MORAL AUTONOMY, SELF-DETERMINATION
AND ANIMAL RIGHTS

1. Introduction

Two perspectives dominate the general attempt to articulate the philosophical foundations of the animal liberation movement. On the one hand there is the utilitarian perspective typified by the work of Peter Singer. Here the morality of our treatment of nonhumans, and for that matter humans, is determined by an overarching concern to maximize a utility function. In Singer's case this utility function is in some way composite. Singer urges the maximization of objective preference satisfaction and the maximization of pleasure. The scope of these norms is not arbitrarily limited. In the case of the first, all creatures who have preferences or desires are covered. The second includes all those creatures with the capacity to experience pleasure. The maximization of the utility function does not take into account species membership except instrumentally. Moreover it is merely of instrumental concern that this or that individual is treated in this or that way. The treatment of individuals is determined solely by reference to the utility function.

On the other hand there is a Kantian perspective, perhaps best represented by Tom Regan. Within this tradition the attempt to work out a philosophical basis for animal liberation has been less programmatic. It has not involved the straightforward extension of an established tradition in ethics. It is typified by a concern to show that animals can be properly regarded as ends-in-themselves and that their lives have a kind of non-instrumental value. In its most radical form the Kantian perspective attributes equal value to human and nonhuman lives. Thus Regan asserts that "all who have inherent value have it equally, whether they be human animals or not."

To say that a life has inherent value is to say that it has value as an end-in-itself. And one way of representing the content of this claim is to say that there is a collection of core rights which attach to any life which has inherent value and which equally protect such lives from instrumental uses. Moreover the possession of these core rights by an individual should guarantee considerable moral protection: while not absolutely binding they should not be easily overridden. Some plausible candidates for these core rights are the right to life, the right to liberty, the right to flourish as a member of whatever kind one is, the right not to be used to
further the ends of others. Possession of these core rights will, on Regan’s view anyway, be guaranteed by the fact that an individual is a subject of a life, that an individual is in at least a minimal sense a psychological being.

It should be clear that the Kantian tradition more than the utilitarian tends towards the absolute proscription of certain ways of treating nonhumans. Thus it is the former rather than the latter which provides most resistance to the suggestion that nonhumans be used as subjects in experiments from which increasing amounts of good might plausibly flow. My intention is to defend the Kantian approach from two potential powerful attempts to undermine it. These attempts seek to demonstrate that there are properties possessed virtually exclusively by humans and which are necessary conditions for the coherent ascription of core rights. The two properties that I have in mind are the property of being self-determining and the property of being morally autonomous. These properties are especially interesting in this context because they are connected closely, on the Kantian view, to what is thought to be distinctively morally significant about human persons. What I intend to show is that there are many kinds of nonhumans to whom it is coherent to ascribe moral rights in exactly the way they are ascribed to humans.

The argument has two general and connected trends. First it is suggested that there is a suitably robust sense in which many kinds of nonhumans are autonomous and self-determining, which sense gives point to the ascription of rights to such nonhumans. Second it is suggested that understandings of autonomy and self-determination which exclude nonhumans are reflections of insufficiently examined human chauvinism which has no sound theoretical basis in moral theory. The argument is developed through a discussion of two recent arguments for the exclusionist view, one by Phillip Montague and one by H. J. McCloskey. McCloskey believes that a necessary condition for being a possessor of rights is that one be morally autonomous. This requirement excludes virtually all nonhumans, and many humans as well, from the scope of rights. Montague thinks that only beings which are self-determining can possess rights in a sense not reducible to some other moral category such as obligation and that only (some) humans are self-determining. Their views are usefully considered conjointly. Their criteria for rights ascription are related and the routes by which they seek to establish their conclusions are similar. Moreover Montague highlights an important issue that McCloskey leaves underdeveloped, namely the issue of what it is to exercise a right. Conversely, McCloskey discusses issues that Montague does not discuss but which seem closely connected with Montague’s position. And taken together the two views are appropriately thought of as representing the Kantian case against animal rights.
2. The Importance of Moral Rights for Nonhuman Animals

A useful beginning is to review the degree to which Montague and McCloskey do think that nonhumans are morally considerable. Both accept that the animal liberation position is not completely eroded even if their own views about rights are correct. McCloskey thinks that there are duties of which nonhumans are the direct objects, for example the duty to render them assistance when their interests are threatened. He also allows that an ideal utilitarianism might attribute intrinsic value to animal lives. This, like the right to life possessed by humans, provides a strong reason for not taking animal lives and for ensuring that they are preserved. There will be differences in the policies that the two approaches generate. The ideal utilitarian will hold that, given certain empirical assumptions about causes and their consequences, nonhuman animal lives are replaceable, whereas the violation of a right to life cannot be put right by the creation of another entity whose right to life is respected. One could also imagine an ideal utilitarianism in which intrinsic value is attributed to the natural activities of animals in their natural states. This would be functionally somewhat similar to the right to liberty possessed by humans. It would provide a reason for not interfering in the lives of nonhumans, for not capturing them, caging them or compelling them to serve human interests. However, unlike the right to liberty this attribution of value only indirectly affords protection to the individuals that fall within its scope. These individuals are afforded protection in virtue of instantiating certain natural kinds. They are not afforded protection in virtue of being individuals which, qua individuals, have inherent worth. And of course the hedonistic act-utilitarian principle, which is included among the principles in the ethical pluralism McCloskey apparently favours, requires consideration of nonhumans. Similarly Montague’s view provides some scope for the development of animal liberation objectives. He remarks that “Infanticide—as well as such things as cruelty to animals and non-therapeutic experimentation on the severely retarded—is immoral even if infants, animals, and the severely retarded have no exerciseable rights.”

Neither McCloskey’s view nor Montague’s view is totally human chauvinist. The former accepts that possibly some nonhumans (e.g., dolphins) can have rights and both are exclusionist with respect to large numbers of humans. Moreover both accord nonhuman animals quite a degree of moral considerability. Consequently it might be thought that apart from theoretical niceties nothing is to be gained for the animal liberation position by challenging the exclusiveness of moral rights. This is not so.

On both McCloskey’s and Montague’s views, and indeed generally, moral rights are powerful instruments for securing benefits for, and pro-
tecting the interests of, individuals which possess them. McCloskey observes that moral rights are "entitlements which confer moral liberties on their possessors to do, demand, enjoy, etc.: and they are entitlements which impose moral constraints on others to abstain from interference, to do, to assist, etc." The extra moral significance of rights is considerable. The belief that a human being has a specific moral right would likely serve as a tie-breaker in cases where human and nonhuman interests conflict and are, in other respects, evenly matched. It may play an even more powerful role. Where the choice is between depriving a nonhuman of its liberty and thereby causing it to suffer considerably and depriving a human person of his or her liberty and thereby causing him or her to suffer a little, the violation of the human's right to liberty might be thought a reason for favouring him or her even where all other morally relevant considerations strongly favour the nonhuman.

Even where philosophers have been willing to grant that nonhumans have moral rights there is sometimes a reluctance to concede that they have them in quite the same way, or to the same degree, that humans have them. For example, Mary Anne Warren remarks that "animal liberationists must recognise that although animals do have significant moral rights, these rights are not precisely the same as those of human beings; and may sometimes be overridden . . . in situations where it would not be morally acceptable to override human rights for similar reasons." The claim is not that there are some moral rights that human persons possess and which are not possessed by nonhumans; the claim is that the very same rights are somehow differently possessed by the two categories of beings. Warren's defence of her view has two components. First she says that this is what we are inclined to think. And of course this appeal to commonsense morality carries little weight unless some rational foundation can be found for it. This is what the second component, which emphasizes the rationality and moral autonomy of humans as against nonhumans, is supposed to provide. What seems to be at the bottom of Warren's modified exclusionist view are the notions of moral autonomy and self-determination more extensively developed by McCloskey and Montague.

Both the view that nonhumans cannot and do not have rights and the view that they have rights of a different order or to a different degree substantially erode the degree to which nonhumans are morally considerable. The Kantian approach to animal liberation requires the defeat of both views. It should be clear then that establishing that nonhumans can have rights in just the same way and to the same degree as humans involves more than theoretical niceties.
3. Non-Reducible Rights and the Argument from Self-Determination

Consider first Montague's arguments. He observes that "individuals attempting to establish the existence of certain obligations have increasingly tended to do so by arguing for the existence of rights which they take to underlie those obligations." He instances James Rachels's defence of the view that we have an obligation not to confine nonhumans in terms of their having a right to liberty. Montague suggests that the thought motivating Rachels's claim is "that obligations imply rights and that the rights implied are the grounds of the obligations which imply them." He goes on to argue that the appeal to rights in this case, and most others, does not ground or explain the claim that we have the obligations in question. We are invited to consider the obligation not to lie. This may be taken to imply that there is a right not to be lied to but "one cannot justify the judgement that A is obligated not to lie to B by stating that B has a right not to be lied to, because the two claims are logically equivalent." In this, and many other cases, talk of rights and obligations simply reflects two different points of view from which the same issue is morally evaluated. Both points of view reflect the claim that lies ought not to be told:

... much talk about rights is really talk about obligations, and in many cases it would be better to frame these discussions in terms of references to obligations rather than references to rights. I see no advantage whatsoever, for example, in speaking of the right not to be killed rather than the obligation not to kill; and appealing to the former rather than the latter to argue against abortion, or the wanton destruction of animals, for example has a significant disadvantage in the way it raises questions about the sorts of individuals that are capable of possessing rights.

Certainly talk in terms of rights is a way of translating moral issues into a discourse in common use. Presumably it is for this reason that Peter Singer, for instance, has talked in terms of animal rights despite being an act-utilitarian. Singer could respond to Montague's challenge by simply dropping talk of rights altogether. Any normative slack that this creates is immediately taken up by his real normative theory. Dropping the claim that animals have rights does not leave him with an embarrassing cluster of free-floating obligations since they are explicable in terms of his composite utility principle.

What of animal liberationists who are not utilitarians, such as Regan and Rachels? Both condemn certain morally rotten ways of treating nonhuman animals and conclude that we have quite specific obligations concerning them. This requires that some general account be given of the basis of these obligations. Regan says that the obligations flow from rights.
This move couches the issue within a familiar rhetoric and it indicates how obligations to nonhumans might be integrated into conventional normative moral theory. Thus Regan, arguing from what he hopes is the firm premise that it is wrong to inflict gratuitous suffering on human morons, says:

... I have not shown that human morons do have any rights. To do this I would have to show that what I believe is true, actually is true—namely that (1) it is only if they have rights that we can give a sufficiently firm theoretical basis for the conviction in question, (2) that this conviction is true, and (3) that the adequacy of theories depends on their ability to illuminate and account for such convictions.13

The question to ask is whether Regan's commitment to (1) plays the necessarily significant role that he thinks it does. Acting on Montague's suggestion, Regan could ground his judgements in obligations. Obligations feature in conventional morality and their point is readily enough understood. Moreover the obligations that Regan says we have in the case of animals would not be free-floating or theoretically unintegrated even if they did not have their real basis in rights. Regan gives an excellent account of why we have an obligation not to cause gratuitous suffering to animals. He links the situation to one in which human morons are caused to gratuitously suffer and shows that our reactions to the two cases can be seen to have a shared basis in our moral psychology.

It is worth considering at this point a reply that Rachels gives to an argument of Donald Van De Veer's:

Van De Veer objects that in order for my argument to be successful it must be proved that "creatures with interests thereby have correlative rights." But I don't think so. All that is needed is to show that, for each plausible account of why humans have a right to liberty, a similar account may be provided in the case of other animals.14

The point of Rachels's strategy is to show that the moral reasons we have for not treating humans in particular ways can be paralleled in the case of nonhumans. This involves showing that there is no property possessed by humans and not possessed by nonhumans which unambiguously forms the basis for exclusionist practices of some kind. This procedure can be followed without bringing in rights at all. We first of all list features common to the two situations. We then suggest that these features provide the foundation for the moral judgement in the case of humans and then we urge that there are no reasons for thinking that these same features, or appropriate variants of them, do not play a similar function in supporting a moral evaluation in the case of nonhumans. A moral theory couched in terms of obligations, where the basis for these can be set down in the man-
ner just alluded to, seems in no way theoretically inferior to one couched in terms of rights. What is important is the sorts of actions that are prescribed or proscribed. And of course the features of the obligation theory which generates the relevant evaluations will in many cases be functionally equivalent to features of a theory of rights.

Given this, Regan's remark that "we are driven to invoke the idea of rights for serious-minded, theoretical, non-rhetorical reasons... in the case of arguing well for the obligation to be vegetarian"15 is not compelling, at least in one sense. The issue of whether nonhumans can have rights becomes important in those cases where attempts are made to support exclusionist practices by arguing that the functional equivalences suggested by Rachels do not obtain. The question of rights typically becomes significant here for two reasons. First, the alleged differential distribution of alleged morally relevant properties is typically articulated via the rhetoric of rights. Second, the range of permissible actions affecting an entity possessing the allegedly rights-supporting properties is typically restricted. (The most extreme cases of this are moral theories which treat rights as side-constraints on the pursuit of the good.) In effect, Montague's reason for saying that there are tactical reasons for eschewing rights-talk in the case of nonhumans is two-edged. The suggestion does provide a means for securing some animal liberation objectives, for example the abolition of LD50, Draize and feedlot farming. However, it does not secure the full-range of animal liberation objectives, including a prohibition on the subjugation of nonhuman interests to human interests, unless two conditions are satisfied: (i) Rights-talk is not retained within the human domain, (ii) No species-differentiated theory of morally relevant properties is retained. The two conditions are related: securing (ii) requires that (i) be secured. Montague's remarks about the merits of avoiding attributing rights to nonhumans is not premised on the satisfaction of these two conditions. Indeed he seeks to mark out a domain of moral considerability which is the exclusive preserve of (some) humans.

Montague thinks that "the distinction between rights which are the grounds of obligations arid those which are not corresponds to the distinction between exerciseable rights and non-exerciseable rights."16 This distinction is supposed to mirror D. D. Raphael's distinction between rights of action and rights of recipience. The latter are rights to be treated in certain ways, for example kindly rather than cruelly, or rights to receive something. The former are rights to act, to do, to pursue a project, to be self-determining. Montague says:

Exerciseable rights are related to liberties in that both are concerned with freedom of action, but having a right to act implies that freedom of action in some area is so important that others are obliged not to interfere with its exer-
cise in that area. In this way exerciseable rights are the grounds of obligations and obligations not to interfere with freedom of action in areas specified by the rights . . . non-exerciseable rights are not distinct from the obligations to which they correspond, and hence cannot serve as the grounds of those obligations.¹⁷

The upshot of this view, if it is correct, is that only entities capable of exercising rights can possess non-reducible rights. This leaves the animal liberationist with two options. First he or she might argue that nonhuman animals are capable of exercising rights. Second he or she might argue that the allegedly non-reducible rights are in fact reducible. I shall do both.

What is it then to exercise a right? Montague does not say a great deal about this. He does say that he is "inclined to view the exercise of a right as an action in some fairly full-blooded sense."
¹⁸ Thus where the right to life is construed as the right not to be killed it is reducible. Where it is construed as a "collection of exerciseable rights concerned with matters of life and death . . . (including) . . . the right to defend oneself against aggressors and the right to obtain and use objects necessary to keep oneself alive"¹⁹ it is non-reducible. It would seem that in Montague's view whether or not a right is non-reducible is determined by the content of that right. Moreover the content of such rights will exclude certain kinds of entities from the scope of the rights in question. The right to express one's political beliefs is arguably a right that humans possess and which fish do not possess. However this concession still leaves open the possibility that nonhumans possess certain exerciseable rights, for example the right to self-defence. Moreover the exerciseable, and hence non-reducible, rights that nonhumans possess might overlap in areas of special significance with the rights possessed by humans and to an extent that guarantees nonhumans an inviolability such as that sought by Regan. There may be a set of core rights which human and nonhumans possess in common. Even if human persons have more and different rights than do nonhumans it does not follow that it is permissible that the interests of the latter be overridden when they conflict with the interests, even significant interests, of the former. If there is a conflict between meeting a human's right to X and to Y and meeting a nonhuman's right to X, then perhaps the additional right that is at stake in the human's case will swing the decision in the human's favour. However, even this does not automatically follow. Certainly in cases where the right to Y is not a core right and the right to X is, the decision does not obviously go the human's way.

I have said that the content of a right determines whether or not a right is exerciseable. The question then is whether nonhumans are the proper subjects of rights which are exerciseable. Now Montague claims that to exercise
a right is to act in some full-blooded sense and, further, that acting in some full-blooded sense requires that the action is intentional under some description. Montague thinks that this requires that the putative right holder must possess language. Two ways of undermining Montague’s exclusionist position clearly suggest themselves. First, one could attempt to show that exercising a right, in some suitably robust sense, does not require acting intentionally. Second, one could attempt to show that nonhumans, despite not possessing language, can act intentionally. I shall pursue the first option since, being neutral between competing views in philosophy of mind and language, it promises the most security for the animal liberationist position.

Consider Montague’s right to life understood as an exerciseable right involving the right to defend oneself against aggressors and the right to obtain what is necessary to stay alive. And for the sake of simplicity let us ignore the problem of conflicting rights and, in particular, conflicting rights to life. Presumably the idea is that the right marks out a range of activities that its possessors are at liberty to do or are entitled to do. Moreover the idea seems to be that the entitlements flow from the fact that the possessors of the right have a capacity for acting and for doing within the circumstances marked out by the right. Acting or doing within these circumstances is to exercise the right to life. One exercises the right to defend oneself against aggressors when one fights off an aggressor or creates barriers that thwart aggression. Now it seems quite obvious that nonhumans behave in these kinds of ways. They act so as to protect themselves and they act so as to obtain what they require in order to stay alive; they gather food, they mark out territory, they build shelter.

Perhaps it might be argued that only creatures capable of representing their actions to themselves as the exercising of their rights can possess exerciseable rights. The cost of such an argument is high. By intellectualising the exercising of rights to this degree one risks excluding huge numbers of humans from the scope of non-reducible rights talk. If the criteria for possessing rights are loosened to include most humans it is highly likely that many nonhumans will be included as a consequence. Perhaps there are exclusionists who are willing enough to restrict the possession of non-reducible rights to entities who are at least minimally acquainted with political philosophy. Such a move may indeed make their position consistent but it does threaten significant deeply held convictions that we could reasonably expect to be preserved by an adequate normative theory. Worse, the differentiating property on which the exclusionist view is made to depend is insufficiently robust to support the view. This can be seen if we reflect for a moment on one common way in which humans exercise the
right to life. They do not typically think of themselves as exercising the right in question. Rather they act, often unreflectively and instinctively, within the area of permissible action marked out by the right.

The advocate of animal rights is able to accept the idea, shared by both Montague and McCloskey, that non-reducible rights are conceptually bound up with the idea of freedoms or entitlements to act in various ways. The concept of a right gets its purchase where there is an entity with an active element, where such an element can be understood in terms of goals, desires, wants, inclinations, instincts, attitudes, preferences and the like. Certainly the concept is at home in situations where there are full-blooded actions but it would be perverse to deny that it is also at home in cases where action is not so cognitively mediated. In such cases it makes clear sense to draw the distinction between “freedom from” and “freedom to” which distinction is supposed to underpin Montague’s distinction between reducible and non-reducible rights. Take the example of a migratory bird. Capturing the bird may cause it to suffer by preventing it from realising a natural propensity. But here the suffering is caused because it is prevented from positively doing something and not just through having something done to it. The range of actions open to it is restricted and an action which it would positively do if unrestrained is among those ruled out. To say that the bird is not having a freedom to do restricted is false and perverse.

I earlier said that questions might be asked about the soundness of Montague’s claim that there are some non-reducible rights, viz., those underpinned by freedoms to. Why should these be viewed as not susceptible to reduction in the manner of other rights? Imagine that Montague has the alleged non-reducible right to life. One way of recasting this is to say that it is permissible for Montague to defend himself from aggression. One might go on to say that the permissibility of the action derives from the impermissibility of actions by others which constitute invasions of some domain defined in terms of certain of Montague’s interests. One might then go on to say that others are obliged not to act in certain ways which affect Montague. The suggestion is that alleged non-reducible rights can be viewed as obligations on the part of others not to act in certain ways, as obligations not to interfere, to let alone, to let be or the like. In this way alleged irreducible rights can be reduced to obligations. At least talk in terms of obligations on the one hand and rights on the other are different ways of making the same moral point.

Montague has not shown that nonhumans cannot possess non-reducible rights and he has not established the superior moral significance of humans to nonhumans. The argument from self-determination fails.
4. The Argument from Moral Autonomy

McCloskey agrees with Montague that "the notion of exercising, acting on the basis of our rights, is central to rights" and believes that if a being is to possess rights there must be some coherent sense in which its rights can be claimed, exercised, waived and forgone "by or on behalf of the possessor of rights." He goes on to suggest that when this requirement is properly understood and amplified it is clear that only morally autonomous, self-determining agents can possess rights. Thus nonhumans cannot possess rights not because they cannot make claims, since these can be made through proxies, but because, lacking moral autonomy, they are not the kinds of creatures on whose behalf proxies can in any coherent sense act with respect to rights. If this argument can be successfully developed and defended it provides a powerful device for excluding nonhumans from the scope of rights.

Let us accept as a minimal requirement that an entity can only possess rights if it possesses a will. I mean this to be understood generously. What is required is that there be desires, preferences, inclinations, wants, attitudes or the like. Nonhumans meet these conditions and if McCloskey's attempt to narrow them is unsuccessful then we may presume that nonhumans can possess rights.

Consider first McCloskey's rejection of sentience as a sufficient condition for the possession of rights. The argument turns on the observation that "it is commonly denied that God is capable of experiencing pain (and pleasure), yet this seems irrelevant to whether or not He has the capacity to possess rights." This does not straightforwardly show that sentience does not suffice to undergird the attribution of rights. To think that it does, as McCloskey seems to, is to confuse necessary with sufficient conditions. The case of God shows that sentience is not a necessary condition but it does not show that it is not sufficient. The argument must be more subtle. Perhaps the idea is that if we think about the God case we will see that what is fundamental to the attribution of rights is exemplified in that case. In other words the case is offered as a paradigm case of rights possession which reveals what essentially undergirds the attribution of rights.

Consider this suggestion in the context of another putative sufficient condition for rights ascription which McCloskey rejects, namely the capacity for desire. He says at one point: "it is desire as an intellectual activity that is relevant, not some sort of animal desire or appetite. A purely intellectual being such as God . . . is capable of desiring in the intellectual sense; it is incapable of desiring in the intellectual sense; it is incapable of appetitive desires." The implication of these remarks is that appetitive desire is not sufficient for possession of rights.
How is this implication made good? The example does not straightforwardly establish that appetitive desire is not sufficient for possession of rights. It establishes only that it is not necessary. Again what must be being offered is the kind of paradigm case argument suggested earlier. However it is not remotely obvious that the example serves its desired purpose. Granted, it involves a paradigm possessor of rights, but it does not establish that it is desire as an intellectual activity that is essentially relevant. In fact it is plausible to think of it as suggesting a way of extending the scope of rights from that which it has in the context of cumulative speciesist practices. First we note that in the paradigm case possession of rights is associated with a capacity for intellectual desire and then we suggest that it is desire in a general sense, unrestricted by socially and intellectually embedded practices, that undergirds the attribution of rights. We might suggest that the sufficient condition for possession of rights is disjunctive, that in order to possess rights a being must possess either the capacity for intellectual desire or the capacity for appetitive desire. Moreover the two disjuncts are not bound together in an arbitrary way; they both involve kinds of desire. The disjuncts are connected through the idea of a being with a will. It is reasonable to claim then that nonhumans which lack the capacity for intellectual desire nevertheless can possess moral rights. They can possess them if they have the capacity for desire.

Perhaps McCloskey’s argument might be strengthened if we turn to a consideration of moral autonomy. The argument is pursued via the suggestion that the concepts of rights and interests are completely distinct. Presumably McCloskey thinks that it is the attribution of interests to nonhumans that smoothes the way for attributing rights to them. He observes that “a possessor of rights may wish to exercise his rights contrary to his interests.”24 Specifically, a possessor of rights may exercise his or her rights contrary to his or her interests for moral reasons. Thus I might have a right to pursue my own projects instead, say, of helping someone else in theirs. However, I might think that the other person’s project is more morally significant than mine and so decide not to do what I have a right to do. McCloskey apparently thinks that such considerations show that moral self-determination or autonomy is necessary for possession of rights. Clearly he thinks that nonhumans, apart from some cetaceans, are not morally self-determining. I accept this last point but dispute the necessity claim.

It is the possibility of giving up one’s rights contrary to one’s interests for moral reasons that is supposed to undermine the very possibility of representing nonhumans with respect to rights. Despite certain practical difficulties the interests of nonhumans can be represented but:
With rights, what has to be determined and represented is something much more difficult to determine. It is how the possessor of rights who cannot express his wishes—who may not even be conscious or have wishes—would wish to exercise his rights, indeed, whether or not he would wish to claim his rights. This involves reading his mind, his moral mind, not simply determining what is for his good.24

There are several lines of reply to this. First, it needs to be pointed out that nonhuman behaviour can be expressive of the wish, will, desire not to take advantage of certain freedoms or opportunities. A nonhuman that defends its young to the point of severe injury or death when it could easily escape is expressing a desire, will or inclination to act contrary to its interests. Of course it will be replied that the nonhuman’s choice is a manifestation of an instinct rather than the expression of its will. There are two weaknesses in this reply. It seeks to co-opt the idea of a will to the process of rationally willing; it construes the idea of a will in an overly intellectualised way. It also downplays the role that instinctive responses play in the moral psychology of human persons.25

Second, it is not clear why attributing moral rights to nonhumans requires that we be able to determine when they might waive those rights or choose not to act within the entitlements the rights provide. Grant McCloskey’s point that rights are essentially the kinds of things that can be waived. It does not follow from this that whenever an entity possesses some right that right can be waived. This only follows from the much stronger, and anything but obvious, premise that rights are essentially the kinds of things that can be waived in all instances. Certainly it would be a mistake to require that wherever rights are properly attributed the same things be true of them. What McCloskey must establish is that the possibility of waiving rights is a necessary feature of every attribution of them. The argument given for this is slender to say the least. He notes that in the paradigm instances of possession of rights the beings concerned are capable of refraining from what they are, by right, entitled to do. It follows from this that rights can be waived but it does not follow that they always can be. It is also pertinent to note that paradigm instances of rights possession are likely to contain considerable human chauvinist assumptions.

There is a third line of reply to McCloskey. Consider the morally despicable case of a laboratory animal imprisoned with the latest shampoo dripping into its eyes. It is too easy to imagine how things are for the animal in this situation and it is easy to understand what the animal would prefer. In every sense that is important it does seem possible to read its will. And given that the misery to which it is condemned is so gross and that the reasons for it are so trivial and mercenary, it makes little sense to suppose
that it would, if it could, waive its right to liberty or its right not to be made to suffer. It is difficult to imagine a rational human person waiving his or her right in such circumstances. The offer to do so would constitute evidence of irrationality or utterly perverse altruism or absurd supererogation. It is plausible to presume that a nonhuman would not, even if it could, waive its right to X in those cases where it would be irrational, perverse or absurd for a human to waive his or her right to X. Just as we think it irrational, perverse or absurd for a human to offer himself or herself up for the gastronomic delectation of his or her conspecifics we should presume that nonhumans would not, even if they could, waive their rights to continued life in those circumstances in which nonhumans are typically devoured by humans.

McCloskey attempts to connect the capacity to exercise moral rights with the capacity for moral evaluation. He says, somewhat opaquely, that “in accepting and exercising their rights [possessors of rights] must call upon their moral entitlements.”

However, it is less than obvious that exercising one’s rights, understood as acting within one’s entitlements, necessitates calling on moral capacities. The evaluations that determine whether or not an individual has the right to act in some way or other can be made by another individual. To exercise a right I do not have to know, or even believe, that I am exercising a right. I might never have thought about rights let alone have beliefs about them. Presumably this does not mean that I cannot have them. One can imagine an intelligent, rational being devoid of all moral sense to whom it is nevertheless coherent to attribute rights. Such a person may desire to perform many harmless actions and it does not stretch our moral notions too far to suggest that with respect to these the agent has a right to liberty.

5. Conclusion

Enough has been said to defeat the exclusionist claims of Montague and McCloskey and to provide the conceptual space for the Kantian defence of animal liberation. The discussion has also indicated that nonhumans are autonomous in a substantial sense provided that the notion of autonomy is not, as it should not be, overly intellectualised.

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NOTES

10. Ibid., p. 375.
17. Ibid., p. 379.
18. Ibid., p. 382.
19. Ibid., p. 382.
21. Ibid., p. 29.
22. Ibid., p. 31.
23. Ibid., p. 35.
24. Ibid., p. 39.