ON A CASE FOR ANIMAL RIGHTS
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Source: The Monist, Vol. 70, No. 1, Animal Rights (JANUARY, 1987), pp. 31-49
Published by: Hegeler Institute
Stable URL: http://www.jstor.org/stable/27903012
Accessed: 04/12/2013 11:40

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ON A CASE FOR ANIMAL RIGHTS

1. Introduction

Down through the past decade and more, no philosophical writer has taken a greater interest in the issues of how we ought to act in relation to animals, nor pressed more strongly the case for according them rights, than Tom Regan, in many articles, reviews, and exchanges at scholarly conferences and in print. Now, in The Case for Animal Rights we have a substantial volume in which Regan most fully and systematically presents his case for a strong panoply of rights for animals. The argument is direct and cumulative, leading up to a final chapter in which Regan draws his conclusions: vegetarianism is obligatory, hunting and trapping wrong, and virtually no use of animals permissible in scientific experimentation. These are radical conclusions; few of us would be unaffected by them, and most of us, indeed, would be in for a terrific alteration in various aspects of our lifestyles. It certainly behooves us, then, to follow his arguments with care. In the present essay, my main concern will be to examine the arguments in this book. But I shall also be concerned to develop an alternative viewpoint, though at lesser length than the subject merits. (An early presentation of that viewpoint is criticized by Regan in the volume before us. Replies to these criticisms, in the present essay, will, for lack of space, be mainly by implication rather than direct reference.)

2. Animal Welfare

In his first three chapters Regan argues for the intermediate conclusion that considerations of welfare, of well- or ill-being, do literally apply to animals. Few would dispute the latter as I have stated it, but an important part of Regan’s case rests on the rather strong form in which he holds this. For example, he insists that animals have “concepts,” and indeed that the standard vocabulary of human psychology is largely applicable to them—they have “Perception, memory, desire, belief, self-consciousness, intention, a sense of the future—these are among the leading attributes of the mental life of normal mammalian animals aged one or more.” (81) Most of us would think this seriously overstated. From acquaintance with pets and the like, we are familiar with the range of behavior on the basis of which Regan makes these strong attributions. To most of us, it will seem
not plausible to assert without severe qualification that animals have all of these capacities. We would point, for example, to the evidence concerning linguistic behavior as an indication that the mental life of animals is pretty thin stuff compared to that of normal humans. In Chapter One, Regan shows that he is aware of this evidence, e.g., that chimpanzees "do not have the ability for language acquisition equal to that of young children" (14). In that chapter, Regan was only concerned to explore this aspect of animal attainments as a test for their possession of consciousness. Most of us surely don't think that animals literally lack consciousness; but this still leaves them very far behind (normal) people in point of mental complexity. Even very retarded human beings, evidently, are very far in advance of even very bright animals. The question is only what this proves. It is important to note, for example, that lack of overt fluency in some language is not what is in question. The problem with chimpanzees is not that they don't happen to have acquired such fluency despite their cognitive capacity for acquiring it: it is that they lack that capacity, so far as all current evidence indicates. That chimps are cognitively inferior even to very markedly inferior humans is not a fact to be sneezed at, in most people's view. Of course we might all be wrong about this. But Regan's assessment of the facts really shows that he is convinced of their substantial irrelevance to the situation. For him, consciousness is enough. But maybe being conscious isn't all that counts.

There are, of course, other extremely impressive animal skills one can point to. The singular homing abilities of some species, for instance, the incredible mechanisms for self-defense or attack, the astonishing (in human terms) capacity for self-sacrifice displayed by ants and bees, etc., etc.—all these are certainly enough to intrigue us. But do they provide support for the view that these beings have moral rights?

Interestingly enough, such attributes of animals have no role to play in Regan's case. He is concerned to show that animals do have welfare, that they suffer and they enjoy, that they do indeed have lives to live and lose. But why should we be impressed with that? What we want to know is why these things matter: specifically, why they matter enough to give us good reason to refrain from the many activities in which we make use of animals to their detriment, e.g., by eating them or experimenting with them or wearing their fur.

3. The Theoretical Background

This brings us to the crucial chapter Four, "Ethical Thinking and Theory," in which Regan articulates his methodology in thinking about these issues. A number of criteria are laid down for making an "ideal moral judgment": Conceptual clarity, information, rationality, impartiality, and
ON A CASE FOR ANIMAL RIGHTS

"coolness." Beyond this, we are given four criteria for appraising proposed moral principles: Consistency, Adequacy of Scope, Precision, and—most controversial, as Regan says—Conformity to our Intuitions. The chapter may seem innocuous. But whether it is or not will depend crucially on how one interprets two of these ideas: namely, impartiality and intuitiveness. Both deserve a closer look.

"If to cause suffering is wrong, then it is wrong no matter who is made to suffer" (129) says Regan, and who could disagree? If causing suffering, just as such, is indeed wrong, it of course follows logically that it is wrong in all cases. But is it thus wrong? Down through the ages, no end of people have held that 'causing suffering', just like that, is not wrong, although causing suffering to selected humans, notably fellow members of one's tribe, family, or some other favored group, certainly is. These people, I take it, reject the claim that suffering is as such wrong. Nor, I suspect, would they be impressed by any purely conceptual argument to the effect that after all, their tribe is just one tribe among others and why should it get more weight than all the others in this regard? Their reply, I think, would be that the other tribes simply do not matter to them, whereas their own does. Doubtless members of other tribes feel much the way about fellow members as he feels about his: that, they may say, is their business. Is there any error in reasoning here? I doubt it. But an error in reasoning, as distinct from a difference in substantial ethical view, is what Regan is imputing here.

Of course narrow tribal morality is unsatisfactory. But this is not because the tribalist's concept of the bases of moral reasoning is logically off-beam. It is, instead, that the world we live in nowadays is one in which such an attitude is going to get you into big trouble. A thorough-going tribalism has low survivability. But is any similar thing true of a morality essentially limited in its scope to fellow humans? In my view, that is the question. In Regan's, note, it is not. His case is apparently meant to be independent of any considerations of our interest whatever.

What about appeals to intuition? Regan means, of course, reflective intuition, a la Sidgwick, Ross, and Rawls rather than sheer seat-of-the-pants pronouncements. Even so, there has long been an evident objection: the method will run into problems when intuitions conflict. Regan's reply is that the objection "fails to recognize the difference between a principle's being valid for all and our knowing that it is ... When we have subjected an ethical principle to the tests of consistency, scope, precision, and conformity with our reflective intuitions ... while making a conscientious effort to make an ideal moral judgment, we have done all we can reasonably be required to do to be in a position to justify that the principle is binding on all moral agents." (139) To require a further claim to absolute certainty would be unreasonable.
True; but this is to sweep the issue under the carpet rather than solve the problem. The problem is that if appeal to intuition is to be a test for the truth (or, if one prefers, the acceptability) of a proposed moral principle, then it is a test such that two mutually contradictory proposed moral principles could each pass it. To say that "this is all we can reasonably be required to do" is absurd if it is a reply to the challenge that these tests can't be sufficient. And obviously they can't. It's the test that is shown insufficient by this possibility—not the people who use it. Once we allow that people of good will and judgment can both be wrong, we have admitted that appeals to good will aren't enough, if what we are looking for is the truth. And that is what Regan is looking for here. What is needed, surely, is a further element in the theory: an element showing us what morality is about, and thus when a certain proposed moral principle is a reasonable one. Manifestly that has not been shown when all we know is that two people who disagree both have a very clear intuition, sincerely advanced.

The appeal to intuition, in short, is theoretically bankrupt. It is not practically bankrupt, of course: it can hardly be, for there is indeed nothing we can do except try to come up with the most practically compelling view we can when it is time to act, and act we must. But that is no excuse for trying to convert appeals to intuition into a source of knowledge, either fallible or not. It simply doesn't qualify in that role. Nor will it do to offer the hope that all men of good will would agree when they have gone through all the steps. For as long as an appeal to intuition is one of the admissible steps, there will be the same problem: they don't give us any good reason to expect agreement, for they offer us nothing to explain what we are agreeing or disagreeing about when we have moral arguments; and so if people did agree with sufficient use of them, it would have to be an accident, not a fact of theoretical significance.

We could try adopting a stance of tolerance and liberalism: You do it your way (in accordance with your intuition) and I'll do it mine (in accordance with my intuition). That, in fact, is part of the solution I recommend, and indeed substantially the solution currently accepted. But it is not a solution available to Regan, for in his view, my practice is wrong. That is not compatible with saying "to each his own". And indeed, as is evident from his concluding chapter, if Regan had his way about it, I would not even be legally allowed to do things my way (e.g., eating hamburgers). The liberal idea is itself, of course, a moral stance, and not, for instance, another component of a neutral idea of "moral reasoning." But in its application to the present subject, it is not a stance Regan can take.

What is the intuionist to do about the existence of contrary intuitions? Should they worry him? The official theory, as once held, had it that
all men have this faculty, and its deliverances must be the same for all. If somehow a particular individual failed to come up with the right view on something, it was due to lack of moral vision on his part, or some such murky shortcoming. Regan doesn’t want to say things like that. But if intuitions are going to be brought in at the level of theory, then what is there to say instead? In short, if theorists are to claim any genuine status for intuitions, they ought to be embarrassed by the existence of contrary ones, and they owe us an explanation.

Regan’s main response, I think, is to accuse the contrary-minded of faulty moral reasoning: i.e., to appeal to his other criteria of consistency and so on. And that is common ground. If he could make his case entirely on that score, the appeal to intuition would be unnecessary or at least innocuous. I shall be at further pains to show reason for doubting that he has done so.

4. Moral Patients

In chapter Five, Regan discusses a set of views about our duties to what he calls “moral patients”—creatures such as animals and small children—according to which we have only “indirect” duties to them. These views are characterized as holding that such duties are really owed to other beings than the animals/infants themselves. We certainly need to discuss theories of the sort he has in mind here, but I am uncomfortable with this way of characterizing the distinction. Suppose that I have promised you that I will take care of your child if you die suddenly. You do so, and now here is the child, on my hands. Surely I now owe that child my love, concern, and attention, even though the reason I do so is that I made a promise to you, rather than to it. (And I definitely do not think I have such a duty to all the other children in the world.) The distinction, in other words, is really a distinction in the fundamental grounds of our duties rather than their objects, and it is somewhat misleading to characterize them in a way that invites confusion on this head.

Regan defines ‘moral patients’ in a narrower way: as referring to those who are patients and not agents. This is unfortunate, since all of us agents are capable of being affected for better and worse, so that we might say that we are both agents and patients. If we use the term ‘patient’ in the exclusive way, however, then we may be bereft of suitable vocabulary for expressing the possibility that the passive aspects of agents may matter morally, even though they matter by virtue of belonging to agents, despite the fact that they are not those aspects of agents in virtue of which they are agents. Thus a certain moral agent may have taken out an insurance policy in virtue of which certain doctors and others have the duty to cater to this agent’s
headache, even though headaches are passive conditions, and even though it might not be true that those doctors had duties to other individuals with headaches but no insurance. (This is an example perhaps not easily appreciated in these days of universal government health insurance. Let them, perhaps, change the example to one in which the pizza is delivered to you, who have paid for it, rather than to the hungrier person next door.)

The point is that we must not let ourselves be steamrolled into the assumption that patients are to be catered to as such—e.g., because of an "intuition" of "moral irrelevance." The example just given shows how the duty to cater to a certain need or want, even though that is a patient-aspect of the person in question, may nevertheless be founded on some agent-aspect of that subject. Another interesting example has to do with our dealings with loved ones. Regan agrees that we have the duty to loved persons to prefer a greater harm to someone else over a lesser harm to them, on occasion. And of course we shouldn't confine it to harms: we surely are also morally justified in preferring the lesser good of loved ones to the greater good of others. How, given Regan's universalistic proclivities, can we be thus justified? Regan, dipping once again into his fairly deep satchel of intuitions, simply puts these down as "special considerations" (his italics, p. 316). But putting something in italics is not equivalent to giving an account of it. My account is that love-relations are relations of self-interest, though deep ones. It is important to you that you chose that man or that woman, as friend, lover, spouse; that you are the parent of that child; and so for many other such cases. What is accomplished by preferring that loved one's lesser needs or wants to the greater needs or wants of some stranger is that their lives are better for it—not, for all you know, better than that of the stranger—and you care for them more. If moral relations are generated essentially by rational agents promoting their own well-considered, long-run interests, these cases make sense. On the Reganian dispensation, they have to be listed as "special cases," no more said.

This brings us to the central issue: what, if any, duties do we have to patients qua patients, and why? And here, I fear, Regan's meta-ethical proclivities work ill. In his discussion of "Direct Duty Views," Regan has got to the point where he feels justified in rejecting theories because they don't support his intuitions about animal rights. Thus, for example, he rejects the "cruelty-kindness" view—i.e., that the reason we shouldn't inflict harm on animals is that to do so is to display a vice, cruelty—on the ground that "kindness is not something we owe to anybody, is not anyone's due" (199)—i.e., because this position would not imply that animals have the right not to be treated in those ways. those of us who don't think that animals have rights, and who have not been persuaded by his previous
ON A CASE FOR ANIMAL RIGHTS

arguments, are not going to be impressed at this. Nor, similarly, will we be impressed at his rejection of utilitarianism. That is of considerable interest in its own right, to be sure. He is quite right to point out that utilitarianism does not provide a firm foundation for the things he is convinced of: vegetarianism, the almost complete prohibition on the use of animals for experimental purposes, and so on. (But is this a reason for disavowing utilitarianism—or is it instead a reason for disavowing those particular intuitions?)

In the next chapter (7: Justice and Equality), Regan introduces his heaviest theoretical weapon, the notion of “inherent value.” He denounces the view that individuals are “mere receptacles” of what has intrinsic value (viz., pleasure or pain, for instance). “They have no value of their own; what has value is what they contain . . .” (205) Opposed to this, we are told, is the idea that individuals are valuable in their own right; that they have “inherent value,” this being a sort of value which is (1) *incommensurate* with other values, and in particular, (2) “not reducible to the intrinsic values of an individual’s experiences” (235). Inherent value is a property such that possessors of it can only be equal in that respect: it is not, apparently, capable of variation in degree. Any given thing either has it or doesn’t. And if it does, it has (for instance) rights; if not, not. If we think of individuals as “receptacles” for what has value, then the idea is that “It’s the cup, not just what goes into it, that is valuable.”

One would like to have got a clearer idea of just what this postulate is supposed to imply, and why. For instance: one might think, given the idea that it is the “cup, and not what goes into it,” that is “valuable,” this being a value grounding a sort of respect that is not commensurate with any other considerations of value, that, for instance, we should have an absolute duty not to commit suicide, since the person contemplating suicide does so merely because the life awaiting him or her looks intolerable—extremely painful, or boring, or whatever. These, however, are mere intrinsic values of contents, and presumably aren’t supposed to be capable of overturning the treatment that is due an individual in virtue of that individual’s “inherent value.” Regan doesn’t bring out this implication, and presumably doesn’t think it has it. But if not, why not? We are not told.

Of course, the most interesting implication of the possession of inherent value is that its possessors are supposed thereby to have rights. Those rights, on Regan’s view, crucially involve that individual’s well- or ill-being. Yet those are matters of degree and are just the things inherent value is not supposed to be “commensurate with.” Thus we find Regan arguing, as against the view that “numbers don’t count,” that in a case where we must choose between harming one person and harming three, “to choose to over-
ride the rights of the many in this case would be to override an equal right three times . . . when we could choose to override such a right only once . . . ." (305). It seems that there is some sort of calculus inherent in the idea of inherent value, then: but-what makes it so? If three violated rights are worse than one, then why aren’t a dozen small violations worse than one big one? (For there are, it seems, small and large violations.) We aren’t told, and I suspect we aren’t told because there isn’t anything to tell. The implications of the idea of “inherent value” are up to Regan: it’s his idea. All we can do is look at the whole package and decide whether to accept it or not. But what is not obviously possible is to work with it independently to assess its implications, and in particular to see whether Regan has drawn the right inferences from this “postulate.” At very least, the idea needs work.

Regan is obviously very taken with this notion, and we soon find him treating it rather as if it were a sort of fact about the individuals who, he thinks, possess it that they do so. Thus in searching for the ground of inherent value, we find him looking for the “relevant similarities” among the individuals who have this sort of value—rather than demonstrating to those of us whose moral intuitions don’t seem to be quite up to the job of spotting this interesting property that we have overlooked it.

But perhaps this is unfair. There is, after all, an argument here:

... some of the harms done to these moral patients are harms of the same kind as harms done to moral agents. We cannot consistently hold, therefore, that moral agents and patients can never be harmed in relevantly similar ways. They can. Thus, if we view all moral agents as having equal inherent value, if we rely on this account of the value of these individuals to avoid the counterintuitive implications of act utilitarianism, denying that the harm done to some moral agents can be justified merely on the grounds that harming them brings about optimal consequences for all concerned, if some of these harms done to moral agents are harms of the same kind as harms done to moral patients, and if the duties not to harm either moral agents or moral patients in these ways are prima facie duties owed directly to each, then it would be arbitrary to regard moral patients as lacking inherent value or to suppose that they have the status of mere receptacles. If, in short, we postulate inherent value in the case of moral agents, then we cannot nonarbitrarily deny it of moral patients. (239–40)

This seems to be the centrepiece in Regan’s case for animal rights. But the argument is, I fear, not only unsound but invalid as well. Schematically, it seems to be this:

1) Moral agents have inherent value
2) It is in virtue of that value that we have the duty not to harm them
3) but (some of) the harms we can do to them (and which are morally prohibited by (2)) are just like the harms we can do to animals; and
4) we have a direct duty not to inflict those harms on those animals.
Therefore,

5) those animals also have inherent value.

But the conclusion fails to follow from its premises. Obviously (5) does not follow logically from its premises. There is no logical reason why the ground for prohibiting harm to individuals with inherent value couldn’t be different from the grounds for prohibiting the same harm to other individuals who don’t have it. The claim that it is “arbitrary” to do so is either another of Regan’s many intuitions, or if meant as a stronger claim is just false. Note again the case of the health-insured patient, Brown, to whom Doctor Crowne owes an operation, even though Brown’s need for it is identical to that of Albert who, however, lacks the relevant insurance. It obviously can be the case that one person can have a right to the very same patient-affecting thing that another person, identical qua patient, does not have a right to.

Note that this criticism holds even if we assume, what many of us would in any case deny, that there is a “direct duty” to animals, or indeed to moral patients of any kind. Since Regan has certainly not established that premise or for that matter the “inherent value” of moral agents, we must conclude, if I have rightly identified the crucial arguments here, that they fail for their intended purpose.

5. An Alternative Approach

Now, I am inclined to agree that we should reject the suggestion that it is the “intrinsic value of the experiences” of a given subject that constitute the whole and only relevant ground of treatment of that being. But if we go on to ask why it should be plausible to make any such distinction, the view Regan is pushing, viz., that “inherent value” can also be possessed by animals or greatly subnormal humans or infants, seems to me not to garner much support. On Regan’s view, of course, it isn’t really a matter of “support”: it’s a matter of moral perception: we don’t need an argument for the “view” that grass is green. Unfortunately, from the fact that grass is green nothing seems to me to follow directly regarding what we should do about it. We would need, in addition to that information, some such information as that we like green things, or that being green promotes some other states of affairs that we value, before we can get any conclusions about action. Similarly, why should the fact that a certain being would feel pain if I were to perform action x constitute a reason why I should refrain from x?

One evident possibility is that I dislike pain—not only my own, but that of others. But unfortunately, not everyone is constituted that way. They may care little or nothing for the pains of others as such. And what do we say to those people? They may not be impressed by the answer that their
view of the matter is morally below par. They'd like to know why it's wrong to inflict pain on other creatures, apart from the fact that Tom Regan and quite a few other people have a unique and apparently inexplicable intuition that it is.

I am assuming, of course, that something's being wrong either constitutes or at least implies that there is a reason for not doing it. And I am also assuming that for an agent, A, to "have a reason" for not doing x is for it to be the case that among A's values is a negative value attached to x or to something connected with x. What might this be, however, if our information thus far is only that x would cause pain to individual D, where D is not one of the individuals A has any particular interest in or affection for? (Whether D is a human or, say, a dog, is thus far unspecified.)

Suppose we add that D also registers the information that it was A who did x. Will this matter? Again, not necessarily. So let us add that D also is able to react to the information in various ways. Perhaps, for instance, that D is able to give A a reproachful look. This might indeed help. A could be sensitive to reproaches, even if they come from a nonmember of *homo sapiens*. A might, for that matter, care more about such reproaches from D than from E, who is a member of that species. (It's unusual, but it's quite possible. One has seen it happen!)

If we add still another item, viz., that D is able to react to x by tearing A to shreds, we can well imagine that A will sit up and take notice. But what kind of notice? Avoiding D, shooting D, trying to make friends with D, are all possibilities. But we don't as yet have the particular set of information which will surely supply A with a reason for adopting a *moral* aversion to doing x. When do we have that?

To answer this question, we need two things: first, a reasonably clear characterization of what constitutes having a 'moral' aversion to something, as distinct from any other sort of aversion one might have; and second, a characterization of the sort of facts or circumstances which would constitute good reasons for A to adopt such an aversion.

There is a good deal of confusion about the first one. By this I do not mean either that people in general or philosophers in particular are greatly confused about it, but rather, that their various uses of this segment of our vocabulary is confusing. I shall adopt some of the main features of common usage, but I don't suppose that any single analysis would capture all of those that are frequently associated with these terms. I shall seize on these: A morality is a set of prescriptions—requirements, prohibitions, recommendations, rules—with the following features: (1) Overridingness, (2) Universal application, (3) Internalization, (4) Interpersonal Reinforcement; and (5) Decentralization, or Informality.
Brief explications: (1) Overridingness: A moral rule is meant to overrule contrary inclinations or interests, as such. "But I didn't feel like it," or "it wasn't in my interest" cannot be an acceptable justification for doing what morality forbids. (2) Moral rules apply to everyone, or at any rate, everyone in the relevant group whose morality it purports to be. We will assume for present purposes that we are considering rules meant to apply to every moral agent. (3) Part of the idea of a moral rule is that A will apply it to A: e.g., by making A feel uncomfortable for breaking it. An individual, A, is immoral if A does what a (true) moral rule requires, even if A can "get away with" it. Persons disposed to do those things under those circumstances are necessarily to be rated immoral; they lack the degree of internalization that is aimed at, and essential if the system is to work. And (4) people are not to "let people get away with it" if they can do something about it (at least, without appreciable cost or risk to themselves). Everybody is to "enforce" morality, especially by the relevant verbal means, just as everyone is subject to its rules. (5) Decentralization: Finally, morality is not a system imposed by force of declared law from without. Everyone is to enforce it, and no central authority can alter its content by fiat. This characterization, it should be noted, does not include the philosophically fancier properties favored by many theorists. A morality could, on this analysis, be clannish, biased, or full of what seem to us arbitrary distinctions without ceasing to be a morality. It could, logically: but if we are addressing ourselves to the question what morality ought to be as distinct from what it merely is in this or that group, then we can readily find strong internal reasons why a rationally acceptable morality would not have any of those characteristics. The reason is that morality is informal, and to be universally inculcated and enforced, including self-enforced. But rational individuals will not accept as restrictions on themselves and will not assist in the informal reinforcement of restrictions on behavior that is contrary to reason, restrictions they see no reason to submit to and to induce all others to submit to. Now there are lots of imaginable rules that would be very much in the interest of Group A to advocate and self-apply, but very much contrary to the interest of another group, B, to do so: aristocratic moralities, master/slave moralities, or moralities in which some group's religion is to be enforced on all, and so on. Such rules are non-starters for general morality, although they certainly could be elements in the more restricted morality of some particular group.

Will anything pass all these requirements? Morality, I have said, is to override individual inclinations and even interests. But how can an individual have a rational interest in overriding his or her own inclinations and interests? The answer is now well known.¹ There are plenty of acts with
the interesting property that an individual, A, will want to do them, but they will only be in A’s interest provided that others don’t. However, the others will be in the same boat. And if all act as they wish, all will be worse off than if all were to agree to act in certain ways. A necessary part of making it worth A’s while to act on R is that A can reasonably expect that all others will too (and vice versa). Under these circumstances, there will be a temptation for any individual to cheat; but there will be a strong inducement for others not to let him cheat, and everyone knows both of these things. It is, then, in their interest to adopt collective rules overriding any particular interest. Such rules will be components of a rational morality.

But if some individuals are only patients and not agents, then no such schema can apply. It will not necessarily be in the interests of others to adopt and assist in the reinforcement of rules requiring agents to have regard for patients as such. Many will, of course, be interested in many patients, and it will indeed be in everyone’s interest to have rules which enable such patients to be free from harm and perhaps to share in certain benefits. But rules benefiting patients simply as such, or calling upon everyone to refrain from harming them simply as such, have no fundamental appeal. The fact, for instance, that if I were a pig, I would want pigs (or at least that one) to be treated well is of no interest, so far as it goes. I’m not a pig, and never will be; and the pig himself has no rational clout. He is not able to address himself to the question of what he can do to make life difficult for us if we don’t cater to his needs, or of how much better he could make it for us if we do. If we want something out of the pig, and treating the pig well is necessary for getting it, then we shall have reason to treat him well. If we don’t, however, or if it isn’t, then why should we go to the trouble?

Thus, consider the idea of “relevant” differences and similarities. Is the fact that individual A and individual B are identical in some respect in which they have an interest a good enough reason for having a moral rule which calls upon everyone to treat them alike? It is not. Only if they are alike in some respect which there is antecedent reason to insist upon everyone’s paying attention to will the identity of their cases in other respects have any weight as such.

It certainly could be that owing to some feature of human psychology, we will have a sympathetic involvement with individuals having certain experiences, quite irrespective of the capacity of those individuals to do anything about it or to enter into arrangements whereby we will do something about it. (Such, very nearly, is the case with human adults in relation to human children.) Or it could be that if agents characterically treat certain sorts of patients in certain ways, that will induce a habit or a cast of mind likely to work ill for other agents in future. But we would need
facts to support those claims; they can’t be taken to be true a priori; any more than can the claim that humans, qua human, take a sympathetic interest in other humans or in rational beings generally.

This characterization of reasons and of morality sets the stakes for establishing that some principle belongs to general human morality very high. Does it set them too high? If we are busy trying to shore up Reganian intuitions, it certainly does, so far as I can see. The suggestion that we, as rational beings, should forego the many benefits available from extensive animal experimentation, not to mention those to be got from eating meat, merely because those benefits are got at considerable cost to the animals themselves is one that looks to have no chance of passing muster.

As it happens, intuition here seems to be on my side, not Regan’s. For one who professes so much respect for our ordinary intuitions, he is surely pressing a most unintuitive program. To most humans, it is surely just obvious that we do no wrong in raising animals for their meat, chickens for their eggs, and so on, even though those animals suffer and die as a result. However, there is also the belief that we shouldn’t be cruel to animals, and the belief that it is wrong to mistreat or take the lives of human infants and idiots. Indeed, it is perhaps not going too far to suggest that the “argument from marginal cases,” as I once called it, is the main intuition-based argument in Regan’s armoury. The argument has it that some humans to whom we are inclined to extend the benefits of morality are less qualified for them (on “our” normal view of what qualifies one for the benefits of morality) than are some animals. Yet there is some overlap between the human and some animal species in respects we are currently inclined to ask people to have moral regard for. How, then, can we maintain this disparity?

At this point, many people would simply invoke the fact that the one set of individuals are human and the other are not as quite relevant enough, all by itself. Species membership is, undoubtedly, a characteristic; it does, undoubtedly, distinguish the two sets of cases; and ordinary people’s morality does pay heed to it. Nor can they be accused of any purely logical incoherence or contradiction in the process. Were we to accept appeals to intuition as of fundamental significance to moral theory, we could stop right here, simply denying Regan’s case outright.

But I, for one, am disinclined to do this. I agree with him that ‘speciesism’ looks a poor candidate for moral relevance. There are various reasons one might give for this. But the best way to show it would be to come up with a list of the characteristics of individuals that are relevant to morality and then point out that membership in a particular species isn’t on the list. This requires that we have a good theory of morality handy. But I claim to have such a theory (or, more modestly, a start at one): moral relevance is
established when it is shown that there is good reason for moral agents to have a principle in which the characteristic in question figures significantly, i.e., that distinguishes the way we should behave toward individuals having it and those lacking it. And that good reason is provided by showing that there is good reason to think that moral agents will be better off having such a principle than they would not having one. This in turn requires that we find an interest on the part of all such agents, an interest commonly shared and such that there is an individual/collective contrast of the kind depicted above. And I take it as obvious that there is no such fact about the property of being a member of any species, simply as such.

Humans are interested creatures, and formidable in their ability to pursue their interests, including in the means by which they do so the use of force, lethal and otherwise. Some moral theories would put a proscription on the use of force for any such purposes other than that of defending persons against the initial use of force by others. Whether or not that can be made out, it is clear that we have a great and enduring interest in not having force used against ourselves. The "social contract," as we may refer to the general articles of morality on the conception being pressed here, will doubtless be very negative on the use of force for other than defensive purposes. But then, there is the question what 'defensive purposes' will include. Consider people inclined to use force to defend their ways of life, where such ways include extensive cultural involvements with many other people. Do they come properly within the scope of such principles? And what about the case where some moral agents identify strongly, in comparable ways, with a group of individuals which are not moral agents: animals, for instance? Take the sacred cows of the Hindus, for example. There are many good reasons for not having their attitude. But while we are in India, will we not respect the customs of the Hindus even though we find them not only strange but perhaps downright irrational? And so, on the present conception, we should.

Similarly, we have good reason to place restrictions on the treatment of some particular animals, such as household pets. People who have no special feelings about animals in general may well develop intense affection for certain particular ones, and these they can, in current circumstances, buy or otherwise appropriate and take under their care. The rest of us are then to treat those animals with due respect. But there is a special problem about persons, such as the members of Greenpeace, who propose to identify with the higher animals generally, claiming that animals are members of oppressed groups, comparable to minority groups of humans in various countries. Those people may be inclined to press their claims by force (and sometimes have done so, recently.) Groups might attempt to proselytize
elsewhere by force, as did the Moors in the 7th–9th Centuries, giving their victims the choice between subscribing to the Koran or losing their heads. But it must surely be obvious that the members of such groups have no moral leg to stand on, if a morality applicable to moral agents generally is our aim. The only principle that will pass muster among rational agents is an agreement to disagree about such matters: which means, a proscription on the use of force as a means of promoting assent to doctrines lacking the support of fact ascertainable by publicly confirmable procedures.

And such, I suggest, is substantially the current situation in regard to ‘animal rights.’ Such commitments to animals, given current knowledge, is comparable to (though not, of course, an actual case of) religious belief. In particular, it is comparable to the moral content of such beliefs, in a different sense of the term ‘moral’ from that employed here. In this sense of the term, a morality is what Mill called a ‘‘theory of life’’: a doctrine about what makes a life a good life, a life worth living in preference to other possible types of life. Those, like Regan, who think to extend the protections of ordinary morality to individuals lacking the usual claims to it, find it intolerable to contemplate, say, the eating of meat when those who ‘‘supply’’ it are defenseless creatures lacking the sophisticated cognitive equipment of persons. Their case, from the point of view of the rest of us, may be accounted a personal one: how, they put it to us, can we live with ourselves if we continue to treat some feeling beings badly when we would object strongly to such treatment in the case of others (such as ourselves)?

A fair number of people do feel like Regan in these respects, and certainly the rest of us, especially if we wish to engage in friendly dealings with them, will wish to consider how much deference to their views we should pay. And this, in turn, seems to me not a matter on which a very definite uniform rule is required. Some vegetarians would be discomfited greatly if their dinner companions in restaurants ordered meat dishes; some nonvegetarians would as a matter of course refrain from ordering such dishes when in company with vegetarians; and so on. But it is clear, I think, that our deference need not extend to taking up vegetarianism ourselves, nor to supporting legislative changes that would deprive everyone of the right to employ animals for laboratory experiments or as sources of food—any more than it need extend to the making of animal sacrifices out of deference to the many religious groups which insist on such practices.

Apart from the case of special sympathizers, as we may refer to the current supporters of rights for animals, we may also point to considerations that underwrite, I think, a claim to public-interest status on the part of some animals. One is ecological. We have come to appreciate that there are interconnections among various elements of our biological environment which
make it imprudent to hunt wantonly, for instance. And there is a general
sense of curiosity, an intellectual interest, in the continued existence of dif-
ferent species of animals. There is, I think, no special claim by, say, would-
be hunters on the members of any hunted species strong enough to outweigh
this enduring interest. If the hunters have their way, humankind in general
may be deprived of any further contact with the species that would succumb
to their uninhibited pursuit of that interest (and hunter-kind is deprived of
all future quarries of that species). But as Regan rightly observes, this in-
terest is not at all equivalent to a moral claim for the rights of individual
members of any of those species. He thinks, for instance, that we would not
be justified in killing some innocent animals in order that others may
flourish, as an interest in species survival could possibly do. That interest is,
for example, quite compatible with controlled hunting, which ensures both
that the species will flourish and that individual members of it will on fre-
quent occasions be, in Regan’s view, murdered. Or we might engage in in-
voluntary artificial insemination, which Regan might object to as com-
parable to rape! Thus public interest arguments give some support to pro-
tections of animals of various kinds and degrees; but nothing like the sweep-
ing restrictions imposed by Regan’s principles.

Let us, finally, return to the Argument from Marginal Cases. The view
that emerges from the Contractarian theory of morality must, of course,
classify those humans who are so far below the standard for our species as
to be unable to communicate effectively or react in a rational way to the ac-
tions of the rest of us as not inherently qualified for basic rights. Such in-
dividuals are, necessarily, wards of someone, since they cannot care for
themselves. Why, then, should we be as concerned for their wellbeing as we
mostly are? Why not allow people to hunt them? Or what about infants?
All of these are important cases—though it is well to remember that they are
also cases concerning which there has been tremendous variation in ap-
proved treatment in the de facto moralities of different ages and cultures.
Exposure of unpromising infants, for instance, was routine in many
cultures. Nevertheless, I wish to stand my ground, despite the criticisms ad-
vanced by Regan in The Case for Animal Rights. The question of how to
treat such cases is to be answered by reference to two strongly supporting
sets of considerations. First, that essentially every subnormal or infant
human individual is the offspring, and often the sibling, of persons who
take a close sympathetic interest in its welfare; and second, that there simply
is no appreciable general interest in treating such individuals adversely. If
we compare the case here with that of animals, we find, of course, a striking
contrast. Various animals have much to offer us which motivates imposi-
tions on them: the culinary interest, of course, but also that in furs, etc.
Apart from the special case of medical experimentation, there is no comparable systematic interest in marginal humans. And there is one special "interest" that properly rates special negative attention: viz., that of cruelty for its own sake. An interest in seeing animals suffer is psychologically very comparable to an interest in seeing people suffer: indeed, since humans are much more capable of expressing their pains than animals, one would expect sadists to prefer human victims—and experience, to my limited knowledge, bears this out. There is certainly a public interest in exterminating attitudes such as that. Thus the standard attitude toward animals, which is that they are not to be wantonly misused, though they certainly can be used for human purposes in ways that will undoubtedly be uncomfortable or fatal to them, has some basis in commonsense psychology.

But there is no need to defend in detail prevailing attitudes in our culture. Why should there be? We are, I take it, trying to find a rational basis for giving animals a particular moral status, one that is compelling and conceptually coherent with our case for moral rights of humans. Cases of overlap—the "marginal cases," as I call them—are grey areas. There is an overwhelming case for not classifying these cases identically with normal humans, and there is a good case for generally regarding the higher animals as eligible for minimally decent treatment. And since there is strong support, arising from the special attachments to other individual humans that marginal humans have but animals lack, for cultivating a general attitude of care for those cases, we arrive at the reasonable conclusion that marginal humans are, in general, to be given an intermediate status. "Given" is the crucial term here. Marginals are not, so to speak, charter members of the moral club; normal adults are. (Children are still a distinct special case, for children are our only source of future adults, and our duties to them stem overwhelmingly from that special consideration, and not from their current repertoire of psychological attributes.)

**Conclusion**

The *de facto* morality of any particular time and place is bound to be the product of many factors, some of them quite independent of reason. Philosophical critics who, like Regan, wish to invoke the aid of "intuition," face the formidable task of discerning beneath the surface of the welter of received moral views which of them are due to philosophically respectable causes and which not. They don't come stamped with "Genuine" and "Culturally Biased" labels—especially in view of the fact that the very notion of a bias is itself a part of the conceptual package we are trying to scrutinize. So too, as I have tried to make clear above, is the notion of consistency: rarely do we get an out-and-out case of two principles one of which is the
negation or the contrary of the other. Instead, we get groups of cases that are similar in some respects and dissimilar in others, leaving us to decide whether the similarities are what matter, thus leaving us with conflicting judgments stemming from intuited principles telling us to treat them differently, or the dissimilarities, thus leaving those judgments nonconflicting after all. Such is the nature of a terrain ripe for philosophical theorizing. But to propose to avail oneself of the fact that something is intuited as a recourse for theoretical validation is to leave oneself open to the charge that a different selection of those intuitions would have left one with a wholly differing but equally well-grounded theory. In the view of this writer, the only solution to this problem is to jettison appeals to intuition for those purposes. What we must do is to hold that an intuition is just that: an unanalyzed sense, hunch, or feeling, that a certain finding is the right one, without quite knowing why. The job of the theorist is then to find out the "why." But if we take the hunch as itself a legitimate part of the explanation, muddle is the almost inevitable result. Or, if one came from a particular cultural milieu happening to be possessed of an exceptionally articulate and coherent set of intuitions (as did, apparently, Oxbridge philosophers of the first decade of this century), one will come up with a beautiful theory the total groundlessness of which is singularly unapt to be noticed by one's fellow theorists from that same culture—and singularly unlikely to persuade anybody else.

Regan, in Animal Rights, takes on the job of disavowing very substantial parts of our received morality—he is not far from being a starry-eyed radical by current standards. His weapons on behalf of this rather revolutionary project consist of a judicious selection of (1) logic, (2) intuitions taken from the very set of received beliefs from which he is so considerably dissenting, and (3) higher-level, "meta-ethical" intuitions got from the standard practice of recent Anglo-American philosophy. Those eager for something new to feel guilty about will be impressed. The rest will not. I side with the latter, personally. And philosophically, I should like to know why we should accept the particular selection Regan has come up with on behalf of his rather unintuitive results, rather than another selection which would not at all support those results. Until we have compelling argument for that selection, this writer, at any rate, will continue to eat meat in good conscience.

Jan Narveson

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ON A CASE FOR ANIMAL RIGHTS

NOTES

1. Tom Regan. *The Case for Animal Rights.* (Berkeley & Los Angeles, CA: University of California Press, 1983.) (All parenthetical references are to page numbers in that volume.)

2. J. Narveson, "Animal Rights," in *Canadian Journal of Philosophy* 7, No. 1 (March 1977). It is unfortunate that Regan used this rather rough presentation of that viewpoint when there has long been available to him my "Animal Rights Revisited," in H. Miller and W. Williams, *Ethics and Animals* (Clifton, NJ: Humana Press, 1983) This version was presented at the same conference as Regan's "Animal Rights, Human Wrongs," in 1979, and also published in *Animal Regulation Studies* 2 (1979/80); Regan certainly had access to it during the writing of his book; it does not, however, get any reference at all in it; nor is there a bibliography.
