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Animal Rights: Misconceived Humaneness

October 15, 1978 is to be proclaimed World Animal Rights Day, on which the International League for Animal Rights (a Geneva-based organization) will present to UNESCO for its consideration and possible adoption a *Universal Declaration of the Rights of Animals*, previously published and disseminated in fifty languages. Meanwhile many other groups and individuals throughout the world are publicly advocating rights for animals. And at the time this is being written, a precedent-setting court case has begun in Hawaii, the outcome of which may decide whether two young laboratory workers who released trained dolphins from an experimental facility in Honolulu were guilty of grand theft, or rather were acting as principled proponents of a legitimate doctrine of animal rights, guilty of nothing more serious than misguided heroics in an effort to dramatize their case.

The notion of rights for animals has been around for almost two centuries, having been promulgated by Jeremy Bentham and certain of his contemporaries, though those who have seriously advanced the argument in favor of granting or recognizing such rights have always constituted a very tiny minority of public opinion. In recent years, however, the clamor generated by talk about animal rights has grown steadily louder, and it looks as though the movement for animal rights has become a bandwagon that is being jumped on by more and more people in search of a focus for their concern about animals. To different individuals, the ascription of rights to animals means different things. To some it is evidently a way of recognizing that the lives of non-human beings have intrinsic value (i.e. value apart from their use to man; we cannot, I think, talk sensibly of "value to themselves," as if animals could reflectively examine their own lives and arrive at qualitative assessments concerning them). To others, it signifies an honorific extension of moral and/ or legal status to creatures which are like us in many respects, and even sometimes unnervingly so. To still others, it represents an affirmation of man's desire and need not to debase himself by maltreating

relatively defenseless and innocent sentient beings. There are also those to whom it seems easy and natural to grant rights to animals as if by this act they could change overnight the attitudes of their fellow men. And finally, some defend rights for animals merely as a well-calculated pragmatic maneuver designed to give the interests of animals independent legal status, so that their objectives of humane treatment and animal welfare may be more readily realized and more stringently enforced. Perhaps it is high time, then, to ask a few questions about the nature of rights themselves, so that we can assess the usefulness of this way of giving substance to praiseworthy sentiments regarding animals—and, more important, to do so before we are all inundated by the slipshod reasoning, propagandizing, and mindless sloganeering that are often the by-products of rapidly snowballing popular movements.

The first thing that has to be noted about rights is that we speak of them in both moral and legal contexts, and what we are speaking of in each case is somewhat different. The relationship between law and morality is complex and subtle, and cannot be gone into in any detail here. Suffice it to say that at least one function of laws is to give voice and sanction to a community's most basic moral standards, to enshrine and safeguard them, as it is sometimes said. Thus, certain fundamental moral precepts (like the Golden Rule, the Ten Commandments or Kant's categorical imperative) must first exist and be acknowledged as binding on everyone's conduct before there can be a corresponding legal code. (Indeed, the entire obligation to obey the law itself rests upon some logically prior moral obligation, such as that which is generated by what is commonly referred to as the "consent of the governed" or the "social contract.")

Many believe that morality is relative, that what is binding on a given group of people is nothing more than a function of their customs, cultural values, beliefs, and place in history. This view, though it calls our attention to some important factors which shape a group's actual moral practices, is, I believe, false, and tells us very little about people's basic moral convictions. Moral rights are often thought of as natural rights, by which I mean nothing more mysterious than rights which belong to everyone by birth simply because of the kind of being he is. It is easy to see that if morality were relative to a given culture, moral rights could not be natural and universal. For moral rights, being grounded in human nature (or man's basic psychological make-up), can only be natural and universal if human nature is uniform everywhere. Now it may be that there is no such thing as a universal human nature, in which case the relativity of morals could be argued for. But there ap-

pears to be no evidence to suggest that humans' basic psychological capacities and dispositions vary significantly from culture to culture or from one area of the world to another. So let us assume, for the sake of argument, that everyone everywhere has the same fundamental moral rights, and that these are natural rights in the relatively innocuous sense just defined.

Two questions now arise: What is a moral right? and: What is it about humans that endows them with moral rights? Moral rights can be understood in the following way. To ascribe moral rights to a certain being (including oneself) is to affirm that the being in question is of a certain type, that beings of this type possess a certain value or worth, and that certain kinds of action and states are essential to the preservation of its well-being, including its independence and dignity, in which that being has an interest. Consequently, any interference with its rights must be justified. This idea has sometimes been expressed by saying that every man is an end in himself and should never be treated merely as a means to someone else's ends. Thus, to ascribe moral rights to a being is to acknowledge that personhood or moral agency resides in it. It is common to hear basic moral rights, such as the rights to life, liberty, happiness, and property, designated as inalienable or indefeasible. That is, they cannot be forfeited, compromised, suspended, or over-ridden by the acts of others or even oneself. As we all know, however, no rights are this absolute, for exceptions are made in extreme circumstances (e.g. capital punishment, self-defense or imprisonment for crimes), and this shows that there are serious philosophical problems in the notion of the inalienability or indefeasibility of moral rights, but which I will not consider here.

Moral rights are also frequently correlated with moral obligations. Many philosophers even define rights in terms of duties. If I have a right to do or receive something, it is generally the case that some other person has or persons have a duty to either refrain from interfering with my action (when I have a right to do something) or to provide me with what I have a right to receive. However, this correlation is not universal, as an example or two will show. Each of us has the general duty to be benevolent, but no individual or group (such as the Red Cross or the local S.P.C.A.) can justifiably come to me and claim the right to be given money. Again, each of us may well have duties toward himself, but it would be absurd to say that I have a right to demand of myself that I fulfill my duties toward myself. This is an important point, which I shall return to later in relation to our treatment of animals.

Now let us look at what it is about humans that endows them with basic moral rights. But first, a small digression. In defining moral rights I have avoided identifying the possessors of these rights as humans, referring instead to "beings." The reason for using this more neutral word is that we should avoid species chauvinism (or "speciesism") in discussing such questions. Let me explain what I mean. It used to be commonplace, in previous centuries, to think about morality from an entirely anthropocentric perspective. Even though we have known since the time of Copernicus that we do not stand in the centre of the universe, and since the time of Darwin that man did not just suddenly come into existence by virtue of a unique and instantaneous act of creation, we have continued, until very recently, to consider our planet as the only one in the universe on which intelligent life exists. We now know with mathematical certainty that intelligent life must exist elsewhere in the universe. We also know that our sun and solar system are in no way special or unique from the standpoint of the universe at large. We may well come into contact some day with extraterrestrial forms of intelligent life, with which we can communicate and interact. Those scientists who have studied the possibility of life elsewhere have concluded that we have absolutely no reason to suppose that extraterrestrials would belong to our own or even a similar species. We are thus faced with the need to recast our moral principles in a manner in which they could be applied to such creatures. For there appears to be no good reason to assume that they would not share the same sorts of aspirations and have the same sorts of needs as we, or that they would be hostile to us.

Another reason for recasting our moral principles and precepts in this manner has to do with other species that live on earth. Though I do not think it is at all likely, it is at least possible that we might learn to communicate at a high level with certain animals (such as chimpanzees, whales or dolphins), and that they will turn out to be so very much like in all important respects that we should also be prepared to extend our moral community to include them as equals. At any rate, I do not want to exclude either of these remote possibilities as a matter of principle.

But in spite of what has just been said, I want to argue as a general point that there are certain characteristics which humans possess and animals lack, and that these provide the basis for ascribing moral rights to the former and denying them to the latter. Now clearly one capacity which all humans possess is the capacity to experience pleasure and pain, or to enjoy and suffer. This is certainly relevant to the granting of rights, but it is not sufficient. The reason is that in my characterization of natural rights (supposing it to be more or less correct), I mentioned

such things as well-being, independence, and dignity, and none of these is exhausted by referring merely to pleasure and pain. Animals do generally share the capacity for pleasure and pain with humans; but it is because more has to be taken into account when describing the basis for the possession of rights that we have to look further.

Now no one would want to deny that there are important differences between humans and animals; but whether they are morally relevant is a moot point. I want to argue that they are. Many proponents of animal rights feel that the sorts of differences usually advanced to differentiate humans from animals—that only humans think, have complex languages, self-consciousness, and so on—are holdovers from an outmoded view of man as “the rational animal,” and also ignore recent animal research. I shall try to show that this is not the case, if we understand the claim in question correctly.

What characteristics that humans share in general, other than the capacity to enjoy and suffer, should be cited in order to give an adequate account of the reasons why they have, and animals lack, moral rights? A complete list would have to include at least the following: the capacities to be critically self-aware, manipulate concepts, use a sophisticated language, reflect, plan, deliberate, choose, and accept responsibility for acting. These are characteristics which manifest the attributes of truly autonomous beings, that is, beings which are capable of acting freely, choosing and deciding rationally in the fullest sense, creating, and self-making (or self-realizing). I have drawn attention to certain cognitive capacities here (critical self-awareness, concept manipulation and the use of a sophisticated language) because these are the essential tools or vehicles by means of which an agent's autonomy is evolved, made known to him reflexively and manifested or expressed to others. The possession of these cognitive capacities, therefore, is a necessary prerequisite for autonomy, which is the capacity for self-conscious, voluntary and deliberate action, in the fullest sense of these words. Autonomy, which thus entails certain cognitive capacities, is necessary (and, together with the capacity to enjoy and suffer, sufficient) for the possession of moral rights.

I should like to suggest that only autonomous beings, as just described, can and do belong to a moral community, which is the sort of social group within which (and only within which) such concepts as those of rights and duties have any meaning and application. For it is only in a community of interacting autonomous beings of this sort that there can be the kind of mutual recognition required for these concepts to evolve and be understood. Obligations and rights, as well as the moral

discourse generated by these and related notions, are functions of mutual recognition and accountability, and are consequently inapplicable outside the context specified. It should be made clear that this is not an attempt merely to legislate concerning the kinds of beings which qualify as possessors of moral rights. Rather, my analysis is meant to suggest that since the only species we know of that has developed the concepts of rights and obligations (and the institutions associated with them) is *Homo sapiens*, there must be something about this peculiar sort of social being that accounts for the phenomenon in question. And my claim is that the relevant features of humans (other than their capacity to suffer and enjoy) that explain why they have rights are their possession of a certain kind of reflexive consciousness, particular cognitive and linguistic abilities and the capacity to comprehend, undertake and carry out obligations and to expect the same of like beings.

These considerations should suffice to show that regarding the cognitive capacities of human beings as relevant to the question of possessing moral rights is not a matter of invoking some simplistic notion of humans' rationality to settle a vastly more complex set of issues. Many animal rights advocates just conveniently leave the capacities I have emphasized out of the picture, or else systematically misunderstand and underrate their significance.

Now what about legal rights? Let us consider for a moment what it means for someone or something to have legal rights. Christopher Stone, in his excellent little book, *Should Trees Have Standing?* (more illuminatingly subtitled *Toward Legal Rights for Natural Objects*), offers the following analysis, which seems complete and accurate enough for our purposes. According to Stone, "for a thing to be a holder of legal rights, nothing is more basic than that there be in the social structure some authoritative body prepared to review and call to question the actions of those who threaten it." In addition, however, three other conditions must be met. These are: "first, that the thing can institute legal actions at *its* behest—to have what the lawyer calls *standing*; second, that in determining whether to grant legal relief, the court must take *its* injuries into account; and third, that relief must run to *its* benefit." Thus, by straightforward application, if animals are to be given legal rights, what this means is that they are to be considered as having legal standing in the sense just described, in which case a court-appointed guardian can press claims and seek redress on their behalf. This would mark a significant change in the law, since animals would acquire the status of jural personhood, meaning that procedures concerning injury and

redress would become applicable to them, just as if they were persons in the fullest sense.

I see no objection in principle to this change and the many benefits therein. Stone argues strongly that all parts of the environment, whether inanimate or animate, should be given the same sort of legal standing or jural personhood. The chief gains from this maneuver would be two: (1) that injury to the interests of some *other* party (e.g. the animal's owner) would not have to be established first in order to gain access to the judicial process, since injury to the natural object (or animal) would qualify it directly to seek remedial legal action on its own behalf; and (2) redress would not be limited to compensation to *other* interested parties for damages suffered, but also would include reparations to the natural object (or animal) itself—which would now be the plaintiff—to restore it to its original state. But I would like to make it clear that creating a legal fiction of personhood for animals is not analogous to the great civil rights movements which brought about the recognition of legal rights for Jews in Europe, and for Blacks, Indians and women in North America, since these were based on the affirmation and protection of belatedly acknowledged basic moral rights. So my point is that we should be very careful that we understand exactly what we are doing when we assign legal rights to animals.

To clarify this further, note that so far as animals' legal standing is concerned, it would be sufficient to limit the rights they would acquire to those which fall under the heading of "due process rights," comprising rights to make claims in a court of law, sue, appear and be heard in court, receive compensation, and generally to forestall decisions which would negatively affect their interests from coming into effect. There is no implication in any of this, however, that animals have (or should be seen as having) rights to life, liberty, happiness, and so on, which should be guaranteed by law. But many questions remain. How far shall we extend the legal meaning of "animal"? What is in an animal's interest—being alive, or simply if alive, not being mistreated? What sort of legal standing should animals have—to do what, and in what kinds of cases? What rights should animals have in disputes affecting the survival of an entire species, as opposed to those involving only the survival of an individual member of a species? Much careful thought must be put into these and other questions to define more precisely what animals' legal status should be.

Many defenders of animal rights go astray by confusing the legal function of preserving and protecting basic moral rights with the granting of legal standing or jural personhood in the sense I have just been

discussing. But it would seem obvious that a being which it is inappropriate to describe as having fundamental or inalienable moral rights cannot have these nonexistent rights enshrined in and defended by law. Thus, it is difficult to understand how some can find it so easy to demand that a principle like "All animals are born with an equal claim upon life and the same rights to existence" (Article 1 of the *Universal Declaration of the Rights of Animals*) should be subsumed by the law. And it may well be that if members of UNESCO and of various legislative assemblies around the world reject this *Declaration*, this will be due to their sharing some of my reservations, rather than merely to an obstinate desire, amplified by vested interests, to overlook inhumane practices that now exist.

The kinds of views I have expressed here are frequently construed by animal rights advocates as opposed to improvements in animal welfare or efforts to preserve endangered species supported by tougher legislation and judicial decisions, and hence, as "reactionary," while their own position is characterized as open-minded, imaginative and forward-looking. By caricaturing their opponents in this way, however, proponents of animal rights have only displayed their own naiveté in a manner which is quite typical of this movement. In sifting through the literature produced by animal rights advocates, one often encounters such unrealistic and philosophically indefensible absolute statements of principle as the following: "Every animal shall have the right to live free from human interference and no action shall be taken which shall produce in any animal a sensation of pain, fear, deprivation or other discomfort" (from the *Bill of Rights for Animals* put before the Canadian Parliament by the Animal Defense League of Canada); or again: "Inasmuch as we believe that there is ample evidence that many other species are capable of feeling, we condemn totally the infliction of suffering upon our brother animals, and the curtailment of their enjoyment, unless it be necessary for their own individual benefit" (from *The Rights of Animals: A Declaration Against Speciesism* adopted recently by a special symposium at Cambridge University, and endorsed by the R.S.P.C.A.). The first of these requires an extreme degree of non-interference and freedom from suffering, extending far beyond what is considered obligatory and just in the human sphere: an animal's freedom may not be curtailed under *any* circumstances, nor are there any legitimate grounds for causing animals to suffer—including, it would seem, their own long-term welfare or that of those whose lives are affected by the animals' exercise of their "freedom." (As might be expected, exceptions are introduced elsewhere in this *Bill*, and therefore, it

is self-contradictory.) The second document cited, while it recognizes that freedom must sometimes be limited for the good of free beings themselves, nevertheless also fails to take into account the possible effects of animals' unrestrained freedom on humans (not to mention other animals).

Apart from such examples of general philosophical and legal sloppiness, what is especially disturbing about the animal rights drafts currently being flaunted everywhere is the complete lack of awareness they betray of the complex matter of competing or conflicting interests generated by life in society, and which plays such a large role in ethics and the law. If humans' interests never stood in opposition, there would be no conflicts that required intervention, negotiation or resolution by appeal to principles and priorities. And one would indeed have to have been born yesterday not to appreciate that conflicts between man and the animals over the use of the environment, the satisfaction of needs and man's search for knowledge and cures for diseases (just to take a few obvious examples) would soon be intense under a policy of total or nearly total non-interference in the lives of animals.

Also disturbing is a (not uncommon) disdain for philosophical discussion of these issues—unless of course the discussion happens to support the animal rights platform; otherwise, it is merely “academic” and ill-informed. But if ever there was a public issue which cried out for philosophical scrutiny, this is it. And it might be well to call to mind here Hegel's tersely stated truth: “reason refuses to allow feeling to warm itself at its own private hearth.”

More and more people are coming to recognize that animals ought to be valued for reasons other than their usefulness to man. This is as it should be. There is no justification for granting absolute value to human life and none to animal life. But does it follow that in order to remedy the devaluation of animal life we must now regard animals' lives as of equal value with human life? Even so staunch a defender of “animal liberation” as Peter Singer does not go this far. But it seems to me that this is the inescapable implication of putting references to animals' rights to life, liberty, freedom from pain, and so on, into the law. Such a move would surely destroy the significance of rights talk within the human context. I say this not only because of my earlier comments on the meaning of rights in the moral sense, but also because the kinds of differences between humans and animals highlighted there have to be given due recognition at some point, if there is to be any basis for dealing with competing interests between humans and animals.

I have argued that there are no grounds for ascribing basic moral rights or correlated legal rights to animals. And if I am right, then there also appears to be no case for saying either that animals ought not to be treated as means to human ends, provided that they are dealt with in as humane and compassionate a manner as possible, or that they have a right to life. However, since it seems equally clear that in saying these things, it is admitted that we have some sort of moral obligation to prevent or minimize animal suffering, it follows that there is a sufficiently compelling moral basis for stringent legal prohibitions against all inhumane practices involving animals. In short, we have a moral obligation to avoid mistreating animals and to prevent others from doing so, but this is an example of a duty without a corresponding right, much like those mentioned earlier. Whether, and to what extent, our moral obligations to animals extend beyond this, and whether the idea of man's dominion is outmoded, are surely matters for careful reflection and detailed interdisciplinary investigation, and cannot be settled by fiat or pious pronouncement. Such an inquiry might well begin with a careful reading of Boyce Rensberger's new book, *The Cult of the Wild*. This book not only punctures many cherished illusions about animals in the wild, but also argues that one of the central features of man's alienation from nature is his idea of his own fallen state, his essential worthlessness in relation to the innocent natural world which he only spoils by his presence—a myth which I have long suspected lies at the root of the evangelical fervor with which the cause of animal rights is advanced. In the meantime, Christopher Stone's cautious approach to the establishment of legal guardianship for animals will prove in the long run to be a far more effective tool for combatting the abuse of animals than a specious universal declaration of the rights of animals.