Moral Rights and Human Culture

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ABSTRACT. In this paper I argue that there is no moral justification for the conviction that rights should be reserved to humans. In particular, I reject James Griffin’s view on the moral relevance of the cultural dimension of humanity. Drawing from the original notion of individual right introduced in the Middle Ages and the development of this notion in the eighteenth century, I emphasise that the practice of according rights is justified by the interest in safeguarding the powers of reason and autonomy that some individuals can exercise. Since we are in no position to rule out that non-humans can exercise these capacities, I conclude that rights should not be reserved to humans. This will lead to a reformulation of the reasons why so-called ‘marginal’ humans and non-human animals can be granted some basic rights. Being human is neither necessary nor sufficient for holding rights. All individuals, human or non-human, who can exercise reason and autonomy to some extent can be accorded basic rights in virtue of their having morally relevant preferences.

KEYWORDS. James Griffin, human rights, animal ethics, culture, autonomy, marginal humans.

INTRODUCTION

Since the notion of individual rights developed in the Middle Ages, rights were meant to be granted to individuals able to deliberate between different courses of action and to act on the basis of their deliberations. Given that it is perfectly conceivable that reason and autonomy are exercised by non-human beings, why do we talk about human rights?

In this paper I argue for two independent theses. First, I reject one influential argument aimed at justifying the practice of reserving rights to humans. Contrary to what James Griffin claims, the cultural dimension of
humanity as such offers no good reasons for special moral consideration. What most adult humans have in common and what is worthy of moral consideration is the exercise of reason and autonomy. It is to defend the exercise of these capacities that individual rights have been conceived and introduced. As a result, rights are not necessarily a human prerogative. Second, I sketch an account that vindicates the intuition that some individuals might be granted direct moral consideration or basic rights even though the powers of reason and autonomy that they can exercise are limited. Taking into account the case of marginal humans and non-human animals, I argue that their morally relevant preferences should be taken into account in moral decision-making.

These two theses are based on the view that right-holders need to satisfy the minimal condition for the exercise of reason and autonomy, which is the possession of morally relevant preferences. One may accept the rejection of Griffin’s argument without accepting the proposed justification for according rights to some human non-persons and non-human animals. But the two theses share the same assumptions: (a) we grant rights to other individuals to respect their preferences about states of affairs that significantly affect their well-being; (b) in so doing, we allow them to exercise to some extent their powers of reason and autonomy.

1. The Origin of Human Rights

A detailed account of the historical origins and development of the concept of moral rights is outside the scope of this paper, but it is interesting to see in what context individual rights were first discussed. One hypothesis is that the first consistent account of individual rights started to be developed in the work of some jurists led by Irnerius in Bologna in the twelfth century. They revised and commented upon the recovered texts of the Roman ecclesiastical norms known as the Justinian Digest. With their comments and revisions, not only did they re-discover
a valuable source, but they also created new areas of application for pre-existing concepts and norms. In their analysis of the multiple meanings of the Latin word ‘*ius*’ gradually surfaces the new idea of subjective right, intended as a power or liberty that an individual is entitled to exercise. The justification for granting natural rights to an individual derives from the power that the individual has to make judgements about what is right and to act on the basis of those judgements. Tierney (2004, 8) writes:

They [i.e., the Decretists] were creating a language within which a doctrine of rights could be expressed by generations of later thinkers. Their definitions of *ius* as “faculty” or “power” were repeated frequently by jurists and political theorists down to the time of Grotius. And already by 1300 some natural rights were coming to be recognized—the right of the destitute poor … a right of self-defence against physical assault or in a court of law, rights in marriage, even rights of infidels.4

It is very significant that the word ‘power’ has been used in this context, because it seems to have a role to play in our contemporary way of justifying the granting of moral rights. By having reason and autonomy, some individuals have the power to deliberate and make choices. As a consequence of having these capacities, they can be harmed when their opportunity to reason or choose is denied to them or when their preferences about states of affairs that significantly affect their well-being are frustrated. Granting rights to them is a way of safeguarding the exercise of the powers they have and respecting their preferences.

According to Tierney,5 one of the first rights to be identified and discussed in the Middle Ages was the right of the poor to subsistence. For instance, some jurists believed that the hungry had a right to steal in times of need. The discussion about the right of the poor to a decent existence was accompanied by the discussion of whether there should be rights to property and self-defence. In the thirteenth century, answering the question whether any rights at all should apply to ‘infidels,’ Pope Innocent IV (1570, Cm. Ad.3.34.8) wrote that rights of ownership could belong to them, because they were made “for every rational creature.”6 What
justifies the view that the poor and the ‘infidel’ have some rights, such as
the right to a decent life or the right to property, is their being individu-
als who can form preferences and enjoy the capacity for reason and auton-
omy, independent of their wealth or religion.

However, it is not until much later that human rights were explicitly
linked to the modern ideas of equality, resistance to oppression, and free-
dom of expression. These values are reflected in Thomas Jefferson’s De-
claration of Independence (1776) and in the Declaration of the Rights of
Man and Citizen by the French Constituent Assembly (1789). The impor-
tance of these declarations lies in granting rights to life, liberty, property,
security, resistance to oppression, and pursuit of happiness to all citizens.
The emphasis on human rights implies that differences in race, wealth, and
status have no relevance to the moral and political standing of the people.

These declarations do not offer any justification of the application of
rights, but they were strongly influenced by the writings of John Locke
on natural rights and by Jean Jacques Rousseau’s idea of social contract.
In their work, we find again a reference to the powers of humankind. In
his Two Treatises of Government, Locke (1988, book II, ch. 2, §4,) writes:

To understand political power aright, and derive it from its original, we
must consider what state all men are naturally in, and that is, a state of per-
fect freedom to order their actions, and dispose of their possessions and persons as they
think fit, within the bounds of the law of Nature, without asking leave or depending
upon the will of any other man. A state also of equality, wherein all the power
and jurisdiction is reciprocal, no one having more than another, there
being nothing more evident than that creatures of the same species and
rank, promiscuously born to all the same advantages of Nature, and the
use of the same faculties, should also be equal one amongst another,
without subordination or subjection. [Emphasis added.]

In the Social Contract, Rousseau (1968, book I, sect. 4) writes:

To renounce liberty is to renounce being a man, to surrender the rights
of humanity and even its duties. For him who renounces everything no
indemnity is possible. Such a renunciation is incompatible with man’s
Both Locke and Rousseau admittedly talk about *humanity* and *human nature*, but they base their own understanding of what human beings are entitled to, and the idea of equality, on the capacities human beings share, and in particular the capacity to form preferences, reason, deliberate, and act autonomously. So, in the eighteenth century the justification of the application of rights has not substantially changed since the origins of the notion of subjective rights in the Middle Ages.

From the very origin of the idea of rights and consistently in the development of this idea, the entitlement of the individual to, say, a decent life, property, and security was justified by the capacity of that individual to form preferences, make judgements, and direct actions. If the possession of these capacities is what determines who has rights, shouldn’t we be open to extending rights to non-humans, provided they also share them?

We might no longer believe in some of the philosophical assumptions on natural rights in which the two declarations of rights were embedded, but we still conceive of moral rights broadly in same way, as a protection of the exercise of those powers of the individual that are morally relevant. If this is the case, then it is not necessary to be human to have rights.

2. ACCORDING RIGHTS: THE ‘KIND’ ARGUMENT

Carl Cohen argues against according moral rights to non-humans and defends the view that only humans have rights. According to Cohen, to have rights, one needs to be the kind of being capable of exercising and responding to moral claims. Non-human animals, who are not beings of that kind, have no rights.¹⁰

Cohen assumes that the distinctive capacity of right-holders is moral agency. Is his view compatible with the notion of rights as I briefly
reconstructed it in the previous section? Two points need to be made. I described rights as a way of safeguarding the morally relevant preferences of those individuals who can exercise reason and autonomy. First, moral agents are not necessarily the only beings who have morally relevant preferences (I shall expand on this later). Moreover, for Cohen right-holders are identified not with the individuals who can exercise such capacities, but with those who belong to the kind of beings who can exercise them. Cohen wants to allow the possibility of granting rights to humans who are not persons and have limited capacities (e.g., infants and mentally impaired adults). Even if marginal humans are not autonomous and do not exercise their powers of deliberation and reflection, they are human and humans are “the kind of beings capable of exercising and responding to moral claims.” Notice that a similarly-structured argument could be applied to human embryos and foetuses. Human embryos are the kind of being capable of exercising and responding to moral claims, even though they are not autonomous and they do not exercise the powers of deliberation and reflection. So, if we push this line, they should also be granted rights and, if among those rights there is the right to life, termination of pregnancy and research on human embryos could be viewed as morally objectionable.11

The problem with Cohen’s position is that it constitutes a difficult compromise. It is possible to justify moral agency as the criterion for according rights if we conceive of rights as a way of safeguarding the exercise of those powers necessary for moral agency. But it is not clear what would justify Cohen’s criterion. What does it take to be the kind of being capable of moral agency? Either moral agency is the criterion for according rights, or it is not. Why should human foetuses and non-human primates have different moral status, when arguably neither is a moral agent?

Nathan Nobis discusses at some length what the term ‘kind’ might entail in this context and rejects the possibility that the kind to what all and only humans belong is defined on the basis of the normalcy or naturalness of the capacities that some humans (the normal human adult
or the majority of humans) have. All is left is the relevance of the species itself. ‘Being human’ is the kind Cohen refers to, but as many have already noted, there is no good argument to the effect that species membership is morally relevant.

It does make sense to argue that all and only those who can exercise moral agency have rights, as they have a power that needs safeguarding, but it does not seem plausible to argue that all and only humans have rights, in virtue of belonging to the kind that is capable of moral agency. The fact that an individual is human is neither necessary nor sufficient to determine whether that individual has the capacity to exercise and respond to moral claims. Therefore, it is neither necessary nor sufficient to determine whether that individual should be accorded rights.

And this is not a point of mere sophistry. All of us have very strong intuitions that the behaviour and circumstances of some non-humans not only trigger in us feelings of sympathy, but also make moral claims on us. Confronted with many intelligent and reflective non-human characters in works of science-fiction, our pre-theoretical reaction is that forms of intelligent life that are autonomous and exhibit emotional complexity deserve respect. It might turn out to be the case that, as a matter of contingency, all forms of life to which we owe respect and grant rights are human, but there seem to be no rational justification for the defence of a necessary connection between humanity as such and the entitlement to moral rights.


Before we can dismiss the necessary connection between humanity and rights, we need to consider another line of argument aimed at the characterisation of the kind to which all humans belong. James Griffin defends the view that we can justify the ‘human’ in human rights without appealing to mere species membership. When we talk about human rights –
he says – we refer to a cultural and social context without which according rights would not make sense. It would not be possible, on his view, to grant rights to agents independently of their social and cultural context, solely on the bases of the properties of rationality and intentionality.

Griffin (2001, 310-1) starts his discussion of the scope of the application of human rights in a very promising way by identifying the grounds for according rights with the marks of moral agency and personhood:

Human life is different from the life of other animals. We human beings have a conception of ourselves and of our past and future. We reflect. We form pictures of what a good life would be, often, it is true, only on a small scale, but occasionally also on a large scale. … And we value our status as human beings especially highly, often more highly even than our happiness. This status centres on our being agents – deliberating, assessing, choosing and acting to make what we see as a good life for ourselves. Human rights can then be seen as protections of one’s human standing, one’s personhood. [Emphasis added.]

What is interesting in Griffin’s account is that all that he describes as special in humans is that they are persons with certain capacities (such as the formation of preferences, the exercise of reason, deliberation, and autonomy) that lead them to value their own existence and give them the opportunity and the responsibility to make morally relevant choices. But then it turns out that Griffin has reservations about moral agency as a criterion that abstracts from social and cultural context because, although he concedes that there can be non-human agents, he also observes that we have no idea of what it is for a non-human to be autonomous and rational. According to Griffin, autonomy and rationality depend on the capacity to think. Thought, in turn, depends on the possession of language, which is embedded in culture. It follows, then, that the agents that qualify as right-holders are the agents who can think and express themselves by thought and language. And only humans can.

In an otherwise elegant and lucid paper, this argument strikes me as weak. To start with, it is based on controversial philosophical assumptions
on the nature of thought and language. There is no consensus that thought is dependent on the possession of a language. But even conceding for the sake of argument that non-linguistic beings cannot think, there is no decisive evidence to the effect that human language is the only form of language that can support thought. Whether it is obvious that language and thought are embedded in culture, it is not clear what this could mean for the application of rights to non-humans. If human culture is a precondition for holding rights, this might be for one of the following three reasons.

1. Culture itself is what matters, but there is no culture outside humanity.
2. There might be different forms of culture but only human culture supports the application of rights.
3. Even if some non-humans developed a culture, we would not be in a position to fully understand their culture and therefore we could not grant to them rights with determinate content.

The claim that only humans have a culture is an empirical claim. We need evidence to support it and, if we accept it now, we must be open to the possibility that future experience will prove it false. We can easily imagine a non-human culture that is so different from ours that we cannot fully understand it, but that is sufficiently similar to ours to generate moral concerns. The reason why we can conceive of this situation is that all we would need to share with the members of this alien culture to start considering them as legitimate right-holders is the combination of those capacities that make up agents and persons, no matter how biologically or artificially implemented: the formation of preferences, the exercise of rational deliberation, autonomy, and purposive action.

Take for instance Fred Hoyle’s *The Black Cloud*.16 In this work of fiction, the author, a very renowned astronomer, describes an interstellar cloud that can move and think. Its brain is made of networks of molecules that can increase in number and become more specialised at the creature’s will. The intelligent cloud is interesting because it is a form of life that seems to justify ethical consideration, even though it does not
have a culture similar to ours. We feel that the cloud makes claims on us, and it is not difficult to rationalise those feelings, because the cloud is an agent and a rational deliberator with morally relevant preferences that can be either satisfied or frustrated.

I doubt that Griffin wants to rule out that non-humans might develop a culture, and he says nothing about why human culture should be morally more important than possible alternative cultures. That is why I believe that Griffin endorses the modest claim that it is difficult from a practical point of view to grant rights with determinate content to individuals who are radically different from us. Although it is trivially true that “the kind of autonomy we are interested in will reflect the peculiarly human way of experiencing and conceptualising the world” and that “we do not know what it is like to be a Great Ape or a deity” (Griffin 2001, 312), from these observations it does not follow that rights should apply to humans only.

We are familiar with radically diverse cultures within humanity. The move from the observation of radical diversity of culture to the inability to accord rights to those who belong to a different culture stirs unpleasant memories. Similar arguments were used to dismiss the property rights of indigenous people in Central and South America during the time of the European colonisation. Those arguments were precisely based on the diversity of the indigenous culture from the culture of the colonisers. Commenting on these cases, someone like Griffin could argue that, when we are confronted with individuals belonging to human cultures different from ours, there is always sufficient overlap for us to be able to recognise those individuals as humans and to grant rights to them. But it is not obvious that there is a human culture shared by all humans, apart from the ‘abstract’ requirements of agency and personhood.

One might argue that there is no culture to which all humans belong and illustrate the claim with the case of the behaviour of feral children. Their behaviour might be impervious to interpretation. Typically, they do not speak a human language and exhibit a very similar behaviour to that of the animals with which they grew up. To be able to account for these
cases, we need a good answer to the following question: what does it take for a culture to be human? If language and thought are the decisive factors, then feral children are not culturally human. It is difficult for us to imagine what it would be like to be a feral child and therefore, according to Griffin, virtually impossible for us to grant them rights. This epistemic difficulty is due to our limited knowledge of the conditions of individuals who do not share human culture. It would prevent us from specifying with sufficient detail the content of the moral claims these individuals would make on us and therefore the whole enterprise of granting rights to them would be compromised.

The problem is accurately described by Griffin: for a right to have any meaning, it needs to be an “effective, socially manageable, claim on others” (Griffin 2001, 315). If we want to be able to specify the content of the rights we grant to others, considerations of efficacy and manageability must be relativized to a culture with which we are sufficiently familiar. As a result, our attention is necessarily confined to the claims of our fellow-humans. This is a powerful point, but in the next section I shall challenge it on the grounds that what is relevant to determine moral status and the applicability of rights is not similarity of culture but possession of mental capacities that are morally relevant; and that it is possible in some circumstances to grant direct moral status or rights to individuals whose way of life is significantly different from ours on the basis of the (basic) preferences that we can ascribe to them.

4. AUTONOMY, PREFERENCES, AND RIGHTS

The exercise of reason and autonomy means that most humans have preferences. By and large, we prefer freedom of movement to confinement. Some of us prefer chocolate cake to vanilla ice cream. Which preferences are morally relevant? It makes sense to talk about the right to freedom from confinement, because confinement (often negatively) affects our
well-being. So a first shot is to say that the preferences we consider as morally relevant, those that might give rise to moral claims, concern those circumstances which significantly affect our well-being.

Other beings might also have preferences. The black cloud described by Fred Hoyle wants to be able to communicate with other interstellar clouds. Chimpanzees prefer bananas to lettuce. Other mammals also have preferences about what to eat and where to live (although they do not know they do). Non-human animals do not speak a language comparable to the human language, although some of them are able to communicate. We can describe some of them as agents which exercise the powers of reason and autonomy to a minimal extent, given that they seem to act with the goal of preference satisfaction, although we have no reason to believe that they also satisfy the criteria for rational deliberation or moral agency.

We might not know enough about their preferences to grant them some specific rights which human persons would greatly value. It is very unlikely, for instance, that they have a preference for expressing themselves freely and therefore we cannot meaningfully accord to them the right to freedom of expression. Similarly some would argue that, since they probably lack plans for the future or beliefs about their own existence, they cannot value their own existence as typical humans value theirs and therefore there are no grounds to grant a right to life to them. Yet, we might decide not to frustrate the preferences of these individuals, when in the appropriate circumstances, we obtain good evidence for the content of their preferences and when the satisfaction of those preferences would significantly affect their well-being. These considerations, as any other in moral decision-making, should of course be weighed up with other moral considerations before giving rise to decisions or actions.

We do not need to know much about the mental states of other mammals, before we can speculate that they have a preference for avoiding pain. In this case, evidence could come from their behavioural responses to potentially painful situations and from some physiological
similarities in pain perception mechanisms between humans and other mammals. It is arguable that some non-human animals make a moral claim on us not to be inflicted with pain, even if it would not make much sense to accord to them the full range of so-called human rights, given the scarcity of evidence that would support the ascription of the relevant preferences to them. For instance, most non-human animals do not engage in reflection and rational deliberation, capacities that are necessary for the appreciation of liberty rights.

A distinct question is whether the moral claim that some non-persons make on us should be described in terms of rights. Contractarians who typically feel that the rights-talk should apply to persons only (whether human or not) or those utilitarians who reject the rights-talk altogether might prefer to account for the direct moral status of non-persons in different ways. To some extent, once we recognise that individuals with morally relevant preferences make moral claims on us, it is a terminological dispute whether we grant to them some very basic rights or we simply agree to take into account some of their preferences in our decision-making and actions. The substantial point is that moral status is tied to the possession of morally relevant preferences.

Now I can challenge Griffin’s modest claim about the difficulty in according rights to individuals outside our culture. We need just to be able to gather evidence that allows us to ascribe to others preferences about states of affairs that significantly affect their well-being, before we can start according to them basic rights. As long as we accept that the justification of the moral claims of individuals is based on the complexity of their mental capacities, we will find it difficult to support the prevalent practice of talking about moral rights as if they were reserved to humans.

If we base our decisions about moral status and applicability of rights on the actual and not just potential capacities of the individuals we consider, how can we account for the widespread intuition that human non-persons also have rights? We can ascribe to them some morally relevant preferences on the basis of the fact that they can exercise reason and
autonomy to some minimal extent. These cases are intriguing and controversial, because even experts have limited knowledge about the extent to which some individuals possess or exercise the capacities required for the possession of morally relevant preferences. Notice that the question about the applicability of rights to marginal humans and about their moral status does not depend on whether these individuals are human. If it did, there would be no controversy at all. They are humans. What else could they be? These debates address the respectful treatment of marginal humans, because, irrespectively of species membership or cultural affiliation, doubts about the applicability of rights emerge when we are unaware of the extent to which some individuals meet the requirements for the possession of morally relevant preferences.

The example of respecting the preferences of some non-human animals and marginal humans raises some issues about the powers required for being granted moral status. Going back to the origins of the notion of individual rights, the kind of autonomy the jurists and philosophers referred to was the autonomy that persons exhibit, and to this day well-functioning human agents have been the only beings that have struck us as embodying the full capacities that a person is required to have. But we are already asking ourselves whether some other primates are rational agents with a sense of self and in the future we can be faced with non-human persons if artificial intelligence starts keeping its promises.

Both the jurists working on the concept of subjective right in the Middle Ages and the philosophers who inspired the first declarations of rights identify the rationale for rights in the necessity to safeguard those powers that human persons have, and in particular, reason and autonomy. The emphasis on reason and autonomy prompts a distinction between (a) the minimal exercise of these capacities represented by an agent being able to initiate actions on the basis of beliefs, desires and preferences, and (b) the full exercise of these capacities that is necessary for rational deliberation and moral agency. Tom Regan (1983) clarified this issue by making a distinction between non-human mammalian animals as
preference-autonomous, autonomous in the minimal sense, and human persons as autonomous proper. This distinction is very useful in accounting for the reason why we feel that direct moral consideration should be granted to infants, severely impaired human adults and, say, some other mammals, even though the full range of moral rights cannot be applied to them. And this is reflected in the way in which legal rights are applied to children and impaired adults as well. Trivially, children do not have complete control over the way they lead their own life. People who are affected by mental illness can lose some of their rights when they no longer have capacity. Their conditions might cause them to lose the custody of minors, the management of their own property, the right to consent to medical procedures and freedom of movement, as they might be involuntarily kept in mental health care facilities. Moreover, both very young children and mentally impaired adults might not be regarded as morally responsible and liable for their actions as adults who have full capacity. They are likely to lack the capacity to think about themselves as unique individuals and the capacity to assess different reasons for action, which leaves them with a limited capacity for autonomous deliberation and moral agency.

But as long as they are autonomous agents in the minimal sense, that is, they have preferences about states of affairs that affect their well-being, and act on the basis of those preferences to achieve their goals, they deserve direct moral consideration. They still have a power, although a diminished one with respect to fully-fledged persons, and that power needs to be safeguarded. Some non-human animals might be (in some respects) in a comparable state of autonomy to that of very young children and severely impaired humans, in so far as the powers they have consist in having simple beliefs and preferences about circumstances that significantly affect their well-being and acting on their preferences.

The way in which nature works seems to suggest that there is a continuum between the psychological capacities of babies and adults, and between those of humans and other mammals. The extent to which we
regard these individuals as right holders varies according to the extent to which they are able to exercise their autonomy. If this is true, it does not make sense to divide the world in individuals with rights and individuals without, where the division is made on the basis of species membership or culture. Rather, it makes sense to recognise that there are individuals who can exercise their reason and autonomy to a greater extent than others, and rights are accorded to them in order for their morally relevant preferences and autonomous choices to be respected.

CONCLUSION

In spite of the sophisticated defences of the accepted view that rights should be reserved to humans, philosophical argumentation, experience, and untutored intuitions speak against it. In this paper I have drawn attention to the way in which the rationale for according moral rights has developed through the history of the notion of rights. I have underlined that rights were in the past and still are meant to safeguard the exercise of those capacities persons have in virtue of their powers of reason and autonomy. On the basis of this account, can we really justify the claim that only humans have rights? Yes, if it is an empirical claim based on the conviction that all persons we have come in contact with so far are human. No, if it is intended as a necessary connection between humanity, biologically or culturally conceived, and the possession of moral rights.

I sketched a possible justification for according direct moral considerations to non-persons, human or non-human. Only persons enjoy the powers of reason and autonomy to their full extent, but these powers come in degrees and it is arguable that some agents are just minimally autonomous in virtue of their having preferences and acting with a view to satisfy their preferences. These agents might not be able to engage in moral agency and their preferences can be so different from ours, or so difficult to access from our point of view, that we might be in doubt.
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about the extent to which they should be granted moral rights. My sug-
gestion is that, where it is plausible to ascribe to them basic preferences
about states of affairs that are likely to affect their well-being, such as the
preference to avoid pain, it is also appropriate to respect those prefer-
ences.

NOTES

1 I would like to acknowledge the support of the E.C.-funded EURECA project on the delim-
itiation of the research concept and research activities in the preparation of this paper. The paper
has benefited from the insightful comments of John Harris (who suggested some of the exam-

ples I have used) and Matteo Mameli. I am also grateful to the audience of the Philosophy Staff
Seminar at the University of Birmingham for useful feedback on a previous version of this paper.
2 The phrase ‘marginal humans’ is a very unfortunate one, as infants and adults with severe
mental impairments are not marginally human, they just lack some of the attributes of personhood.
They are ‘human non-persons.’ But for the purposes of this paper, I shall use the phrase ‘mar-
ginal humans’ when referring to the literature on the topic.
3 Gratian, The Treatise on Laws (Decretum DD. 1-20) with the Ordinary Gloss, trans. James Gordly
(Washington: Catholic University of America Press, 1993).
4 Brian Tierney, “The Idea of Natural Rights – Origins and Persistence,” Journal of Interna-
5 Brian Tierney, The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church
6 Innocent IV, Commentaria Innocentii (Frankfurt, 1570).
7 Action of Second Continental Congress, Declaration of Independence (1776),
National Assembly of France, Declaration of the Rights of Man and Citizen (1789),
8 John Locke, Two Treatises of Government (1680-1690), ed. P. Laslett (Cambridge: Cambridge
University Press, 1988).
Classics, 1968).
12 Nathan Nobis, “Carl Cohen’s Kind Arguments for Animal Rights and Against Human
13 See: Peter Singer, “All Animals Are Equal,” in Animal Rights and Human Obligations, eds.
T. Regan and P. Singer (Englewood Cliffs, NJ: Prentice Hall, 1989); Tom Regan, The Case for
There are many examples of fictional non-humans that seem to make moral claims on us, as we find in Isaac Asimov’s collection of stories, *I, Robot*. Another good example is Steven Spielberg’s movie *A.I.* (inspired by the fairy-tale of Pinocchio), which tells the story of a cybernetic boy who can love and suffer.


Details of several real-life cases can be found at www.feralchildren.com. A recent case is that of child Andrei Tolstyk, who was abandoned by his parents when he was three-month old and had been subsequently raised by the family dog. When found seven years later, he would walk on all four, bite people, and sniff food before eating. See Andrew Osborne, “Abandoned boy said to have been raised by dog,” in *New Zealand Herald* August 4, 2004.
