

mistakes with respect to thoughts. But interest may revive as the scope for transformation is increased.

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## ANIMAL RIGHTS: A REPLY TO FREY

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IN his paper 'Animal Rights' (ANALYSIS 37.4) R. G. Frey disputes what he refers to as 'the most important . . . argument' for the view that 'animals do have rights' (p. 186). Frey formulates the argument in the following way:

- (1) Each and every criterion for the possession of rights that excludes animals from the class of right-holders also excludes babies and the severely mentally-enfeebled from the class of right-holders;
- (2) Babies and the severely mentally-enfeebled, however, do have rights and so fall within the class of right-holders;
- (3) Therefore, each and every one of these animal-excluding criteria must be rejected as a criterion for the possession of rights (pp. 186-7).

Frey's position is that premiss (2) 'is not obvious and requires defence', and that 'the best defences of it, *if they stand at all*, specifically exclude animals from the class of right-holders' (p. 187). The dilemma this is supposed to pose for those who argue for animal rights is this: 'either premiss (2) cannot be defended or else premiss (1) . . . is false' (ib.). 'In either case,' Frey concludes, 'this most important argument in behalf of animal rights fails' (ib.).

At the outset a serious question must arise as to whose argument, if anyone's, Frey is attacking, when he disputes this 'important argument'. 'Instances of this argument abound,' he claims (p. 187), yet he fails to document a single instance of it. The only supposed occurrence Frey cites is from Andrew Linzey's *Animal Rights*, the allegedly incriminating passage being the following:<sup>1</sup>

<sup>1</sup> Andrew Linzey, *Animal Rights* (London, 1976), p. 24. Frey fails to show that this argument occurs in any of the other sources he cites. These sources are the following: J. Feinberg, 'The Rights of Animals and Future Generations', in W. Blackstone (ed.), *Philosophy and Environmental Crisis* (Athens, Georgia, 1974); S. & R. Godlovitch, J. Harris (eds.), *Animals, Men and Morals* (London, 1971); T. Regan, 'The Moral Basis of Vegetarianism', *Canadian Journal of Philosophy*, vol. V, 1975, pp. 181-214; T. Regan, P. Singer (eds.), *Animal Rights and Human Obligations*, (Englewood Cliffs, New Jersey, 1976); P. Singer, 'Animal Liberation', *The New York Review of Books*, vol. XX, no. 5, April 5, 1973, pp. 17-21; P. Singer, *Animal Liberation* (London, 1976).

If we accord moral rights on the basis of rationality, what of the status of newly born children, "low grade" mental patients, "intellectual cabbages", and so on? Logically, accepting this criterion, they must have no, or diminished, moral rights.

Questions about the soundness of Linzey's argument are one thing; those concerning its form are another. Frey would have us suppose that Linzey's argument provides an example of the form of argument Frey attacks. The passage just quoted from Linzey, however, provides us with no grounds for thinking this. Linzey argues that, given a particular criterion for right-possession (namely, rationality), not only animals, but also some humans will fail to qualify as possessors of rights, or will at most have 'diminished moral rights'; in the passage just quoted he does not allege, and neither does he commit himself to, the view set forth in Frey's premiss (1)—namely, '*Each and every* criterion for the possession of rights that excludes animals from the class of right-holders also excludes babies and the severely mentally-enfeebled from the class of right-holders.' And since it is this view which an exponent of what Frey calls 'the most important argument' for animal rights must affirm or be committed to, Frey fails to show even that Linzey argues in the way he (Frey) criticizes, let alone that 'instances of this argument abound.' Even were we to grant, therefore, that anyone who argues in the way Frey disputes must face the dilemma he sets out, Frey provides us with no evidence for supposing that any "animal rightist" argues in this way.<sup>1</sup>

Whether or not any animal rightist does argue after the fashion Frey criticizes, it is reasonably clear that none needs to or should. For there are criteria for the possession of rights which, if accepted, could permit us to ascribe rights to all humans and withhold them from all animals. If, for example, we suppose that possession of an immortal soul is necessary and sufficient for inclusion within the class of right-holders, *and* that all and only human beings have immortal souls, then we have a criterion which would exclude all animals but no human beings. It would be prudent, therefore, for animal-rightists not to subscribe to so unqualified a position as the one which Frey, in his premiss (1), attributes to them. All that an animal rightist should and need maintain, and all that, for example, Linzey, in the above quote, commits himself to, is the view that some humans will be excluded from the class of right-holders *given certain* criteria for the possession of rights that exclude animals,<sup>2</sup> not that

<sup>1</sup> Though not an argument, it may not be irrelevant to remark that the present authors do not know of a single instance of an animal rightist's arguing in the way Frey criticizes.

<sup>2</sup> This form of argument has recently come under attack. See Jan Narveson, 'Critical Notice' of Tom Regan and Peter Singer (eds.), *Animal Rights and Human Obligations* (Englewood Cliffs: Prentice-Hall, Incorporated) 1976; and Peter Singer, *Animal Liberation* (New York: A New York Review Book) 1975; in *The Canadian Journal of Philosophy*, July 1977. For a critical discussion of Narveson's objections to this form or argument, see Tom Regan, 'Narveson on Egoism and the Rights of Animals' in this same issue of *The Canadian Journal of Philosophy*.

some humans will be excluded given each and every criterion that excludes animals. What needs to be made clear, and what Frey evidently fails to understand, is this: the fact that some humans will be excluded, given certain criteria for right-possession, is *just one* reason (albeit a vitally important one) which animal rightists can and do give for rejecting *some* criteria proposed for right-possession. It is not essential to their position that this be the *only* reason they can give for rejecting *all* the criteria they do or should reject, or that, though there may be other reasons they *may* give, this is one they *must* give against every criterion they do or should reject. If, again, we suppose that all and only human beings have an immortal soul, then no animal rightist could object to the view that right-possession is to be determined by soul-possession because this criterion for right-possession excludes some humans from the class of right-holders. But it does not follow from this that an animal rightist cannot object to this criterion on some *other* grounds—for example, that it is false that humans have immortal souls, or that there is no plausible connection between having souls and having rights.

There exists, then, no apparent reason why any animal rightist must or should accept Frey's premiss (1); and this, coupled with the fact that Frey fails to demonstrate that any animal rightist does accept it, would seem to constitute sufficient grounds for concluding that, so far is he from identifying and criticizing 'the most important argument' for animal rights, the argument Frey actually examines is of no importance whatsoever for the case for animal rights.

Although Frey appears to be mistaken in supposing that premiss (1) is crucial to any argument for animal rights, it does not follow that his principal thesis (hereafter referred to as 'Frey's thesis') is mistaken—the thesis, namely, that 'the best defences of [premiss (2)], *if they stand at all*, specifically exclude animals from the class of right-holders.' Although it does not follow that Frey's thesis is false, there are other grounds for thinking that it is, or at least that Frey himself fails to show that it is true.

A "defence" of premiss (2), as Frey uses the concept, is an attempt to show that infants and the severely mentally-enfeebled satisfy some requirement (e.g., rationality) proposed as a criterion for the possession of rights. 'The best defences' of this premiss, according to Frey, are (i) 'the potentiality argument', wherein one argues that, though not actually in possession of some capacity allegedly required for right possession (say, rationality), infants have this capacity potentially and so should be accorded rights; (ii) 'the similarity argument', wherein it is argued that, though lacking the allegedly required capacity both actually and potentially, the severely mentally-enfeebled should be accorded rights because they 'betray strong similarities to other members of our species'; and (iii) a religious argument, according to which rights are to be

attributed only to beings possessing an immortal soul, a blessing which all humans may be alleged to enjoy.

Frey's thesis, then, appears to consist of two parts: (a) there is his view that the potentiality, similarity and religious arguments are, in his words, 'the best defences' of premiss (2); and (b) there is his view that these defences, 'if they stand at all, specifically exclude animals from the class of right-holders'. Now, this latter claim is ambiguous, as is Frey's use of 'animals' throughout his essay. It could be interpreted to read either that these defences, if they stand at all, exclude some *or* all animals from this class. Since Frey nowhere concedes that these allegedly 'best defences' might be sufficient rationally to ground the view that at least some non-human animals have rights, it does not seem contrary to the spirit of his essay to interpret part (b) of his thesis to read that each of these defences, if it stands at all, specifically excludes *all* animals from the class of right-holders.

Interpreted thus, part (b) is at least highly controversial. If we suppose that part of what it is to be rational<sup>1</sup> is to be able to make inferences; to be able to select the most efficient means of achieving certain ends; to be able to symbolize; to be able to analyse concepts into their constituent features; and to be able to recognize instances of general concepts; then it is at least arguable that some infant animals (e.g., infant primates) are, to some degree, 'potentially rational', in which case the potentiality argument, 'if it stands at all' as a defence of the view that (normal) human infants have rights, does not, or at least does not appear to, 'specifically exclude (all) animals from the class of right-holders'.

Similarly in the case of the similarity argument: given any basis (for example, physical appearance) in terms of which to judge the relative similarity of other beings to normal human beings, cases will arise where some animals will betray stronger similarities to these paradigm humans than do some non-paradigmatic humans (e.g., some physically deformed humans who are severely mentally-enfeebled). Thus, if these latter humans should be accorded rights, on the grounds of their similarity to these paradigm humans, then those animals who betray the same or a greater degree of similarity ought also to be accorded rights. *If*, then, the similarity argument 'stands at all', it does not, or at least it does not in any clear way, 'specifically exclude (all) animals from the class of right-holders'. The case of the religious argument may be somewhat different, but enough already has been said, without going into attempts to ground rights on the existence or non-existence of souls, to make it clear that it is at least arguable that some animals should be accorded rights, if the potentiality and similarity arguments happen, in Frey's words, to 'stand at all'. And this is enough to cast doubt on part (b) of his thesis.

<sup>1</sup> On this topic, see D. Premack, 'On Animal Intelligence', in H. Jerison (ed.), *Perspectives on Intelligence* (New York: Appleton-Century-Croft), forthcoming.

It remains to be asked whether part (a) of Frey's thesis is true: are 'the best defences' of premiss (2) the ones Frey considers? The issues here are complicated. They involve fundamental questions about how to evaluate proposed criteria for right-possession. Short of answering these questions, it is difficult to see how some one or some few defences can non-arbitrarily be singled out as "the best". If, for example, possession of an immortal soul simply is not a reasonable criterion on which to base possession of rights, then the fact, if it is a fact, that all human beings, including infants and the severely mentally-enfeebled, have souls could not be construed as one of 'the best defences' of premiss (2); it could not be construed as a defence at all. Judgments about which defences of this premiss are "the best", therefore, would seem to presuppose very careful supporting argument. In this, if in no other respect, Frey's essay is disappointing. It is not possible to find fault with his supporting argument because it is not possible to find one. Why just the potentiality, similarity and religious arguments are "the best", he does not say. Equally importantly, why the fact that infants and the severely mentally-enfeebled are *sentient* does not count as one of 'the best defences' of premiss (2) is left undiscussed by Frey, an inexplicable omission since (i) what Frey professes to be considering, in his words, are 'the best defences' of that premiss, and (ii) it is the capacity for sentience on which some animal rightists (and Linzey in particular!) rely<sup>1</sup> as 'the best defence' of the view that infants and the severely mentally-enfeebled do have rights. It is of more than passing interest, moreover, that this same capacity (that is, sentience) is relied upon by these thinkers for including animals within the class of right-holders.

We conclude, therefore, that Frey fails to show that anyone who argues for animal rights has argued, or should or must argue, after the fashion he examines, *and* that he provides us with insufficient reasons, and sometimes no reasons at all, for accepting either part of his thesis. Arguments for animal rights may fail, but Frey fails to show that they do or, if they do, why they do.

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<sup>1</sup> See, for example, Linzey, *op. cit.*, p. 20 ff., and Singer, *Animal Liberation*, *op. cit.*, p. 1 ff.