WHY ANIMALS HAVE NO RIGHT TO LIFE: A RESPONSE TO REGAN

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If animals are to have the kinds of moral rights currently reserved to humans, it must be that animals as well as humans possess the properties which underlie those rights. In The Case for Animal Rights, Tom Regan argues that animals do possess the relevant properties. His argument depends upon the claim that all those who have inherent value have it equally. I shall argue that Regan has not established this claim and that, furthermore, there is good reason for supposing that the claim is false. As a result, Regan’s argument fails in ways which indicate that animals do not possess a right to life.¹

If humans have a right to life and animals do not, there must be some relevant difference between humans and animals. Contra Regan, I believe this difference is to be found in rationality. Regan explicitly rejects rationality as the basis for the right to life. He argues that the right to life is based upon inherent value and that animals not only have inherent value, they have it to the same extent as do humans.²

Regan’s argument that animals have inherent value is as follows:

... Some of our duties regarding animals are duties we owe directly to them. Moreover, as we argued above, some of the harms done to these (animal) moral patients are harms of the same kind as harms done to moral agents. We cannot consistently hold, therefore, that moral agents and patients can never be harmed in relevantly similar ways. They can. Thus, if we view all moral agents as having equal inherent value, if we rely on this account of the value of these individuals to avoid the counterintuitive implications of act utilitarianism, denying that the harm done to some moral agents can be justified merely on the grounds that harming them brings about optimal consequences for all concerned, if some of these harms done to moral agents are harms of the same kind as harms done to moral patients, and if the duties not to harm either moral agents or moral patients in these ways are prima facie duties owed

¹ Regan, Tom, The Case for Animal Rights, University of California Press, 1983. All parenthetical references refer to this volume. For purposes of simplicity I shall discuss only the right to life, even though a number of other rights are also reserved to humans.

² Regan develops his argument in terms of moral agents and moral patients. For our purposes we can view normal adult humans as moral agents and animals as moral patients. Moral agents have the capacity to act on moral principles, moral patients lack this capacity. See pp. 151-153 for Regan’s development of this distinction.
directly to each, then it would be arbitrary to regard moral patients as lacking inherent value or to suppose that they have the status of mere receptacles. If, in short, we postulate inherent value in the case of moral agents, then we cannot nonarbitrarily deny it of moral patients. (pp. 239-240)

The crux of this argument is the claim that if some of the harms done to moral patients are the same kind of harms (direct harms) as done to moral agents, then if moral agents have inherent value, so must moral patients. This argument will hold only if there is a connection between direct harms and the possession of inherent value such that direct harms can be done only to creatures which possess inherent value. But there is no such connection.

Inherent value is defined as having 'value in their own right, a value that is distinct from, not reducible to, and incommensurate with the values of those experiences which, as receptacles, they have or undergo'. (p. 236) The definition of direct duties is completely independent of the definition of inherent value. Direct duties are contrasted with indirect duties. The concept of direct and indirect duties relate to the different answers which can be given to questions of why we ought not mistreat animals. An indirect answer is one that claims 'we have no duties directly to animals; rather animals are a sort of medium through which we may either succeed or fail to discharge those direct duties we owe to nonanimals, either ourselves, other human beings, or, as on some views, God'. (p. 150) '... (D)irect duty views hold that we have duties directly to animals'. (p. 151) Given the definitions of direct duties and inherent value, there is no reason to suppose that direct duties owed to a creature entail that the creature has inherent value, as the following will show.

The assertion that we ought not to cause animals pain can be based on the principle that we ought not to cause anything pain. Thus even if we grant that we do have a duty not to cause pain, and even if we grant that we have a direct duty to animals not to cause them pain, we need not agree that animals have inherent value. We can take the position that, pain being what it is, we ought not to cause pain even to creatures that have no inherent value. Regan has given no argument that rules out this possibility. Thus Regan's argument does not show that animals or moral patients have inherent value.

Nevertheless, I believe that animals do have inherent value. I shall not defend this belief here. Indeed, since I suspect that the perception of inherent value is a fundamental moral insight, I am not sure that it can be defended. However, I do not believe that animals and normal human beings have equivalent inherent value. Since the claim that entities can have unequal inherent value is a fundamental moral insight, I am not sure that it can be defended.

3 I have deliberately used the word 'insight' rather than 'intuition' since the latter term is ambiguous, vague, and more importantly, is an anathema to many philosophers. What I mean to capture by 'insight' is the fact that all ethical systems, indeed, all rational systems, have foundations which cannot be established within the system. Regan recognizes this when he postulates inherent value. The importance I attach to moral insights will become more clear later in the paper.
degrees of inherent value directly confronts one of Regan's central theses, it is necessary to examine his argument that inherent value cannot be a matter of degree. Regan argues as follows:

Two options present themselves concerning the possession by moral agents of inherent value. First, moral agents might be viewed as having this value to varying degrees, so that some may have more of it than others. Second, moral agents might be viewed as having this value equally. The latter view is rationally preferable. If moral agents are viewed as having inherent value to varying degrees, then there would have to be some basis for determining how much inherent value any given moral agent has. (p. 236) . . . To accept this view of the inherent value of moral agents is to pave the way for a perfectionist theory of justice. (p. 237) Perfectionist theories of justice are morally pernicious, providing, as they do, the foundation of the most objectionable forms of social, political, and legal discrimination — chattel slavery, rigid caste systems, and gross disparities in the quality of life available to citizens in the same state, for example. But perfectionist theories are objectionable at a deeper level. Whether individuals have the talent necessary to acquire the favored virtues . . . is beyond their control. What natural talents individuals have . . . is the result of 'the natural lottery.' . . . No theory of justice can be adequate that builds justice on so fortuitous a foundation . . . (p. 234)

While one cannot help but sympathise with Regan's point, and while one must agree with the danger inherent in perfectionist theories, Regan's argument is nevertheless fallacious.

Regan's argument against degrees of inherent value depends upon two key claims:

1. All those who possess inherent value possess it equally, and
2. Since degrees of intelligence are a result of a natural lottery, and hence undeserved, it would be unjust to base justice upon such unearned traits.

Regan believes that all who possess inherent value must possess it equally because accepting degrees of inherent value leads to perfectionist theories which serve as a foundation for rampant discrimination. But is this correct? Moral agents differ from moral patients in that moral agents can, but moral patients cannot, think abstractly to the extent that they can 'bring impartial principles to bear . . .'. Since this is a defining condition of being a moral agent, all moral agents can do this. All moral agents possess the ability to engage in a higher level of abstract thought than can any moral patients. Thus, if, contra Regan, rationality is a source of inherent value, all moral agents would have equal inherent value because, by definition, all moral agents possess the relevant virtue of rationality at or above a threshold level. Since all moral patients lack the relevant degree of rationality, all moral patients would have less inherent value than do any moral agents. Furthermore, since all moral agents have equal inherent value, the threshold
theory would not lead to the unjust treatment of moral agents.4

Regan’s natural lottery argument is equally fallacious. Regan himself divides moral patients into two groups: ‘(a) those individuals who are conscious and sentient but who lack other mental abilities, and (b) those individuals who are conscious, sentient, and possess the other cognitive and volitional abilities (such as belief and memory).’ (p. 153) It is conceptually possible that this division morally justifies some differences in treatment, but even if it does not, surely Regan would agree that it is morally permissible to treat, say, stones in ways in which it is not permissible to treat, say, dogs. But are not the differences between these various classes merely a result of the natural lottery? Certainly they are. But these natural differences are precisely the types of differences which morally justify different treatment.

Of course there may be disagreement about the moral significance of particular natural characteristics such as biological life, sentience, rationality, natural talents, etc., but unless every natural thing is to have the same inherent value as every other natural thing, some differences in inherent value will be a result of the ‘natural lottery’.5 Thus, though I believe that Regan is correct in denying that differences in natural talents between moral agents generate differences in degree of inherent value, this is not because natural talents are a result of the ‘natural lottery’. In my view, all moral agents possess equal inherent value because, as a result of the natural lottery, all moral agents possess the sufficient conditions of such value. This, of course, remains to be shown, but the possibility alone is sufficient to show that Regan’s objection to the natural lottery is not decisive with regard to the possibility of degrees of inherent value.

Nevertheless, the fact that Regan’s argument is fallacious does not show that inherent value is a matter of degree. For that one needs to present positive arguments. Let us begin with a more precise examination of the difference between moral agents and moral patients. According to Regan, moral patients are individuals who meet the subject-of-a-life criterion.

(1) Individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else’s interests. (p. 243)

It is clear that, in Regan’s view, the cited psychological characteristics are the basis of the inherent value of moral patients. I agree with Regan

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4 For a promising attempt to work with the concept of thresholds see Van De Veer, Donald, ‘Interspecific Justice’, Inquiry 22, 1979, pp. 55-79.

5 I view this as a reductio ad absurdum, but perhaps some persons within the environmental rights movement believe that all natural things do have equal inherent value. If there be such, I cannot deal with them here.
on this point. But since Regan has not shown that inherent value cannot admit of degrees, it is entirely possible that whatever additional characteristics are possessed by moral agents may yield a higher degree of inherent value than that possessed by moral patients. According to Regan, these additional characteristics are as follows:

Moral agents are individuals who have a variety of sophisticated abilities, including in particular the ability to bring impartial moral principles to bear on the determination of what, all considered, morally ought to be done and, having made this determination, to freely choose or fail to choose to act as morality, as they conceived it, requires. (p. 151)

Moral agents can act from impartial moral principles because they are capable of quite sophisticated abstract thought. Abstract thinking creates the possibility of moral thinking, but it does more than that. It also creates the possibility of new types of moral harm. This is similar to the situation of moral patients. Moral patients possess those characteristics which make them subjects-of-a-life. It is these characteristics which make it possible to do them moral harm. That is to say, one level of morality, or one set of moral concerns is made possible by the existence of the characteristics possessed by moral patients. Similarly, those characteristics unique to moral agents may constitute the grounds for the generation of new, additional moral concerns, among which might be the right to life.

The claim that such characteristics as sentience, preferences, and rationality are factors which generate moral concerns is central to my argument. Thus, I want to explore it a little further. I will start by considering what I will assume to be a necessary condition of being a moral patient: the property of being sentient. 6

The exact moral significance of sentience is a matter of controversy, but what is beyond question is that one's own pain — first person pain — is a reason for what one does. That is, the fact that an action will cause one pain is a reason, though a defeasible one, not to engage in that action. The question of why one's own pain constitutes a reason for action may seem obtuse, but sometimes it is useful to state the obvious. Pain is a reason for action because of how it feels. Anyone or any creature experiencing pain normally prefers to get rid of the pain. Furthermore, no conceptual apparatus is required in order to experience the kind of pain arising from mere sentience. Perhaps even the most simple of sentient creatures can experience such pain. Thus the experience of such pain may be an experience we share with all other sentient animals. It is certainly one we share with many. Insofar as we do share such pains with other sentient creatures, we have no more intrinsic reason to avoid such pains than do they. Here indeed, all animals may be equal.

But what about second person pain? How can it be that a second person's

6 The claim that sentience is a necessary condition is controversial. For one counter view see Goodpaster, Kenneth E., 'On Being Morally Considerable', *The Journal of Philosophy* LXXV, No. 6, June 1978, pp. 308-325.
pain can be a reason for a first person's action? One way that this can happen is through the emotion of sympathy. In this sense, sympathy involves feeling badly because another creature is in pain. It is the first person discomfort involved in the feeling of sympathy that motivates action. Hence, sympathy as a first person motive is merely a subtle variation of pain as a first person motive: it is our own emotion which motivates our behaviour.

The human animal seems to share the ability to feel sympathy with at least some other animals. But humans have three additional capacities relevant to sympathy that are quite significant: 1. Humans can feel sympathy imaginatively. 2. Humans can 'feel' sympathy abstractly. 3. Humans can ask whether they ought to feel sympathy.

We feel sympathy imaginatively when the object of our sympathy is not present to our senses. This ability we probably share with some animals, but humans are able to do this over a greater range of situations than are other animals. We can feel sympathy for someone we have known or seen; animals, presumably, cannot.

The second capacity, that of 'feeling' sympathy abstractly, is quite different. It is so different that it is somewhat misleading to call it 'abstract sympathy'. This is because abstract sympathy does not directly involve feelings. However, abstract sympathy does seem to be derivative from 'felt' sympathy, and I will continue to use the expression 'abstract sympathy' in order to keep this connection before the mind.

It is my belief that we (moral agents) can be aware that some creatures somewhere are suffering, and that we can decide to do something about it — say, contribute to a fund drive — without being at all emotionally disturbed by our abstract awareness that the creatures are suffering. We can decide to contribute merely because we intellectually decide we ought to. But, at the time we contribute, we need not feel anything at all. (We are not always in emotional distress when we write a check to our favorite charity.) It is this capacity which I call 'abstract sympathy'. Abstract sympathy is a factor in altruistic actions. Whether any actions are purely altruistic, or whether altruistic actions always involve some egoistic motives, is not crucial to my point. Regardless of whether altruistic actions always involve mixed motives, altruistic actions necessarily involve (either explicitly or implicitly) the recognition that it is the pain or wellbeing of another which is the moral basis of the action.

Perhaps abstract sympathy is parasitic upon actually feeling sympathy at some time or other. But once sympathy is experienced, reflective thought can lead one to believe that the reason we ought to help others is their pain and not our feeling of sympathy. It is this notion — that it is the pain of others which constitutes the moral reason for action — that is crucial. It is crucial because it is the ability to recognise the pain of others as a sufficient reason for our action, independently of our own feelings, that is a necessary condition of being a moral agent. It is here, indeed, that the transition from motives to reasons, and, hence, the transition from moral patient to moral agent, occurs. So far as we act only on the basis of felt
sympathy we are acting on the basis of mere motives. When we recognise that it is not our feelings but the feelings of others that are *morally* relevant, we move from mere motives to reasons. Reasons, of course, can also be motives, but they are a special kind of motive.

The grasping of moral reasons requires a high degree of abstract thought. It is clear that human beings are capable of having such thoughts. Consequently, human beings and, so far as we can tell, only human beings, can think morally. Only human beings are moral agents.7

The third capacity that humans have is that of evaluating their feelings, including the feeling of sympathy. We humans can ask whether we ought to feel sympathetic about this or that, or we can ask whether we ought to feel sympathetic at all. Since our feelings are integral to what we are, this capacity introduces a new moral issue, not merely of what we should feel, but of what we should be. Of course we cannot instantaneously decide to feel this or that, and hence we cannot instantaneously decide to be this or that, but we can deliberately set about to make ourselves into the kind of people that we decide we ought to be. This too is a capacity which seems to be unique to humans.

The human animal thus has at least two moral capacities that seem to be unique to humans: abstract sympathy and the capacity to evaluate one's own feelings and desires. Uniqueness, however, is not particularly significant. If any other creatures have such capacities, so be it. But it does seem to be a contingent fact of our world that only humans have these capacities. Hence, if the possession of these capacities generates any inherent value, it seems likely that that value will pertain only to the human animal. It is this possibility which I now wish to explore.

My argument shall be as follows: (I) I suggest that inherent value, in Regan's sense, is based upon the possession of certain natural characteristics; (a) those possessed by moral patients and (b) those additional characteristics possessed by moral agents. (II) The concept of inherent value is vague enough so that I could argue that the differences between (a) and (b) generate either (i) different types of inherent value or (ii) different degrees of inherent value. I shall argue for (ii) for reasons which lie beyond the scope of this paper, but which have to do with the moral status of euthanasia and abortion.

Many advocates of animal rights cite the work of Jane Goodall so it is relevant to note that she recognises the distinction under discussion.

Human beings are capable of acting from purely unselfish motives; we can be genuinely sorry for someone and try to share in his troubles in an endeavor to offer comfort and solace. It is unlikely that a chimpanzee acts from feelings quite like these; I doubt whether even members of one (chimpanzee) family, united as they are by strong mutual affections, are ever motivated by pure altruism in their dealings one with another.

On the other hand, there may be parallels in some instances. Most of us have experienced sensations of extreme discomfort and unease in the presence of an abject, weeping person. We may feel compelled to try to calm him, not because we are sorry for him in the altruistic sense, but because his behaviour disturbs our own feelings of well-being. Perhaps the sight — and especially the sound — of a crouching, screaming subordinate similarly makes a chimpanzee uneasy; the most efficient way of changing the situation is for him to calm the other with a touch. (Goodall, Jane van Lawick, *In the Shadow of Man*, Houghton Mifflin Co., 1971, p. 245)
Since Regan would deny both (i) and (ii) my choice to pursue (ii) is contextually innocuous.

Because I accept Regan's contention that moral patients have inherent value and that they have it because they meet the subject-of-a-life criterion, little discussion of the inherent value of moral patients is necessary here. However, it will be useful to examine one of the claims which Regan makes about the subject-of-a-life criterion: that it is categorical in nature.

Since inherent value is conceived to be a categorical value, admitting of no degrees, any supposed relevant similarity must itself be categorical. The subject-of-a-life criterion satisfies this requirement. This criterion does not assert or imply that those who meet it have the status of subject of a life to a greater or lesser degree, depending on the degree to which they have or lack some favored ability or virtue (e.g., the ability for higher mathematics or those virtues associated with artistic excellence). One either is a subject of a life, in the sense explained, or one is not. All those who are, are so equally. (pp. 244-245)

It is true that the subject-of-a-life criterion neither asserts nor implies that being the subject of a life is a matter of degree, but it does not preclude its being so either. Since the notion of subject-of-a-life is offered as an empirical, naturalistic basis of inherent value, whether being the subject of a life admits of degrees is largely an empirical matter. At this point I shall only argue that it is plausible to view it as admitting of degrees.

Being the subject of a life is to 'have beliefs and desires; perception; memory, and a sense of the future . . .' (p. 243) and other such things, all of which admit of degrees. Now, while it is true that all those who meet the subject-of-a-life criterion are subjects of a life, it is not true that the lives of which they are the subject are all equal. Some lives are fuller, richer, and more complex than others. Whether a fuller, richer and more complex life has exactly the same inherent value as a much simpler life, simpler with regard to the types and degrees of experiences and activities which can be had and undertaken, must be argued and not merely assumed. Regan offers no such argument. Rather, he relies upon his purported proof that inherent value cannot admit of degrees. (pp. 244-45) Since we have seen that his proof is not valid, the question, of whether being the subject-of-a-life and being a center of inherent value admits of degrees, remains open.

Nevertheless, I shall not argue that there are degrees of inherent value among moral patients, though I suspect that there are. (Does the life of a somewhat retarded cow have exactly the same inherent value as that of a bright chimpanzee?) What I shall argue is that the lives of moral agents have greater inherent value than the lives of moral patients.

The capacity to think abstractly is not only a necessary condition of being a moral agent, it is also a necessary condition for certain types of benefits and harms. Morality is concerned with the well-being of any entity capable of experiencing a well-being. Rational beings can experience things that are not accessible to non-rational beings. This means that rational beings
can be helped or harmed in ways that non-rational beings cannot. The harms done to non-rational beings seem to be dependent upon hedonic states, either directly or indirectly. This is not true of some of the harms that can be done to rational beings. For example, only rational beings can have a concept of freedom. Hence, only rational beings can be enslaved as distinct from being owned. By this I mean the following:

It is conceptually possible that so far as hedonic states are concerned, both an owned animal and an enslaved human might be better off than if they were free. If so, there can be no hedonistic consequentialist objection to either. Yet it is plausible to claim that slavery is wrong even if the slave is hedonically better off than he would be if he were free. If so, it must be because freedom from slavery is a good which is independent of the hedonic situation. It is a good which is based in 'human' or 'rational' dignity; a type of dignity which applies only to rational beings.

The feeling state which can arise from the recognition that one has been enslaved can be extremely negative even if one is treated so well by one's master that in all other respects one's life is quite positive. Insofar as negative feelings are to be taken into account, the objection to being enslaved can be extremely powerful and, hence, merits a great deal of moral consideration. But it is a feeling that can be experienced only by beings capable of abstract thought. Moreover, and most importantly, what is wrong with slavery is not a result, or is not merely a result, of such feelings. This is indicated by the fact that even 'contented slavery' is viewed as unacceptable. The contented slave is not necessarily deprived of any positive hedonic states. To the contrary, depending upon the situation, it is quite possible that he/she is being 'deprived' of negative states which would occur if he/she were free. No creature which lacks the concept of freedom can be deprived in this way. What the human is being deprived of is a special type of freedom which I shall call autonomous freedom. Autonomous freedom occurs when an entity is free and knows that it is free. It is the knowledge of freedom which is essential, a knowledge which requires a high level of abstract thought. A happy animal cannot miss its freedom, a happy human can. It is this difference which partly constitutes human dignity. The deprivation of autonomous freedom need not hurt. But it is a violation of human dignity; a dignity that presupposes rationality.

It seems, then, that moral agents can be directly harmed in more than

8 That this claim is plausible is shown by the attention it has received in the literature. R. M. Hare, for example, rejects the claim that 'contented slavery' would be morally wrong. See his Moral Thinking, Oxford University Press, 1981, p. 167 and his article 'What is Wrong With Slavery', Philosophy and Public Affairs 8, No. 2, pp. 103-121.

9 The claim that a happy human can miss his/her freedom may seem self contradictory, and perhaps it is. Even so, the underlying point is still valid. Because of our conceptual abilities, human beings can be unhappy in circumstances where animals cannot. Furthermore, this is not trivial matter. The significance of the story of Adam and Eve is indicative of the importance of the fact that happy humans can be discontented. Despite the fact that they lived in paradise they revolted against a mere verbal command of God's, a command which they found onerous even though, except for the fact that they understood it as a command, did not hurt them.
one way. Given the running battle between consequentialists and deontologists, this should not be surprising. It is plausible to postulate that there are consequentialistic and deontological harms. Such harms might presuppose either different kinds of inherent value or different degrees of inherent value. If so, moral agents might be harmed in both ways while moral patients might be harmed in only one way. Thus, moral agents and moral patients might be harmed in some relevantly similar ways without that fact entailing the absolute equality of moral agents and moral patients.

If deontological harms presuppose one type or one degree of inherent value and consequentialistic harms presuppose a different type or a different degree of inherent value, then moral patients can be harmed consequentialistically while moral agents can be harmed both consequentialistically and deontologically. Therefore, if the right to life is based upon deontological grounds, moral agents would have a right to life while moral patients would not, even though some similar direct harms could be done to both. Is there any reason to suppose that the right to life is similar to the right not to be enslaved in that the grounds which generate the right presuppose rationality?

This question is too complex, and the foundations of ethics are too obscure, to allow a definitive answer to be given. Some progress towards an answer can be made, however, but first some observations (and opinions) about contemporary ethical theory may be helpful.

There is a continuing argument between deontological and consequential moral philosophers. I believe that there is much to be said for consequentialism. I also believe that there is much to be said for deontological theories. As a consequence, I believe that there is some truth in both types of theories. In most cases the two types of theories yield similar results, but I do not believe that they can be totally reconciled. When there are ultimate conflicts between the two theories we are faced with genuine moral dilemmas. If the dilemmas are serious, we are faced with ultimate human tragedy.

I advance this as a merely plausible hypothesis since the foregoing argument shows a limitation of hedonistic consequentialism but leaves open the possibility of ideal consequentialism. While I cannot argue the point here, I believe that ideal consequentialism leads to rampant intuitionism, and hence I will explore only the relationship of my argument to deontological theories.

This view is endorsed by R. M. Hare when he suggests that an examination of the logic of moral argument may also help us to see how philosophers like Kant and the utilitarians, often thought to be at loggerheads, in fact each had hold of a part of the truth. (Moral Thinking, p. vi) Hare, of course, believes that he has developed a coherent ethical theory and thus denies the existence of genuine moral dilemmas. For a partial critique of the adequacy of Hare's theory see my Magic and Morality: Comments on Gewirth and Hare, forthcoming: Journal of Value Inquiry.

The matter of whether there are ultimate moral dilemmas is controversial. For a discussion of the possibility of such dilemmas and the consequences of their existence see Nagel, Thomas, 'The Fragmentation of Value', in his Mortal Questions, Cambridge University Press, 1979. For an argument that there are no ultimate moral dilemmas see Terrence C. McConnell, 'Moral Dilemmas and Consistency in Ethics', Canadian Journal of Philosophy, Vol. VIII, No. 2, June, 1978. McConnell considers and rejects several arguments that there can be moral dilemmas. However, he fails to consider the possibility that there might be a conflict of moral principles (as distinct from conflicts between moral rules).

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Both consequential and deontological theories depend upon basic moral insights. Consequential theories depend upon the basic insight that second person pain (or well-being, or preferences, or what have you,) are to be taken into account. As the above discussion of second person pain indicates, this insight cannot be proven. Likewise, deontological theories depend upon the basic insight that inherent value (or possessing personhood, or being an end-in-itself, or what have you,) is to be taken into account. This too cannot be proven. (Hence Regan's postulate of inherent value.)

Believing that both consequential and deontological theories contain some truth and that neither can be proven (and believing that there are no other equally plausible theories) leads me to what I shall call a bootstrapping type of argument. I shall not argue that I can prove that there are degrees of inherent value, but I shall argue that there are reasons for believing that there are degrees of inherent value which are as good as the reasons for believing that second person pain is morally relevant, and as good as the reasons for believing that there is such a thing as inherent value. My argument proceeds as follows:

It is at least initially plausible to hold that self awareness — an abstract concept of self — is a necessary condition of a right to life. The justification of such a claim, if it can be justified, would have to be on a par with the justification for the claim that another creature's pain is to be taken into account. The latter claim, as I have suggested, is a basic moral insight which cannot be logically or rationally justified. One can come to believe it only if one comes to abstractly sympathise with another's pain. This is the moral insight which underlies consequentialism. It is the fact that humans can have this abstract insight that makes it possible for humans but not animals to be moral consequentialists. Similarly, the recognition of another creature as possessing inherent value is a basic moral insight. It is based upon the recognition that the other creature meets the subject-of-a-life criterion. This is the moral insight which underlies first level deontological views. Creatures which are subjects of a life, who have 'beliefs and desires; perception, memory, and a sense of the future . . . ' are not to be treated merely as receptacles, not merely as things. Moral agents have direct duties to such creatures because such creatures are subjects of a life. This is the moral insight upon which Regan has built his case. But what makes such insights significant?

Consequentialist theories are founded upon the insight that second person experiences have moral significance. Such theories have point only because there are creatures which are capable of having experiences. First level deontological theories are founded upon the insight that subjects-of-a-life are not to be treated as mere receptacles. Such theories have point only because there are creatures which are capable of being subjects of a life. The capacity to have experiences, the capacity to be a subject of a life, are natural capacities which many reflective moral agents recognises to have moral significance.

What gives the capacity to have experiences, and the capacity to be a
subject of a life, their moral significance is that these capacities generate the possibilities of new types of harms and benefits. But this is exactly what is done by the capacity for rationality. A rational being is not only the subject of a life, he or she is also the creator of a life in that rational creatures can not only decide what they will do, they can decide (within quite broad parameters) what they will be. Because of this, the untimely death of rational beings frustrates activities in which non-rational creatures cannot participate. As a result, the untimely death of a rational creature harms that creature in a way in which non-rational creatures cannot be harmed.¹³

Thus, if the capacity to have experiences has moral significance, and if the capacity to be a subject of a life has moral significance, then it is at least possible that the capacity to be rational also has moral significance. Furthermore, since the capacity to be rational makes the death of a rational being a type of harm which cannot be experienced by non-rational beings, it follows that the relationship between rational beings and death is different than the analogous relationship between non-rational beings and death. This raises the question of whether it is plausible to suppose that this difference in relationship is sufficient to give rational beings, and only rational beings, a right to life.

This latter question presents the problem of weighing the significance of morally relevant differences. I will not argue how such differences should be weighed. I will only point to the way in which they are weighed. Human beings give great weight to second person pain, as is shown by the sacrifices they are willing to make to prevent it. They also give significant weight to being the subject of a life, as is shown by the energies devoted to the well being of creatures recognised as moral patients. But humans give greater weight to the capacity of rational beings to create (or lead) one’s life as one sees fit, as is shown by the enormous sacrifices we are willing to make to defend our freedom. I conclude, therefore, that the moral significance attached to the capacity of rationality is at least as great as that to be attached to second person pain and to first level inherent value. Since rationality makes death a special and important type of harm, I conclude that it is likely that rational creatures, but not non-rational creatures, have a right to life.

This conclusion generates a number of problems which must be briefly addressed. Rationality is clearly a matter of degree. Some people are more rational than others, and all of us are more or less rational. Thus it should be expected that the right to life would be a matter of degree. Such a consequence is quite compatible with modern moral practice. Given current medical technology, we have had to accept some forms of euthanasia. If euthanasia is ever justifiable, it is surely in those cases where the rational faculties are either overwhelmed by excruciating pain or diminished through physiological deterioration. A human life worth living is generally held to

¹³ Bernard William’s concept of categorical desires is a partial development of this point. See ‘The Makropolous Case’ in William’s Problems of the Self. One categorical desire is that of self development.
be a life in which those rational faculties which are (contingently) unique to humans can come into play. If the rational faculties are totally gone there is no right to life and (passive) euthanasia is non-controversial. But the rational faculties are a matter of degree, and as a result, there are many cases of gradual deterioration where decisions of what to do are unclear and agonising. There is no certainty in such cases, and there are no guarantees. This is exactly what is to be expected if inherent value is a matter of degree.

Turning next to animal moral patients, my view does not leave them as badly off as one might think. The fact that rationality, including abstract rationality, is a matter of degree makes it possible that the rational abilities of the ‘higher’ animals might approach a level which validates a right to life. At the very least, the justifications required for killing them might be very stringent. The degree to which the various animals are rational is an empirical question which must be left to others. My thesis, however, opens the possibility that the primates, but perhaps not cows, dogs, or cats, may have a right to life.

I have argued that there may be and very likely are degrees of inherent value. What, then, of Regan’s fear of discrimination? The danger that Regan sees must be admitted. Those who want to discriminate will use and misuse any fact they can to legitimise their actions. Furthermore, if they misunderstand the nature and the relevance of degrees of inherent value, even those who do not wish to discriminate may be misled into discriminating. But none of this shows that variations in inherent value require illegitimate discrimination. Nor does it show that there are variations in the inherent value of moral agents. It may be that there is a threshold of rationality which, once reached, establishes a degree of inherent value which requires equal treatment, and it may be that that threshold is also the threshold for moral agency. If so, all moral agents would be equal.

Finally, not all human beings are moral agents and hence it may be that not all human beings have equal inherent value. This fact is what generates the problem of ‘marginal humans’. There are two distinct types of marginal humans: (1) the very young who are not yet moral agents but who have the potential to become moral agents, and (2) those who are not and cannot become moral agents. (Some of these may have been moral agents, other never were and never will be, but this is a distinction which need not be pursued in this context.)

With respect to the second type of marginal humans, it is a strength of the thesis I have advanced that the treatment which ought to be accorded such marginal humans can, within ethical theory, overlap the treatment which ought to be accorded to some animals. There is, after all, little difference between the rational and physical capacities of some humans and some animals. Were ethics all that were involved in the question of how we ought to treat one another, then it might turn out that marginal humans of type two ought to be treated less well than some animals. This, indeed, may be the case, but it does not automatically follow from my thesis. The reason that it does not follow is that all my thesis shows is that marginal humans
(and animals) either do not have a right to life (if rationality is a necessary condition for the right to life) or, if marginal humans (and animals) do have a right to life, that right cannot be based upon the same considerations that generates the right to life of normal humans. Of these two options, I suspect that the former is correct, since I am aware of no characteristics possessed by type two marginal humans (and animals) which is likely to generate a right to life. However, even if type two marginal humans have no right to life, it does not follow that they ought to be killed or that they ought to be treated as equivalent to animals. How they ought to be treated remains another question.14

A final word needs to be said about type one marginal humans. Fetuses, infants, and perhaps very young children fall into this category. It is unfortunate that in the literature type one and type two marginal humans are frequently placed in the same category, since the difference between being a potential moral agent and not being a potential moral agent is significant. At any rate, if type one marginal persons merit treatment different from that accorded to type two marginal persons, the distinguishing characteristic will likely be that of potentiality. That, however, is a topic for another paper.15 16

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14 I discuss the problem of marginal persons more fully in 'The Moral Priority of (Most) Human Beings'. Forthcoming.
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