

DISCUSSIONS

McCLOSKEY ON WHY ANIMALS CANNOT HAVE RIGHTS

BY TOM REGAN

Interest continues to mount among philosophers in the question of man's treatment of his fellow animals.¹ Two questions in particular have received recent critical attention. These are, first, whether eating animals is morally objectionable, and, second, whether using them in scientific research is morally defensible. Interest in these questions can be traced at least as far back as Pythagoras, so the interest in them is not new. The recent surge of interest is more in the nature of a reawakening than of a revolution.

These questions in applied ethics are related to questions in theoretical ethics. One of the latter concerns whether animals are a sort of being which can have rights. As H. J. McCloskey has remarked:

The issue as to who or what may be a possessor of rights is not simply a matter of academic, conceptual interest. Obviously, important conclusions follow from . . . the question as to whether animals have rights. If they do . . . it would seem an illegitimate invasion of animal rights to kill and eat them, if, as seems to be the case, we can sustain ourselves without killing animals. If animals have rights, the case for vegetarianism is *prima facie* very strong, and is comparable with the case against cannibalism.²

Perhaps it is true, as McCloskey could agree, that we might have duties concerning animals even if it is true that animals do not (or cannot) have rights. The situation would not be unique if this were the case. We can claim a duty to preserve our oceans and woodlands or great works of art and architecture without implying that they have a right to be preserved. But though we might have duties concerning animals even if they do not have rights, McCloskey seems correct when he says that the case for vegetarianism is strengthened if a case can be made for the view that animals do have them.

Arguments which purport to show that animals are not a kind of being which can have rights, therefore, are of more than merely academic, conceptual interest. And the same is true of the critical investigation of these arguments. Thus, although in what follows I shall be concerned with the

¹See, for example, *Animals, Men and Morals*, edd. Stanley and Roslind Godlovitch and John Harris (London, 1973); *Anarchy, State and Utopia*, by Robert Nozick (New York, 1974); *Animal Rights and Human Obligations*, edd. Tom Regan and Peter Singer (Englewood Cliffs, 1976); *Animal Liberation* by Peter Singer (New York, 1976). See also John Passmore's "The Treatment of Animals", *JHI*, 36 (1975); my own "The Moral Basis of Vegetarianism", *Can. J. Phil.*, 5 (1975); and Singer's "Animal Liberation", originally published in *The New York Review of Books*, XX (April 5, 1973) and reprinted in *Moral Theories*, ed. James Rachels (New York, 1975), and *Ethics in Perspective*, edd. Karsten J. Struhl and Paula Rothenberg Struhl (New York, 1975). See also Singer's "All Animals Are Equal", *Philosophic Exchange*, Summer 1974; reprinted in Rachels' *Understanding Moral Problems* (Encino, 1976).

²H. J. McCloskey, "Rights", *The Philosophical Quarterly*, 15 (1965), p. 122. Reprinted in Rachels' *Moral Theories*. Page references are to the original paper and are hereafter included in the text.

academic or conceptual merits of two arguments that McCloskey gives in support of his view that animals are not a kind of being which can have rights, I believe that the issue of their adequacy bears on questions of immediate practical significance.

McCloskey's first argument excludes animals as possible possessors of rights because "only beings which can possess things can possess rights", and animals, McCloskey thinks, are not a kind of being which can possess things. Why McCloskey thinks this is obscure. The only reason he gives for this view is his claim that "A right cannot not be possessed by someone; hence, only those beings which can possess things can possess rights" (p. 126). It is difficult to see any obvious logical connection between these two ideas. For a right is not a *thing*, and those beings which do possess things do not stand in the same relation to them as to the rights which they happen to possess. A person who possesses a house, for example, can sell or rent it, but no one can sell or rent his right to life, if he has one. Why, therefore, McCloskey should think that, since a right must be possessed by some being, it follows that the only beings which can possess them are those which can possess things, is far from clear. But let us suppose, for the sake of argument, that this requirement for possible right-possession is a sound one. Then our question is, "Why does McCloskey deny that animals are a kind of being which can possess things?"

McCloskey's answer is in the form of a question. "Consider 'possess' in its literal use. Can a horse possess anything, e.g., its stable, its rug, in a literal sense of 'possess'?" (*ibid.*). McCloskey thinks our answer should be no.

McCloskey's intuitions of what we can and cannot say (literally) are not reliable in this case. Imagine that McCloskey's horse takes it into his head not to surrender his rug. Despite our efforts to take it from him, he will not let it go. In a perfectly ordinary, literal use of the word, we could say that the horse possesses the rug; it is the horse who has possession of it. So, McCloskey's denial to the contrary notwithstanding, an animal can possess something in a literal sense of 'possess'.

A defender of McCloskey might say that, though this is true in *one* sense of 'possess', it is not true in another, and that it is this other sense that is the important one. This other sense is that in which to say that someone possesses something means that it belongs to him. A thief, for example, can possess my watch in the sense that he can have it in his possession; but he does not possess it in the sense that it belongs to him. So perhaps McCloskey thinks that animals cannot possess things in *this* sense.

It is clear, however, that animals can possess things in this sense too. Suppose my dog has a favourite bone which it is his custom to bury only to dig up and bury again. Suppose the latest resting place is under my neighbour's prized azalea. "Does this bone belong to your dog?", my neighbour asks, holding the dreaded object in his hand. What am I to say except "Yes"? Certainly it will not get itemized on a list of *my* personal possessions.

"Still", it might be objected, "the bone doesn't belong to your dog as a matter of right. It's not something he has a right to possess." Well, perhaps this is so. But such a manoeuvre here would be clearly question-begging. The claim that animals cannot possess things was introduced in the first place as a basis for saying that they cannot have rights. Thus to say that they cannot have a right to what they possess because they cannot have rights clearly would not advance the argument against their being possible possessors of rights.

Perhaps there is some other literal, non-question-begging sense of 'possess'

which McCloskey has in mind. For my part, I do not know what this could be. In any event I take it as demonstrated that we can and do speak (literally) about what animals possess in the literal senses instanced above. Accordingly, if McCloskey's first requirement for possible right-possession were accepted as sound, it would follow that animals are a kind of being which can have rights.³

McCloskey's second argument against the view that animals are logically possible possessors of rights should command greater attention. It turns on the idea of interests. Only those beings which have interests, McCloskey believes, can have rights. Unlike the first requirement, this one seems more plausible. Most of us do not think that *things* can have rights, and this seems to be because we do not think that they can have any interest in what happens to them. Whether this is so or not, let us assume that this requirement is sound. McCloskey explains why he thinks animals fail to satisfy it:

The concept of interests which is so important here is an obscure and elusive one. Interests are distinct from welfare, and are more inclusive in certain respects—usually what is dictated by a man's welfare is in his interests. However, interests suggest much more than that which is indicated by the person's welfare. They suggest that which is or ought to be or which would be of *concern* to the person/being. It is partly for this reason—because the concept of interests has this evaluative-prescriptive overtone—that we decline to speak of the interests of animals, and speak rather of their welfare (*ibid.*).

Three preliminary remarks are in order. First, McCloskey's observation that "we decline to speak of the interests of animals" seems to be in the nature of a piece of linguistic legislation; certainly it cannot be a report of what all users of the language would say. Second, it is peculiar, in view of his observation that the concept of interests is "important and elusive", that, after a few cursory remarks about it, McCloskey peremptorily declares that animals do not have interests, or, at any rate, that "we decline to speak" in this way. One would think that if the idea is so important and elusive, some care would need to be expended on its analysis prior to reaching conclusions about how it should be applied. For even if it were true that "we decline to speak of the interests of animals", it might turn out, in view of such an analysis, that we should or, in any event, that we could. Before examining McCloskey's position, I shall try to remedy, at least partially, this deficiency in his own position, prefacing my comments with a disclaimer of any pretension to completeness. Third, and relatedly, the passage just quoted from McCloskey is not a model of clarity and rigour. Indeed, it lends itself to various interpretations. I shall indicate how I think it should be understood later on. First, though, there is the matter of interests that needs looking into.

To say that a being *A* has an interest in a thing *X* is ambiguous. At least two different things we may mean by this are (1) that *A* is interested in *X* or (2) that *X* is in *A*'s interests. These ideas are logically distinct. A

³Rachels has taken McCloskey's view that the only beings which can have rights are those which can possess things and used it as a basis for arguing that (a) animals can possess things—e.g., a bird possesses the nest it builds—and that (b) animals who have made things by their own labour have a right to possess them. See his "Do Animals Have a Right to Liberty?", in *Animal Rights and Human Obligations*, pp. 205-23. For a critical assessment of Rachels' position, see Donald A. VanDeVeer's "Defending Animals by Appeal to Rights", *op. cit.*, pp. 224-9, and Rachels' response, pp. 230-32.

person, for example, can be interested in something that is not in his interests—e.g., Jones might be interested in taking drugs that are injurious to his health. And a person might not be interested in something that is in his interests—e.g., Smith might not be interested in exercising despite the fact that exercise is in his interests. Suppose we speak of interests₁ and interests₂ here. By interests₁ we shall mean those things which a person is *interested in*, those things he likes, desires or wants to have, etc., or, contrariwise, those things he dislikes or wants to avoid, etc. It is this sense of interests—interests₁—that Perry evidently has in mind when he characterizes interests as “a certain class of acts or states which have the common characteristic of *being for or against*”.⁴ Perry’s characterization does not seem entirely satisfactory, however. What Perry seems to have in mind are what we might call episodic interests—“certain acts or states”, e.g., my presently being in a certain mental state which we might describe as “being interested in a banana”. However, a person might be interested in something without its necessarily being the case that he *now* is in a certain mental state or *now* is performing a particular mental act. Some of my friends are interested in plants. But when I say “Don is interested in plants”, the truth of what I say does not depend on what Don’s present mental state is. Interests₁, in short, can be *dispositions* to desire, want, act, etc. This dispositional character of interests seems to have been left out of Perry’s characterization.

Interests₂ are different. Here, in saying that *A* has an interest in *X* we are not saying (nor necessarily implying) that *A* is interested₁ in *X* in either the episodic or dispositional sense. What, then, are we saying? What we seem to be saying is this: that *X* would (or that we think *X* would) benefit *A*, that *X* would contribute to *A*’s good or well-being. McCloskey, it is true, evidently thinks more is involved; this will be considered shortly. For the present it is sufficient to remark that, in this sense of ‘interests’, a necessary condition of literally speaking of a being as having an interest₂ is that it must be the sort of being which can have a good.⁵ Animals, it seems, can meet this condition. So we could not argue that there is something untoward involved in speaking of animals as having interests because they cannot have a good or state of well-being. One thing that can be said in favour of McCloskey’s procedure is that he does not argue in this way.

Now, when McCloskey says “we decline to speak of the interests of animals” he evidently has interests₂ in mind. For I take it that McCloskey, who does not otherwise display any Cartesian tendencies, and does allow our speaking of their welfare, would not deny that animals have interests in either the episodic or dispositional sense of interests₁. To challenge McCloskey’s view, therefore, merely by claiming, as Feinberg seems to,⁶ that animals do have interests₁, would be to miss the point McCloskey is trying to make. For it may be that, though animals do have interests₁, and though we can make sense of their having a good or welfare, there is something logically odd involved in speaking about what is *in* an animal’s interests. The questions

⁴R. B. Perry, *Realms of Value* (Cambridge, Mass., 1954), p. 7.

⁵This same point is made by Joel Feinberg in his “The Rights of Animals and Future Generations”, in *Philosophy and Environmental Crisis*, ed. William Blackstone (Athens, Georgia, 1974), pp. 50-55. Feinberg uses this point as a basis for arguing against the possibility that mere things and plants can have rights. But this will work only if we assume, what is far from clear, that the only kind of good a being can have is a “well-being”—i.e., happiness. Feinberg provides us with no reason for supposing this. Relevant portions of Feinberg’s essay appear under the title “The Rights of Animals” in *Animal Rights and Human Obligations*, edd. Regan and Singer (see fn. 1).

⁶*Op. cit.*, pp. 50-51.

before us, therefore, are (a) what reasons does McCloskey give for his view, and (b) how good are they?

McCloskey's reasons seem to be as follows. We should not speak of what is in an animal's interests because this way of speaking about beings (hereafter referred to as "interest₂ talk") has "an evaluative-prescriptive overtone". This, in itself, is unclear, but I shall assume that, when McCloskey speaks of this "overtone", what he has in mind is the *meaning* of interest₂ talk. And what McCloskey evidently thinks is true of the meaning of interest₂ talk is this: it has both an evaluative and a prescriptive element. That it has an evaluative meaning has already been noted. For in saying that *A* has an interest₂ in *X* we mean to convey that *X* will (or that we think *X* will) benefit *A*. What McCloskey would have us believe, however, is that more than this is involved: interest₂ talk also has a "prescriptive overtone", he thinks. Now, if we ask why he thinks this, the only clue we have is his claim that "they [that is, interests] suggest that which is or ought to be or which would be of *concern* to the person/being". The operative words here seem to be 'ought' and 'concern', since the rest of what McCloskey says does not seem to provide any possible grounds for imputing a prescriptive overtone to speaking of a being's interests₂. So what McCloskey seems to be saying is that, when we speak of what is in a being's interests, what we mean is (a) that *X* will (or that we think it will) contribute to *A*'s good—the "evaluative overtone"—and (b) that *X* ought to be of concern to *A*, that *A* ought to care about it—hence the "prescriptive overtone".

But to stop here, at the idea of what a being ought to care or be concerned about, would apparently be to stop too soon for McCloskey's purposes. For it would seem that the point of speaking of what is in a being's interests, if it has a prescriptive overtone, would not be merely to persuade the being *A* to care about *X*; it would seem that the point of this is to persuade *A* to *do* something—namely, *X* or what is a means to it. A natural way to understand what McCloskey says about interests, then, is to understand him to be saying that interest₂ talk has an action-guiding (hence, prescriptive) function or meaning. This seems a fair way to understand McCloskey, I think, and it is the interpretation I shall consider in what follows. It is not essential for my argument, however, that this must be the correct interpretation, since the same objections I shall be raising against it could be raised against the view that the alleged prescriptive overtone of interest₂ talk should be characterized in terms of what a being ought to care or be concerned about.

Now, it has already been pointed out that we can make sense of the idea that animals can benefit from things, they can have a good or welfare; and we have already seen that McCloskey accepts this. Accordingly, in supposing, as he does, that it is because interest₂ talk has an evaluative-prescriptive overtone that we should not speak this way about animals, McCloskey cannot believe that this is because of the evaluative overtone; rather, it must, on his view, be because of the alleged prescriptive overtone. So let us turn our attention to this idea.

The first thing to notice is that, even if there is a prescriptive element present in some cases of interest₂ talk, it is not a permanent feature of this way of speaking.⁷ No prescription is issued concerning what *A* ought to do (or care about, etc.) by *asking* what is in *A*'s interests, or by expressing one's wonder, hope or expectation that something is. Similarly, in those cases

⁷For a similar argument against the view that 'I commend *X*' is part of the meaning of '*X* is good', see Searle's "Meaning and Speech Acts", *PR* 71 (1962).

where we speak of what is in some third party's interests—e.g., “It would be in Esdorn's interests to have her gall bladder removed”—we issue no prescription. At the very most, therefore, the prescriptive meaning could be an element of meaning only in *some* cases of interest₂ talk. The most plausible sort of case in which this might be true is one where one being, *B*, says something of the form ‘*X* is in your [*A*’s] interests’, within the context of giving advice to *A*.

But there seems to be a fundamental objection that can be raised even against this. For suppose that, in the type of case under consideration, part of the *meaning* of ‘*X* is in *A*’s interests’ is ‘You [*A*] ought to do *X*’. Then we could never adduce the fact that *X* is in *A*’s interests as a *reason* for saying that *A* ought to do *X*, since, on the supposition under consideration, we could not say ‘*X* is in your [*A*’s] interests’ without thereby already meaning ‘You [*A*] ought to do *X*’. But this is false. To cite the fact that *X* is in *A*’s interests, in the sort of case under consideration, is to provide *A* with a reason for doing *X*. True, by saying this, in these circumstances, we may imply that we think that *A* ought to do *X*. But it does not follow that this is because ‘You [*A*] ought to do *X*’ is part of the meaning of the words ‘*X* is in your interests’. Rather, it is because of the institution of advice-seeking-and-giving that this is implied. For it is an essential feature of this institution that, by citing the fact that *X* is in *A*’s interests, we have given *A* the best of reasons, other things being equal, for why *A* ought to do *X*.

If, then, McCloskey is mistaken in supposing that interest₂ talk has a prescriptive meaning, even in those sorts of cases where it might appear most likely that it would, it follows that he cannot invoke this idea as a basis for supporting his view that there is something logically askew involved in our attributing interests to animals.

But suppose, for the sake of argument, that I am the one who is mistaken and that McCloskey is right in thinking that interest₂ talk has a prescriptive element as part of its meaning. The question would still remain, “What could be the possible connection between this fact, assuming it is a fact, on the one hand, and, on the other, McCloskey’s view that there is something untoward involved in speaking of what is in the interests of animals?” In all fairness to McCloskey, it must be said that he provides us with no explicit account of how these two ideas are supposed to be connected. One is left, therefore, with the task of constructing (to use Plato’s words from the *Timaeus*) “a likely story”.

What we have to go on is this: (a) McCloskey thinks that interest₂ talk has “an evaluative-prescriptive overtone”; (b) he would not object to speaking of the welfare of animals, which implies that it is not the evaluative element in interest₂ talk that rules out talking in this way about animals; so (c) it must be because he thinks there is something about animals that makes it inappropriate to issue prescriptions to them that makes it inappropriate to speak of what is in their interests. With this much as background, the most likely story goes like this: “We shouldn’t speak of what is in an animal’s interests because such talk has a prescriptive overtone. Thus, if we were to say, for example, “Treatment for worms is in Fido’s interests”, part of what we would mean is “Fido ought to see to it that he gets treated for worms”. But this is absurd. Animals are not a sort of being which ought (or ought not) to do (or care, or be concerned about) anything. Thus, since interest₂ talk has this prescriptive overtone, we shouldn’t talk about what is in their interests.”

If these are McCloskey’s reasons for holding the view he does—and it

seems likely, in view of (a), (b) and (c) above, that these are his reasons—then we can show why, even if he was correct in thinking that interest₂ talk has a prescriptive element as part of its meaning, it still would not follow that we have any reason for “declining to speak of the interests of animals”. Consider the case of human infants, or the severely mentally-enfeebled of all ages. We do not regard these as beings who ought to do anything. Yet we do not for a moment suppose that we cannot (or should not) speak of what is in their interests. And this would be true even if McCloskey were right in supposing that interest₂ talk had a prescriptive overtone. For in saying, for example, “It would be in the baby’s interests to have a transfusion”, we need not be saying anything that means that the *baby* ought to see to it that she gets a transfusion; if such talk had a prescriptive overtone the prescription in such a case could apply only to some *other* being, some competent person who has it within his power to see that the baby gets what she needs. This being so, however, we can see how interest₂ talk, even granting McCloskey’s view that it has a “prescriptive overtone”, could have the interests of animals as its subject. For were we to say “Treatment for worms is in Fido’s interests”, the same pattern of analysis could apply: it would not be *Fido* that we mean ought to see to it that he gets treated; it would be some *other* competent being who has it within his power to see that Fido gets what he needs.

McCloskey, therefore, fails to show that there is any logical abnormality involved in speaking of what is in the interests of animals, even if we grant him his doubtful view that interest₂ talk has a “prescriptive overtone”. So what we find in the case of his “interest principle”—the principle, that is, that if a being is capable of having rights, it must have interests—is much the same as what we found in our earlier discussion of the principle that logically requires that, in order to possess rights, a being must be able to possess things. In both cases the principles suffer from a severe absence of clarity and an almost total absence of any effort to support them. Even so, however, were we to grant McCloskey the principles he wants, we have seen that arguments can be advanced to show that animals meet the conditions. True, showing that animals meet McCloskey’s requirements, even if we were to assume that they are the correct ones, does not show that animals *have* any rights and so does not, by itself, strengthen the vegetarian’s case against killing and eating them; but showing this at least makes it plain (and this with a fine twist of irony) that McCloskey himself, assuming his requirements are the correct ones, is mistaken in believing that animals are not logically possible possessors of rights; and this, though it does not show all that a vegetarian needs to show to gain rational acceptance of his views, at least removes a potential obstacle to their reception.⁸

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⁸For a fuller statement of the case for vegetarianism, see my “The Moral Basis of Vegetarianism”, cited in fn. 1. I want to thank W. R. Carter for his helpful criticisms of earlier versions of this essay.