

Is the Argument from Marginal Cases Obtuse?

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ABSTRACT *Elizabeth Anderson claims that the argument from marginal cases is ‘the central argument’ behind the claim that nonhuman animals have rights. But she thinks, along with Cora Diamond, that the argument is ‘obtuse’. Two different meanings could be intended here: that the argument from marginal cases is too blunt or dull to dissect the reasons why it makes sense to say that nonhuman animals have rights or that the argument from marginal cases is insensitive regarding nonrational human beings (the marginal cases of humanity). The purpose of the present article is to argue that, despite Anderson’s and Diamond’s nuanced and perceptive treatments of the argument from marginal cases, this argument is not obtuse in either sense of the term.*

I. Introduction

Elizabeth Anderson claims that the argument from marginal cases (hereafter: AMC) is ‘the central argument’ behind the claim that nonhuman animals (hereafter: animals) have rights (p. 279).¹ But she thinks (along with Cora Diamond) that the argument is ‘obtuse’ (p. 296). Two different meanings could be intended here. The first meaning follows closely the Latin *obtusus*, which refers to something that is blunt or dull. The idea here seems to be that the AMC is not sufficiently sharp so as to dissect the reasons why it makes sense to say (in some limited cases, on Anderson’s account) that animals have rights. The second meaning of ‘obtuse’ is a derivative one, but it leads to an accusation that is more negative. The second sense of the term refers to insensitivity. Here the accusation is not merely that the AMC is not a sharp enough instrument in the analysis of animal rights. Rather, to say that the AMC is obtuse is to say that it implies an insensitivity regarding nonrational human beings.

The purpose of the present article is to argue that, despite Anderson’s and Diamond’s nuanced and perceptive treatments of the AMC, this argument is not obtuse in either sense of the term.

II. The Argument from Marginal Cases

A useful summary of the AMC is given by Lawrence Becker.² There is little danger of special pleading in using his version of the argument in that he is one of the best known opponents of the AMC:

1. It is undeniable that [members of] many species other than our own have ‘interests’ — at least in the minimal sense that they feel and try to avoid pain, and feel and seek various sorts of pleasure and satisfaction.

2. It is equally undeniable that human infants and some of the profoundly retarded have interests in *only* the sense that members of these other species have them — and not in the sense that normal adult humans have them. That is, human infants and some of the profoundly retarded [i.e. the marginal cases of humanity] lack the normal adult qualities of purposiveness, self-consciousness, memory, imagination, and anticipation to the same extent that [members of] some other species of animals lack those qualities.
3. Thus, in terms of the morally relevant characteristic of having interests, some humans must be equated with members of other species rather than with normal adult human beings.
4. Yet predominant moral judgments about conduct toward these humans are dramatically different from judgments about conduct toward the comparable animals. It is customary to raise the animals for food, to subject them to lethal scientific experiments, to treat them as chattels, and so forth. It is not customary — indeed it is abhorrent to most people even to consider — the same practices for human infants and the [severely] retarded.
5. But absent a finding of some morally relevant characteristic (other than having interests) that distinguishes these humans and animals, we must conclude that the predominant moral judgments about them are inconsistent. To be consistent, and to that extent rational, we must either treat the humans the same way we now treat the animals, or treat the animals the same way we now treat the humans.
6. And there does not seem to be a morally relevant characteristic that distinguishes all humans from all other animals. Sentience, rationality, personhood, and so forth all fail. The relevant theological doctrines are correctly regarded as unverifiable and hence unacceptable as a basis for a philosophical morality. The assertion that the difference lies in the *potential* to develop interests analogous to those of normal adult humans is also correctly dismissed. After all, it is easily shown that some humans — whom we nonetheless refuse to treat as animals — lack the relevant potential. In short, the standard candidates for a morally relevant differentiating characteristic can be rejected.
7. The conclusion is, therefore, that we cannot give a reasoned justification for the differences in ordinary conduct toward some humans as against some animals.

Tom Regan puts the AMC in the following deontological terms: if an animal has characteristics a, b, c, . . . n but lacks autonomy (or reason or language) and a human being has characteristics a, b, c, . . . n but lacks autonomy (or reason or language), then we have as much reason to believe that the animal has rights as the human.³ Peter Singer's somewhat different (and problematic, as we will see) utilitarian approach to the AMC is as follows:

The catch is that any such characteristic that is possessed by *all* human beings will not be possessed *only* by human beings. For example, all humans, but not only humans, are capable of feeling pain; and while only humans are capable of solving complex mathematical problems, not all humans can do this. So it turns out that in the only sense in which we can truly say, as an assertion of fact, that all humans are equal, at least some members of other species are also 'equal' — equal, that is, to some humans.⁴

III. The Bluntness Charge Regarding Species Membership

Anderson's skepticism regarding the AMC in general — whether it be Becker's, Singer's, or Regan's version — does not stem from a commitment to the claim that animals are valuable in a strictly instrumental way. That is, she admits that they have 'intrinsic value' (p. 277). But her view that animals have intrinsic value does not lead her to defend an animal welfarist stance similar to Peter Singer's position (pp. 277–278). Nor does it lead her to defend the stronger animal rightist stance made famous by Tom Regan (p. 278). She rejects the animal welfare and animal rights positions of Singer and Regan, respectively, largely because she rejects the AMC, which, once again, she sees as the central argument behind these positions.

Anderson thinks that the appeal of the AMC lies in its striking simplicity, wherein principles of justice are immediately derived from the possession of valuable capacities, such as sentience, which supplies a sufficient condition for moral considerability. According to Anderson, the problem with the AMC is that it rejects the idea that species membership can be a morally relevant feature. Species membership, she argues, does not have to be seen as morally arbitrary in that the rich complexity of animal and human lives is often bound up with the social relations these beings have with fellow members of their own species. That is, principles of justice ought not to be derived solely on the basis of the intrinsic capacities of moral patients (pp. 279–280, 289).

However, even animal rightists acknowledge that the species that an animal belongs to can make a difference regarding its capacities: pigs obviously are capable of experiencing pain, but it is questionable if clams can do so in that, lacking a central nervous system, they only have a cluster of ganglia to enable them to respond to stimuli in a rudimentary way. We have seen that animal rightists influenced positively by the AMC nonetheless think that 'individuals must earn entitlements on their own merits', to use Anderson's language (p. 281). Presumably what she means here is that a defender of the AMC would not automatically see a particular pig as an inferior moral patient when compared to a particular human being if the individual pig in question were as sentient and rational (or more so) as the individual human being. Likewise regarding an individual clam and an individual pig, were (*per impossible*) a superior clam or a nonsentient pig to be found.

Anderson has a different view. She thinks that no fine-tuning of the AMC will make it sharp enough to deal, say, with the issue of development of language skills. Any human who can learn language has the right to be taught a language, whereas chimpanzees that can learn language have no such right. Why? Anderson's response seems to be that it is no disadvantage to a chimpanzee not to be taught language because the characteristic species life of chimpanzees does not require linguistic communication, whereas the characteristic species life of human beings *does* require linguistic communication. Chimpanzees do not *need* to learn a language to flourish; human beings do.

Is the AMC too blunt here? A defender of the AMC can readily admit that the interests of an individual depend on its capacities. Further, these capacities may very well be a combination of idiosyncratic and species dependent properties. The point to be emphasized is that the sharpness of the AMC starts to cut when *individuals* are not treated fairly. Hence James Rachels rightly refers to the AMC as a type of moral individualism.⁵ Despite what Anderson thinks about the matter, the AMC is perfectly

consistent with her attempt to ascertain the interests of individuals, including the species dependent component of such interests (p. 282).

For example, a pig has an interest in avoiding pain and in continuing to enjoy its life, but it does not have much of an interest, if any, in cleanliness. (Granted, when pigs roll in the mud they may be more interested in cooling off than in the 'pleasure' that comes from the mud itself.) A marginal human being has the same interests regarding pleasure and pain as the pig, but in addition it has a species dependent interest in cleanliness. Or better, in order to fit in the human community, it is in the marginal human being's interest that its hygiene needs be attended. The defender of the AMC would not object if it were claimed that a marginal human being has a right to cleanliness that a pig does not have, but the defender of the AMC *would* object if the marginal human being's right to cleanliness was played as a trump card against the pig's right not to have unnecessary pain inflicted on it.

To put the point metaphorically, one could imagine a knife (the AMC) that could carve both melons and pumpkins (the moral patient status of individual animals and marginal human beings, respectively); Anderson has correctly emphasized that pumpkins weigh more than melons (due to the species dependent properties of human beings in general); but this does not establish that pumpkins are worth more per pound than melons. That is, there is nothing blunt about the AMC.

Likewise a defender of the AMC could agree with Anderson that it is not a good idea to provide food and shelter to wild animals like bears, which get noticeably bored in zoos, for example. That is, we do not need to exaggerate the concept of species-dependent needs in order make Anderson's point: the good of *individual* bears is attenuated when they are not allowed to forage for food over a wide area. At times Anderson seems to agree with this assessment: 'I would argue that the deprivation of opportunities to exercise healthy species-typical behaviors, or even tempting them away from such exercise, is, other things being equal, bad for *the animal*' (p. 284 — emphasis added). The definite article here is worthy of notice.

Anderson moves too quickly from the automatic inclusion of human beings into the realm of moral considerability and moral rights, which is understandable enough, to the troublesome conclusion that only species membership or social relations that are peculiar to human beings could vindicate these rights (pp. 284–285). The point to the AMC is that even the marginal cases of humanity have intrinsic capacities that can vindicate these rights. These marginal cases of humanity can indeed have their rights enhanced or expanded on the basis of social membership in the human species, but such enhancement is not required for moral patient status or for moral rights.

Consider premise 5 in the extended version of the AMC summarized in section II above. R. G. Frey seems to defend the former (negative) alternative, wherein, in order to be consistent, we should treat marginal human beings the unfavorable way we now treat animals.⁶ Most of the other defenders of the AMC, including myself, argue for the latter (positive) alternative, wherein, in order to be consistent, animals should be treated the favorable way we now (finally!) treat the marginal cases of humanity, who are at least sentient and who have lives that can go well or ill *for them*, quite apart from how their lives affect conspecifics.

Singer, however, seems to defend a stance between these two. As he sees things, our attitudes toward *both* animals and the marginal cases of humanity should change, such that our treatment of animals should be more generous and our treatment of the

marginal cases of humanity should be less generous, especially regarding medical experimentation, where aggregative considerations seem to encourage us to sometimes experiment on both animals and marginal human beings.⁷

Some rapprochement with Anderson can be reached when she implies that, at least with respect to 'protection from wanton cruelty' (p. 289), the intrinsic capacity to be sentient is enough to deserve protection regardless of which species membership the sentient being in question has. This is precisely the point that the defender of the AMC would like to make! However, Anderson is more impressed with the way that additional protections that apply to domesticated animals, and not wild ones, depend on proximity to, and care from, human beings. These social conditions depend on historically contingent facts regarding the particular needs of modern city-dwellers as opposed to those of hunter-gatherers, etc. (p. 290).

That is, some human beings have historically *depended on* the killing and eating of animals, hence it was permissible for them to do so as long as they avoided cruelty in the way they raised and slaughtered animals. Anderson's position is becoming clearer: she defends animal rights, but she thinks that the AMC is a simplistic way of offering such a defense. She thinks that there is no single criterion of moral considerability in that, in addition to its intrinsic capacities, an animal's species nature and its social relations with moral agents have to be addressed. Different social contexts yield different animal rights.

We can conclude this section by noting three points. First, despite what Anderson thinks, the AMC is perfectly consistent with the attempt to ascertain the interests of individuals, *including* the species dependent component of such interests. Second, Anderson is correct to include automatically all human beings into the realm of moral considerability and to defend the latter alternative in premise 5 above (contra Frey and Singer). But she is incorrect in assuming automatically that such inclusion can only be due to species membership or social relations that are peculiar to human beings. As we have seen, the point to the AMC is that even the marginal cases of humanity have intrinsic capacities that can vindicate these rights. Third, Anderson is nonetheless insightful regarding why even marginal human beings have more rights than animals at comparable levels of sentience and rationality (due to the special social relations the marginal human beings have with conspecifics). But having *more* rights is not the same as having more *secure* rights, say the rights not to be forced to suffer or be killed unnecessarily or gratuitously. That is, the defender of the AMC can appeal to the age-old idea in moral theory that negative duties have a certain priority over positive ones; this in no way, however, is meant to eradicate or even trivialize the positive duties.

IV. The Insensitivity Charge

Frey's utilitarian view that we should, in order to be consistent, treat the marginal cases of humanity the way we now treat animals with comparable cognitive and affective abilities constitutes a throwing out of the baby with the nonhuman bath water (the metaphor is Evelyn Pluhar's). But what is objectionable in Frey is not the AMC, but the familiar utilitarian view that the interests of sentient individuals can be sacrificed for an aggregative good.

This criticism applies to the animal welfarist view of Singer as well. Whereas an animal rightist defender of the AMC may retain our present attitudes toward the marginal cases of humanity and try to change our attitudes toward animals, utilitarians like Frey and Singer do something quite different. They either retain our present attitudes toward animals and try to change our attitudes toward the marginal cases of humanity (Frey) or change our present attitudes toward *both* the marginal cases of humanity and animals (Singer). That is, Anderson and Diamond can rightly fear that Frey and Singer are obtuse (in the insensitivity sense of the term) toward the marginal cases of humanity.

To be precise, Singer's view is that mentally developed animals (e.g. chimpanzees) should be given the same consideration and treatment as marginal human beings at the same cognitive and affective levels, and mentally undeveloped animals (e.g. chickens) should be given the same consideration and treatment as (the most marginal of) marginal human beings at the same cognitive and affective levels. In fact, the implication of Singer's view is that the mentally undeveloped animals and comparable human beings are replaceable: they can be raised for the table (in the case of animals) or used, say, in lethal medical experiments that have aggregative benefits (in the cases of both mentally undeveloped animals and marginal human beings at the same cognitive and affective levels) as long as their lives are as pleasant as possible, they are killed humanely, and they are replaced with comparable beings.⁸

The point I wish to emphasize is that Anderson and Diamond would be correct to think that the views of Frey and Singer are obtuse (in the insensitivity sense of the term) regarding marginal human beings. But I also wish to emphasize that this obtuseness is not due to the AMC, but to the implications of Frey's and Singer's utilitarianism and to the latter's belief that utilitarian reasoning not only permits, but entails, a commitment to the replaceability argument.

Note that we all have a strong intuition (indeed an extremely strong intuition) that killing and eating marginal human beings is grossly immoral. Diamond correctly emphasizes this point (e.g. p. 95). In this regard Diamond is even more emphatic than Anderson, hence they ought not to be lumped together in every respect. That is, Diamond more than Anderson emphasizes the claim that our refusal to eat cognitively impaired human beings is not the result of our consideration of moral patient status, but is rather the result of our shared human (Wittgensteinian) practices, especially linguistic ones. Consider, however, Regan's different way of handling the intuition that killing and eating human beings is grossly immoral:

1. Humans, including those who are marginal, have rights and therefore belong in the class of right-holders.
2. However, given the most reasonable criterion of the possession of rights, one that enables us to include marginal humans in the class of right-holders, this same criterion will require us to include some (but not all) animals in this class.
3. Therefore, if we include these marginal humans in the class of right-holders, we must also include some animals in this class.⁹

This version of the AMC is obviously daring in the sense that it reaches the radical (for some) conclusion that animals with central nervous systems have rights, but it should also be noted that it is intellectually conservative in the sense that it works on the assumption that we all share (including Anderson and Diamond) that it is

unconscionable to kill and eat marginal human beings. This epistemological conservatism should impress Anderson and especially Diamond (in that the latter emphasizes that human beings are not to be eaten) more than it does.

The rights that we acknowledge in marginal cases of humanity cannot be accounted for on the basis of rationality, sophisticated language use, etc. If we say that marginal cases of humanity have these rights merely because we stipulate that we do (the apparent view of Anderson and Diamond), however, we account for neither the existence of, nor the strength of, our intuition that they can be violated. If sentience is a sufficient condition for having rights, as I think it is, then sentient animals have them as well. It is on this basis that we can explain both why we think that marginal human beings can be the victims of gross injustice (hence a defender of the AMC need not be insensitive to them) and why morally reflective people (including meat-eaters!) cringe when they imagine cows being cut down in the abattoir.

One of the reasons why Singer is open to Anderson's and Diamond's charge of obtuseness is that his replaceability argument is overly atomistic in a Humean sense. This is because as long as the moment of death is painless, Singer is willing to consider moral replaceability of animals and marginal human beings. On my view, however, influenced positively by Regan and Rachels, marginal human beings and animals are, albeit short of being Aristotelian substances, nonetheless the sorts of beings who to varying degrees have memories of the past and expectations or hopes or possibilities regarding the future. By avoiding this atomism one can avoid the charge of obtuseness in the insensitivity sense. As Regan has famously put the point, both marginal cases of humanity and animals have *lives of their own*, rather than lives that are valuable in a strictly instrumental sense. We have seen that even Anderson argues against the strictly instrumental status of marginal cases of humanity and animals.

Some might object at this point that Regan-like defenders of the AMC are more than willing to take seriously their pretheoretical intuition that it is impermissible to harm marginal cases of humanity, but not that it is permissible to experiment painfully on animals if data valuable for human beings cannot be obtained otherwise. There is no necessary inconsistency here, however, for whereas the former intuition is considered, the latter is largely unconsidered. That is, on reflection and after dialectical examination, we certainly do not want to give up the pretheoretical intuition that we all have that it is wrong to harm marginal cases of humanity, but once examined critically it is by no means clear that we can with equanimity hold onto our pretheoretical intuition regarding the permissibility of painful experimentation on animals. Surely some people can assent to this pretheoretical intuition, but only with a nervous twitch. The twitch is due to the fact that we all agree that the infliction of pain is morally relevant *if anything is morally relevant*.

One of the problems with the criticisms of the AMC offered by Anderson and Diamond is that they place too much importance on actually existing moral communities and their ability to legislate into existence moral boundaries; ideal moral communities as discovered by rational analysis (e.g. through consideration of the AMC) are ignored or denigrated. The danger here is that this view could lead to the reification of certain traditional prejudices. It is true that if I can save only my child or a stranger but not both in some *in extremis* situation like a burning building, then I should save my child. Nonetheless, this hierarchy of judgment or partiality of affection does not license tyranny such that I may kill the stranger so as to benefit my child. Likewise,

partiality of affection perhaps enables us to justify saving a conspecific rather than an animal in an *in extremis* or triage situation (although even here the issue is complicated if the animal has more sophisticated cognitive and affective traits than the conspecific), but it does not enable us to justify killing an animal so as to benefit a conspecific, much less to satisfy one's taste for meat.

Anderson and Diamond are to be thanked, however, for highlighting the fact that, once the minimal rights that the AMC affords to marginal cases of humanity and animals are acknowledged (e.g. the right not to receive gratuitous suffering or the right to life), it is still permissible to put in place additional protections regarding marginal cases of humanity. That is, as I see things in contrast to Anderson and Diamond, partial affections are legitimate in morality as long as they are ancillary to, rather than replacements for, impartial ascription of basic rights.

A defense of the AMC does not have to be based on the idea that there are independently existing facts out there that *dictate* our morality, as in some versions of natural law theory. Rather, our values and obligations can legitimately be *derived from* facts if the facts to which they refer are the relevant ones and if the values derived from these facts are defensible ones.¹⁰ Or again, a defender of the AMC need not commit to the naïve view that facts wear their relevance on their face and that values can be *immediately* (Anderson's word) derived from them. That is, the AMC is an *argument* that gives reasons for the defensibility of the claims that animals have basic rights due to their sentience and that species membership is irrelevant when considering moral patient status itself.

By way of contrast, critics of the AMC like Anderson and Diamond seem to move illegitimately from the claim that human decision-making is a necessary condition for there being rights to the claim that it constitutes a sufficient condition for there being rights. Another way to put the point is to say that Anderson's and Diamond's views are overly nominalistic when they hold that beings acquire status as moral patients (entirely?) because *we* say that they deserve such status. Human beings on this view have the Orpheus-like ability to bring moral patient status to life merely by saying that it should be so. The remedy to such an approach does not run to the other extreme, where it is assumed that moral patient status is a fact 'out there' waiting to be discovered. Rather, human beings are the measurers of nature, but not necessarily the measure; they are the primary beholders of value in nature, but not necessarily the only holders of such value, to use Holmes Rolston's language.¹¹

It should now be apparent that, despite my criticisms of Anderson's and Diamond's rejections of the AMC, I think that they are helpful in identifying the problems associated with Singer's and especially Frey's uses of the AMC. Once again, these problems are not due to the AMC itself, but to familiar difficulties with utilitarianism. Neither Anderson, Diamond, nor I share Singer's and especially Frey's view that certain human beings and animals can be used for the aggregative benefit of others. In the present context there is no need to repeat all of Regan's, Pluhar's, and Clark's quite legitimate arguments against the aggregative logic of utilitarianism.¹² To put the point cautiously, *if* there are problems with performing experiments on certain human beings without their consent for the good of other human beings, as Anderson and Diamond understandably assume, *then* Singer's and Frey's positions exhibit these problems. However, it is possible to defend the AMC without relying on a theory that devalues the worth of cognitively impaired human beings.

V. Conclusion

It is quite understandable why some people are sensitive to the possibility that others might exhibit insensitivity regarding marginal cases of humanity. This is because marginal cases of humanity have been treated deplorably in the past and because, for example, a United Nations statement declaring intellectually disabled beings to be morally equal to the rest of humanity did not occur until the 1970s, with other historically marginalized groups receiving attention years before. In that my wife and I have a thirty-year old adopted son who is developmentally delayed, I especially appreciate this sensitivity.¹³

But as philosophers we must be on the alert to continue the Aristotelian project of treating like cases alike and different cases differently in proportion to the differences. James Rachels is on the mark regarding the AMC (he calls it 'moral individualism') in the following quotation:

Aristotle knew that like cases should be treated alike, and different cases should be treated differently; so when he defended slavery he felt it necessary to explain why slaves are 'different'. Therefore, if the doctrine of [anthropocentrism] was to be maintained, it was necessary to identify the differences between humans and other animals that justified the difference in moral status. . . . Moral individualism is . . . nothing but the consistent application of the principle of equality to decisions about what should be done . . . about our relation to the other creatures that inhabit the earth.¹⁴

In short, Anderson and Diamond do not adequately enough tell us how animals are different in morally relevant ways from some members of our own species.

I would like to end on a conciliatory note. It seems to me that my own defense of the AMC and the criticisms of this argument made by Anderson and Diamond are both compatible with the method of reflective equilibrium made famous by Rawls regarding theory of justice, but which is of use in ethics generally. The idea is that we should first carefully examine all of the relevant intuitions that we have and the judgments that we make, asking which are the most basic or which are the considered judgments. Then we should investigate different theories that claim to organize these intuitions and judgments. Nothing is held to be fixed. The goal is to seek consistency and fit among both intuitions/judgments and theory when all are taken together as a whole.

It is crucial in this method that we be able to revise our considered judgments, and even our intuitions, if such revision is required by a powerful theory. It is also possible that we might revise, or even reject, a theory in the face of considered judgments or intuitions. Neither component is fixed in advance. It is my hope that some small, yet real, contribution to ethics can be made by the AMC. As a result of this theoretical argument, which has as its aim the familiar goal of logical consistency, closer attention should be paid to our common sympathetic intuition in the face of the suffering of both animals and the marginal cases of humanity. Both Anderson and Diamond should be seen by animal rightists as dialectical partners rather than as antagonists. That is, animal rightists can deliberate together with them, from the Latin *deliberare*: to weigh in mind, to ponder, to thoroughly consider.

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NOTES

- 1 See Elizabeth Anderson, 'Animal rights and the values of nonhuman life', in C. Sunstein and M. Nussbaum (eds.) *Animal Rights: Current Debates and New Directions* (Oxford: Oxford University Press, 2004). Also see Cora Diamond's essay in the same volume: 'Eating meat and eating people'. Numbers in parentheses in the text refer to page numbers in these two articles. It should be noted that Diamond's essay originally appeared in *Philosophy* 53 (1978). It should also be noted that, despite Anderson's understandable claim that the AMC is *the central argument* for animal rights, a claim shared by Dale Jamieson and others, some animal rightists oppose the AMC. See, e.g. Steve Sapontzis, *Morals, Reason, and Animals* (Philadelphia: Temple University Press, 1987). Finally, see Richard Arneson, 'What, if anything, renders all humans morally equal?', in D. Jamieson (ed.) *Singer and His Critics* (Oxford: Blackwell, 1999), pp. 103–128.
- 2 See Lawrence Becker, 'The priority of human interests', in H. Miller and W. Williams (eds.) *Ethics and Animals* (Clifton, NJ: Humana, 1983), pp. 226–227. Also see my *Babies and Beasts: The Argument from Marginal Cases* (Champaign: University of Illinois Press, 1997).
- 3 See Tom Regan, 'Fox's critique of animal liberation', *Ethics* 88 (1978): 126–133. Also see Regan's *The Case for Animal Rights* (Berkeley: University of California Press, 1983).
- 4 See Peter Singer, *Animal Liberation* (NY: New York Review, 1975), p. 265.
- 5 See James Rachels, *Created from Animals: The Moral Implications of Darwinism* (Oxford: Oxford University Press, 1990).
- 6 See R. G. Frey, *Rights, Killing, and Suffering* (Oxford: Blackwell, 1983), pp. 115–116. Also see L. P. Francis and Richard Norman, 'Some animals are more equal than others', *Philosophy* 53 (1978): especially 509–511.
- 7 See Peter Singer, 'Animals and the value of lLife', in Tom Regan (ed.) *Matters of Life and Death* (Philadelphia: Temple University Press, 1980), pp. 239–240.
- 8 See my 'The replaceability argument', *Process Studies* 30 (2001): 22–35.
- 9 Tom Regan, 'An examination and defense of one argument concerning animal rights', *Inquiry* 22 (1979): 196.
- 10 See Mary Midgley, 'The absence of a gap between facts and values', *Aristotelian Society: Supplementary Volume* 54 (1980).
- 11 See Holmes Rolston, *Environmental Ethics: Duties to and Values in the Natural World* (Philadelphia: Temple University Press, 1988), e.g. p. 32.
- 12 On Regan's work, see notes 3 and 9 above. Also see Evelyn Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Durham, NC: Duke University Press, 1995); and Stephen R. L. Clark, *The Moral Status of Animals* (Oxford: Clarendon, 1977), as well as Clark's *Animals and Their Moral Standing* (London: Routledge, 1997).
- 13 It does not escape notice that several scholars (e.g. Stephen R. L. Clark, Steve Sapontzis) have criticized the language regarding 'marginal cases'. These thinkers find this language offensive because they think it implies that certain cognitively impaired individuals are on the margins of humanity and hence do not require moral consideration from us. But this runs completely contrary to the spirit of the argument as I defend it. Because the language regarding marginal cases offends some scholars, however, I would be willing to change it were it not the lingua franca of much of the contemporary philosophical literature regarding animal rights. This has been the case since Jan Narveson coined the phrase 'argument from marginal cases' in 'Animal rights', *Canadian Journal of Philosophy* 7 (1977). Perhaps a better label would be 'argument from species overlap', but it is unlikely that, at this late date, this improved label would replace the one that is currently in use.
- 14 Rachels, op. cit., pp. 196–197.

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