beings have inherent value, since they would all seem to meet that condition? Sentient but mentally unsophisticated beings may have a less extensive range of possible satisfactions and frustrations, but why should it follow that they have—or may have—no inherent value at all?

In the absence of a positive account of inherent value, it is also difficult to grasp the connection between being inherently valuable and having moral rights. Intuitively, it seems that value is one thing, and rights are another. It does not seem incoherent to say that some things (e.g., mountains, rivers, redwood trees) are inherently valuable and yet are not the sorts of things which can have moral rights. Nor does it seem incoherent to ascribe inherent value to some things which are not individuals, e.g., plant or animal species, though it may well be incoherent to ascribe moral rights to such things.

In short, the concept of inherent value seems to create at least as many problems as it solves. If inherent value is based on some natural property, then why not try to identify that property and explain its moral significance, without appealing to inherent value? And if it is not based on any natural property, then why should we believe in it? That it may enable us to avoid some of the problems faced by the utilitarian is not a sufficient reason, if it creates other problems which are just as serious.

### IS THERE A SHARP LINE?

Perhaps the most serious problems are those that arise when we try to apply the strong animal rights position to animals other than normal, mature mammals. Regan's theory requires us to divide all living things into two categories: those which have the same inherent value and the same basic moral rights that we do, and those which have no inherent value and presumably no moral rights. But



wherever we try to draw the line, such a sharp division is implausible.

It would surely be arbitrary to draw such a sharp line between normal, mature mammals and all other living things. Some birds (e.g., crows, magpies, parrots, mynahs) appear to be just as mentally sophisticated as most mammals and thus are equally strong candidates for inclusion under the subject-of-a-life criterion. Regan is not in fact advocating that we draw the line here. His claim is only that normal, mature mammals are clear cases, while other cases are less clear. Yet, on his theory, there must be such a sharp line *somewhere*, since there are no degrees of inherent value. But why should we believe that there is a sharp line between creatures that are subjects-of-a-life and creatures that are not? Isn't it more likely that "subjecthood" comes in degrees, that some creatures have only a little self-awareness, and only a little capacity to anticipate the future, while some have a little more, and some a good deal more?

Should we, for instance, regard fish, amphibians, and reptiles as subjects-of-a-life? A simple yes-or-no answer seems inadequate. On the one hand, some of their behavior is difficult to explain without the assumption that they have sensations, beliefs, desires, emotions, and memories; on the other hand, they do not seem to exhibit very much self-awareness or very much conscious anticipation of future events. Do they have enough mental sophistication to count as subjects-of-a-life? Exactly how much is enough?

It is still more unclear what we should say about insects, spiders, octopi, and other invertebrate animals which have brains and sensory organs but whose minds (if they have minds) are even more alien to us than those of fish or reptiles. Such creatures are probably sentient. Some people doubt that they can feel pain, since they lack certain neurological structures which are crucial to the processing of pain impulses in vertebrate animals. But this argument is inconclusive, since their nervous systems might process pain in ways different from ours. When injured, they sometimes act as if they are in pain. On evolutionary grounds, it seems unlikely that highly mobile creatures with complex sensory

systems would not have developed a capacity for pain (and pleasure), since such a capacity has obvious survival value. It must, however, be admitted that we do not *know* whether spiders can feel pain (or something very like it), let alone whether they have emotions, memories, beliefs, desires, self-awareness, or a sense of the future.

Even more mysterious are the mental capacities (if any) of mobile microfauna. The brisk and efficient way that paramecia move about in their incessant search for food *might* indicate some kind of sentience, in spite of their lack of eyes, ears, brains, and other organs associated with sentience in more complex organisms. It is conceivable—though not very probable—that they, too, are subjects-of-a-life.

The existence of a few unclear cases need not pose a serious problem for a moral theory, but in this case, the unclear cases constitute most of those with which an adequate theory of animal rights would need to deal. The subject-of-a-life criterion can provide us with little or no moral guidance in our interactions with the vast majority of animals. That might be acceptable if it could be supplemented with additional principles which would provide such guidance. However, the radical dualism of the theory precludes supplementing it in this way. We are forced to say that either a spider has the same right to life as you and I do, or it has no right to life whatever—and that only the gods know which of these alternatives is true.

Regan's suggestion for dealing with such unclear cases is to apply the "benefit of the doubt" principle. That is, when dealing with beings that may or may not be subjects-of-a-life, we should act as if they are.<sup>6</sup> But if we try to apply this principle to the entire range of doubtful cases, we will find ourselves with moral obligations which we cannot possibly fulfill. In many climates, it is virtually impossible to live without swatting mosquitoes and exterminating cockroaches, and not all of us can afford to hire someone to sweep the path before we walk, in order to make sure that we do not step on ants. Thus, we are still faced with the daunting task of drawing a sharp line somewhere on the continuum of life forms—this time, a line demarcating the limits of the benefit of the doubt principle.



The weak animal rights theory provides a more plausible way of dealing with this range of cases, in that it allows the rights of animals of different kinds to vary in strength. . . .

### WHY ARE ANIMAL RIGHTS WEAKER THAN HUMAN RIGHTS?

How can we justify regarding the rights of persons as generally stronger than those of sentient beings which are not persons? There are a plethora of bad justifications, based on religious premises or false or unprovable claims about the differences between human and non-human nature. But there is one difference which has a clear moral relevance: people are at least sometimes capable of being moved to action or inaction by the force of reasoned argument. Rationality rests upon other mental capacities, notably those which Regan cites as criteria for being a subject-of-a-life. We share these capacities with many other animals. But it is not just because we are subjects-of-a-life that we are both able and morally compelled to recognize one another as beings with equal basic moral rights. It is also because we are able to "listen to reason" in order to settle our conflicts and cooperate in shared projects. This capacity, unlike the others, may require something like a human language.

Why is rationality morally relevant? It does not make us "better" than other animals or more "perfect." It does not even automatically make us more intelligent. (Bad reasoning reduces our effective intelligence rather than increasing it.) But it is morally relevant insofar as it provides greater possibilities for cooperation and for the nonviolent resolution of problems. It also makes us more dangerous than non-rational beings can ever be. Because we are potentially more dangerous and less predictable than wolves, we need an articulated system of morality to regulate our conduct. Any human morality, to be workable in the long run, must recognize the equal moral status of all persons, whether through the postulate of equal basic moral rights or in some other way. The recognition of

the moral equality of other persons is the price we must each pay for their recognition of our moral equality. Without this mutual recognition of moral equality, human society can exist only in a state of chronic and bitter conflict. The war between the sexes will persist so long as there is sexism and male domination; racial conflict will never be eliminated so long as there are racist laws and practices. But, to the extent that we achieve a mutual recognition of equality, we can hope to live together, perhaps as peacefully as wolves, achieving (in part) through explicit moral principles what they do not seem to need explicit moral principles to achieve.

Why not extend this recognition of moral equality to other creatures, even though they cannot do the same for us? The answer is that we cannot. Because we cannot reason with most non-human animals, we cannot always solve the problems which they may cause without harming them—although we are always obligated to try. We cannot negotiate a treaty with the feral cats and foxes, requiring them to stop preying on endangered native species in return for suitable concessions on our part.

If rats invade our houses . . . we cannot reason with them, hoping to persuade them of the injustice they do us. We can only attempt to get rid of them.<sup>7</sup>

Aristotle was not wrong in claiming that the capacity to alter one's behavior on the basis of reasoned argument is relevant to the full moral status which he accorded to free men. Of course, he was wrong in his other premise, that women and slaves by their nature cannot reason well enough to function as autonomous moral agents. Had that premise been true, so would his conclusion that women and slaves are not quite the moral equals of free men. In the case of most non-human animals, the corresponding premise is true. If, on the other hand, there are animals with whom we can (learn to) reason, then we are obligated to do this and to regard them as our moral equals.

Thus, to distinguish between the rights of persons and those of most other animals on the grounds that only people can alter their behavior on the basis

of reasoned argument does not commit us to a perfectionist theory of the sort Aristotle endorsed. There is no excuse for refusing to recognize the moral equality of some people on the grounds that we don't regard them as quite as rational as we are, since it is perfectly clear that most people can reason well enough to determine how to act so as to respect the basic rights of others (if they choose to), and that is enough for moral equality.

But what about people who are clearly not rational? It is often argued that sophisticated mental capacities such as rationality cannot be essential for the possession of equal basic moral rights, since nearly everyone agrees that human infants and mentally incompetent persons have such rights, even though they may lack those sophisticated mental capacities. But this argument is inconclusive, because there are powerful practical and emotional reasons for protecting non-rational human beings, reasons which are absent in the case of most non-human animals. Infancy and mental incompetence are human conditions which all of us either have experienced or are likely to experience at some time. We also protect babies and mentally incompetent people because we care for them. We don't normally care for animals in the same way, and when we do—e.g., in the case of much-loved pets—we may regard them as having special rights by virtue of their relationship to us. We protect them not only for their sake but also for our own, lest we be hurt by harm done to them. Regan holds that such "side-effects" are irrelevant to moral rights, and perhaps they are. But in ordinary usage, there is no sharp line between moral rights and those moral protections which are not rights. The extension of strong moral protections to infants and the mentally impaired in no way proves that non-human animals have the same basic moral rights as people.

### WHY SPEAK OF "ANIMAL RIGHTS" AT ALL?

If, as I have argued, reality precludes our treating all animals as our moral equals, then why should we

still ascribe rights to them? Everyone agrees that animals are entitled to some protection against human abuse, but why speak of animal *rights* if we are not prepared to accept most animals as our moral equals? The weak animal rights position may seem an unstable compromise between the bold claim that animals have the same basic moral rights that we do and the more common view that animals have no rights at all.

It is probably impossible to either prove or disprove the thesis that animals have moral rights by producing an analysis of the concept of a moral right and checking to see if some or all animals satisfy the conditions for having rights. The concept of a moral right is complex, and it is not clear which of its strands are essential. Paradigm rights holders, i.e., mature and mentally competent persons, are *both* rational and morally autonomous beings and sentient subjects-of-a-life. Opponents of animal rights claim that rationality and moral autonomy are essential for the possession of rights, while defenders of animal rights claim that they are not. The ordinary concept of a moral right is probably not precise enough to enable us to determine who is right on purely definitional grounds.

If logical analysis will not answer the question of whether animals have moral rights, practical considerations may, nevertheless, incline us to say that they do. The most plausible alternative to the view that animals have moral rights is that, while they do not have *rights*, we are, nevertheless, obligated not to be cruel to them. Regan argues persuasively that the injunction to avoid being cruel to animals is inadequate to express our obligations towards animals, because it focuses on the mental states of those who cause animal suffering, rather than on the harm done to the animals themselves (p. 158). Cruelty is inflicting pain or suffering and either taking pleasure in that pain or suffering or being more or less indifferent to it. Thus, to express the demand for the decent treatment of animals in terms of the rejection of cruelty is to invite the too easy response that those who subject animals to suffering are not being cruel because they regret the suffering they cause but sincerely believe that what they do is justified. The injunction to avoid cruelty



is also inadequate in that it does not preclude the killing of animals—for any reason, however trivial—so long as it is done relatively painlessly.

The inadequacy of the anti-cruelty view provides one practical reason for speaking of animal rights. Another practical reason is that this is an age in which nearly all significant moral claims tend to be expressed in terms of rights. Thus, the denial that animals have rights, however carefully qualified, is likely to be taken to mean that we may do whatever we like to them, provided that we do not violate any human rights. In such a context, speaking of the rights of animals may be the only way to persuade many people to take seriously protests against the abuse of animals.

Why not extend this line of argument and speak of the rights of trees, mountains, oceans, or anything else which we may wish to see protected from destruction? Some environmentalists have not hesitated to speak in this way, and, given the importance of protecting such elements of the natural world, they cannot be blamed for using this rhetorical device. But, I would argue that moral rights can meaningfully be ascribed only to entities which have some capacity for sentience. This is because moral rights are protections designed to protect rights holders from harms or to provide them with benefits which matter *to them*. Only beings capable of sentience can be harmed or benefitted in ways which matter to them, for only such beings can like or dislike what happens to them or prefer some conditions to others. Thus, sentient animals, unlike

mountains, rivers, or species, are at least logically possible candidates for moral rights. This fact, together with the need to end current abuses of animals—e.g., in scientific research . . . —provides a plausible case for speaking of animal rights.

## CONCLUSION

I have argued that Regan's case for ascribing strong moral rights to all normal, mature mammals is unpersuasive because (1) it rests upon the obscure concept of inherent value, which is defined only in negative terms, and (2) it seems to preclude any plausible answer to questions about the moral status of the vast majority of sentient animals. . . .

The weak animal rights theory asserts that (1) any creature whose natural mode of life includes the pursuit of certain satisfactions has the right not to be forced to exist without the opportunity to pursue those satisfactions; (2) that any creature which is capable of pain, suffering, or frustration has the right that such experiences not be deliberately inflicted upon it without some compelling reason; and (3) that no sentient being should be killed without good reason. However, moral rights are not an all-or-nothing affair. The strength of the reasons required to override the rights of a non-human organism varies, depending upon—among other things—the probability that it is sentient and (if it is clearly sentient) its probable degree of mental sophistication. . . .

## NOTES

1. Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983). All page references are to this edition.
2. For instance, Peter Singer, although he does not like to speak of rights, includes all sentient beings under the protection of his basic utilitarian principle of equal respect for like interests. (*Animal Liberation* (New York: Avon Books, 1975), p. 3.)
3. The capacity for sentience, like all of the mental capacities mentioned in what follows, is a

disposition. Dispositions do not disappear whenever they are not currently manifested. Thus, sleeping or temporarily unconscious persons or non-human animals are still sentient in the relevant sense (i.e., still capable of sentience), so long as they still have the neurological mechanisms necessary for the occurrence of experiences.

4. It is possible, perhaps probable that some non-human animals—such as cetaceans and anthropoid apes—should be regarded as persons. If so, then

the weak animal rights position holds that these animals have the same basic moral rights as human persons.

5. See R. G. Frey, *Interests and Rights: The Case Against Animals* (Oxford: Oxford University Press, 1980).
6. See, for instance, p. 319, where Regan appeals to the benefit of the doubt principle when dealing with infanticide and late-term abortion.
7. Bonnie Steinbock, "Speciesism and the Idea of Equality," *Philosophy* 53 (1978), p. 253.

### STUDY QUESTIONS

1. Examine Warren's critique of Regan's position. What is her main criticism? How strong is her criticism?
2. What is the basis for granting human beings moral rights that we do not grant animals? Do you agree with Warren's arguments?
3. What is the weak animal rights position? What is Warren's argument for it?