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Tom Regan

The Case for Animal Rights

This selection is from the influential *The Case for Animal Rights*, published in 1983. Regan explains his concept of "subject-of-a-life" as the basis for inherent value, the distinction between moral agents and moral patients, and two principles to be used in cases of unavoidable conflicts between subjects-of-a-life.

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Moral agents and moral patients

A helpful place to begin is to distinguish between moral agents and moral patients [. . .]. 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 conceive it, requires. Because moral agents have these abilities, it is fair to hold them morally accountable for what they do, assuming that the circumstances of their acting as they do in a particular case do not dictate otherwise.

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In contrast to moral agents, *moral patients* lack the prerequisites that would enable them to control their own behavior in ways that would make them morally accountable for what they do. A moral patient lacks the ability to formulate, let alone bring to bear, moral principles in deliberating about which one among a number of possible acts it would be right or proper to perform. Moral patients, in a word, cannot do what is right, nor can they do what is wrong. Granted, what they do may be detrimental to the welfare of others—they may, for example, bring about acute suffering or even death; and granted, it may be necessary, in any given case, for moral agents to use force or violence to prevent such harm being done, either in self-defense or in defense of others. But even when a moral patient causes significant harm to another, the moral patient has not done what is wrong. Only moral agents can do what is wrong. Human infants, young children, and the mentally deranged or enfeebled of all ages are paradigm cases of human moral patients. More controversial is whether human fetuses and future generations of human beings qualify as moral patients. It is enough for our purposes, however, that some humans are reasonably viewed in this way.

Individuals who are moral patients differ from one another in morally relevant ways. Of particular importance is the distinction between (a) those individuals who are conscious and sentient (i.e., can experience pleasure and pain) but who lack other mental abilities, and (b)

those individuals who are conscious, sentient, and possess the other cognitive and volitional abilities discussed in previous chapters (e.g., belief and memory). Some animals, for reasons already advanced, belong in category (b); other animals quite probably belong in category (a).

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Our primary interest, in this and in succeeding chapters, concerns the moral status of animals in category (b). When, therefore, the notion of a *moral patient* is appealed to in the discussions that follow, it should be understood as applying to *animals in category (b) and to those other moral patients like these animals in the relevant respects*—that is, those who have desires and beliefs, who perceive, remember, and can act intentionally, who have a sense of the future, including their own future (i.e., are self-aware or self-conscious), who have an emotional life, who have a psychophysical identity over time, who have a kind of autonomy (namely, preference-autonomy), and who have an experiential welfare. Some *human* moral patients satisfy these criteria—for example, young children and those humans who, though they suffer from a variety of mental handicaps and thus fail to qualify as moral agents, possess the abilities just enumerated. Where one draws the line between those humans who have these abilities and those who do not is a difficult question certainly, and it may be that no exact line can be drawn. But how we should approach the question in the case of human beings is the same as how we should approach it in the case of animals. Given any human being, what we shall want to know is whether his/her behavior can be accurately described and parsimoniously explained by making reference to the range of abilities that characterizes animals (desires, beliefs, preferences, etc.). To the extent that the case can be made for describing and explaining the behavior of a human being in these terms, to that extent, assuming that we have further reasons for denying that the human in question has the abilities necessary for moral agency, we have reason to regard that human as a moral patient on all fours, so to speak, with animals. As previously claimed, some human beings *are* moral patients in the relevant sense, and *it is only those individuals who are moral patients in this sense (who have, that is, the abilities previously enumerated), whether these individuals be human or nonhuman, who are being referred to, in this chapter and in the sequel, when reference is made to " 'moral patients.' "*

Moral patients cannot do what is right or wrong, we have said, and in this respect they differ fundamentally from moral agents. But moral patients can be on the receiving end of the right or wrong acts of moral agents, and so in this respect resemble moral agents. A brutal beating administered to a child, for example, is wrong, even if the child herself can do no wrong, just as attending to the basic biological needs of the senile is arguably right, even if a senile person can no longer do what is right. Unlike the case of the relationship that holds between moral agents, then, the relationship that holds between moral agents, on the one hand, and moral patients, on the other, is not reciprocal. Moral patients can do nothing right or wrong that affects or involves moral agents, but moral agents can do what is right or wrong in ways that affect or involve moral patients.

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Individuals as equal in value

The interpretation of formal justice favored here, which will be referred to as *equality of individuals*, involves viewing certain individuals as having value in themselves. I shall refer to this kind of value as *inherent value* and begin the discussion of it by first concentrating on the inherent value attributed to moral agents.

The inherent value of individual moral agents is to be understood as being conceptually distinct from the intrinsic value that attaches to the experiences they have (e.g., their pleasures or preference satisfactions), as not being reducible to values of this latter kind, and as being incommensurate with these values. To say that inherent value is not reducible to the intrinsic values of an individual's experiences means that we cannot determine the inherent value of individual moral agents by totaling the intrinsic values of their experiences. Those who have a more pleasant or happier life do not therefore have greater inherent value than those whose lives are less pleasant or happy. Nor do those who have more "cultivated" preferences (say, for arts and letters) therefore have greater inherent value. To say that the inherent value of individual moral agents is incommensurate with the intrinsic value of their (or anyone else's) experiences means that the two kinds of value are not comparable and cannot be exchanged one for the other. Like proverbial apples and oranges, the two kinds of value do not fall within the same scale of comparison. One cannot ask, How much intrinsic value is the inherent value of this individual worth—how much is it equal to? The inherent value of any given moral agent isn't equal to any sum of intrinsic values, neither the intrinsic value of that individual's experiences nor the total of the intrinsic value of the experiences of all other moral agents. To view moral agents as having inherent value is thus to view them as something different from, and something more than, mere receptacles of what has intrinsic value. They have 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.

The difference between the utilitarian-receptacle view of value regarding moral agents and the postulate of inherent value might be made clearer by recalling the cup analogy. On the receptacle view of value, it is *what goes into the cup* (the pleasures or preference-satisfactions, for example) that has value; what does not have value is the cup itself (i.e., the individual himself or herself). The postulate of inherent value offers an alternative. The cup (that is, the individual) has value *and* a kind that is not reducible to, and is incommensurate with, what goes into the cup (e.g., pleasure). The cup (the individual) does "contain" (experience) things that are valuable (e.g., pleasures), but the value of the cup (individual) is not the same as any one or any sum of the valuable things the cup contains. *Individual moral agents themselves have a distinctive kind of value*, according to the postulate of inherent value, but not according to the receptacle view to which utilitarians are committed. It's the cup, not just what goes into it, that is valuable.

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All that is required to insure just treatment, on utilitarian grounds, is that the preferences (pleasures, etc.) of all affected by the outcome be considered and that equal preferences (pleasures, etc.) be counted equally. But if moral agents have a value that is *not* reducible to or commensurate with the value of their own or everyone else's valuable experiences, then how moral agents are to be treated, if they are to be treated justly, cannot be determined *merely* by considering the desires, and the like, of all involved, weighting them equitably, and then favoring that option that will bring about the optimal balance of goods over evils for all involved. To suppose otherwise is to assume that questions of just treatment can be answered by ignoring the value of the individual moral agent, which, if moral agents are viewed as equal in inherent value, simply is not true. Moreover, because all moral agents are viewed as equal in inherent value, if any have such value, what applies to how some may be justly treated applies to all, whatever their race, say, or sex. Given the postulate of inherent value, no harm done to *any* moral agent can possibly be justified merely on the grounds of its producing the best consequences for all affected by the outcome. Thus are we able to avoid

the counterintuitive implications of act utilitarianism if we deny the receptacle view of moral agents and postulate their equal inherent value.

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It might be suggested that *being-alive* is a *sufficient* condition of an individual's having inherent value. This position would avoid the problems indigenous to the view that being-alive is a necessary condition, but it stands in need of quite considerable analysis and argument if it is to win the day. It is not clear why we have, or how we reasonably could be said to have, direct duties to, say, individual blades of grass, potatoes, or cancer cells. Yet all are alive, and so all should be owed direct duties if all have inherent value. Nor is it clear why we have, or how we reasonably could be said to have, direct duties to collections of such individuals—to lawns, potato fields, or cancerous tumors. If, in reply to these difficulties, we are told that we have direct duties only to some, but not to all, living things, and that it is this subclass of living things whose members have inherent value, then not only will we stand in need of a way to distinguish those living things that have this value from those that do not but more importantly for present purposes, the view that being-alive is a sufficient condition of having such value will have to be abandoned. Because of the difficulties endemic both to the view that being-alive is a necessary condition of having inherent value and to the view that this is a sufficient condition, and granting that moral agents and moral patients share the important characteristic of being alive, it is extremely doubtful that the case could be made for viewing this similarity as the relevant similarity they share, by virtue of which all moral agents and patients have equal inherent value.

Inherent value and the subject-of-a-life criterion

An alternative to viewing being-alive as the relevant similarity is what will be termed *the subject-of-a-life criterion*. To be the subject-of-a-life, in the sense in which this expression will be used, involves more than merely being alive and more than merely being conscious. To be the subject-of-a-life is to be an individual whose life is characterized by those features explored in the opening chapters of the present work: that is, 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 experiental 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. Those who satisfy the subject-of-a-life criterion themselves have a distinctive kind of value—inherent value—and are not to be viewed or treated as mere receptacles.

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The subject-of-a-life criterion identifies a similarity that holds between moral agents and patients. Is this similarity a relevant similarity, one that makes viewing them as inherently valuable intelligible and nonarbitrary? The grounds for replying affirmatively are as follows: (1) A relevant similarity among all those who are postulated to have equal inherent value must mark a characteristic shared by all those moral agents and patients who are here viewed as having such value. The subject-of-a-life criterion satisfies this requirement. *All* moral agents and *all* those moral patients with whom we are concerned *are* subjects of a life that is better or worse for them, in the sense explained, logically independently of the utility they

have for others and logically independently of their being the object of the interests of others. (2) 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. The subject-of-a-life criterion thus demarcates a categorical status shared by all moral agents and those moral patients with whom we are concerned. (3) A relevant similarity between moral agents and patients must go some way toward illuminating why we have direct duties to both and why we have less reason to believe that we have direct duties to individuals who are neither moral agents nor patients, even including those who, like moral agents and those patients we have in mind, are alive. This requirement also is satisfied by the subject-of-a-life criterion. Not all living things are subjects of a life, in the sense explained; thus not all living things are to be viewed as having the same moral status, given this criterion, and the differences concerning our confidence about having direct duties to some (those who are subjects) and our not having direct duties to others (those who are not subjects) can be at least partially illuminated because the former meet, while the latter fail to meet, the subject-of-a-life criterion. For these reasons, the subject-of-a-life criterion can be defended as citing a relevant similarity between moral agents and patients, one that makes the attribution of equal inherent value to them both intelligible and nonarbitrary.

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Justice: the principle of respect for individuals

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If individuals have equal inherent value, then any principle that declares what treatment is due them as a matter of justice must take their equal value into account. The following principle (*the respect principle*) does this: *We are to treat those individuals who have inherent value in ways that respect their inherent value*. Now, the respect principle sets forth an egalitarian, nonperfectionist interpretation of formal justice. The principle does not apply only to how we are to treat some individuals having inherent value (e.g., those with artistic or intellectual virtues). It enjoins us to treat *all* those individuals having inherent value in ways that respect their value, and thus it requires respectful treatment of all who satisfy the subject-of-a-life criterion. Whether they are moral agents or patients, we must treat them in ways that respect their equal inherent value.

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It is not an act of kindness to treat animals respectfully. It is an act of justice. It is not "the sentimental interests" of moral agents that grounds our duties of justice to children, the retarded, the senile, or other moral patients, including animals. It is respect for their inherent value. The myth of the privileged moral status of moral agents has no clothes.

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Comparable harm

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A distinction [can be] drawn between those harms that are inflictions and those that are deprivations. Harms that are deprivations deny an individual opportunities for doing what will bring satisfaction, when it is in that individual's interest to do this. Harms that are inflictions diminish the quality of an individual's life, not just if or as they deprive that individual of opportunities for satisfaction, though they usually will do this, but because they detract directly from the individual's overall welfare.

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[We can now] give content to the notion of comparable harm. Two harms are comparable when they detract equally from an individual's welfare, or from the welfare of two or more individuals. For example, separate episodes of suffering of a certain kind and intensity are comparable harms if they cause an equal diminution in the welfare of the same individual at different times, or in two different individuals at the same or different times. And death is a comparable harm if the loss of opportunities it marks are equal in any two cases.

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The miniride principle

By making use of the notion of comparable harm, the rights view can formulate two principles that can be appealed to in order to make decisions in prevention cases. The first principle (*the minimize overriding principle*, or *the miniride principle*) states the following:

> Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many.

This principle is derivable from the respect principle. This latter principle entails that all moral agents and patients are directly owed the prima facie duty not to be harmed and that all those who are owed this duty have an equally valid claim, and thus an equal prima facie moral right, against being harmed. Now, *precisely because* this right is equal, no one individual's right can count for any more than any other's, when the harm that might befall either is prima facie comparable. Thus, A's right cannot count for more than B's, or C's, or D's. However, when we are faced with choosing between options, one of which will harm A, the other of which will harm B, C, and D, and the third of which will harm them all, and when the foreseeable harm involved for each individual is prima facie comparable, then numbers count. *Precisely because* each is to count for one, no one for more than one, we cannot count choosing to override the rights of B, C, and D as neither better nor worse than choosing to override A's right alone. Three are more than one, and when the four individuals have an equal prima facie right not to be harmed, when the harm they face is prima facie comparable, and when there are no special considerations at hand, then showing equal respect for the equal rights of the individuals involved requires that we override the right of A (the few) rather than the rights of the many (B, C, D). To choose to override the rights of the

many in this case would be to override an equal right three times (i.e., in the case of three different individuals) when we could choose to override such a right only once, and *that* cannot be consistent with showing equal respect for the equal rights of all the individuals involved.

To favor overriding the rights of the few in no way contravenes the requirement that each is to count for one, no one for more than one; on the contrary, special considerations apart, to choose to override the rights of the many rather than those of the few would be to count A's right for more than one—that is, as being equal to overriding the rights of three relevantly similar individuals. Accordingly, because we must not allow any one individual a greater voice in the determination of what ought to be done than any other relevantly similar individual, what we ought to do in prevention cases of the sort under consideration is choose to override the rights of the fewest innocents rather than override the rights of the many. And since this is precisely what the miniride principle enjoins, that principle is derivable from the respect principle.

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The worse-off principle

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Recall the earlier prevention case where we are called upon to choose between harming A quite radically (−125), or harming a thousand individuals modestly (−1 each), or doing nothing

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The miniride principle, since it applies *only* in prevention cases where harms are prima facie comparable, cannot be relied on in cases, such as this one, where the harm all the innocents face is not prima facie comparable. The rights view thus requires a second principle, distinct from but consistent with the miniride principle, and one that is distinct from and not reducible to the minimize harm principle. The following principle (*the worse-off principle*) meets these requirements.

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> Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many.

Unfinished business

Two issues deferred in earlier discussions may now be addressed. The first is the lifeboat case [. . .] There are five survivors: four normal adults and a dog. The boat has room enough only for four. Someone must go or else all will perish. Who should it be? Our initial belief is: the dog. Can the rights view illuminate and justify this prereflective intuition? The preceding discussion of prevention cases shows how it can. All on board have equal inherent value and an equal prima facie right not to be harmed. Now, the harm that death is, is a function of the opportunities for satisfaction it forecloses, and no reasonable person would deny that the

death of any of the four humans would be a greater prima facie loss, and thus a greater prima facie harm, than would be true in the case of the dog. Death for the dog, in short, though a harm, is not comparable to the harm that death would be for any of the humans. To throw any one of the humans overboard, to face certain death, would be to make that individual worse-off (i.e., would cause *that* individual a greater harm) than the harm that would be done to the dog if the animal was thrown overboard. Our belief that it is the dog who should be killed is justified by appeal to the worse-off principle.

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Thus has the case for animal rights been offered. If it is sound, then, like us, animals have certain basic moral rights, including in particular the fundamental right to be treated with the respect that, as possessors of inherent value, they are due as a matter of strict justice.

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