

WHY ANIMALS HAVE NO RIGHTS

"A right, properly understood, is a claim, or potential claim, that one party may exercise against another. The target against whom such a claim may be registered can be a single person, a group, a community, or (perhaps) all humankind. The content of rights claims also varies greatly: repayment of loans, nondiscrimination by employers, noninterference by the state, and so on. To comprehend any genuine right fully, therefore, we must know who holds the right, against whom it is held, and to what it is a right.

Alternative sources of rights add complexity. Some rights are grounded in constitution and law (e.g., the right of an accused to trial by jury); some rights are moral but give no legal claims (e.g., my right to your keeping the promise you gave me); and some rights (e.g., against theft or assault) are rooted both in morals and in law.

The differing targets, contents, and sources of rights, and their inevitable conflict, together weave a tangled web. Notwithstanding all such complications, this much is clear about rights in general: they are in every case claims, or potential claims, within a community of moral agents. Rights arise, and can be intelligibly defended, only among beings who actually do, or can, make moral claims against one another. Whatever else rights may be, therefore, they are necessarily human; their possessors are persons, human beings. [p.865]

The attributes of human beings from which this moral capability arises have been described variously by philosophers, both ancient and modern: the inner consciousness of a free will (Saint Augustine); the grasp, by human reason, of the binding character of moral law (Saint Thomas); the self-conscious participation of human beings in an objective ethical order (Hegel); human membership in an organic moral community (Bradley); the development of the human self through the consciousness of other moral selves (Mead); and the underivative, intuitive cognition of the rightness of an action (Prichard). Most influential has been Immanuel Kant's emphasis on the universal human possession of a uniquely moral will and the autonomy its use entails. Humans confront choices that are purely moral; humans -- but certainly not dogs or mice -- lay down moral laws, for others and for themselves. Human beings are self-legislative, morally

auto-nomous [sic]. [p.865-866]

Animals (that is, nonhuman animals, the ordinary sense of that word) lack this capacity for free moral judgment. They are not beings of a kind capable of exercising or responding to moral claims. Animals therefore have no rights, and they can have none. This is the core of the argument about the alleged rights of animals. The holders of rights must have the capacity to comprehend rules of duty, governing all including themselves. In applying such rules, the holders of rights must recognize possible conflicts between what is in their own interest and what is just. Only in a community of beings capable of self-restricting moral judgments can the concept of a right be correctly invoked.

Humans have such moral capabilities. They are in this sense self-legislative, are members of communities governed by moral rules, and do possess rights. Animals do not have such moral capacities. They are not morally self-legislative, cannot possibly be members of a truly moral community, and therefore cannot possess rights. In conducting research on animal subjects, therefore, we do not violate their rights, because they have none to violate.

To animate life, even in its simplest forms, we give a certain natural reverence. But the possession of rights presupposes a moral status not attained by the vast majority of living things. We must not infer, therefore, that a live being has, simply in being alive, a "right" to its life. The assertion that all animals, only because they are alive and have interests, also possess the "right to life" is an abuse of that phrase, and wholly without warrant.

It does not follow from this, however, that we are morally free to do anything we please to animals. Certainly not. In our dealings with animals, as in our dealings with other human beings, we have obligations that do not arise from claims against us based on rights. Rights entail obligations, but many of the things one ought to do are in no way tied to another's entitlement. Rights and obligations are not reciprocals of one another, and it is a serious mistake to suppose that they are.

.... Plainly, the grounds of our obligations to humans and to

animals are manifold and cannot be formulated simply. Some hold that there is a general obligation to do no gratuitous harm to sentient creatures (the principle of nonmaleficence); some hold that there is a general obligation to do good to sentient creatures when that is reasonably within one's power (the principle of beneficence). In our dealings with animals, few will deny that we are at least obliged to act humanely -- that is, to treat them with the decency and concern that we owe, as sensitive human beings, to other sentient creatures. To treat animals humanely, however, is not to treat them as humans or as the holders of rights.

A common objection, which deserves a response, may be paraphrased as follows:

"If having rights requires being able to make moral claims, to grasp and apply moral laws, then many humans -- the brain-damaged, the comatose, the senile -- who plainly lack those capacities must be without rights. But that is absurd. This proves [the critic concludes] that rights do not depend on the presence of moral capacities."

This objection fails; it mistakenly treats an essential feature of humanity as though it were a screen for sorting humans. The capacity for moral judgment that distinguishes humans from animals is not a test to be administered to human beings one by one. Persons who are unable, because of some disability, to perform the full moral functions natural to human beings are certainly not for that reason ejected from the moral community. The issue is one of kind. Humans are of such a kind that they may be the subject of experiments only with their voluntary consent. The choices they make freely must be respected. Animals are of such a kind that it is impossible for them, in principle, to give or withhold voluntary consent or to make a moral choice. What humans retain when disabled, animals have never had. [p.866]

A second objection, also often made, may be paraphrased as follows:

"Capacities will not succeed in distinguishing humans from the other animals. Animals also reason; animals also communicate with one another; animals also care passionately for their young; animals also exhibit desires and preferences. Features of moral

relevance - rationality, interdependence, and love -- are not exhibited uniquely by human beings. Therefore [this critic concludes], there can be no solid moral distinction between humans and other animals."

This criticism misses the central point. It is not the ability to communicate or to reason, or dependence on one another, or care for the young, or the exhibition of preference, or any such behavior that marks the critical divide. Analogies between human families and those of monkeys, or between human communities and those of wolves, and the like, are entirely beside the point. Patterns of conduct are not at issue. Animals do indeed exhibit remarkable behavior at times. Conditioning, fear, instinct, and intelligence all contribute to species survival. Membership in a community of moral agents nevertheless remains impossible for them. Actors subject to moral judgment must be capable of grasping the generality of an ethical premise in a practical syllogism. Humans act immorally often enough, but only they -- never wolves or monkeys -- can discern, by applying some moral rule to the facts of a case, that a given act ought or ought not to be performed. The moral restraints imposed by humans on themselves are thus highly abstract and are often in conflict with the self-interest of the agent. Communal behavior among animals, even when most intelligent and most endearing, does not approach autonomous morality in this fundamental sense. [p.866-867]

Genuinely moral acts have an internal as well as an external dimension. Thus, in law, an act can be criminal only when the guilty deed, the *actus reus*, is done with a guilty mind, *mens rea*. No animal can ever commit a crime; bringing animals to criminal trial is the mark of primitive ignorance. The claims of moral right are similarly inapplicable to them. Does a lion have a right to eat a baby zebra? Does a baby zebra have a right not to be eaten? Such questions, mistakenly invoking the concept of right where it does not belong, do not make good sense. Those who condemn biomedical research because it violates "animal rights" commit the same blunder." [p. 867]

Carl Cohen. "The Case for the Use of Animals in Biomedical Research" *The New England Journal of Medicine* 315, no. 14 (October 2,1986): 865-69.