

Chapter 8

Animal Rights and Environmental Ethics

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Abstract The position I favor (the “rights view”) prioritizes the moral rights of individuals when it comes to our moral thinking. Some defining features of these rights are explained; reasons for recognizing them in the case of humans are advanced; and arguments for extending them to other-than-human animals are sketched. Several objections are considered, including those that dispute the rights view’s alleged inability to explain (1) the amorality of predator-prey relations and (2) our obligations to preserve rare and endangered species.

The position that I favour in ethics (“the rights view”) sometimes is criticized because of its alleged inability to address important issues in environmental ethics. As I hope to be able to explain, I believe criticisms of this sort, though understandable, are deficient. When all the dust settles, the rights view grounds important restrictions on our freedom to exploit or destroy the natural world. Granted, some critics want more. In fact, some disparage the very idea of individual rights, viewing it as offering a shallow environmentalism at best, weighed down by antiquated, patriarchal modes of thinking, unequal to the task of plumbing the depths of a deep, bio-centric ecology. I have addressed these issues elsewhere (see, for example, Regan 1991, 1994, and Chapter one, 2001b) and beg leave of doing so again here. Here I begin with a sketch of my understanding of basic moral rights, an understanding first articulated at length in *The Case for Animal Rights* and since amplified and clarified in more recent work (Regan 1994, 2001a, b, 2003a, b, 2004).¹

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8.1 Defining Characteristics of Moral Rights

8.1.1 “No Trespassing”

To possess moral rights is to have a kind of protection that we might picture as an invisible “No Trespassing” sign. What does this sign prohibit? Two things. First, others are not morally free to harm us; to say this is to say that others are not free to take our life or injure our body as they please. Second, others are not morally free to interfere with our free choice; to say this is to say that others are not free to limit our free choice as they please. In both cases, the “No Trespassing” sign is meant to protect our most important goods (our life, our body, our liberty) by morally limiting the freedom of others.

Things are different when people exceed their rights by violating ours. When this happens, we act within our rights if we fight back, even if this does some serious harm to the aggressor. However, what we may do in self-defense does not translate into a general permission to hurt those who have not done anything wrong.

8.1.2 Equality

Moral rights breathe equality. They are the same for all who have them, differ though we do in many ways. This explains why no human being can justifiably be denied rights for arbitrary, prejudicial, or morally irrelevant reasons. Race is such a reason. To attempt to determine which humans have rights on the basis of race is like trying to sweeten tea by adding salt. What race we are tells us nothing about what rights we have.

The same is no less true of other differences between us. My wife Nancy and I trace our family lineage to different countries; she to Lithuania, I to Ireland. Some of our friends are Christians, some Jews, some Moslems. Others are agnostics or atheists. In the world at large, a few people are very wealthy, many more, very poor. And so it goes. Humans differ in many ways. There is no denying that.

Still, no one who believes in human rights thinks that these differences mark fundamental moral divisions. If we mean anything by the idea of human rights, we mean that we *have them equally*. And we have them equally regardless of our race, gender, religious belief, comparative wealth, intelligence, or date or place of birth, for example.

8.1.3 Trump

Every serious advocate of human rights believes that our rights have greater moral weight than other important human values. To use an analogy from the card game Bridge, our moral rights are trump. Here is what this analogy means.

A hand is dealt. Hearts are trump. The first three cards played are the queen of spades, the king of spades, and the ace of spades. You (the last player) have no spades. However, you do have the two of hearts. Because hearts are trump, your lowly two of hearts beats the queen of spades, beats the king of spades, even beats the ace of spades. This is how powerful the trump suit is in the game of Bridge.

The analogy between trump in Bridge and individual rights in morality should be reasonably clear. There are many important values to consider when we make a moral decision. For example: How will we be affected personally as a result of deciding one way or another? What about our family, friends, neighbours, people who live some place else? It is not hard to write a long list. When we say, “rights are trump,” we mean that respect for the rights of individuals is the most important consideration in “the game of morality,” so to speak. In particular, we mean that the benefits others derive from violating someone’s rights never justify violating them.

8.1.4 Respect

In a general sense, the rights mentioned above (life, liberty, and bodily integrity) are variations on a main theme, that theme being respect. I show my respect for you by respecting these rights in your life. You show your respect for me by doing the same thing. Respect is the main theme because treating one another with respect *just is* treating one another in ways that respect our other rights. Our most fundamental right, then, the right that unifies all our other rights, is our right to be treated with respect.

8.2 Who Has Moral Rights?

It is one thing to say what moral rights are and quite another to explain why we have them but sticks and stones do not. Given the constraints of space, it will not be possible for me to offer anything like a complete explanation. But permit me to offer a rough sketch of the answer I favour, an answer that relies heavily on what I call a subject-of-a-life.

8.2.1 Subjects-of-a-Life

Earlier we noted some of the many ways that humans differ from one another in terms of gender, race and ethnicity, for example. Despite our many differences, there are some ways in which all humans who have rights are the same. I do not mean because we all belong to the same species (which is true but not relevant). And I do not mean because we all are persons (which may be relevant but is not true).

What I mean is that we are like one another in relevant ways, ways that relate to the rights we have: our rights to life, to bodily integrity, and to liberty.

For consider. Not only are we all in the world, we all are aware of the world, and aware as well of what happens to us. Moreover, what happens to us—whether to our body, or our freedom, or our life itself—matters to us because it makes a difference to the quality and duration of our life, as experienced by us, whether anybody else cares about this or not. Whatever our differences, these are our fundamental similarities.

We have no commonly used word that names this family of similarities. “Human being” does not do the job (a deceased human being is a human being but is not aware of the world, for example). Neither does “person” (human infants are aware of what happens to them but are not persons). Still, these similarities are important enough to warrant a verbal marker of their own. I use the expression “subject-of-a-life” to refer to them. Given this usage, the author of these words, Tom Regan, is a subject-of-a-life, and so are the people who hear them.

Which humans are subjects-of-a-life? All those humans who have the family of similarities mentioned above. And who might these be? Well, somewhere in the neighborhood of *seven billion* of us, regardless of where we live, how old we are, our race or gender or class, our religious or political beliefs, our level of intelligence, and so on through a very long inventory of our differences.

Why is being the subject-of-a-life an important idea? Because the family of characteristics that define this idea *makes us all equal* in a way that makes sense of our moral equality. Here is what I mean.

As implied in the preceding, human subjects-of-a-life differ in many ways. For example, some are geniuses and others are severely mentally disadvantaged; some are gifted in music while others cannot carry a tune.

These differences are real, and they matter. However, when we think about the world in terms of fundamental moral equality, these differences make no difference. Morally considered, a child *protégé* who can play Chopin *études* with one hand tied behind her back does not have a “higher” rank than a seriously mentally-impaired adult who has never understood what a piano is or who Chopin was. Morally, we do not carve-up the world in this way, placing the Einsteins in the “superior” category, “above” the “inferior” Homer Simpsons of the world. The less gifted do not exist to serve the interests of the more gifted. The former are not mere things when compared to the latter, to be used as means to their ends. From the moral point of view, each of us is equal because each of us is equally a somebody, not a something, the subject-of-a-life, not a life without a subject.

So why is the idea of being the subject-of-a-life important? Because it illuminates our moral sameness, our moral equality.

As subjects-of-a-life, we are all the same because we are all in the world.

As subjects-of-a-life, we are all the same because we are all aware of the world.

As subjects-of-a-life, we are all the same because what happens to us matters to us.

As subjects-of-a-life, what happens to us matters to us because it makes a difference to the quality and duration of our life.

As subjects-of-a-life, there is no superior or inferior, no higher or lower.

As subjects-of-a-life, we are all morally the same.
 As subjects-of-a-life, we are all morally equal.

Needless to say, the forgoing does not constitute a strict proof of our rights based on our subjectivity. My intention, rather, has been to explain how our being subjects-of-a-life illuminates (helps us understand) the underpinning of our rights, especially our moral sameness, our moral equality. It should come as no surprise that I think what I have just said about our rights is no less true of the rights of other animals.

8.2.2 *Animal Rights*

Are any other-than-human animals subjects-of-a-life? Yes, of course. All mammals and birds, most certainly. All fish, most probably. Why? Because (for reasons I have given at length on other occasions and will not rehearse here: see Regan 1983, 2001b, 2003a, b) these beings satisfy the conditions of the kind of subjectivity in question. Like us, they are in the world, aware of the world, aware of what happens to them; and what happens to them (to their body, their freedom, their life) matters to them, whether anyone else cares about this or not. Thus do these beings share the rights we have mentioned, including the right to be treated with respect.

This conclusion (that *these* animals, at least, have basic moral rights) has profound, one might even say revolutionary consequences. Respect for these rights means (among other things) more than cutting back on the amount of meat we eat, or avoiding pale veal, or eating only chicken and fish. It means an end to commercial animal agriculture, whether intensive or free range. We do not respect the rights of cows and pigs, chickens and geese, tuna and trout by ending their life prematurely, however “humane” the methods used. These animals have a right to life no less certainly than we do.

8.3 **A Number of Environmentally-based Objections Have Been Raised Against the Rights View²**

8.3.1 *The Rights View and Predator-Prey Relations*

Although the main focus of the rights view is duties of justice, there is room within this outlook to include a general duty of beneficence, of doing good for others, not only doing what is just. If (as I believe) we humans have duties of assistance to one another, independent of the demands of justice, there is no reason why duties of the same kind might not arise in circumstances in which animals are involved. For example, suppose a lion is stalking a small child. If we frighten the lion, we may be able to save the child. Since lions are not moral agents, in the sense in which I use this expression, no rights violation is in the offing. But the child almost certainly

will be harmed if we do nothing. Should we try to prevent this outcome? Do we have a *prima facie* duty to intervene? It is hard to imagine how a negative answer could be defended. So let us assume (what I take to be true) that we have a *prima facie* duty of assistance in this case.

Next, suppose the same lion is stalking, not a child, but a wildebeest. And suppose, again, that if we frighten the lion, we may be able to save the wildebeest. Since lions are not moral agents, in the sense in which I use this expression, no rights violation is in the offing. But the wildebeest almost certainly will be harmed if we do nothing. Should we try to prevent this outcome? Do we have a *prima facie* duty to intervene? My answer has been, and remains, no. It did not take long for critics (e.g., Ferré 1986) to think that something had gone wrong.

J. Baird Callicott, one of the true pioneers in environmental ethics, is representative. As part of his critique of the rights view, he writes: "If we ought to protect humans' rights not to be preyed upon by . . . animal predators, then we ought to protect animals' rights not to be preyed upon by . . . animal predators" (Callicott 1989, 45). And not just a little. Callicott insists that the rights view is committed to protecting prey animals a lot. In his words, "Regan's theory of animal rights implies a policy of human predator extermination, since predators, however innocently, violate the rights of their victims" (*Ibid.*).

Whatever else may be true, Callicott clearly overstates his diagnoses when he writes that "predators, however innocently, violate the rights of their victims." Only moral agents are capable of violating rights, and non-human animals are not moral agents. Moreover, and obviously, Callicott moves uncritically from asking what should be done in particular cases, to what should be done as a matter of general policy. And this is important. While we all agree (I assume) that we have a *prima facie* duty to assist the child from the lion, no advocate of children's rights is thereby logically committed to promulgating policies that seek to eradicate every predatory animal under the sun. Why, then, suppose that advocates of animal rights are committed to promulgating such policies because predatory animals harm their prey? Callicott does not say. To tar the rights view with the broad brush of "eradicating wildlife," while it may make for good rhetoric, does not make for good philosophy.

These matters to one side, what does the rights view say about predator-prey relations? To begin with, my position is diametrically opposed to the one Callicott would foist upon me. Instead of advocating a policy of massive intervention in the affairs of wildlife, what we ought in general to do is . . . nothing. Here is what I mean and why I think this way.

In my view (see *The Case for Animal Rights*, 1983, 357, 361), our ruling obligation with regard to wild animals is to *let them be*, an obligation grounded in the recognition of their general competence to get on with the business of living, a competence that we find among members of both predator and prey species. After all, if members of prey species, including the young, were unable to survive without our assistance, there would not be prey species. And the same applies to predators. In short, we honour the competence of animals in the wild by permitting them to use their natural abilities, even in the face of their competing needs. As a general rule,

they do not need help from us in their struggle for survival, and we do not fail to discharge our duty when we choose not to lend our assistance.

We do not find this same competence in young children. The plain fact is, they cannot take care of themselves and have no realistic hope of surviving, in any circumstances, in the wild or in the home, if we do not help them. To *let children be*, therefore, is not to honour their competence. In general, they do need help from us with their survival skills (whatever these might be). From the perspective of the rights view, therefore, there is nothing in the least bit inconsistent in recognizing duties of assistance to human beings, including human children, that we do not recognize in the case of other animals, including wild animals.

This same point can be made in another way. By my lights (*Ibid.* 103–109), animals are capable of knowing what they want and of acting with the intention of getting it. Because they have these capacities, we can act paternalistically toward them. Roughly speaking (*Ibid.* 107 for greater specificity), paternalistic intervention in their life means taking measures to prevent them from pursuing what they want because, we believe, permitting them to do so will be detrimental to their interests.

When it comes to our obligations to wild animals, the rights view is unapologetically anti-paternalistic. I write: “[T]he goal of wildlife management should be to defend wild animals in the possession of their rights, providing them with the opportunity to live their own life, by their own lights, as best they can, spared that human predation that goes by the name ‘sport’ [hunting]” (*Ibid.* 357).

In the case of young children, our obligations differ. Someone who placed young children in the woods or on an ice flow, the better to provide them with the “opportunity to live their own life, by their own lights, as best they can,” would be judged criminally irresponsible, and rightly so. In general, we act in ways that respect the rights of wild animals by adopting an anti-paternalistic stance, just as, in general, we act in ways that respect the rights of young children if the stance we adopt is paternalistic. From the perspective of the rights view, both stances show equal respect for the rights of both (see for example Everett [2001] defending the rights view against the “predation critique”).

8.3.2 *The Rights View and Endangered Species*

Some environmental philosophers (Callicott is representative) criticize the rights view because of its failure to provide a credible basis for addressing our obligation to preserve endangered species. (For simplicity’s sake, I limit my attention to endangered [as distinct from rare] species.) If we set rhetorical excess aside, the logic of the objection is simple. If the rights view fails to provide a credible basis for addressing this obligation, the rights view is not the best theory, all considered.

Although I believe my position is seriously challenged by this line of criticism, and although (for reasons I explain below) I now believe my discussion of endangered species in the past should have been expanded, it is not clear to me that this objection is as telling as its proponents would have us believe. Let me explain.

The rights view restricts rights to individuals. Because species are not individuals, “the rights view does not recognize the rights of species to anything, including survival” (Regan 1983, 359). Moreover, the rights of individuals do not wax or wane depending on how plentiful or rare are the species to which they belong. Beaver do not have lesser rights just because they are more plentiful than bison, and East African black rhinos do not have greater rights than rabbits just because their numbers are declining. How, then, can the rights view address our obligation to preserve endangered species? In the past, I have offered a twofold answer.

First, we have an obligation (*prima facie*, to be sure) to stop human moral agents (“commercial developers, poachers, and other interested third parties” [*Ibid.* 360]) whose actions violate the rights of animals. Second, we have an obligation to “halt the destruction of natural habitat” that makes life for these animals sustainable (*Ibid.* 361). If we succeed in discharging these obligations, my discussion implies, we will succeed in discharging our duty to protect endangered species.

A critic might respond by noting that the rights view fails to do justice to our intuition that we owe something more to endangered than we do to bountiful species. More to East African black rhinos than to rabbits, for example. In view of its insistence on their equal rights, how can the rights view account for this intuition? Here, in rough outline, is the answer I favour.

Compensatory justice is an idea advocates of human justice sometimes employ. A classic example involves past injustice done to members of identifiable groups. For example, although today’s descendants of the Miniconjou Sioux who were slaughtered by the 7th US Cavalry at Wounded Knee on 29 December 1890 were not alive at the time of the massacre, it is not implausible to argue that they (today’s descendants) are owed something because of what happened, not only at Wounded Knee but for many years before and after. Given any reasonable view of history, today’s descendants have been disadvantaged because of the massive injustice done to their predecessors. Moreover, what they are owed is something more than what is owed to others of us who have not been disadvantaged in similar ways, for similar reasons. Other things being equal, more should be done for them, by way of compensatory assistance, than what is done for us.

The rights view can apply compensatory principles to animals (the East African black rhino, for example) whose numbers are in severe decline because of past human wrongs (for example, poaching of ancestors and destruction of habitat). Although the remaining rhinos have the same fundamental rights as do members of a more plentiful species (rabbits, say), the duty of assistance owed to the former arguably makes a greater claim on us than this same duty does when owed to the latter. If it is true, as I believe it is, that today’s rhinos have been disadvantaged because of human wrongs done to their predecessors, then, other things being equal, more should be done for the rhinos, by way of compensatory assistance, than what should be done for rabbits. In such manner, I believe, the rights view can account for our intuition that we owe members of endangered species of animals something more than what we owe to the members of more plentiful species.

Critics of the rights view can be counted upon to challenge it even after it is augmented by my compensatory argument. In particular, they will point out that the

vast majority of endangered species consists of plants and insects, forms of life too rudimentary to qualify as subjects-of-a-life. In their case, because no rights are possessed, nothing can be owed to them for reasons of compensatory justice. Worse (it will be claimed), the continued existence of many of these plants and insects is not necessary to sustain the life of those animals who are subjects-of-a-life. What can the rights view say about our obligation to preserve these endangered species?

What can be said, I think, is what I have said in the past. "The rights view," I write, "does not deny, nor is it antagonistic to recognizing, the importance of aesthetic, scientific, sacramental, and other human interests [in preserving endangered species] . . ." (1983, 361) or, more generally, encouraging practices that promote a biotic world at once rich, diverse and sustainable. What the rights view denies, at least given its articulation to date, is that plants and insects are subjects-of-a-life; and it denies as well that these forms of life have been shown to have any rights, including a right to survival. Of course, we may (that is, there is nothing wrong in principle if we do) make great efforts to preserve such life, based on human aesthetic or sacramental interests, for example. But that we may be willing to do this stops well short of establishing that plants and insects have a valid claim against us to do so.

More than a few environmental philosophers in general, including some of the most distinguished among them, will not be satisfied with the environmental implications of the rights view, whether augmented by principles of compensatory justice or not. They will say (in fact some have said – see Rolston 1988) that species have inherent value. And so do ecosystems and the biosphere – which is how we should account for our obligation to save endangered species, including plants and insects, not just "fuzzy mammals." To which (following the lead of the Cuba Gooding character in the movie *Jerry Maguire*) I can only reply: "Show me the argument!" It is not enough to confer inherent (or intrinsic) value on species, ecosystems, the biosphere. One wants a compelling argument for doing so, something that, for reasons I have given elsewhere (Regan 1992), not only has not been done; I believe it cannot be done.

Notes

1. My article is adapted from Chapters 3 and 4 of *Empty Cages: Facing the Challenge of Animal Rights* and from the new Preface to the second edition of *The Case for Animal Rights*.
2. A notable omission is any discussion of Gary Varner's defense of therapeutic hunting (Varner 1998).

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