

## RIGHTS ACROSS SPECIES

Organized efforts to protect other animals are at an historic crossroads. Never before have so many joined in the struggle to bring significant improvements to their lives. The number of people involved and their growing sense of shared values are making a difference in the political process, in the marketplace, in the classroom, even – on some occasions – in places of worship. Truly, animal protection efforts are a force to be reckoned with.

This reckoning sometimes takes bitter forms. Especially among those whose professional training, career and economic interests involve routine utilization of other animals, whether this be in the name of science or commerce in flesh, for example, some animal advocates are being “reckoned with” with a vengeance. Steadily increasing amounts of time, energy and money are being devoted to this reckoning, not on the merits of the issues involved, for the most part, but instead with a view to destroying what today is called the “Animal Rights Movement.” The plan of attack is simple: destroy the Movement by discrediting those who comprise it. The old rhetoric of disdainful dismissal, the one that lopped all animal advocates together as “cranks”, “lunatics”, “freaks”, or simple-minded members of an addled army of “little old ladies in tennis shoes” – this old rhetoric is dead. Or dying. In its place is a new rhetoric, an incendiary rhetoric, a rhetoric of vitriolic accusation. Today members of the Animal Rights Movement commonly are said to be “fanatics”, “extremists”, “radicals” or – the most frequently used verbal bomb – today these people are said to be “terrorists”. Indeed, it is not unusual to find people using the expressions “animal rights” and “terrorism” interchangeably, as if they were synonymous. What cannot be earned by reason can be won by guile.

As an advocate of animal rights myself, it was perhaps to be expected that I would not escape this incendiary rhetoric. I have been likened to Herbert Goehring and Jim Jones. I have been accused of torching a fur store and of physically attacking researchers. My campus visits have been linked to laboratory break-ins. I have been portrayed as anti-science and anti-intellectual. My published work has been dismissed as “emotional” and as unworthy of so much as an ounce of intellectual respect. My motives and methods have been called into question. It has also been said that laboratory break-ins, the looting of these laboratories, bodily damage to scientists and the destruction of property are activities I have attempted to justify by my philosophy – and, too, that I believe I am at liberty to violate the rights of others as I move through the world acting on my ‘Truth’.

I will say this. Although for the most part I have trodden the high road, I have on rare occasions given the accusers a dose of their own medicine – sometimes, for example, a bit of public ridicule of the sort animal rights activists must endure not rarely but everyday, offered (I hasten to add) at rallies or demonstrations and thus outside academe, presented where my aim was to prick the puffed-up pretensions of the accusers and where the same kind of ridicule, the same attempt to prick inflated pretensions were aimed not only at them but also at animal rights activists and (not least of all) at me. For whatever our many differences, we all can be stupid on some occasions, all unjustifiably vain on others, and all – worst of all – sometimes stupid and vain at the same time.

All this I freely admit, and not for the first time. *But* – and this is a very important ‘but’ – anyone who knows me and is familiar with my work, including even my most impassioned rally oratory, knows that I have *never* attempted to offer a philosophy that would justify the looting of laboratories, *never* attempted to justify anyone’s physically attacking researchers, *never* advocated the destruction of property, and *never* (as I have been accused of doing) indulged in lies and deception regarding researchers, their research practices and the medical value of their research.

But enough, by way of example, of the incendiary rhetoric that has been, and continues to be, the stock-in-trade of some powerful voices within the biomedical research community. I do not equate any of you with any of them. My major interest on this occasion is not to defend myself against libellous charges but to clarify certain ideas and evaluate certain arguments. For while it is important that animal advocates combat the fraudulent ways they are being described by others, we should not be unmindful of or insensitive to what animal advocates are saying about themselves, of how *they* are describing who-they-are. The plain fact is, they are saying many different things. They are against cruelty. They stand for animal welfare, for animal protection, for compassion, for human responsibility to the other animals. Their goal is animal liberation. They are part of a progressive social movement – the Animal Rights Movement. Are they all these things? Can they be?

In the remarks that follow I offer some answers to these questions, explain how these answers relate to the particular theme of this conference and, after indicating where my own sympathies lie, reply to a number of objections.

#### ANTI-CRUELTY, COMPASSION, PROTECTION

We do well to remember that societal opposition to cruelty to animals, especially opposition that has the force of law, is a comparatively recent development. In England we can date its beginning with the passage, on June 22, 1822, of the Ill-Treatment of Cattle Act, while in the United States we may

point to the passage of anti-cruelty legislation by several of the states, beginning with New York in 1828. Sad to say, there are many countries in which no laws exist, even to this day.

Laws without strong enforcement are words without deeds, and the tragic truth is, courts in both England and the United States have displayed a general unwillingness to mete out harsh punishment to those found guilty of cruelty to animals and an even greater reluctance to render guilty verdicts in the first place, perhaps nowhere more conspicuously than in a research setting. And for good reason, as I shall attempt to explain.

In no small measure the scarcity of cruelty convictions is due to the concept of cruelty with which the judicial system has operated. Historically, to prohibit cruelty to animals has amounted to prohibiting the infliction of *unnecessary* pain, or *unjustified* pain, especially when the pain is *substantial* and the human agent has acted wantonly or *maliciously*, and with *intent*. A man who, for the sheer fun of it, intentionally torments and then sets fire to a cat, knowing fully well what he is doing, is a paradigm example of what legal and moral opposition to cruelty to animals has meant historically.

Few there are who would speak in favor of cruelty to animals, as thus understood, and I take it that, whatever else our differences might be, at least we all agree that cruelty to other animals is morally vile. Indeed, I believe we can go further and state that this is a judgment in which the vast majority of Americans agree.

But this consensus conceals important differences, especially those that concern *when* cruelty occurs. There are obvious problems here. To establish that someone acted with malicious or wanton intent is notoriously difficult, all the more so when the pain that is inflicted is caused by someone who is presumed *not* to have a malicious or wanton character. Certainly this is a presumption we make, and rightly make, in the case of those professionals who use nonhuman animals in their research. People who are familiar with my writings know that I defend the character of these researchers against the charges of sadism, Nazism and the like. My guess is, CPAs as a group (not to mention moral philosophers) probably are less to be trusted than researchers. I do not deny, and sadly am obliged to admit, the real possibility of incidents of wanton, malicious cruelty in the lab. But these would be the exception by a long shot, not the rule. Even if "animal model" research (so-called) is wrong, as I believe it is, it does not follow that the people who conduct it are evil.

But establishing cruelty is difficult for another reason. To be told that animals are treated cruelly when they are caused *unnecessary* or *unjustified* pain is of little use unless we are told what counts as unnecessary or unjustified pain. Not surprisingly, different people count differently.

A case in point is the use of rodents in carcinogenicity tests. Anyone who believes that life for these animals isn't a bad deal is suffering from a bad case of denial. There is a lot of pain. Except for closet Cartesians, this is

something upon which we all can agree. But is it *unnecessary* or *unjustified* pain? Here I think our consensus is likely to unravel, and this for two importantly different reasons.

First, disagreement can arise concerning the necessity of using rodents in order to achieve an end that is accepted as morally worthwhile. The end in this case, let us agree, is to protect humans against the possible carcinogenic effects of a large variety of items, some potentially therapeutic, others not. The potential for disagreement arises because some people will view the rodent as a poor or unreliable "model" for this purpose, while others will take the contrary view. Given the former alternative, causing rodents pain in the course of conducting carcinogen tests is unjustified because it is bad science and thus a poor way to protect human health. I need not tell this audience that a steadily growing number of informed toxicologists are to be found advocating this position. When Philip H. Abelson, in the September 21, 1990 lead editorial of the prestigious journal *Science*, writes that "the standard carcinogen tests that use rodents are an obsolescent relic of the ignorance of past decades," it seems safe to say that mainstream scientists, not just animal advocates, think we can do better.

But there is a second approach to thinking about the justification of pain that does not turn on how good the science is. It is a commonplace that unjust means are sometimes employed to achieve worthwhile ends. In human-to-human ethics, examples abound (for example, people who donate significant portions of stolen wealth to worthy charities). A good end (food or shelter for the homeless, say) is advanced by people who use corrupt means.

Is it possible that the same might be true in the case of utilizing rodents in carcinogen tests? Well, people's answers differ. Some people think it is wrong to use these animals as a means to the good end in view, others think such use is permissible. The question, in short, is open to (sometimes heated) debate. As such – and whatever the right answer is, assuming there is a right answer – the question should not be begged. To use nonhuman animals in pursuit of a good end, assuming that the end is a good one and the science reliable, does not *guarantee* that all is well morally. In order to establish that it is, we need to establish that it is not wrong to use these animals in pursuit of a good end, that using them for this purpose is justified, even if they are caused considerable pain. As I say, this is something that needs to be established, not assumed. Indeed, failure to address this question – to beg it – is a good indicator that moral thought and vision are lacking.

The upshot is: *merely* to affirm one's opposition to cruelty is not enough. Before we can sensibly decide whether causing pain to animals is justified or necessary or unjustified and unnecessary, which is part of what needs to be decided before we can intelligently decide whether causing pain amounts to cruelty in any given case, the morality of both the ends sought and the means used need to be assessed.

These same observations can be applied to other ways in which animal advocates are describing themselves. People who say they stand for animal protection, for compassion, for human responsibility towards the other animals, speak well and truly as far as these descriptions go. The problem is, it often is not clear how far this is. If these descriptions assume that the only moral prohibition we must honor is the prohibition against cruelty, then they assume that it sometimes is morally permissible to cause animals pain, even substantial pain. Since whether this *is* permissible proves to be a widely disputed proposition, the position that animal protection, or compassion for animals, or human responsibility to other animals are exhausted by the prohibition against cruelty also are question-begging at best, mistaken at worst.

In addition to these defects, there is another reason why merely being against cruelty to animals is not enough. In the end, all that the prohibition against cruelty forbids is that we not unnecessarily or unjustifiably visit evil, in the form of pain, upon another animal. What this prohibition therefore fails to address or account for, is the obligation to *promote the good* of other animals. Perhaps no one sees this point better than St. Francis. Recall his observation: "Not to hurt our humble brethren is our first duty to them, but to stop there is not enough. We have a higher mission – to be of service to them wherever they require it."

#### ANIMAL WELFARE

If understood in a particular way, I believe this Franciscan insight captures the essence of the ideals affirmed by those who work for animal welfare. To be for animal welfare, as distinct from merely being against animal cruelty, is to believe that we have a duty to improve the quality of animal life, by insuring – so far as this is practicable, when balanced against our other moral obligations and ideals – that other animals are the beneficiaries of what is good for them. To speak the jargon of philosophy, animal welfarists believe that we have positive, not only negative, duties to other animals.

The difference between these two views (anti-cruelty and pro-welfare) can be illustrated by considering debates about the obligation to enrich the lives of animals in laboratories. Animal welfarists, because they are committed to promoting the good of these and other animals, seem to have an intelligible basis on which to rest their call for alleviating the boredom many of these animals experience. To do this, after all, is to improve the welfare of these animals – to make their life better. Those who limit animal protection to the prohibition against cruelty, by contrast, seem to have a less intelligible basis for encouraging adoption of measures that decrease boredom, if we assume, what to me seems plausible, that being bored is not the same as being in

pain. True enough, bored animals *are* bored and, to that extent, deprived, but being deprived is not the same as being in pain.

Though the two viewpoints (anti-cruelty and pro-welfare) differ in important ways, I believe animal welfarists have the same strong public support as those who oppose cruelty to animals. Moreover, I believe few readers of this article will step forward to denounce the idea of animal welfare, as if it is a matter of indifference whether an animal's life is good or bad. There is *something* in the idea of being for animal welfare we all can accept, just as there is *something* in the ideas of being against cruelty, and being for compassion and animal protection, we all can uphold. Nevertheless, as was true in the case of the anti-cruelty position, the pro-welfare stance is not free of serious problems. I shall comment on only one.

Even if all informed people could agree concerning what animal welfare is, and how well various animals are faring – and these are very large assumptions, to put the point as mildly as possible – the animal welfarist's position would remain controversial because of what it implies may be done to nonhuman animals. If we ask an animal welfarist to explain this, we can expect something like the following.

"The welfare of nonhuman animals is important," we will be told, "but it is not the only thing that is important. Human interests and preferences also are important and, frequently, more important than the interests and preferences of other animals. For example, researchers have serious professional and humanitarian interests in the utilization of rodents and other animals used in research. These people are and should be supportive of animal welfare. There is no argument here. But to be for animal welfare is perfectly consistent with utilizing other animals in pursuit of human preferences and interests."

"There is no question", this view continues, "that when animals in laboratories are 'sacrificed' we shorten their life. But ending the life of animals is not contrary to supporting animal welfare. If animals used in research have fared-well, all considered, up to the point when they are utilized, and if they are killed as humanely as possible, then we do nothing wrong when we kill them."

"Moreover, it is important to realize that a commitment to animal welfare is consistent with striving to improve the *overall* condition of those individuals who have a welfare, both humans and other animals, even if this means decreasing the welfare of some. Such circumstances often arise, especially in biomedical research. This is regrettable, certainly, and everything should be done to make the lives of these animals as good as practicable. In the end, however, to diminish the welfare of some animals is a price we must be willing to pay for making the world better for others, both human and non-human."

I hope it is clear, from this sketch of the position under review, that animal welfarists are people who attempt to serve two demanding moral masters.

First, there is the demand that we ought to help improve the welfare of *individual animals*. This is the demand that leads animal welfarists to call for improved living conditions for animals in laboratories, for example. But, second, there is the demand that we ought to help improve welfare *in general*. And it is this demand that leads animal welfarists to permit the death of some animals, sometimes very large numbers of them, and even to permit the agony of some, so that others might benefit.

When viewed in this light it should not be surprising that the loudest, most powerful voices being heard in the name of animal welfare today are those who have an interest in the perpetuation of institutionalized utilization of non-human animals. By this I mean that those who identify themselves with the cause of animal welfare increasingly are those who speak for the commercial animal agriculture community and the biomedical community, for example. Witness the formation, in Congress, of the Animal Welfare Caucus and the commercial interests this caucus represents. In the United States, it is fair to say, the major commercial interests that utilize nonhuman animals have usurped the idea of animal welfare from the traditional animal welfare societies.

Some of these societies seem to be unhappy or embarrassed by this turn of events. Certainly they have damage control and public image problems on their hands. In their rush to distinguish themselves from the Animal Rights Movement, which they robustly condemn because they equate animal rights with "extremism" and "terrorism", these traditional animal welfare societies increasingly find themselves embracing the same philosophy as the members of the Animal Welfare Caucus, for example, who proudly describe themselves as champions of animal welfare. And how will the traditional societies free themselves from this embrace? Will it be said that primates raised in breeding colonies, for example, do not fare well, and that steps should be taken to enrich their caged environment? Well, people who stake their opposition to primate breeding programs on this kind of consideration should be prepared for a long debate, with one set of experts declaring that thus-and-so is true, while another set declares that it is not.

But even if the critics are right, and the quality of life for these animals can be improved, this will not change the system in any fundamental way. True, some more space might be provided; perhaps better ventilation, maybe a change in diet or exercise opportunities. The system of utilization, that is, might be reformed, with a view to improving the welfare of the animals being utilized. Nevertheless, the philosophy of animal welfare by its very nature permits utilizing other animals for human purposes, even if this means (as it always does) that most of these animals will experience pain, frustration and other harms, and even if it means, as it almost always does, that these animals will have their life terminated prematurely. This is what I mean by saying that reforms within the system of utilization will not change the system in any fundamental way.

## ANIMAL LIBERATION

Advocates of animal rights believe that more than reform of the system is needed. When a system is unjust to the core, abolition, not reform, is what respect for justice demands. There is, then, a fundamental moral difference between advocates of anti-cruelty, animal welfare and animal rights. Although the first two positions are committed to the view that we are *sometimes* justified in causing nonhuman animals significant pain, in institutionalized pursuit of valued human interests, animal rightists deny that we are ever justified in doing this. The true objective for which animal advocates should work, according to this view, is not larger cages but empty cages. If people describe themselves as advocates of animal rights, therefore, they are saying something quite different than if they say they are against cruelty or for welfare. Within the context of biomedical research, animal rightists are abolitionists, not reformists.

In my view, for reasons I have set forth at length elsewhere and which are summarized in the relevant selections in *Animal Rights and Human Obligations* that were recommended readings for this conference, I believe the philosophy of animal rights is the right philosophy. Am I right? By my own lights, I think I am. The arguments for the "extreme" animal rights' position are the best arguments, all considered. Or so I believe, and thus have I argued on numerous occasions in the past. You will be relieved to hear that I shall spare you most of the details of these arguments on this occasion. Nonetheless, some remarks of this nature are unavoidable. But first I want to say something more about what at first might seem to be a trivial point – namely, how people who share my views should describe themselves. Not in terms of anti-cruelty. And not in terms of pro-welfare. I hope that is clear. But how, then?

People who share my views can, and often do, describe themselves as being in favor of Animal Liberation. I believe this is an appropriate description. But I also believe it can be misunderstood.

One possible basis for Animal Liberation is an egalitarian interpretation of interests. On this view the interests of everyone affected by what we do must be taken into account, and equal interests must be counted equally. If only we would do this, we are to suppose, animals would be liberated.

I believe this understanding of animal liberation is mistaken. To make my reasons clearer, consider first the case of chattel slavery. There is no question that the interests of slaves were often grossly ignored and, when they were considered, that they were not counted equitably. This much granted, someone might maintain that the fundamental basis for the call to liberate human slaves amounted to two demands: first, that their interests not be ignored, and second, that their interests be counted equitably.

This is not true. Merely to count the interests of slaves equitably is not



equivalent to liberating them. Why? Because slaves can have their interests counted equitably *and still* remain in bondage. Why? Because there is no guarantee that, once their interests are counted equitably, they *should* be liberated. For whether they should be liberated or not will depend on what interests *other* people have, including the interests of slave owners. If a true egalitarianism of interests is observed, then *everyone's* interests must be taken into account, and the interests of *everyone* must be weighed equitably. If the results of canvassing interests in this way yield one result, the slaves should be liberated, if not, not.

Now, this way of thinking about Human Liberation has got things backwards. It's not that, in the face of a system of chattel slavery, we first insist on counting everyone's interests equitably, and *then* see if slaves should be liberated; rather, we first recognize the moral imperative to liberate them, on grounds *other than* counting equal interests equally. Put another way, *after* human slaves have been liberated, *then* one might attempt to argue that a fair way to decide between competing social policies is to count everyone's interests and count equal interests equally. But it is a mistake, I believe, to argue that *before* we can decide whether human slaves should be liberated, we first need to count everyone's interests, both slaves and slave owners alike, and count equal interests equally. The interests of those who profit from slavery should play no role whatsoever in deciding to abolish the institution from which they profit. The fact that the interests of slaves are not counted equitably by their oppressors is a symptom, not the underlying cause, of the great evil human slaves are made to endure.

This great evil is rooted in systematic injustice. It is the right of slaves *to be free*, their right *not to be treated as another's property*, their right *not to be used as a mere means to another's end* – it is these basic moral *rights* that a system of chattel slavery systematically violates, not the principle that we must count equal interests equally. The very concept of *liberation* makes sense only if it is viewed against the backdrop of unjust oppression, and while the notion of unjust oppression no doubt assumes many guises, it is incomprehensible to me how we might understand it apart from the idea of the violation of basic moral rights.

There is, then, in my view, a better way in which we can understand Animal Liberation than the way provided by an egalitarian interpretation of interests. It takes its cue from other kinds of liberation, and rests the call for Animal Liberation on the recognition of the rights of nonhuman animals, including in particular their right not to be treated as mere means to human ends. When viewed in this light, Animal Liberation is the goal for which the philosophy of animal rights is the philosophy. The two – Animal Liberation and Animal Rights – go together, like a hand in a glove.

## ANIMAL RIGHTS

Resistance to the philosophy of animal rights takes many forms, from the incredulous (“You can’t be serious!”) to the superficial (“What about carrots?”), and from the prideful (as in the increasingly heard boast, “I’m a speciesist and proud of it!”) to the deep. While most objections are to serious thinking what veneer is to seasoned wood, some – I have in mind objections that some feminists bring against the idea of animal rights in particular and the notion of individual rights in general – deserve a serious hearing and exploration. I listen to and explore the feminist challenge in a recently published book, and will spare you an airing of my views on this matter on this occasion. Here I sketch only a few of the more substantive philosophical objections, and my replies.

Quite possibly the most important objections raised against the position I accept involve variations on a main theme – namely, the alleged inapplicability of the idea of moral rights to nonhuman animals. Of course, if there are no moral rights – if not even human animals have them – then my position would seem to lack so much as a handhold. If “moral rights” is an empty idea, “animal rights” can hardly fill it.

But *is* this idea empty? I think most of us will find it difficult to answer in the affirmative. Things we think and feel very deeply, concerning, for example, our thoughts and feelings about racial, sexual, religious and other forms of prejudicial discrimination, verily cry out for the language of rights, just as our convictions and attitudes about the removal of such barriers would have at most a diminished voice if we were to purge the concept of rights from our moral vocabulary. This is no *proof* that humans have moral rights. My remarks here are intended only to remind us that, independent of any partisan manoeuvring on behalf of some favored theory of moral rights, there is the widely shared conviction that moral rights are something, not nothing.

But is it possible that *nonhuman animals* have moral rights? Our answer to this question depends in obvious ways on what we think the possession of moral rights presupposes. In a lead article in *The New England Journal of Medicine*, entitled “The Case for the Use of Animals in Biomedical Science” – and permit me to remark, parenthetically, that though this article criticizes both Peter Singer’s and my own ideas, and only our ideas, by name, the *NEJM* did not see fit to publish either Singer’s or my own reply – Carl Cohen argues that rights can belong only to humans because “rights arise, and can be intelligibly defended, only among beings who actually do, or can, make moral claims against one another.” But, surely, *how* rights arise leaves open the question of which individuals have them. By way of analogy: As far as we know, theories of genetics “arise” only among humans, and only humans make scientific “claims” about genes. Does it follow that only humans have genes? It would be a dubious logic that permitted this inference to a new

biology. Cohen's logic is no less dubious in authorizing his inference to an old morality.

Many people who deny that nonhuman animals have moral rights do so because they think rights presuppose reciprocity: In order for it to be true that A has a duty to respect B's rights, it must be true that B has a duty to respect A's rights. Thus, I have a duty to respect your rights because (let us assume) you have a duty to respect mine. When it comes to rodents and hamsters, primates and dogs, however, the situation is importantly different. Because they cannot meaningfully be said to have a duty to respect our rights, we do not have a duty to respect theirs either.

Though much abler minds than mine have endorsed this view, sometimes with evident conviction and enthusiasm, I remain unconvinced. The grounds of my skepticism will be familiar. Myself, I simply do not understand why it is impossible that I have a duty to respect the rights of young children, for example, despite the fact that they cannot reciprocate. Thus, I do not understand how we can deny that nonhuman animals have rights on the grounds that *they* cannot reciprocate. To exclude them, for this reason, while including children, is arbitrary in the extreme.

A common response at this juncture takes the following form. Assuming all goes well, children someday will become mature adults with a variety of favored capacities (among which rationality and autonomy are by far the most frequently favored). Thus, although they lack these capacities while they are young, these children do not lack the *potential* for acquiring them, and it is for this reason that we can ground the conviction that they have rights. Not so in the case of nonhuman animals. They lack the potential for rationality and autonomy (to mention these favored capacities). Thus, because their moral position is relevantly different from that of young children, it is not arbitrary to believe that children, but not nonhuman animals, have moral rights.

This argument is less obviously flawed than the previous ones. But it is flawed. For openers, why think rationality and autonomy are the decisive characteristics that determine who does and who does not have rights? Why not the capacity to experience pleasure and pain, or to enter into caring relationships, or to have an experiential welfare? If these characteristics are chosen, then many, many nonhuman animals will qualify. Those feminists I mentioned earlier, the ones who are highly suspicious of the concept of individual rights, also are highly suspicious of the supposed "value neutrality" involved in selecting rationality and autonomy as *the* decisive characteristics, in the sense explained, and while I cannot either fully explain or assess their misgivings on this occasion, it is important to realize that such misgivings exist and cannot fairly be ignored.

Moreover, even if we grant that rationality and autonomy are the decisive characteristics, in the sense explained, appeals to the potential of acquiring them are fraught with very serious problems. I mention only two. First, if it

is a newborn child's potential for autonomy and rationality that grounds the possession of rights, then one will be hard pressed indeed to explain why the same is not equally true of a normal human fetus from the moment of conception onward, and hard pressed, too, to explain why abortions, performed even in the early weeks of pregnancy, do not violate the right to life of the fetus (that is to say, why such abortions are not murder). And yet many people who choose rationality and autonomy as the decisive characteristics, and who appeal to the absence of any potential to acquire these capacities as a basis for excluding nonhuman animals as possible bearers of rights, seem loathe to adopt a strong anti-abortion position. My modest point is, it's hard to see how all these beliefs can be consistently entertained.

Second, not all human children have the potential for becoming rational and autonomous. Sadly, some suffer from profound mental handicaps. Do these children therefore lack moral rights? Myself, I find this a most uncongenial idea. Myself, I do not think that someone who sexually abuses or tortures one of these children has merely failed to be kind or decent, or that what is done is wrong because others find it offensive. Myself, I think these children have been treated unjustly. The treatment they have received was not their due. Just the opposite. But, now, if this much is granted, then the selection of rationality and autonomy as the decisive characteristics must be called into question. For if these children can have their rights violated and *not* be rational and autonomous, not even potentially, then the actual or potential possession of these capacities is not necessary for the possession of rights. Let it be granted, then, that all nonhuman animals lack these capacities (I note in passing that this admission itself is highly questionable); it does not follow that they do not have rights.

Cohen has a reply to this argument. In his view there is a morally relevant difference between (1) human children who lack the potential for autonomy and rationality and (2) nonhuman animals who lack this potential. In the case of these children, lack of this potential is a *defect* – that is, they are missing potentials that are normal to their kind. Not so in the case of the other animals: Because having this potential is not normal to their kind, its absence in their case is not a defect.

Now, the conceptual point being made here seems to be correct. For example, we humans do not have the potential to swim underwater without the assistance of mechanical aids for hours at a time, but we are not defective (do not suffer from a defect) for this reason. A shark who lacks this potential, however, is a defective shark. So the question is, granting that the concept of a defect has the logic it does, what follows *morally* from noting that nonhuman animals who lack the potential for rationality and autonomy are not defective whereas human children who lack this potential are?

Will it be suggested that those for whom this is a defect possess moral rights but not those for whom this is not a defect? This is Cohen's position;

it, too, is flawed. It is an odd logic that requires that those individuals for whom the lack of the potential to acquire a given capacity is a defect are to be classified and treated *as if* they had this potential anyway. Many children suffer from many different kinds of defects, both physical and mental. Some will never walk, others will never see or hear, still others will never be able to speak or read or add and subtract. In these tragic cases, these children lack the potential to acquire these capacities, notwithstanding that "normal" human beings possess them. Should we treat these defective humans *as if* they had these potentials anyway? Do we violate their rights if we fail to teach them calculus or the finer points of "A Midsummer Night's Dream"?

I do not want to be misunderstood (or misquoted). In raising these questions I do not in the least want to suggest that children who suffer from various handicaps should not be treated well. Just the opposite: The philosophy I have developed at length and in some detail attempts to illuminate why they are due such treatment, as a matter of strict justice. My point in raising the questions I do is to help remind us of a simple but, in my view, an important truth – namely, that the rights individuals possess do not depend on those capacities that are normal for the "kind of being" they are. When rights are tied to capacities or to the potential to acquire them, they must depend on the actual capacities or potentials of individuals themselves, considered individually. And this is important. For if I am right about this, then another line of argument that has been used to deny moral rights to nonhuman animals (see Cohen, for example) can succeed only at the price of excluding many human beings as well. One cannot reasonably include these humans and exclude these animals by appealing to what is or is not a defect.

Some critics of animal rights take a different route. "Neither young children nor the severely retarded qualify as rights-holders," these critics contend, "because they are not rational and autonomous. Thus, when we extend rights to these humans, we actually are doing more than we are required – giving them more than they actually deserve. But notice: What are we doing when we give someone more than is deserved? Why, we are being *generous*. In extending moral rights to the humans in question, then, we are exercising our generosity."

"Now", this argument continues, "generosity is something over which individuals are sovereign; that is, it is for each person to decide to whom to be generous, how much, and the like. As such, it is morally out of bounds for someone else to attempt to force me to be generous to this individual rather than that one, or to fault me for how I express my generosity. And so it is that when people are generous to young children and the seriously mentally retarded, and grant them rights, it really is morally indecent for someone else to complain that these people should be *even more* generous and do the same for nonhuman animals. There is no moral failing present here, and certainly no logical fallacy. People are at liberty to choose to limit their generosity

anyway they wish. It's just that, human nature being what it is, most of us extend our generosity to our conspecifics, fewer of us to other animals."

One thing should be said for this argument: It *is* clever. To my mind, however, that's all it is: clever. For consider what this argument (what I call the "generosity argument") actually does: It makes the degree of protection children should be afforded entirely contingent upon how generous people happen to be. And that's not enough. For there is nothing in this position *as such* that would mandate that all children be protected equitably. To make this clearer, imagine that the majority of people are prepared to extend their generosity (read: "grant rights") to white children but not to black children. Indeed, suppose the majority favors using the latter in biomedical research in preference to nonhuman animals because, it is alleged, these children are better "models" than these other animals. And suppose the will of the majority prevails: These children really are used for this purpose.

Would this be a policy about which we would want to raise questions of fairness? Myself, I trust we *would* want to do just this. And yet the generosity argument places such considerations out of bounds. It implies that we cannot be faulted for limiting our generosity to white children, by granting them rights, while not extending rights to black children, because how one extends and limits one's generosity (assuming one is generous) is not something for which one can be faulted, either morally or logically. Thus, to the extent that we wish to claim – and I can only hope that we at least all *would* wish to do this – that a policy that permitted routine utilization of black children, in the name of biomedical advances, *is* wrong, *is* unfair and *is* unjust, then it follows that we cannot reasonably believe that the assignment of rights is something that falls within the province of our generosity. This much acknowledged in the case of children's rights, the same must also be acknowledged in the case of the rights of other animals.

## CLOSING REMARKS

None of what I have argued here proves that any animal, whether human or otherwise, has moral rights. Whether any does or does not obviously is a long and complicated story. My version of that story has been offered elsewhere. My major interests on this occasion have been to clarify some ideas and answer some objections, including objections that have been raised by others against my previous work. Certainly my remarks do not bring the discussion of animal rights to an end; my hope is, they may have added something new or helpful to it.

North Carolina State University  
College of Humanities and Social Science  
Department of Philosophy and Religion  
Box 8103

Raleigh, NC 27695-8103/USA