iods when such schools are not in session, unless adequate care is provided at all times.

The provisions of the preceding three paragraphs shall also apply to any activity associated with or sponsored by the school.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars. 1979 Mass. Acts Ch. 439.

**Pennsylvania**

In 1949, the Pennsylvania state legislature passed its Humane Education Statute Article XV SS1514. "No cruel experiment on any living creature shall be permitted in any public school of this Commonwealth." (1949 Pa. Laws Art. XV § 1514) Unfortunately, there is no evidence to suggest that this law has ever been tested in the courts or that it has any real effect on the types of experiments conducted in Pennsylvania schools.

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**Discussion Paper**

**The Debate Over Animal Rights: An Introduction**

**Tom Regan**

There is a growing interest in some circles in the idea of animal rights. Not surprisingly, others find the very idea laughable. But laughter is no substitute for informed judgment and the ideas people find most amusing, sometimes turn out to be the very ones that most challenge their slumbering prejudices. The present essay is an attempt to take a few first steps. In Part I, the ideas of moral and legal rights are compared and contrasted. The question of what constitutes a "right" is discussed in order to provide a clearer focus for the rest of the paper. In Parts II and III, arguments for and against ascribing to animals moral and legal rights are examined. Part IV sketches some implications and poses some questions for further thought.

**I. Moral Rights and Legal Rights**

A right can be understood as a valid claim the possessor has against another. For example, if I have a right to an inheritance, then I cannot only claim that the inheritance is mine (that is, not only am I empowered to say that it is mine)—I am justified in taking certain steps to see that I actually get it (that is, my claim is valid). By contrast, someone who does not have a right to an inheritance may claim it is his but, lacking any right to it, he is not justified in taking steps to get it. The criteria establishing the validity of anyone's claim varies depending on whether one is speaking of moral rights or legal rights. Legal rights acquire their validity from the law while moral rights acquire their validity from the principles of an enlightened morality. Both ideas need to be explained more fully, beginning with the idea of legal rights.

It is clear that the laws of one country frequently differ from the laws of another. This variability occurs because laws are created by the legislative acts or decrees of various persons living in various countries at various times and, like other creative activities, the products of this one are bound to differ. A similar situation occurs in the case of legal rights of the citizens of various countries. Moreover, because legal rights are made by humans, they can also be unmade. For example, slave owners in the United States once had the legal right, based on property rights, to buy and sell slaves.

The idea of a moral right differs in important respects from that of a legal right.

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First, moral rights are supposed to be universal—that is, if any individual (A) has a moral right, then all other individuals like A in the relevant respects also have this right. Second, moral rights, unlike legal rights, are not the result of human creative activity. They are not “brought into existence” by democratic vote or the whim of a despot. Rather, moral rights are discovered, not by doing empirical science, but by thinking hard about moral questions. Like basic postulates in science, moral rights (if there are any) are what reason compels us to include in the most satisfactory theoretical account of morality. Thus, legal rights are created by humans, moral rights are not.

A final defining characteristic of moral rights is that they are equal. This means that if any two individuals, A & B, both have the same moral right, then both possess this right equally. No one person’s moral right can be greater than any other’s. Thus, for example, whites do not have greater moral rights than blacks, men than women, adults than children, or Americans than Viet Cong.

Not everyone has agreed that there are moral rights. The arguments for and against them are too complex and varied to receive a complete airing here. However, one attempt to dispense with moral rights needs to be characterized, both because it is a widely held and influential view and because its apparent shortcomings highlight the importance of moral rights. The attempt in question is the (or perhaps the) most immoral as utilitarianism. Utilitarianism emphasizes the consequences (the results or effects) of actions or rules of action, including legislation, maintaining that the morality of an action or rule depends entirely upon how valuable the consequences are. Moral rights are, according to this theory, superfluous; there is no good reason to postulate them and very good reason not to.

The major difficulty encountered by all forms of utilitarianism is the apparent commitment to the view that the end justifies the means. So long as the results of a certain action or rule bring about the best consequences, the action or rule are above moral criticism, according to the utilitarian. Thus, acts or rules that are flagrantly wrong might emerge as morally quite all right. A standard example is that of slavery. Might it not be the case that an economy based on slavery brought about the best consequences, all considered, in nineteenth century America? If so, then utilitarians seem necessarily to be committed to supporting slavery under those conditions.

The idea of moral rights is useful when attempting to explain why slavery is wrong. Since human beings each have certain moral rights (e.g., to life and liberty), and because these rights are universal and equal, it cannot be morally justifiable to treat some human beings, against their will, in ways that it would be wrong to treat others. Although many of the details and subtleties of this debate have not been discussed, hopefully enough has been said to suggest why the idea of humans having moral rights is an important one.

For the present, let us accept that human beings do have certain moral rights, such as the rights to life, liberty, and the pursuit of happiness. Two further questions can then be explored. First, what are the grounds humans possessing moral rights? Second, how do alternative answers to this first question impact on the debate over whether animals have moral rights? These are the issues that are dealt with in Part II.

II. Do Animals Have Moral Rights?

What are the grounds for human possession of moral rights? Various answers have been proposed. A cursory examination of some of the most important follows.

The Species Requirement: This view states that all and only members of the species Homo sapiens have moral rights. Thus, all humans have moral rights but all animals lack them.

This requirement can be challenged in a variety of ways, but one stands out. The Species Requirement implies that moral questions can be answered by biological considerations—in this case, species membership. However, prejudices such as racism and sexism also attempt to answer moral questions on biological grounds, in their case by appeals to race or sex. If, as is agreed, these latter positions are morally unacceptable, the suspicion arises that the same is true of the view espoused by the Species Requirement. It, too, expresses a morally unacceptable prejudice (what many now call "speciesism")—namely, a prejudice against members of species other than our own. To make this clearer, imagine the following possibility. Beings from another planet (extraterrestrials) pay Earth a visit. They are intelligent, display the ability to remember and imagine, feel pleasure and pain, are able to communicate, have preferences and, in a word, are like "normal" humans when it comes to their abilities. However, despite these noteworthy similarities, they do not have moral rights, according to the Species Requirement. But this surely is rank prejudice, comparable in terms of its logic to racism and sexism. The Species Requirement, therefore, is inadequate.

The Rationality Requirement: This view holds that all and only rational beings have moral rights. Thus, even extraterrestrials have moral rights if such beings are rational. Animals, however, since they are not rational, do not have moral rights.

Two objections to this view will suffice. First, many animals appear to be able to reason. Accordingly, if we were to accept the Rationality Requirement, many animals would have moral rights. Second, there are many human beings who are not rational, such as severely mentally enfeebled humans and the mentally deranged. However, if all humans have moral rights, these humans have moral rights. And if they have moral rights and yet are not able to reason, then the ability to reason cannot be a requirement individuals must meet in order to have moral rights.

The Modified Species Requirement: This requirement states that all and only those individuals who belong to a species whose members typically (or normally) are rational have moral rights. Thus this requirement does not include only Homo sapiens; even extraterrestrials can have moral rights, if the typical members of their species are rational. The Modified Requirement does allow that the enfeebled and deranged have moral rights since they belong to a species (Homo sapiens) whose members are normally or typically rational. Thus, this requirement overcomes the principal objection raised against the Rationality Requirement. Animals, however, come out on the short end again, since they do not belong to species whose members normally or typically are rational.

The apparent success of this requirement is just that—apparent. First, if it is true that some animal species do normally or typically have members that are rational, then all members of these species will have moral rights, given the Modified Require-
ment. Thus, all members of certain species of primates would seem to qualify as possessors of moral rights. Second, the case of our extraterrestrials needs to be reconsidered. We have supposed that the ones who visit the earth are rational, but now imagine that they are abnormal ones, so far as their species is concerned. That is, the members of their species normally or typically are not rational. This being so, we would be compelled to deny that our visitors had moral rights according to the Modified Species Requirement. This is not because of any fault of their own nor because they are unable to do something normal humans are able to do, but merely because of some fact about the species to which they happen to belong. This is palpably unfair. Whatever else may be unclear or uncertain about moral rights, it at least is clear and certain that no one individual can lack moral rights because of what is true of some other individual(s).

A general theme emerges from the inadequacy of the preceding requirements. It is that moral rights, because they are possessed by individuals, must be based on what is true of the individuals who possess them and that the requirement for possessing moral rights must not exclude those humans who are enfeebled or deranged. This is why many have thought that the next requirement is the most adequate.

**The Sentience Requirement:** All and only individuals who are sentient (defined as the ability to experience pleasure and pain) have moral rights. Thus, deranged and enfeebled humans have moral rights. And so, too, do members countless species of animals.

Not everything is smooth sailing even for this requirement. In particular, the moral status of irreversibly comatose human beings poses a serious problem since, given the Sentience Requirement, these humans have no moral rights. However, this does not mean that we would be morally entitled to do anything we like to these humans. On the contrary, it is open to anyone who accepts the Sentience Requirement to insist that all humans must be treated with respect, even those who are irreversibly comatose, because (a) we may not know that they are in an irreversible state and because (b) we ought always to act in ways that promote respect for human life.

Now, if the Sentience Requirement is considered adequate, a rational basis is provided for enfranchising many animals in the class of individuals possessing moral rights. For there are many animals who are sentient. Granted, there are uncertainties over where we draw the line between those who can feel pain and those who cannot. But there can be no reasonable doubt that many of the animals routinely used by humans as a source of food, in research, in science fairs and in classroom demonstrations would qualify as possessors of moral rights on the grounds of being sentient.

From the moral point of view, therefore, we must seriously inquire into the justifiability of using animals in these ways since overriding moral rights cannot be justified on the grounds of mere utility. This is true in a human case, such as that of slavery, or in the case of our use of animals in research or science fairs. Perhaps someone will suggest that the case of animals is different, that our use of them can be justified because of its utility, whereas our use of other humans cannot. Doubtless, many people believe this. The challenge these people must meet is to give good reasons for thinking this true. This challenge is compounded all the more by the fact that the animals in question resemble enfeebled human beings in the relevant respects—namely, both are sentient. The importance of the idea of animals rights is due, in part, to its role in forcing us to come to terms with the morality of the ways we routinely treat animals. It is also important because it is relevant to the related issue of granting legal rights to animals, an issue to which we shall now turn.

**III. Should Animals Have Legal Rights?**

Though many people apparently think otherwise, animals do not now have legal rights. True, they are protected by various laws, such as anti-cruelty legislation and the Endangered Species Act. But buildings and works of art also protected by laws, yet they do not have legal rights. Indeed, so far as the law is currently written and understood, animals are in the same general legal category as buildings and works of art. Like them, animals are not “legal persons.” Since only legal persons can possess legal rights, animals do not possess legal rights.

Even granting that animals are not now accorded the status of legal persons, it does not follow that they cannot or should not be given this status in the future. To begin with, “persons” within the law are not restricted to human beings. Ships and corporations, for example, are legal persons. Thus, in arguing that animals ought to be accorded the status of legal persons, one is not asking the law to perform the biological trick of changing animals into human beings! Moreover, if we ask what characterizes legal persons, a strong case can be made for placing animals in this category and removing them from the legal limbo they presently share with buildings and works of art. The following ideas characteristically are attributed to legal persons:

- Legal persons can be injured;
- Legal persons can be benefitted;
- Legal persons have interests.

Now whereas there is no literal sense in which, say, a building can be injured, benefitted, or have its interests represented, respected or ignored, the same is not true in the case of those animals who are sentient. For these animals do have an interest in avoiding pain; they can be injured; and they are benefitted when, for example, they are permitted to live in an environment attuned to their nature. There is, then, no logical gap to granting the status of legal person to these animals.

In reply it might be argued that since legal rights are valid claims, and since animals cannot claim anything, they cannot have legal rights. This objection does not stand up to scrutiny. Ships cannot claim anything, yet these “individuals” have legal rights. Animals, therefore, cannot be denied legal personhood because of their inability to make claims. Furthermore, enfeebled humans often are unable to make claims, and yet the law recognizes that others, acting on behalf of the interests of the enfeebled, can claim what is due them as matter of legal right. This being so, there is no compelling reason for denying that others, acting on behalf of the interests of animals, could make and press those claims which the animals themselves are incapable of making, pressing or, again like the enfeebled, even understanding.

However, even if animals could be accorded the status of legal persons and could be accorded legal rights, the question remains—ought we to do so? This question would be of only theoretical interest if we had good reason to believe that present and forthcoming legislation already respects and protects the interests of animals. If it did, then making animals legal persons and giving them legal rights would be superfluous. But the law does not necessarily respect and protect the interests of animals. For example, witness this not untypical ruling of the New Mexico Supreme
Court on the legality of cock-fighting.

While it is true that in the minds of some men, there is nothing more violent, wanton, and cruel, necessarily producing pain and suffering to an animal, than placing a cock in a ring with another cock, both equipped with artificial spurs, to fight to the death, solely for man’s amusement and sport, others consider it an honorable sport mellowed in the crucible of time so as to become an established tradition not unlike calf-roping, steer riding, bulldogging, and bronco busting.

What this ruling illustrates so well is that the law allows human interest to be the measure of the legality of practices involving animals, independently of how these practices affect the interests of the animals themselves. The court in this case weighs the interests some humans have in avoiding cruelty against the interests other humans have in preserving one among a number of sports “mellowed in the crucible of time.” Nowhere is there any mention of whether cock-fighting is in the interests of the chickens, nor will there be such consideration, so long as animals are denied the status of legal persons.

How, then, might we argue on behalf of animals in this regard? The following argument merits consideration.

1. The law already allows that nonhumans can be legal persons; therefore, there is no reason why animals cannot have this legal status.
2. The law already accords legal rights to mentally enfeebled humans.
3. Sentient animals are similar to enfeebled humans both in terms of their sentence and because the case for postulating moral rights in the case of these animals is just as strong as the case for postulating them in the case of these animals (see Part II, above).
4. The law ought to treat similar cases similar.
5. Therefore, the law ought to treat animals similarly to the way it treats enfeebled humans.
6. Therefore, the law ought to accord legal rights to sentient animals.

Whether this argument can withstand the test of informed criticism cannot be argued here, but it does serve to illustrate how one might argue for granting legal rights to animals independently of appeals to sentient or “cuddly” qualities. The issue is one of fact and reason, not of “mere sentient.”

IV. Some Questions

In the present case, as in all other controversial, important ones, questions are easier to come by than answers. Especially in the area of the law, questions abound, and a collective wisdom at least equal to that of Solomon’s may be necessary to make intelligent headway, if animals are accorded legal rights. The central question is—what form should future animal legislation take? For example, should the law make it possible for animals to sue for damages? If so, what if the aggrieved animals happens to die or happens to have been killed—then who is the rightful heir? Indeed, does it make any sense at all even to think of one animal as “the heir” of another? Would not the law become absurdly disorderly if animals were permitted legal rights?

Not necessarily. For there is another legal approach than that of making animals the beneficiaries of legal proceedings brought on their behalf. This is to punish those who violate their rights. In fact, of course, this is similar to the approach of present ant-icruelty legislation, so that any future legislation based on the legal rights of animals could be an extension of this.

Given this approach, what ways of treating animals ought to be made illegal? Certainly more than presently existing anti-cruelty legislation is required. For this legislation almost invariably makes it legally punishable to treat animals in certain ways only on the condition that the accused was “wanton” or “intentionally cruel” in his treatment of the animal in question. This is altogether inadequate as a means of legally protecting animals, mainly because it requires proving that the accused did what he did from a particular mental state—e.g., that he was intentionally cruel—and the existence of mental states is extremely difficult to establish. If, instead of putting laws in terms of human cruelty, they were put in terms of animal rights, the situation would be different. For then persons could be convicted for violations of animal rights, independently of whether they happened to be cruel, wanton, etc. It would be enough that they acted in ways that violated the animal’s rights.

If the interests of the animals themselves, not just human interests in animals, are taken into account, how might we rationally resolve those cases where the interests of animals and humans come into conflict? How could reasonably qualify as a spokesperson of the interests of animals and represent their interests with knowledge and authority? What would be the impact of granting animals legal rights on our standard practices of using them in research, in the classroom, in science fairs, sport and the many other ways present custom condones? In particular, would the legal rights of animals serve as a legal check of the human right of freedom of inquiry, making it either legally impossible or at least legally extremely difficult to use animals in laboratory experimentation and how would this effect the quality of research? The issue of enfranchising animals, not just by having laws that “protect” them, but drafting and enforcing ones that are grounded in their interests, clearly is fraught with enormously difficult and important practical implications that in many ways go to the heart of our traditional beliefs and institutions. As remarked earlier, the questions come more readily than the answers. And yet, as was observed at the outset, the issues really are ones that call for informed judgment and rational inquiry.

Suggestions for Further Reading