DO ANIMALS HAVE RIGHTS?

Tibor R. Machan

ALTHOUGH the idea that animals have rights goes back to the 18th century, at least, it has only recently become something of a cause célèbre among numerous serious and well-placed intellectuals, including moral and political philosophers. Although Jeremy Bentham seems to have suggested legislation requiring humane treatment of animals, he didn’t defend animal rights, per se—not surprisingly, since Bentham himself had not been impressed with the more basic (Lockean) doctrine of natural rights—calling them “nonsense upon stilts.” John Locke’s idea of individual rights has had enormous influence and even where it is not respected, it is ultimately invoked as some kind of model for what it would take for something to have rights.

In recent years the doctrine of animals rights has found champions in important circles where the general doctrine of rights is itself well respected. For example, Professor Tom Regan, in his important book The Case For Animal Rights (UC Press, 1983), finds the idea of natural rights intellectually congenial but then extends this idea to cover animals near humans on the evolutionary scale. The tradition from within which Regan works is clearly Lockean, only he does not agree that human nature is distinctive enough, in relevant respects, to restrict the scope of natural rights to human beings alone.

Following a different tradition, namely, utilitarianism, the idea of animal liberation has emerged. And this idea comes to roughly the same thing, practically speaking. Only the argument is different because for utilitarians what is important is not that someone or something must have a specific sphere of dominion but that they be well off in their lives. So long as the bulk of the relevant creatures enjoy a reasonably high living standard, the moral and political objectives for us will have been met. But if this goal is neglected, moral and political steps are required to improve on the situation. Animal liberation is such a step.

This essay will maintain that animals have no rights and need no liberation. I will argue that to think they do is a category mistake—it is, to be blunt, to unjustifiably anthropomorphize animals, to treat them as if they were what they are not, namely, human beings. Rights and liberty are
political concepts applicable to human beings because human beings are moral agents, in need of what Harvard philosopher Robert Nozick calls "moral space," that is, a definite sphere of moral jurisdiction where their authority to act is respected and protected so it is they, not intruders, who govern themselves and either succeed or fail in their moral tasks.

Oddly, it is clearly admitted by most animal rights or liberation theorists that only human beings are moral agents— for example, they never urge animals to behave morally (by, e.g., standing up for their rights, by leading a political revolution). No animal rights theorist proposes that animals be tried for crimes and blamed for moral wrongs.

If it is true that the moral nature of human beings gives rise to the conception of basic rights and liberties, then by this alone animal rights and liberation theorists have made an admission fatal to their case.

Before getting under way I want to note that rights and liberty are certainly not the whole of moral concern to us. There are innumerable other moral issues one can raise, including about the way human beings relate to animals. In particular, there is the question how should people treat animals. Should they be hunted even when this does not serve any vital human purpose? Should they be utilized in hurtful—indeed, evidently agonizing—fashion even for trivial human purposes? Should their pain and suffering be ignored in the process of being made use of for admittedly vital human purposes?

It is clear that once one has answered the question of whether animals have rights (or ought to be liberated from human beings) in the negative, one has by no means disposed of these other issues. In this essay I will be dealing mostly with the issue of animal rights and liberation. Yet I will also touch briefly on the other moral issues just raised. I will indicate why they may all be answered in the negative without it being the case that animals have rights or should be liberated—i.e., without raising any serious political issues.

**Why Might Animals Have Rights?**

To have a right amounts to having those around one who have the choice to abstain from intruding on one within a given sphere of jurisdiction. If I have the right to the use of our community swimming pool, no one may prevent me from making the decision as to whether I do or do not use the pool. Someone's having a right is a kind of freedom from the unavoidable interference of moral agents, beings who are capable of choosing whether they will interfere or not interfere with the rights holder.

When a right is considered natural, the freedom involved in having this right is supposed to be justified by reference to the kind of being one is, one's nature as a certain kind of entity. The idea of natural rights was formulated in connection with the issue of the proper relationship between human beings, especially citizens and governments. The idea goes back
DO ANIMALS HAVE RIGHTS? 165

many centuries—e.g., in the 15th century William of Ockham already spoke of "natural right [as] nothing other than a power to conform to right reason, without an agreement or pact." The idea played a significant role in Thomas Hobbes's political philosophy. Referring to everyone's natural right in the state of nature, Hobbes meant that everyone's choice to do what seemed right to him is a natural right. "The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto." In line with Hobbes's thinking, then, whatever any human being does in the state of nature—i.e., in the wild, outside civil society—he has the natural right to do it. And there is no reason why the Hobbesian idea could not be extended to all animals, human or not.

The major political thinker with an influential doctrine of natural rights was John Locke. In his *Second Treatise on Government* he argued that each human being is responsible to follow the Law of Nature, the source of morality. But to do so, each also requires a sphere of personal authority, which is identified by the principle of the natural right to property—including one's person and estate. In other words, to be a morally responsible being in the company of other persons one needs what Robert Nozick has called "moral space," i.e., a sphere of sovereignty or personal jurisdiction so that one can engage in self-government—for better or for worse.

Locke made it a provision of having such a right that there be sufficient and good enough of whatever one may have a right to left for others—i.e., the Lockean proviso against absolute monopoly. For Locke the reason government is necessary is "that though in the state of Nature [every human being] hath such a right [to absolute freedom], yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others." So we establish government to make us secure in the enjoyment of our rights.

Since Locke's time the doctrine of natural rights has undergone a turbulent intellectual history, falling into disrepute at the hands of empiricism and positivism but gaining a revival at the hands of some influential political philosophers of the second half of the twentieth century.

Ironically, at a time in recent intellectual history when natural rights theory had not been enjoying much support, the idea that animals might also have rights came under increasing discussion. Most notable among those who proposed such a notion was Thomas Taylor, whose anonymous work, *Vindication of the Rights of Brutes* was published in 1792 but discussed animal rights only in the context of demeaning human rights. More positive (though brief) was the contribution of Jeremy Bentham, who in his *An Introduction to The Principles of Morals and Legislation* (1789),
argued that those animals that can suffer are owed moral consideration, even if those that molest us or those we may make good use of may be killed—but not “tormented.”

In the latter part of the 19th century an entire work was devoted to the idea by Henry S. Salt, entitled Animals’ Rights. And in our time numerous philosophers and social commentators have made the attempt to demonstrate that if we are able to ascribe basic rights to life, liberty and property to human beings, we can do the same for many of the higher animals. In essentials their arguments can be broken down into two parts. First, they subscribe to Darwin’s thesis that no difference of kind, only a difference of degree, can be found between other animals and human beings. Second, even if there were a difference in kind between other animals—especially mammals—and human beings, since they both can be shown to have interests (e.g., the avoidance of pain or suffering), for certain moral and legal purposes the difference does not matter, only the similarity does. In connection with both of these arguments the central conclusion is that if human beings can be said to have certain basic rights—e.g., to life, liberty or consideration for their capacity to suffer—then so do (higher) animals.

Now I do not wish to give the impression that no diversity exists among those who defend animal rights. Some do so from the viewpoint of natural rights, treating animal’s rights as basic limiting principles which may not be ignored except when it would also make sense to disregard the rights of human beings. Even on this matter are there serious differences among defenders of animals rights—some do not allow any special regard for human beings, some hold that when it comes to a choice between a person and a dog, it is ordinarily the person who should be given protection. But others choose to defend animal rights on utilitarian grounds—to the extent that it amounts to furthering overall pleasure or happiness in the world, animals must be given equal consideration to what human beings receive. Thus only if there really is demonstrable contribution to the overall pleasure or happiness on earth, may an animal capable of experiencing pleasure or happiness be sacrificed for the sake of some human purpose. Barring such demonstrable contribution, animals and humans enjoy equal rights.

At times the argument for animal rights begins with the rather mild point that “reason requires that other animals are as much within the scope of moral concern as are men” but then moves on to the more radical claim that therefore “we must view our entire history as well as all aspects of our daily lives from a new perspective.”

Of course, people have generally invoked some moral considerations as they treated animals—I can recall living on a farm in Hungary when I was 11 and getting all kinds of lectures about how I ought to treat the animals, receiving severe rebuke when I mistreated a cat and lots of praise when I took the favorite cow grazing every day and established a close bond with it over time. Hardly anyone can have escaped one or another moral lecture
from parents or neighbors concerning the treatment of pets, household animals, or birds. When a young boy once tried out an air gun by shooting a pigeon sitting on a telephone wire before the apartment house in which he lived, I recall that there was no end of rebuke in response to his wanton callousness. Yet none of those who engaged in the moralizing ever entertained the need to “view our entire history as well as all aspects of our daily lives from a new perspective.” Rather they seemed to have understood that reckless disregard for the life or well being of animals shows a defect of character, lack of sensitivity, callousness—realizing, at the same time, that numerous human purposes justify our killing and using animals in the various ways most of us do use them.

And this really is the crux of the matter. But why? Why is it more reasonable to think of animals as available for our sensible use rather than owed the kind of respect and consideration we ought to extend to other human beings? It is one thing to have this as a common sense conviction, it is another to know it as a sound viewpoint, in terms of which we may confidently conduct ourselves.

WHY WE MAY USE ANIMALS

While I will return to the arguments for animal rights, let me first place on record the case for the use of animals for human purposes. Without this case reasonably well established, it will not be possible to critically assess the case for animal rights. After all, this is a comparative matter—which viewpoint makes better sense, which is, in other words, more likely to be true?

One reason for the propriety of our use of animals is that we are more important or valuable than other animals and some of our projects may require animals for them to be successful. Notice that this is different from saying that human beings are “uniquely important,” a position avidly ridiculed by Stephen R. L. Clark, who claims that “there seems no decent ground in reason or revelation to suppose that man is uniquely important or significant.” If man were uniquely important, that would mean that one could not assign any value to plants or non-human animals apart from their relationship to human beings. That is not the position I am defending. I argue that there is a scale of importance in nature, and among all the various kinds of being, human beings are the most important—even while it is true that some members of the human species may indeed prove themselves to be the most vile and worthless, as well.

How do we establish that we are more important or valuable? By considering whether the idea of lesser or greater importance or value in the nature of things makes clear sense and applying it to an understanding of whether human beings or other animals are more important. If it turns out that ranking things in nature as more or less important makes sense, and if we qualify as more important than other animals, there is at least the
beginning of a reason why we may make use of other animals for our purposes.

That there are things of different degree of value in nature is admitted by animal rights advocates, so there is no great need here to argue about that. When they insist that we treat animals differently from the way we treat, say, rocks or iron ore—so that while we may not use the former as we choose, we may use the latter—they testify, at least by implication, that animals are more important than, say, iron ore. Certainly they invoke some measure of importance or value and place animals higher in line with this measure than they place other aspects of nature. They happen, also, to deny that human beings rank higher than animals, or least they do not admit that human beings' higher ranking warrants their using animals for their purposes. But that is a distinct issue which we can consider later.

Quite independently of the implicit acknowledgment by animal rights advocates of the hierarchy of nature, there simply is evidence through the natural world of the existence of beings of greater complexity and of higher value. For example, while it makes no sense to evaluate as good or bad such things as planets or rocks or pebbles—except as they may relate to human purposes—when it comes to plants and animals the process of evaluation commences very naturally indeed. We can speak of better or worse trees, oaks, redwoods, or zebras, foxes or chimps. While at this point we confine our evaluation to the condition or behavior of such beings without any intimation of their responsibility for being better or worse, when we start discussing human beings our evaluation takes on a moral component. Indeed, none are more ready to testify to this than animal rights advocates who, after all, do not demand any change of behavior on the part of non-human animals and yet insist that human beings conform to certain moral edicts as a matter of their own choice. This means that even animal rights advocates admit outright that to the best of our knowledge it is with human beings that the idea of moral goodness and moral responsibility enters the universe.

Clearly this shows a hierarchical structure in nature: some things do not invite evaluations at all—it is a matter of no significance or of indifference whether they are or are not or what they are or how they behave. Some things invite evaluation but without implying any moral standing with reference to whether they do well or badly. And some things—namely, human beings—invite moral evaluation. The level of importance or value may be noted to move from the inanimate to the animate world, culminating, as far as we now know, with human life. Normal human life involves moral tasks, and that is why we are more important than other beings in nature—we are subject to moral appraisal, it is a matter of our doing whether we succeed or fail in our lives.

Now when it comes to our moral task, namely, to succeed as human beings, we are dependent upon reaching sensible conclusions about what
we should do. We can fail to do this and too often do so. But we can also succeed. The process that leads to our success involves learning, among other things, what it is that nature avails us with to achieve our highly varied tasks in life. Clearly among these highly varied tasks could be some that make judicious use of animals—for example, to find out whether some medicine is safe for human use, we might wish to use animals. To do this is the rational thing for us to do, so as to make the best use of nature for our success in living our lives. That does not mean there need be no guidelines involved in how we might make use of animals—any more than there need be no guidelines involved in how we use anything else.

**WHY INDIVIDUAL HUMAN RIGHTS?**

Where do individual human rights come into this picture? The rights being talked of in connection with human beings have as their source, as we have noted earlier, the human capacity to make moral choices. We have the right to life, liberty and property—as well as more specialized rights connected with politics, the press, religion—because we have as our central task in life to act morally. And in order to be able to do this throughout the scope of our lives, we require a reasonably clear sphere of personal jurisdiction—a dominion where we are sovereign and can either succeed or fail to live well, to do right, to act properly.

If we did not have rights, we would not have such a sphere of personal jurisdiction and there would be no clear idea as to whether we are acting in our own behalf or those of other persons. No one could be blamed or praised for we would not know clearly enough whether what the person is doing is in his or her authority to do or in someone else’s. This is precisely the problem that arises in communal living and, especially, in totalitarian countries where everything is under forced collective governance. The reason moral distinctions are still possible to make under such circumstances is that in fact—as distinct from law—there is always some sphere of personal jurisdiction wherein people may exhibit courage, prudence, justice, honesty, and other virtues. But where collectivism has been success fully enforced, there is no individual responsibility at play and people’s morality and immorality is submerged within the group.

Indeed the main reason for governments has for some time been recognized to be nothing other than that our individual human rights should be protected. In the past—and in many places even today—it was thought that government (or the State) has some kind of leadership role in human communities. This belief fallowed the view that human beings differ amongst themselves radically, some being lower, some higher class, some possessing divine rights, other lacking them, some having a personal communion with God, other lacking this special advantage.

With such views in place, it made clear enough sense to argue that government should have a patriarchal role in human communities—the
view against which John Locke forcefully argued his theory of natural individual human rights.12

WHERE IS THERE ROOM FOR ANIMAL RIGHTS?

We have seen that the most sensible and influential doctrine of human rights rests on the fact that human beings are indeed members of a discernibly different species—the members of which have a moral life to aspire to and must have principles upheld for them in communities that make their aspiration possible. Now there is plainly no valid intellectual place for rights in the non-human world, the world in which moral responsibility is for all practical purposes absent. Some would want to argue that some measure of morality can be found within the world of at least higher animals—e.g., dogs. For example, Rollin holds that “In actual fact, some animals even seem to exhibit behavior that bespeaks something like moral agency or moral agreement.”13 His argument for this is rather anecdotal but it is worth considering:

Canids, including the domesticated dog, do not attack another when the vanquished bares its threat, showing a sign of submission. Animals typically do not prey upon members of their own species. Elephants and porpoises will and do feed injured members of their species. Porpoises will help humans, even at risk to themselves. Some animals will adopt orphaned young of other species. (Such cross-species “morality” would certainly not be explainable by simple appeal to mechanical evolution, since there is no advantage whatever to one’s own species.) Dogs will act ‘guilty’ when they break a rule such as one against stealing food from a table and will, for the most part, learn not to take it.14

Animal rights advocates such as Rollin maintain that it is impossible to clearly distinguish between human and non-human animals, including on the grounds of the former’s characteristic as a moral agent. Yet what they do to defend this point is to invoke borderline cases, imaginary hypothesis, and anecdotes.

In contrast, in his book *The Difference of Man and the Difference it Makes*, Mortimer Adler undertakes the painstaking task of showing that even with the full acknowledgment of the merits of Darwinian and, especially, post-Darwinian evolutionary theory, there is ample reason to uphold the doctrine of specie-distinction—a distinction, incidentally, that is actually presupposed within Darwin’s own work.15 Adler shows that although the theistic doctrine of radical species differences is incompatible with current evolutionary theory, the more naturalistic view that species are superficially (but non-negligibly) different is indeed necessary to it. The fact of occasional borderline cases is simply irrelevant—what is crucial is that the generalization is true that human beings are basically different from other animals—by virtue of “a crucial threshold in a continuum of degrees.” As Adler explains:
DO ANIMALS HAVE RIGHTS? 171

... distinct species are genetically isolated populations between which interbreeding is impossible, arising (except in the case of polyploidy) from varieties between which interbreeding was not impossible, but between which it was prevented. Modern theorists, with more assurance than Darwin could manage, treat distinct species as natural kinds, not as man-made class distinctions.16

Adler adds that "Without the critical insight provided by the distinction between superficial and radical differences in kind, biologists [as well as animal rights advocates, one should add] might be tempted to follow Darwin in thinking that all differences in kind must be apparent, not real."17

Since Locke’s admittedly incomplete—sometimes even confusing—theory had gained respect and, especially, practical import (e.g., in British and American political history), it became clear enough that the only justification for the exercise of state power—namely the force of the law—is that the rights of individuals are being or have been violated. But as with all successful doctrines, Locke’s idea became corrupted by innumerable efforts to concoct rights that government must protect, rights that were actually disguised special interest objectives—values that some people, perhaps quite legitimately, wanted very badly to have secured for them.

While it is no doubt true that many animal rights advocates sincerely believe that they have found a justification for the actual existence of animal rights, it is equally likely that if the Lockean doctrine of rights had not become so influential, they would now be putting their point differently—in a way, namely, that would secure for them what they, as a special interest group, want: the protection of animals they have such love and sympathy for.

CLOSING REFLECTIONS

As with most issues on the minds of many intelligent people as well as innumerable crackpots, a discussion of whether there are animals rights and how we ought to treat animals cannot be concluded with dogmatic certainty one way or the other. Even though those who defend animal rights are certain almost beyond a shadow of doubt, all I can claim is to being certain beyond a reasonable doubt. Animals are not the sort of beings with basic rights to life, liberty and property, whereas human beings, in the main, are just such beings. Yet we know that animals can feel pain and can enjoy themselves and this must give us pause when we consider using them for our legitimate purposes. We ought to be humane, we ought to kill them and rear them and train them and hunt them in a fashion consistent with such care about them as sentient beings.

In a review of Tom Regan’s provocative book already mentioned, The
Case for Animal Rights, John Harsys makes the following observations that I believe put the matter into the best light we can shed on our topic:

As one reads page after page of Regan’s book, one has the growing impression that his thesis is in an important way “going against nature.” It is a fact of nature that living things have to live on other living things in order to stay alive themselves. It is a fact of nature that carnivores must consume, not plants (which they can’t digest), but other sentient beings capable of intense pain and suffering, and that they can survive in no other way. It is a fact of nature that animal reproduction is such that far more creatures are born or hatched than can possibly survive. It is a fact of nature that most creatures die slow lingering tortuous deaths, and that few animals in the wild ever reach old age. It is a fact of nature that we cannot take one step in the woods without killing thousands of tiny organisms whose lives we thereby extinguish. This has been the order of nature for millions of years before man came on the scene, and has indeed been the means by which any animal species has survived to the present day; to fight it is like trying to fight an atomic bomb with a dartgun.... This is the world as it is, nature in the raw, unlike the animals in Disney cartoons.18

Of course, one might then ask, why should human beings make any attempt to behave differently among themselves, why bother with morality at all?

The fact is that with human nature a problem arose in nature that had not been there before—basic choices had to be confronted, which other animals do not have to confront. The question “How should I live?” faces each human being. And that is what makes it unavoidable for human beings to dwell on moral issues as well as to see other human beings as having the same problem to solve, the same question to dwell on. For this reason we are very different from other animals—we also do terrible, horrible, awful things to each other as well as to nature, but we can also do much, much better and achieve incredible feats nothing else in nature can come close to.

Indeed, then, the moral life is the exclusive province of human beings, so far as we can tell for now. Other—lower(!)—animals simply cannot be accorded the kind of treatment that such a moral life demands, namely, respect for and protection of basic rights.

Auburn University

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Notes

3. John Locke, Two Treatises on Government, Par. 123.
4. Henry S. Salt, *Animals' Rights* (London: George Bell & Sons, Ltd., 1892; Clark Summit, PA: Society for Animals Rights, Inc., 1980). This is perhaps the major philosophical effort to defend animals rights prior to Tom Regan's treaties on the same topic.


6. On these points both the deontologically oriented Tom Regan and the utilitarian Peter Singer tend to agree, although they differ considerably in their arguments.

7. Peter Singer holds that "we would be on shaky grounds if we were to demand equality for blacks, women, and other groups of oppressed humans while denying equal consideration to nonhumans." "All Animals are Equal," *op. cit.*, Regan & Singer, *Animal Rights*, p. 150.

8. Tom Regan contends that "[it] is not to say that practices that involve taking the lives of animals cannot possibly be justified .... in order to seriously consider approving such a practice [it] would [have to] prevent, reduce, or eliminate a much greater amount of evil ... there is no other way to bring about these consequences ... and ... we have very good reason to believe that these consequences will obtain." "Do Animals Have a Right to Life?" *Op cit.*, Regan & Singer, *Animal Rights*, pp. 205-4.

9. This is the gist of Singer's thesis.


12. John Locke, *Two Treatises*.


