

ANIMAL RIGHTS AND HUMAN DUTIES

Frances Bauer

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ABSTRACT

Frances Bauer

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Do animals have rights? Many philosophers maintain that they do not, since animals are not moral agents. But whether moral agency is necessary for rights possession depends upon what rights are. If rights are contracts, moral agency will be necessary in order to possess them; this does not follow if rights are conceived to be powers, entitlements, or the correlates of duties.

Our duties to animals are related to the fact that animals are sentient, but it is not clear that sentience is a sufficient ground for possessing rights. However, each being has a perceptual world which is complete for him, and in consequence of which he has interests. If rights are intended to protect interests, then animals, who have interests, should have rights.

Some problems arise when rights are ascribed to animals; it is argued that such problems are no impediment to the view that animals have rights.

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## INTRODUCTION

There exists a growing literature on the problem of natural rights and human rights<sup>1</sup>, much of it careful and informed. Animals are often mentioned in this literature, and it is perhaps fair to say that the 'human' in 'human rights' derives its point from the existence of non-human creatures who might also have a claim to rights. This is certainly felt to be the case by a number of writers on the problem.<sup>2</sup> It is also perhaps understandable that discussion of animal rights is mostly by-the-way, incidental to the problem of human rights. Many feel, no doubt, that with so much to be done in the human area, there is not time to explore seriously the question of animal rights. Sustained considerations of animal rights are therefore rare in the literature.<sup>3</sup>

However, this rather casual approach to animal rights has several questionable effects. First, many writers assume that animal rights are non-problematic,

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1 See bibliography.

2 W.T. Blackstone, "Equality and Human Rights," Monist, 52 1968, p. 623: "The line between humans and animals is not entirely clearcut, but we do want to distinguish human rights and the rights of animals."

3 The only recent one seems to be Stanley and Roslind Godlovitch and John Harris, eds., Animals, Men and Morals, London, 1971.

that it is an open and shut case (one way or the other). Lamont argues that animals are "a specially critical case to test any definition of 'right'..."<sup>4</sup> "It is only conceivable that animals be a kind of test-case if the answers to questions about animal rights are known beforehand. But the philosophical literature reveals little in the way of agreement as to whether animals do or do not have rights.

Secondly, many writers assume that as far as animals go, the status quo must be good enough. Questions are not usually raised about common practises on the basis of any alleged rights.<sup>5</sup> At least some of the discussion of human rights is motivated by the desire to change practises<sup>6</sup> but the ethics of meat-eating or horse racing are rarely raised.

Furthermore, many writers imply that if there are any animal rights, their existence can be deduced from that of human rights. This position is taken by several thinkers who support the view that animals do have

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4. W.D. Lamont, "Symposium: Rights," Ar. Soc. Supp., 24, 1950, p. 93.

5. The Godlovitch and Harris volume (note 3 above) is an exception.

6. For example, see Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," J. Phil., 61, 1964.

rights, including R. Godlovitch<sup>7</sup> and H.S. Salt<sup>8</sup>. Another line is taken by those who feel that rights are a humans-only preserve. They argue that since rights are based on some specifically human characteristics, it follows that animals do not possess them: "Whatever belongs on a list of natural or human rights is there because of a prior inventory of what men want, what men deserve, what all men require — in short, what men need — in order to be free and self-respecting persons. Already this guarantees that the list of rights has fundamental and unique relevance to human beings."<sup>9</sup>

No one has suggested that animals might have some rights which humans do not, or that different animals might have different rights. Animal rights are assumed to be, at most, a diminished set of human rights. Many writers assimilate animals to human beings who are mentally handicapped, such as the severely retarded, the insane, and infants; others class them with things.

7 S. and R. Godlovitch and J. Harris, op. cit.

8 Henry S. Salt, Animals' Rights, London, 1894.

9 Hugo Bedau, "The Right to Life," Monist, 52, 1968. p. 571 (italics added to final phrase).

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Many writers deny that animals have rights at all, on a variety of grounds. But few deny that we have duties to animals.<sup>10</sup> To say the least, the subject is untidy. Our ethical attitude to animals still derives largely from the Book of Genesis and Cartesian mechanism, despite Darwin and modern ethology. In fact, our approach is somewhat less sophisticated than Genesis, for in Genesis animals are classified and named, whereas in current philosophy we lump them all together — amoeba, ape and aardvark. But are the variety of animal life and our varied responses to it philosophically irrelevant? This has certainly not been shown.

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<sup>10</sup> H.L.A. Hart and D.G. Ritchie believe we have duties concerning animals but not to them. This is discussed in Chapter 2.



## CHAPTER 1

The Significance of Moral Agency in Different  
Theories of Rights

Many writers have argued that moral agency is a necessary prerequisite to the possession of rights.<sup>11</sup> I will tackle this line of argument first because, should the argument prove sound, it will preclude the possession of rights by the vast majority of non-humans and so settle the question. It is usually agreed that animals are not moral agents. Lacking speech, they also lack the complex concepts that make possible consciously rule-guided behaviour. Even if it were shown conclusively at some point in the future that some animals can learn to speak, or do speak (e.g. some cetaceans) and thus operate with abstract concepts and make moral choices, only those particular animals would be counted as moral agents and hence possessing rights; rights would not need to be accorded to any of the other forms of animal life.

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<sup>11</sup> For the sake of clarity, brevity and simplicity I will speak of 'rights', rather than 'natural rights' (which has meta-ethical overtones) or 'human rights' (which prejudices our inquiry) when I mean 'rights' in a generic sense.

Herbert Morris writes: "Implied...on any conception of rights are the existence of individuals capable of choosing on the basis of considerations with respect to rules."<sup>12</sup> Most writers would agree with Morris that being a moral agent entails being able to make rule-guided choices; and many at least<sup>13</sup> would grant that talking about rights is only significant if some moral agents exist; It should be realized, however, that rights might still exist, even if they were not talked about. One can imagine an anthropologist describing a culture as recognizing certain rights in its members in a case where the culture lacked any notion of a right. Rules governing observances of rights could be so wholly embedded in a religion or myth that they could not be conceptualized apart from the myth. Within such a culture rights-talk would lack significance, although such talk might be significantly employed by an outsider describing the culture. However, significant normative use is logically prior to significant descriptive use, and it is the former which concerns us in the case of animals. For the question is: given that the capacity of moral agents to follow moral rules is a necessary significance condition for rights-talk, does it follow

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12 Herbert Morris, "Persons and Punishment," Monist, 52, 1968, p. 500.

13 Different theories about what rights are are discussed later in this chapter.

that rights are restricted to moral agents or potential moral agents? Two facts seem to motivate such a limitation on who may possess rights:

- (1) the inability of beings who are not moral agents to claim rights; and
- (2) the inability of beings who are not moral agents to recognize the rights of others.

Clearly animals neither claim rights nor recognize the rights of others.<sup>13</sup> Neither do babies, or certain impaired persons, and it seems to be this common disability which favours the subsumption of animals, babies and the mentally impaired under one class. But are either of these facts relevant to the possession of rights? In consideration of (2), it is not always the case that failure to recognize the rights of others results in a loss of rights. If A fails to recognize the right of others to worship freely, A does not automatically lose his right to worship freely (although if he prevails he may lose his right in the long run). If A tells lies, thereby failing

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13. Altruistic behaviour on the part of animals towards others, noted in the case of dolphins, elephants, dogs, etc. is not usually considered to imply a recognition of the rights of others. Such behaviour is described as altruistic because it resembles altruistic human behaviour; but it is thought to be motivated by instincts rather than concern. The problem of interpreting animal behaviour is discussed later.

to recognize the right of others to be told the truth, he does not thereby lose his right to be told the truth.

Of course, with animals, infants and the like, the case is somewhat different, for there is not even the presumption of having my rights recognized by a bear or a baby. You do not describe a bear's attack on your campsite as the bear's failure to recognize your right to camp there, for this would imply that the bear ought to recognize your right. No one has argued that the rights of bears and babies are forfeit through their failure to recognize the rights of others; it is simply argued that they do not have rights.<sup>14</sup> It is their inability to be moral agents which disqualifies them, not their failure as such.

The relevance of the ability to recognize the rights of others depends on how rights are conceived. If rights arise from a contract or agreement, and certain rights do, then the failure of one party to fulfil his part of the contract may result in that party forfeiting

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14 In the case of humans, like babies, who do not recognize the rights of others, authors are divided as to whether they have rights. Morris, for example, says "Children possess the right to be treated as persons..." (op. cit. p. 493) whereas H.L.A. Hart restricts the equal right of all men to be free to adult human beings capable of choice. (H.L.A. Hart, "Are There Any Natural Rights?" in A. Quinton, ed., Political Philosophy, Oxford, 1967.)

his rights. If all rights are thought to be contractual, then only moral agents will have rights, insofar as only moral agents can make contracts. The idea of the social contract has, of course, a long and venerable history in philosophy; it has been used to explain the power of the sovereign (Hobbes) and to justify the idea that government should be government for the good of the people (Locke, Rousseau, Kant) and even to explain how society is possible at all.<sup>15</sup> As a myth it is compelling, but also deceptive: compelling because it suggests a rule or criterion for judging the behaviour of governments and individuals (would the affected parties agree to being treated this way?) and deceptive because society really does not depend for its existence on the making of contracts. Many animal species form societies without making contracts — for example, bees, baboons and musk-oxen. Contracts are seen as necessary to form societies when competition is thought to be the whole story of human relations, and cooperation is forgotten. Why competition seems or has seemed so much more significant in western society than cooperation is a mystery; that it has is a fact which myth and literature

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15 See, for example, R.E. Ewin, "What is Wrong with Killing People?" Phil. Q. 22, 1972.

attest to. But cooperation, however imperfect, is nonetheless a biological fact: without it reproduction would not take place, nor any offspring be reared, except by frogs, corals and others whose offspring take care of themselves.

If the social contract is a myth, it cannot be a reason for limiting rights to those who can make contracts. And in practise, rights are not so limited, though some thinkers do advocate such a limitation (Hart). Infants, the insane and the retarded are all accorded various rights in western societies and in most others as well.

Many thinkers, most notably Hobbes and Spinoza, have defined a right as a kind of power. Insofar as powers and abilities are allied notions, this account of rights may warrant limiting rights to those who are able, or who have the power, to claim them.

To some extent the way we speak of rights supports this view. Rights are had or possessed, and also claimed, and so are powers had, possessed and claimed. Both may be exercised. On the other hand, one person's rights are often thought to correlate with someone else's duties. This is not so with power, which if anything correlates with subjection.

Furthermore, while animals and babies are not able to claim rights, they have many other abilities and powers. This might lead to saying the baby has a right to tear books or smash the jam jar, and the lion the right to maul me should he get the chance. But if we do use the word 'right' in this connection, it seems that we use it in a peculiar sense, as a synonym for 'not blameworthy'. The baby and the lion are not to be blamed for what they do. This places lions and babies in the odd position of having powers or abilities which may be said to be rights, which can be exercised but not claimed. A confusing situation, to say the least. For we do not regard not being subject to blame or criticism as identical with possessing a right, or even as one of the more important consequences of possessing a right. In some cases one may indeed be blamed or criticized precisely because one has exercised a right. Natural parents who demand custody of a child who has been happy for years with an adoptive family are felt to be both blameworthy and yet within their rights; and if this is no longer so, at least it was so in the past. The rightness of any particular action depends on more than the rights of the parties involved. We habitually point this out to friends and family when we say: "Of course, you are certainly within your rights, but..."

Indeed, there are good reasons for supposing that rights are not identical with powers or abilities. Having the power to do a thing does not necessarily entail having the right to do that thing; and if it did, being a moral being would be a great deal easier than it is. Many feel that although Henry VIII had the power, he did not have the right to cause Anne Boleyn to be put to death. In point of fact, rights are most often spoken of precisely when the power to exercise them is lacking. The democrats in the Soviet Union are working to make actual the equal rights of all citizens. These rights may be real rights in the sense that the Soviet state and Soviet citizens should recognize them; but while they presently exist de jure, they do not exist de facto, and a fortiori they are not powers.

But even if one does hold the view that rights are powers, it does not follow that rights are limited to those who can claim them, as we have seen. In practise we do not limit rights to those who can claim them, or to those who recognize the rights of others. Infants, imbeciles and the insane are thought to possess at least some rights, which can be claimed on their behalf. Moreover, moral agents who are ignorant of their rights and thus not in a position to claim them are nonetheless



thought to possess those rights. It seems arbitrary to not ascribe rights to animals for a reason which is not an impediment in other cases.

We have rejected the view that rights are basically contractual and the view that rights are powers.

H.J. McCloskey argues that rights are not powers, nor "rights against" but "entitlements to do, have, enjoy or have done."<sup>16</sup> McCloskey's account is interesting because he goes more thoroughly into the question of animal rights than most other writers.

His central argument is that rights are "rights to" rather than "rights against" moral agents. He allows that certain special rights are appropriately described as rights against a moral agent; — "The wife has rights against the husband, the creditor against the debtor"<sup>17</sup> — but he denies that all rights can be construed this way. He suggests that it is strangely artificial to construe general rights, like the rights to life, liberty or the pursuit of happiness as rights against someone or something. This is tantamount to denying that the existence of moral agents is a significance condition for rights-talk, or at the least, denying that this is the

<sup>16</sup> H.J. McCloskey, "Rights," Phil. Q., 15, 1965, p. 118.

<sup>17</sup> Ibid.

most fundamental significance condition. McCloskey is saying that if there were nothing worth being entitled to, no goods worth having, then there would be no motive to assert rights. This is not something which other writers have denied or overlooked, but it is not typically stressed.

The views of writers like Morris<sup>18</sup>, Plamenatz<sup>19</sup>, Hart<sup>20</sup>, and Benn and Peters<sup>21</sup> can be contrasted with McCloskey's view. In Benn and Peters we read: "Without the possibility of the correlative duty resting somewhere, the attribution of the right to X would be meaningless."<sup>22</sup> The correlation between rights and duties claimed by Benn and Peters is a logical correlation: "right and duty are different names for the same normative relation".<sup>23</sup> For Benn, Peters and Hart, a person alone in the universe would have no rights in the full sense of the word, as

18 Herbert Morris, "Persons and Punishment," Monist, 52, 1968.

19 J.P. Plamenatz, "Symposium: Rights," Ar. Soc. Supp., 24, 1950.

20 H.L.A. Hart, "Are There Any Natural Rights?" in Anthony Quinton, ed., Political Philosophy, Oxford, 1967.

21 S.I. Benn and R.S. Peters, Principles of Political Theory, New York, 1959, Chap. 4.

22 Op. cit., p. 101.

23 Op. cit., p. 102.

there would exist no one with the correlative duties. McCloskey argues that the hypothetical last person in the universe would have rights, and that talking about his rights would be meaningful. If the last person were a woman who had survived a nuclear war together with a sperm bank she might, for example, consider whether she had the right to reproduce, or whether she had the right to commit suicide. McCloskey goes so far as to argue that even the possible existence of other human beings is not necessary for talk of rights to have point.

It is meaningful to speak of the hermit on an isolated island as having rights to do or have certain things, but it would be strange to speak of him as having rights against others. His rights may give rise to rights against others, but the right — e.g. to live — is not primarily against others.<sup>24</sup>

But has the hermit a right to live? Like all of us, he will one day die, and unless he dies at the hand of another person, we will not say that he has been denied his right. Should his boat capsize in a storm and he drown, talk of rights would be irrelevant. Only if someone heard the hermit's cries for help and failed to heed them, would we speak of the hermit's right having been denied.

<sup>24</sup> McCloskey, "Rights," p. 118.

McCloskey seems to have succumbed to a confusion between a descriptive and a prescriptive use of 'right'. To say the hermit has a right to live when in isolation can only mean that for as long as he is able to sustain himself, avoid drowning, and resist disease, he will live or will be able to live. But this is not the same as, nor even an adequate basis for, the right to live as it is asserted in a social context. The importance of distinguishing these two types of use can be easily exemplified. Suppose that McCloskey's hermit is an escaped killer under sentence of death. There would then be a legitimate sense in which the hermit did not have the right to live. (i.e. a social and legal sense) and this sense would be taken as the over-riding one, just because entitlements have limited relevance in a social context.

Construing rights as entitlements leads to further confusions. McCloskey argues that the hermit's right to live "justifies him in killing animals — and in the process causing them to suffer — in order to sustain himself."<sup>25</sup> Leaving aside the question of whether the animals have rights, let us accept that the hermit is justified in killing animals. Suppose that there are mule deer on the island, and that the hermit has habitually

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25 Ibid.

killed ten a year for food; that furthermore this is equivalent to the maximum sustainable yield for the size of the mule deer population. What happens if someone else comes to live on the island? Presumably his right to live entitles him to kill mule deer, too. Does this diminish the hermit's right? If only ten deer can be killed each year without damaging the population, how are those ten to be shared out? Does the hermit, who formerly had an entitlement to ten, have now a right to only five? Is the hermit justified in driving the newcomer from the island, on the grounds that he was there first and needs it all? It is not clear what should happen; but if the hermit's right is his entitlement, then his right is diminished by the arrival of another person with similar rights and entitlements. On the other hand, if his right is to his "fair share", then the notion of sharing, which implies a social context, is really built in to the notion of a right, and McCloskey's emphasis is misplaced. It is more coherent to accept a notion of rights which is independent of the actual number of rights-holders at any given moment. This is not possible on McCloskey's view of rights as entitlements.

But our original question is whether animals, who are not moral agents, can possess rights. McCloskey

says:

An obvious answer to the question "Who may possess entitlements?" is "Free moral agents." They obviously may and do possess and claim entitlements of the sorts claimed in rights to life, liberty and health. However, it is unduly and arbitrarily to narrow and limit the field of possible possessors of rights to limit it to free moral agents.<sup>26</sup>

McCloskey denies that the ability to claim is necessary for the possession of rights, and gives numerous examples: a lunatic who could be cured by a cheap drug (costing 1/-) would have a right to the drug, while an infant "is entitled to care and nurture from his parents."<sup>27</sup> The incurable lunatic is entitled to decent treatment, too, so these entitlements do not depend on any potential ability to recognize the rights of others.

But McCloskey does not find that animals possess rights, despite the fact that he does not consider moral agency to be a necessary ground for rights possession. In an argument which we will discuss later, he compares animals to things; but in addition he gives a very curious reason for his conclusion that animals have no rights — curious because of his view that rights are entitlements.

<sup>26</sup> Op. cit., p. 124.

<sup>27</sup> Op. cit., p. 125.

He says simply that "rights are possessed and that animals cannot possess things."<sup>28</sup> But would not tortoises on an isolated island possess the right to live, if hermits do?

Moreover, it is not at all clear that animals cannot possess things. We do use the possessive case and speak of the wolves' den, the dog's bone, or the robin's eggs. That an animal has no legal recourse if you take away its home or its food, since it lacks the wit to call a lawyer, hardly proves anything. Finally, rights are not things in the usual sense; and being unable to possess material things, if this were true, would not be grounds for being unable to possess rights. Possessing rights (e.g. the right to property) is rather the ground for possessing things.

We have examined several views of rights in an attempt to answer the question, Can those who are not moral agents possess rights? The contract theory of rights would limit the possession of rights to moral agents; but we found no reason to believe that the contract theory is true. A theory of rights as powers seems to be inadequate on several counts, while McCloskey's entitlement theory contains several difficulties and

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28 Op cit., p. 126.

confusions. Neither a power theory nor an entitlement theory can justify limiting rights to moral agents.

The view that rights and duties are aspects of the same normative relation is the most widely held view of rights today. This position will be examined in the next chapter.



## CHAPTER 2

Duties to Animals and the Significance of Sentience

## (1) Duties to Animals

The view that we have duties to animals is very widely held and has even been incorporated into the laws of many countries in the form of prohibitions of cruelty to animals. The assumption that we do have duties to animals combined with the assumption that duties are strictly correlated with rights, creates a dilemma for those who wish to say that animals do not have rights. In this section I am going to discuss the arguments of some of those who find themselves in this dilemma.

D.G. Ritchie, in Natural Rights, argues that "we may be said to have duties of kindness towards the animals; but it is incorrect to represent these as strictly duties towards the animals themselves, as if they had rights against us."<sup>29</sup> According to Ritchie, this duty is really a "duty to human society" because it is "an offense against civilised life to cause any unnecessary suffering...unnecessary for human well-being."<sup>30</sup>

29 D.G. Ritchie, Natural Rights, London, 1892, London, 1952, p. 111.

30 Op. cit., p. 110.

Having made the point that every normal sentient being instinctively avoids pain, he goes on to say: "The growth of sympathy and of imagination makes it possible for human beings to feel mental pain at the sufferings of other human beings...and of other animals..."<sup>31</sup> It is for this reason that causing unnecessary suffering to an animal is an offensive thing to do, and something we have a duty not to do.

The first thing to be noticed about this argument is that while it demonstrates a duty to other persons which is a duty concerning animals (but not to them), it does not show that we have not also got a duty to animals.

It is worthwhile to enquire why unnecessary suffering is so especially offensive. For from Ritchie's reasoning, one could conclude that all suffering was offensive, since all suffering, and not just unnecessary suffering, is held to evoke mental pain. "Pain is in itself an evil, not in the special moral senses of the term 'evil', but in the sense that it is an impediment to the maintenance and development of life."<sup>32</sup> But given this, then to cause pain unnecessarily is morally evil,

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

and explains in what way the mental pain evoked by unnecessary suffering may differ from that evoked by necessary suffering: it is a compound of sympathy and moral indignation. Such indignation would be quite out of place if we did not regard the unnecessary suffering of animals as wrong in itself. But if it is wrong in itself, then it is wrong not only because it causes mental pain to human beings; it is a wrong done to the animals. It is not our mental pain we are primarily concerned to avoid when we prohibit cruelty, it is the cruelty itself, and this suggests a duty to animals after all.

H.L.A. Hart, on quite different grounds, argues, like Ritchie, that our duty to animals is not owed to them, but is better described as a duty concerning them.<sup>33</sup> He points out that we are not justified in identifying "having a right" with "benefitting by the performance of a duty".<sup>34</sup>

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33 H.L.A. Hart, "Are There Any Natural Rights?" in A. Quinton, ed., Political Philosophy, Oxford, 1967.

34 Ibid., p. 57-58.

It is important for the whole logic of rights that, while the person who stands to benefit by the performance of a duty is discovered by considering what will happen if the duty is not performed, the person who has a right (to whom performance is owed or due) is discovered by examining the transaction or antecedent situation or relations of the parties out of which the "duty" arises.<sup>35</sup>

Therefore, according to Hart, although animals stand to benefit when we do our duty, this duty is not due or owed to them, nor do they have any rights against us. But to whom, then, is this duty owed? Hart gives us a method of discovering this: "by examining the transaction/ or antecedent situation..." but unlike Ritchie, he provides no concrete answer. Instead he explains that the duty we have to animals is a duty in the "philosopher's generalized sense of 'duty'"<sup>36</sup> which presumably indicates that it is not owed to anyone and not correlated with a right.

One might well reply, if we have the duty anyhow (the duty not to mistreat animals) why not say they have a right (to decent treatment)? Hart offers two reasons for not doing this: first, that it is unnecessary as "the moral situation can be simply and adequately described..."

35 Ibid.

36 Ibid.

by saying that it is wrong or that we ought not to ill-treat them"<sup>37</sup> and secondly, that it is a good idea to keep the expression 'a right' for those situations where it has specific force, namely the force of a bond. Hart elaborates on what he means by a bond: "The precise figure is not that of two persons bound by a chain, but of one person bound, the other end of the chain lying in the hands of another to use if he so chooses."<sup>38</sup>

To take his first reason first: while agreeing with the statement that it is wrong to mistreat animals, we do not have to accept this as an adequate description of the moral situation. Throughout this discussion Hart has been speaking of animals and babies in the same breath, a fact my quotes have not brought out. In actuality, we treat animals and babies very differently. We eat the former and not the latter, for example: yet Hart gives no indication whether 'mistreat' means the same thing in both cases. Clearly, even if this is an adequate description in some sense of 'adequate', it is nonetheless unnecessarily vague.

Hart's second point, that 'right' should have the force of a bond, is misleading in a consideration of

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37 Ibid.

38. Ibid.

natural as opposed to special rights. In the case of special rights, the person who has a right is usually free to waive his rights and claims over another (he can choose not to use the chain, in Hart's analogy). This is not the case if the right in question is a natural right. Natural rights are morally inalienable, in the sense that we do regard A's failure to recognize the natural right of B as wrong even in the case where B makes no protest.<sup>39</sup>

W.D. Ross argues that we have a duty to animals, but that animals do not have rights. The question arises for Ross in the course of his investigation of the correlativity of rights and duties. He analyses the notion of correlativity into four logically independent statements, all or some of which may be true. This leads him to contrast two views:

...it is not clear whether we should say that though we have a duty to animals they have no right against us, or that though they have a right against us they have no duty to us. If we take the first view, we are implying that in order to have rights, just as much as in order to have duties, it is necessary to be a moral agent. If we take the second view, we are implying that while only

39 For an excellent discussion of Hart's paper, see Roslind Godlovitch, "Animals and Morals," in S. and R. Godlovitch and J. Harris, Op. cit., p. 158-161.

moral agents have duties, the possession of a nature capable of feeling pleasure and pain is all that is needed in order to have rights. It is not at all clear which is the true view.<sup>40</sup>

Ross decides, however hesitantly, for the first view, on the grounds that it is more natural and convenient. This permits him to say that rights and duties are fully correlative in the domain of moral agents. What is of interest in Ross's account, however, is the succinctness of the dilemma he poses; for clearly we must decide whether moral agency or sentience are sufficient conditions for rights possession. We have seen, in Chapter 1, that it is not necessary to be a moral agent in order to possess rights. Infants and the mentally impaired possess rights without being moral agents. We have also seen that most writers agree that we have duties of some kind to or regarding animals, and that these duties are in some way related to the fact that animals are sentient. But is sentience a sufficient ground for possessing rights? Ross, Hart, and Ritchie answer this negatively, as do a number of others. Some answer positively. In the next section, we shall investigate the disagreement.

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40 W.D. Ross, The Right and the Good, Oxford, 1930, p. 50.

## (2) The Significance of Sentience

Most writers imply that they do regard sentience as a necessary condition for ascribing rights, even when they do not affirm this openly. I suspect many feel that it is so obvious that it warrants no discussion. Discussion may, nonetheless, be in order and throw light on the nature and significance of sentience. Moreover the principle that sentience is a necessary condition for rights ascription has been questioned by both McCloskey<sup>41</sup> and H.D. Aiken<sup>42</sup>.

In practise rights of various sorts are ascribed to non-sentient things, but many of these uses are elliptical, as when we speak of a ship or a plane having the right to dock or to land somewhere. When we speak of institutions having rights it is not so clear that the usage is merely elliptical. But if we see such rights as attaching to roles and offices of persons, such roles and offices being invariably filled by persons, no great difficulties arise. The rights which some ascribe to races and nations or to the state can be regarded as dependent upon or derived from the rights of the individual human beings who form the collectivity in question. None of these types of

41 McCloskey, "Rights," p. 123 ff.

42 H.D. Aiken, "Rights, Human and Otherwise," Monist, 52, 1968.



rights ascription really challenges the principle that sentience is a necessary condition for such ascription.

The case is different when it is proposed that we ascribe rights to houses<sup>43</sup>, or to trees, or even works of art<sup>44</sup>. Consider a great painting. We might well say: "People have a right to see this work; therefore it should be in a museum, not in a private home." Could this be turned about meaningfully to read: "This painting has a right to be seen (appreciated, admired etc.) Therefore..."? To turn the statement about in this way seems to be to indulge in a literary conceit: the conceit that the painting has desires, goals and interests. But the question is not: Do paintings have desires, goals and interests? but rather, Can non-sentient things have rights? In the case of the painting, a rights ascription sounds plausible only if we fancifully suppose it to be sentient.

As for houses, when City Council announces that demolition permits will be issued for certain old buildings, we may feel very strongly that City Council is acting wrongly. We will perhaps say: "They have no right to demolish those beautiful old homes." But it is not the case that whenever we invoke the formula: "A has no

<sup>43</sup> Aiken, Op. cit.

<sup>44</sup> McCloskey, Op. cit.

right to do x" we can, by simple inspection, determine which, if any, rights are being infringed. In cases like the supposed rights of the non-sentient, we tend to become confused by the fact that rights are of different types: some being liberties, some special rights, as of promisee against promisor, and yet others welfare rights, like the right of humans to medical treatment if necessary and available. Things might seem to have welfare rights, or even the liberty to exist. But a universe in which each thing had the right to continued existence (which McCloskey suggests for the paintings of Raphael and da Vinci, and my example suggests for certain old houses) would be a universe in which we could never act without over-riding the rights of something. Those who, like Aiken and McCloskey, question whether sentience is a necessary condition for rights ascription never mention this. McCloskey claims that argument is needed to show why parasitic animals like the flea might have rights, and not "a beautiful oak or mountain ash" or "paintings of Raphael and da Vinci."<sup>45</sup> His concern is strictly for what is beautiful and valuable for us. He nowhere suggests, and I presume would not suggest, that slag heaps, automobile graveyards and oil slicks should have rights to continued existence.

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45 Ibid.

If we follow McCloskey he seems to advocate that rights be ascribed to whatever we value because we happen to value it (for its beauty, its humanity, or whatever) rather than because of the value of some entity to itself. Clearly a flea can value its own life, even if we do not, whereas a painting or a slag heap is valued or disvalued by us or other sentient beings, but not by itself.

The case of plants is in essentials the same as that of inanimate things. So long as we assume that they are non-sentient we do not ascribe rights to them. If the assumption that they are not sentient begins to waiver, as is presently fashionable, the suggestion that they have rights becomes at least plausible.

Let us grant, then, that sentience is a necessary condition for rights ascription. This seems to be so, if only because it would be pointless to ascribe rights to something which lacked interests. Rights, we feel, are ascribed to a being for its own sake — why would anyone bother to claim a right, if it were not for his own sake? It is precisely this feature of rights that makes Morris's "right to punishment" sound so paradoxical<sup>46</sup>. By and large, we try to avoid punishments even when they are owed to us, and this is not the way we typically behave when

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46 Herbert Morris, "Persons and Punishment," Monist, 52, 1968.

we have a right to something.

Now philosophers who argue that sentience is not a sufficient ground for ascribing rights usually focus on only one or two aspects of sentience. Ritchie seems to

identify sentience with sensitivity: he speaks of degrees of acuteness of feeling<sup>47</sup> and also of the evil of pain<sup>48</sup>.

If we follow a utilitarian principle, we must, he argues, in deciding how to act, take all the different grades of sentience into account, and not only among animals, but among humans too. But is there not some confusion here, and a presumption or two? Is sentience nothing but feelings of pleasure or pain? And if it is, on what grounds does Ritchie conclude that the mollusc feels these less than the mammal? For that is the example he gives<sup>49</sup>. If it is on the grounds that the sensory equipment of the mammal is superior to that of the mollusc, he might ponder the fact that birds by and large have better visual acuity than humans; that dogs have a superior sense of smell; that flies have extremely sensitive taste, and that the cricket's sensitivity to vibrations cannot be surpassed,

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47 Ritchie, Natural Rights, p. 107.

48 Op. cit., p. 111.

49 Op. cit., p. 107.

as it is at the physical limit<sup>50</sup>. Furthermore, there is no neat correlation between the variety and sensitivity of one's sensory modes and the degree to which one can experience pain or pleasure; many pains and pleasures are not specific with respect to the senses at all. We do not suppose the blind or the deaf to be less capable of feeling pleasure and pain, except in cases of pleasure and pain specifically visual or aural.

Ross, not as specific as Ritchie, speaks of "the possession of a nature capable of feeling pleasure and pain."<sup>51</sup> McCloskey refers to the possibility of action and the possibility of pain<sup>52</sup>, and declines to speak of animals having interests. He begins by pointing out that we are reluctant to speak of the legal rights of animals, in the case of money being left, say, for the care of a cat. He contends that the grounds for this reluctance become "clearer if we consider things, and why things cannot have legal rights."<sup>53</sup> If money is left to

50 Hansjochem Autrum, "The Operational Limits of Animal Sense Organs," in Friedrich, ed., Man and Animal, London, 1972, p. 6.

51 Ross, Op. cit.

52 McCloskey, "Rights," p. 124.

53 Op. cit., p. 125.

preserve a building or a park, the "trustees care for the thing, not the interests of the thing."<sup>54</sup> Furthermore, things do not have representatives, since they have no interests to be represented, but custodians. Likewise "we decline to speak of the interests of animals and speak rather of their welfare."<sup>55</sup>

This is open to several objections. Not everyone is as reluctant as McCloskey to speak of the legal rights of animals (both Salt<sup>56</sup> and Lamont<sup>57</sup> speak of them). Similarly, many writers speak of animals' interests; some of these are discussed below. Those who do not speak of animals' interests, like McCloskey, are mistaken, as I hope to show. For animals are not things, i.e. inanimate objects, and it is difficult to find a point in the comparison. The fact that we do sometimes, perhaps most of the time, treat animals as if they were things does not provide a justification, but stands in need of justification. In the past (and even occasionally today) human

54 Op. cit., p. 126.

55 Ibid.

56 Henry S. Salt, Animals' Rights, London, 1892.

57 W.D. Lamont, Principles of Moral Judgement, Oxford, 1946, Chap. III. See quote below.

beings were bought and sold and treated as if they were things; we don't conclude from this that people are things, or should be treated as if they were.

Furthermore, 'interests' is a somewhat vague term. It seems legitimate to distinguish interests from welfare, but the distinction is worthless unless clearly exemplified. McCloskey notes the obscurity and elusiveness of the notion of interests, but provides an obscure and elusive definition, rather than the much-needed example. He says that interests "suggest that which is or ought to be or which would be of concern to the person/being"<sup>58</sup> and argues that the "evaluative-prescriptive overtone" rules out animal interests. But there are no reasons given from which it would follow that an evaluative-prescriptive overtone rules out animal interests, and meaningful sentences can be made using the terms in McCloskey's definition, to wit:

(a) The cat ought to be more concerned about her kittens.

(b) The squirrels would be more concerned to hoard food if winter were really just around the corner. Of course, one can also make puzzling or silly sentences:

(c) The beaver of the James Bay region ought to

<sup>58</sup> McCloskey, Op. cit., p. 126.

be concerned that Bourassa not be re-elected.

We can, however, make equally puzzling sentences about human beings:

(d) The president ought to be more concerned about fulfilling God's plan.

Sentences (a) and (b) make sense because they mention activities which are of the sort undertaken by cats and squirrels. Cats do care for their young; they feed them; they retrieve kittens who stray from the nest; they groom the young and clean the nest. Experienced cats are often better at this than novices. It is presumably in the interests of the mother cat to care for her young, and frustrating for her if she is prevented from doing so, by a closed door, for example. Also, it is not an activity which has to do primarily with her own welfare; there is no reason to suppose that it is not tiring for her, just as mothering is tiring for the human mother.

Sentences (c) and (d) fail to make sense because the subject of the sentence in each case is asked to concern himself with something which is beyond his experience, or ken, Bourassa in one case and God in the other.

McCloskey seems to be presuming — rather than demonstrating — that animals do not have interests; that they are not experiencing subjects, but mechanical devices. He has offered no conclusive reasons for this view, and



this view is not only not supported by common usage, as he seems to claim, it is downright counter-intuitive.

Those writers who argue that animals do have rights because they are sentient tend to take a more global view of sentience. Lamont says:

On my view of what a right is, animals possess legal rights. They can have "objects of conation" or "interests", such as the securing of food, the well-being of their young, the accompanying their masters for walks, and so on. The pursuit of these interests can be free from prohibition; i.e. animals can have "spheres of autonomy". To some of their "spheres of autonomy" there are, in fact, annexed legal demands upon the behaviour of other conative beings; i.e. animals have rights.<sup>59</sup>

H.S. Salt, in Animals' Rights, argues against the Cartesian doctrine that animals are merely "animated machines"<sup>60</sup> and refers throughout to the intelligence, personality, spirit and individuality of animals, and the moral purpose of their lives.<sup>61</sup> R. Godlovitch argues that our conventional morality is incoherent, insofar as we regard animal suffering as bad, but at the same time accept the taking of animal life for the most meagre of reasons.<sup>62</sup> Leonard

59 Lamont, Op. cit., p. 126.

60 Salt, Animals' Rights, p. 10 ff.

61 Ibid., and also pp. 12, 34, 41, 72.

62 Roslind Godlovitch, "Animals and Morals," in S. and R. Godlovitch and J. Harris.

Nelson claims: "We do not say that a being has rights on the ground that it responds to stimuli, but on the ground that it has interests."<sup>63</sup>

I submit that the confusion and disagreement which surround the subject of animal rights are directly related to the vagueness of the notion of sentience, particularly as it relates to interests. The root of the difficulty is epistemological, as Salt suggests. A strictly Cartesian position<sup>64</sup> is no longer tenable and no longer maintained. No one now argues that animals do not feel pain and pleasure. But this very emphasis on animals' ability to feel pain and pleasure has given rise to a picture of animals as animated machines not unlike Descartes'.

Pleasure and pain are rarely the objects of experience: they are qualities of experience which may or may not be noted. A hungry boy munching an apple may be aware of his pleasure, but he is more likely to be aware of the sweet juicy taste, the crunching noise, and the new contours and edges which appear in the apple when he bites it. Actual awareness of pleasure as such or of pain as such is sporadic and likely only when the feeling is

63 Leonard Nelson, "Duties to Animals," in S. and R. Godlovitch and J. Harris.

64 For a good exposition of the Cartesian position, see Norman Malcolm, "Thoughtless Brutes," Proc. Amer. Phil. Ass., 46, 1972-73, p. 5-20.

intense. Thus it is possible to attribute to animals a capacity for feeling pleasure and pain and to maintain at the same time the fiction of the dumb beast in a state of oblivion. On this view the animal becomes aware only at those moments when pain or pleasure are intense enough to impinge on his native dumbness. Two things support this picture: first, the highly predictable character of some pleasures (drinking when thirsty, for example) and some pains (being given electric shocks). Highly predictable responses to such stimuli as drinking water and electric shock can be and often are regarded as mechanical or automatic, and the animal as a machine. Secondly, the fact that pleasure and pain are not continuous in our own experience supports a picture of animal-consciousness as discontinuous when pleasure and pain are the only experiences we allow an animal to have, or imagine an animal having.

That the above is a false picture is hardly at this point an open question. The deer and the rabbit do not avoid pain, but the wolf, the hunter and the fox; nor are their perceptions of wolves, hunters and foxes like the hard-edge representations in field guides; they are of the same unpredictable, complex stuff as our own perceptions: partial, corrigible, and involving every sensory mode and an attentiveness to the total scene. The discovery of

sign-stimuli<sup>65</sup> is no argument against this, for humans, too, respond to signs, and signs still have to be picked out in a complex and every-changing environment.

To summarize, sentience is not merely an ability to respond to stimuli. Rights are not ascribed on the basis of the number or sensitivity of one's sense organs: the blind have the same basic rights and are thought to be just as sentient as the sighted. Nor is sentience a capacity merely to experience pleasure and pain; to ascribe rights on the grounds of a creature's sentience is not to endorse hedonism. To be sentient is to constitute a world in which one's movements make sense<sup>66</sup>. To be sentient is to have values and interests: the fact that some values and interests are biologically determined in no way alters their character as values. For here, too, we have traditionally espoused a double standard: the autonomy which has its basis in sentience we have called freedom in the case of human beings and lawlessness in the case of beasts<sup>67</sup>.

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65 N. Tinbergen, The Study of Instinct, Oxford, 1969.

66 For a classic statement see Jakob von Uexküll, "A Stroll Through the World of Animals and Men," in Claire H. Schiller, trans. and ed., Instinctive Behavior, New York, 1957.

67 For an interesting discussion of this and other animal/man contrasts and comparisons, see Mary Midgley, "The Concept of Beastliness," Philosophy, 43, 1973.

It follows from this that being sentient entails having interests, objections like McCloskey's notwithstanding. And if the point of ascribing rights is to protect interests, or spheres of autonomy, then rights must be ascribed to animals. But what rights? That is a very difficult question indeed.

## CHAPTER 3

The Rights and Entitlements of Animals

In the previous chapter I argued that rights are ascribed to animals because they have interests. But rights are many and various, and it is not clear which rights are ascribable to animals. In this chapter two basic types of rights will be distinguished, and then, in the light of this distinction, some questions about the ascription of particular rights to animals will be discussed.

The word 'interests' has two different senses which are relevant to rights. The first sense refers to an aspect of sentience; it is by virtue of interests in this sense that a being has any rights at all. But 'interests' is also used in the sense of 'objects of interest'. The distinction is an exact parallel to the distinction between 'consciousness' and 'object of consciousness'.

A discussion of rights in connection with interests in the first sense centers on talk about the freedom, sphere of autonomy, or liberty of the beings in question. Hart, for example, maintains that if there are any moral rights, there is at least one natural right, the equal right of all men to be free<sup>68</sup>. If extended to all sentient beings, the

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68 H.L.A. Hart, "Are There Any Natural Rights?", p. 53.

equal right to be free gives rise to the duty of moral agents to forbear from coercion or restraint against a sentient being, save to hinder coercion or restraint.<sup>69</sup>

McCloskey, in claiming that rights are essentially entitlements, is speaking about rights which correspond to or arise in connection with objects of interest. He fails to recognize that entitlement rights are grounded on interests in the first sense.<sup>70</sup> However, if rights corresponding to objects of interest are seen to be grounded in the equal right of all sentient beings to be free, it is legitimate to discuss rights in this sense, too. And indeed it is impossible to limit the conception of rights to the first sense and have it be very meaningful, as can be readily seen if we consider the human right of freedom of religion. In part, freedom of religion means the freedom of belief which cannot -- logically, at least -- be taken away. But in the sense in which "freedom of religion" is usually used, as in the Canadian Bill of Rights, for example, it means much more than this, and implies that religious buildings may be built, services conducted, an organization constituted, festivals observed, and whatever other steps necessary for

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69 Ibid.

70 For a more detailed discussion of McCloskey, see p.16-22.

the practise of a faith taken, insofar as they do not trespass on the equal right of other beings to freedom. These rights are entitlements, and while the equal right to be free is correlated with the duty of moral agents to forbear from the use of coercion or restraint, the relationship between entitlements and duties is more complicated. The real correlate of an entitlement is some good which is an object of interest to the owner of the entitlement.

Every sentient being has prima facie rights to the objects of his interest. But it is an intricate business to determine precisely the entitlements of any person or creature, for one must take account of the objects of interest in question, the available resources, and the equal right of other sentient beings to be free. Problems arise because interests often conflict, and also because it is always debatable whether or not a particular entitlement gives rise to a duty.

Problems of these sorts have sometimes been raised as evidence that the notion that animals have rights is absurd. Ritchie, for example, asks if mice and cows have rights, what are moral agents to do about cats and tigers, who violate the rights of mice and cows?<sup>71</sup>

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71 D.G. Ritchie, Natural Rights, p. 109.



I will argue that, given the foregoing analysis of rights and entitlements, some of these problems can be, if not solved, at least illuminated and clarified, and that such problems are no impediment to the view that animals have rights.

The following cases and questions will be discussed:

- 1) The use of animals by humans for food, clothing and labour;
- 2) Whether moral agents have a moral duty to intervene when one animal is harming another;
- 3) Whether animals can own their homes;
- 4) Whether moral agents have a moral duty to endangered species;
- 5) Whether our preference for some animals over others has any bearing on the entitlements of animals.

1) The use of animals

Many writers have pointed out that, if animals have rights, the use of animals for food is wrong on the same grounds as cannibalism. This conclusion would also follow from Hart's definition of a natural right, previously cited, for to kill a being is certainly to deprive him of

his freedom or sphere of autonomy.<sup>72</sup> Since the food question has been discussed very ably and at length in some recent philosophical literature,<sup>73</sup> I will only say that the eating of animals is excusable only when no other food is available. Having given the matter considerable thought, I have come to the conclusion that it is understandable that many people are ready to accept this, and nevertheless to go on eating lambs and lobsters. We grow up with the idea that "bad" things are done by "bad" people. But nearly everyone eats meat, and it seems wrong to say they are bad, when in fact they are not. This raises the question of whether anything as widely accepted as killing animals for food can seriously be considered wrong: but that one can criticize meaningfully the morality of one's own society is an explicit assumption of this thesis.

The use of animals in ways that do not involve killing them may also violate their rights if no account is taken of the animals' interests beyond what is necessary for

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72 Hart defines restraint as including "any action designed to make the exercise of choice impossible and so includes killing or enslaving a person." (*Op. cit.*, p. 53, n.2).

73 Rosalind Godlovitch, "Animals and Morals"; John Harris, "Killing for Food"; David Wood, "Strategies"; all in Godlovitch, Godlovitch and Harris.

such use. The Kantian imperative against using human beings as means only can be applied to animals, mutatis mutandis. The human use of sheep wool, chicken eggs and dairy products might, then, be consistent with the rights of animals, although in modern factory farms it is frequently not so consistent.<sup>74</sup> It might be objected by some that all such uses of animals are wrong, as the animal can never give his consent. There is, therefore, at least the appearance of coercion in such cases. The problem is complicated by the fact that the animals most affected are domestic forms, and have been selectively bred for thousands of years; as a result they are adapted to living with man. It has been argued in the case of zoo animals that they come to regard their zoo accommodation as equivalent to their territory, rather than as a prison.<sup>75</sup> Of course, this can only happen if the accommodation really is adequate to the animal's needs, and in many zoos this is not yet the case.

The elimination of contexts of use requires a fundamental change in our concept of animals. Traditionally, we have regarded them as things or resources.<sup>76</sup> The

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74 Ruth Harrison, "On Factory Farming," in Godlovitch, Godlovitch and Harris.

75 Heinz Hediger, Wild Animals in Captivity, New York, 1964.

76 S. Godlovitch, "Utilities," in Godlovitch, Godlovitch and Harris.

first step towards a more valid concept is to stop killing animals for food when this is not necessary.

2) Cats, mice and moral agents

I have previously referred to the problem raised by Ritchie regarding cats, mice, tigers and cows. Ritchie asks, if mice and cows have rights, are we not, as moral agents, obliged to intervene when their lives are threatened by cats and tigers? As a matter of historical fact we have often intervened: shooting tigers who attacked cows-- because cows were our property-- and rewarding cats who caught mice -- because we regard mice as vermin. But this is not intervention motivated by a desire to protect anyone's right, hence not what Ritchie means.

When a person has rights or entitlements, it is not only of concern that all moral agents respect those rights; it is also concern that his entitlements be protected. My human right to live does not only imply that no one can kill me with impunity; it also implies that the community will protect my entitlement to life. The duties and responsibilities we have to people with rights amount to more than the duty to forbear from coercion or restraint against our fellows.

This positive duty to render aid, in contrast to the negative duty to forbear from coercion, reflects the

norms and values of the human community and in fact varies from one community to another. Uniformity about what counts as an entitlement is lacking. For example, the United Nations Declaration of Human Rights states that education is a fundamental human right. This imposes a duty on governments to create educational opportunities; however, the opportunities vary widely from one country to another, depending both on the resources available and the felt need of the country in question. Similarly, while there may be a universal entitlement to aid from the able when one's life is endangered, the conditions of its application can be expected to show significant differences depending on place and time. Therefore the first criticism to be made of Ritchie's example is to point out that the fact that we do not feel duty-bound to rescue mice who are attacked by cats no more invalidates the notion that animals have rights than the typical New Yorker's failure to intervene in a stabbing incident invalidates the idea of human rights.

But let us forget the New Yorker for a moment, and accept Ritchie's assumption that moral agents are bound fundamentally by positive duties (duties to do) as well as negative (duties to refrain from doing). This has been a part of the Christian ethic and is a very pervasive idea.

Does Ritchie's cat and mouse example really lead to difficulties? One might deny that it does, on the ground that cats are not moral agents, and therefore the right of the mouse to "forbearance from coercion and restraint" does not apply against the cat. The cat is to the mouse what an "act of God" is to man: the storm at sea which takes a man's life has not violated the man's right, because, like the cat, the storm is not a moral agent (it is not an agent at all). This misses the point of Ritchie's example, however, for while we would usually feel bound to rescue the drowning man, we do not feel so bound to save the mouse from the cat.

Now if another moral agent, say C, were mistreating or killing the mouse in question, C would be violating the mouse's rights. On the assumption that we are good Samaritans (i.e., bound by positive duties), we will intervene with C on behalf of the mouse: this is provided for in Hart's definition of a natural right. Coercion or restraint are to be used to hinder coercion or restraint. It is nevertheless doubtful that the good Samaritan would intervene if C were not a moral agent, but a cat. This is precisely Ritchie's point: can the Samaritan justify his non-intervention, and maintain that animals have rights? I believe he can. I maintain that certain circumstances do sometimes justify non-intervention, even for Samaritans.

Here are two examples:

- (a) The neighbours are having a marital quarrel, but neither is likely to kill the other; the Samaritan leads his own business.
- (b) The Samaritan is not an individual but a nation; another nation is having a civil war; the Samaritan remains neutral, and refrains from sending arms or forces to either side (though providing, possibly, medical aid and supplies of foodstuffs).

In each example it is necessary to assume that the Samaritan has the capability of ending the conflict by his intervention, but chooses on acceptable moral grounds not to do so, even as we choose not to rescue mice. While the Samaritan may dream of the peacable kingdom where the lion lies down with the lamb, he will, I submit, feel that, given the evolution of cats and mice and their traditional roles as predator and prey, it is not his place to intervene, just as it is not his place to intervene in domestic squabbles, of either the marital sort, or the civil war sort.

### 3) Can animals own their homes?

The problem of animals and their homes is more difficult than the questions we have discussed thus far. It is complicated by the fact that in many cases there is a conflict of interest between human beings and wild animals.

But the main problem is that wild animals have not usually been regarded as owning their own homes. They are classed instead as resources, of the same order as forests and rivers. They are seen as parts of the landscape.

Human beings are accustomed to modify the landscape to suit their own purposes. They build roads, dams, pipelines and towns. In most cases the rights of animals dispossessed or displaced by such modifications to the landscape are not even considered. An exception is the badger in Britain. One of the major highways was discovered to have been built across a number of badger paths. Badgers are very traditional, and large numbers of them were getting killed on the highway because they persisted in using these paths. When this was realized, the building of underpasses in the form of culverts was authorized; the badgers are now using the underpasses, and no longer have to cross the highway. The question now before us is: what entitlements does an animal have, and what duties have we in regard to those entitlements, if any?

Consider the case of a beaver living on a river somewhere in northern Québec. Like all sentient beings, he has prima facie rights to the objects of his interest-- the well-being of himself and his family, the state of his lodge and dam, and the availability of appropriate food. But it



is not clear that he is actually entitled to all these things, insofar as his entitlement depends on the equal right of all other sentient beings to be free and on the availability of resources. He has a territorial claim against others of his own species. But what claims has he against beings of a different species, particularly human beings?

If a human being owns property, he must be compensated if his property is expropriated. It is easier to compensate humans than beavers, however; besides human beings can negotiate and acquiesce with one another, but not with beavers.

If the beaver's prima facie rights are recognized as entitlements, we have -- insofar as we are moral agents -- the duty of leaving him in peace and regarding his domain as we would any other private property. On the other hand, we have tended to think that we had a prima facie right to develop land in our own interests. Like the beaver, each human being has an equal right to be free from coercion and restraint, and an equal claim to have his interests recognized or satisfied. Unlike the beaver, many human beings seem to have an indefinitely large inventory of objects of interest. This works to the beaver's disadvantage.

Ritchie has said that we will always stand in the

relation of despots to the lower animals.<sup>77</sup> This implies that we are unwilling to act as moral agents towards animals, or at best, that we act as moral agents part of the time, and as merely another competing species when we build hydroelectric dams and new towns.

The difficulty Ritchie sees is basically a practical difficulty which arises because we are more powerful than beavers. While it is true that we cannot choose to be less powerful than beavers, nor to act against our own interests, we do have a capacity to reflect on what our true interests are and to modify our own inventory of objects of interest. This may work to the advantage of the beaver and his kin.

#### 4) Duties to endangered species

The discussion of the entitlements of an individual beaver may give us an inkling of the difficulties of trying to determine the duties of moral agents to endangered species. Conservationists have numerous arguments in support of the claim that we ought to help endangered species, but they do not usually include among these arguments the claim that we have a positive duty to such species. Their arguments

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77 D.G. Ritchie, Natural Rights, p. 109.

are utilitarian and human-oriented, based on the aesthetic, scientific, and economic values of the species in question. An additional argument to these is the human survival argument, which links human survival to the survival of all other species. This argument has some scientific validity when the threat to survival is something global in effect, like pollution of air or water, but is fallacious if interpreted to mean that our survival as a species is directly linked to that of every other species.

It may be helpful at the outset to distinguish between different cases of endangered species. Some have declined as a result of human action, either direct or indirect. In other cases human action has not played a significant role. In many cases the fact that a species is declining means that the dangers to each individual member are greater than they would be if the species were not declining. This is particularly true where hunting by man is a major cause of danger, as is the case, for example, for the orangutan, the snow leopard and the blue whale. It is also the case where species are hunted by predators introduced by man. Flightless bird species, fairly common on tropical islands, fall easy prey to cats, dogs, mongooses and rats-- all predators brought to these islands by man. But increased danger to individual species members is not always demonstrable; a change in climate, availability of

habitat, or even a chemical change can affect the reproductive potential of a species without necessarily increasing the danger to existing individuals. This is to some extent the case with the ivory-billed woodpecker and the California condor, and with birds of prey in general; although in each of these cases hunting by man has also played some part.

Obviously we are more likely to have a positive duty to the individuals endangered directly or indirectly by human action. In the first place we have the negative duty of refraining from killing or capturing individual snow leopards and whales. But many feel that over and above this, we owe special protection and encouragement to the remaining members of such species, in order, so to speak, to put the species back on its feet. While aesthetic, scientific or economic reasons may be sufficient to motivate such action as may be required, there also seems to be a distinct feeling that we have a duty to make amends.

Some nations seem to feel a peculiar sort of positive duty to animals who have played a particularly important role in their history, or who are regarded as emblems or national symbols. But it is not really clear whether this is done from a sense of duty to the animals themselves, or to history, or to posterity, or simply out of gratitude. Some of the animals who are benefitting from the performance of this duty are the beaver, the bison, the bald eagle, the

Hawaiian goose, and the marsupials of Australia; there may well be others. Norway, at one time the greatest of the whaling nations, has become more and more protectionist towards whales in recent years.

While conservation entails many serious practical problems, several genuinely ethical problems also arise.

First, each member of an endangered species has *prima facie* rights to the means of life. But so does everybody else. Do the endangered animals have a stronger moral claim than members of a species which is not endangered? And if they do, is this to make up for past injustice (e.g., hunting) or is it related to their endangered status as such?

Protecting endangered humans -- political leaders, film stars and atomic physicists -- involves time, effort and expense. It does not essentially involve killing the innocent. But programs to exterminate introduced cats, rats and the like who innocently prey on rare birds on tropical islands involve just that. In a gorilla reserve, the wardens have been advised to shoot to kill when they see a poacher.

Have we duties to endangered species as species? This seems inconsistent and unnecessary.

Fortunately, most conservation efforts involve only or mainly that we recognize each individual's equal

right to be free from coercion and restraint: from killing and trapping; and likewise the prima facie rights of each to the means of life.

5) Human preferences

We have definite preferences for some animals over others. People who think positively about animals in a casual way probably think of friendly and appealing animals, like dogs and cats, or monkeys and elephants. But many animals are not appealing, and are even frightening to most people, for example snakes, while a great many can be dangerous. We will always have to kill some animals in self-defense, and sometimes as a precautionary measure, to forestall an attack which would otherwise come. Rats in cities do carry disease, and do bite children from time to time. This seems to justify our attempts to exterminate them. But the decision to kill is less readily taken in the case of a large animal like a polar bear. The polar bear is a zoo favorite, and besides, it is easier to admire a large animal than a small one. When polar bears became a menace in Churchill, attracted by the city dump, they were not shot, but air-lifted at great expense five hundred miles north. Yet, where rats will merely bite a child, polar bears will eat him up. Clearly, our preferences for some animals over

others sometimes affects our treatment of them.

There are circumstances when our preference for one human being rather than another can be legitimately expressed: we choose our friends, and we usually love our own children more than other people's children.

In contrast to such circumstances, there are many where we deliberately abstract from our feelings of liking or disliking someone, and try, instead, to be fair. We resolve to consider only what is relevant in the given case. Teachers try to assign grades fairly. Everyone is equal before the law. Hotel keepers are not supposed to discriminate against people on grounds of race, religion or nationality. This is, at least in part, what it means to acknowledge human rights.

In the human case the two contexts, those where preferences are relevant, and those where they are not, can be fairly clearly discriminated. There always are cases where it is not clear which rule should apply; if two boys are in difficulties because their canoe has overturned far from shore, and you can rescue only one, are you obliged to rescue the one you prefer? Or the mathematical genius? Or is either one good enough as a fulfilment of your duty? The point is, the fact that these two contexts do exist in the human case, however imperfectly delineated, is some kind

of evidence that human rights are significant in human life. It is reasonable to expect that two contexts will be discoverable in the case of human-animal relations, if animals' rights are significant. Such a test, of course, is not a substitute for philosophical argument, and does not establish that animals ought, or ought not to have rights. It merely indicates the degree of recognition accorded to the rights of animals.

Konrad Lorenz writes:

The scientist who considers himself absolutely "objective" and believes that he can free himself from the compulsion of the "merely" subjective should try -- only in imagination of course -- to kill in succession a lettuce, a fly, a frog, a guinea pig, a cat, a dog and finally a chimpanzee. He will then be aware how increasingly difficult murder becomes as the victim's level of organization rises. The degree of inhibition against killing each one of these beings is a very precise measure for the considerably different values that we cannot help attributing to lower and higher forms of life.<sup>78</sup>

This then, is the context of preference with which we are all familiar. We speak of "level of organization" and thereby conceptualize an intuitive judgement. Doubtless we can by now express it mathematically in terms of the carrying capacity for information which an organism has. I cannot prove that ticks can feel, and machines cannot: but on that assumption, levels of organization are not relevant in

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78 Konrad Lorenz, On Aggression, London, 1966, p. 194.



the context of rights.

...the animal shall not be measured by man. In a world older and more complete than ours, they more finished and complete, gifted with extensions of the senses we have lost or never attained, living by voices we shall never hear. They are not brethren; they are not underlings; they are other nations, caught with ourselves in the net of life and time, fellow prisoners of the splendour and travail of the earth.<sup>79</sup>

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79 Henry Beston, The Outermost House, cited by Victor B. Scheffer, The Year of the Whale, New York, 1969, p. v.

BIBLIOGRAPHY

- Aiken, Henry David, "Rights, Human and Otherwise", Monist, 52, 1968.
- Anscombe, G.E.M., "Modern Moral Philosophy" in W.D. Hudson, ed., The Is-Ought Question, London, 1969.
- Baier, Kurt, "Moral Obligation", Amer. Phil. Q., 3, 1966.
- Bedau, Hugo, "The Right to Life", Monist, 52, 1968.
- Benn, S.I., and Peters, R.S., Principles of Political Thought, New York, 1964, Chap. 4. Originally Social Principles and the Democratic State, London, 1959.
- Blackstone, W.T., ed., The Concept of Equality, Minneapolis, 1969.
- Blackstone, W.T., "Equality and Human Rights", Monist, 52, 1968.
- Blackstone, W.T., "Ethics and Ecology", S. J. Phil., 11, 1973.
- Brandt, R.B., "The Concepts of Obligation and Duty", Mind, 73, 1964.
- Brandt, R.B., Ethical Theory, Englewood Cliffs, 1959.
- Brown, Stuart M., "Inalienable Rights", Phil. Rev., 64, 1955.
- Caras, Roger A., Last Chance on Earth: A Requiem for Wildlife, New York, 1972.
- Disch, Robert, ed., The Ecological Conscience, Englewood Cliffs, 1970.
- Douglas-Hamilton, Iain and Oria, Among the Elephants, London, 1975.
- Ewin, R.E., "What is Wrong with Killing People?" Phil. Q., 22, 1972.

- Feinberg, Joel, "Duties, Rights and Claims", Amer. Phil. Q.,  
3, 1966.
- Feinberg, Joel, "Wasserstrom on Human Rights", J. Phil.,  
61, 1964.
- Frankena, W.K., "The Concept of Universal Human Rights",  
in Science, Language and Human Rights, Amer. Phil.  
Assoc., 1952.
- Frankena, W.K., "Natural and Inalienable Rights", Phil. Rev.,  
64, 1955.
- Friedrich, H., ed., Man and Animal, London, 1972.
- Glickman, S.E., and Sroges, R.W., "Curiosity in Zoo Animals",  
Behaviour 26, 1966.
- Godlovitch, Stanley and Roslind, and Harris, John, Animals,  
Men and Morals, London, 1971.
- Golding, M.P., "Towards a Theory of Human Rights", Monist,  
52, 1968.
- Goodall, Jane van Lawick, In the Shadow of Man, London, 1971.
- Greenway, James C., Jr., Extinct and Vanishing Birds of the  
World, New York, 1967.
- Grzimek, Bernard, The Serengeti Shall Not Die, London, 1960.
- Hare, R.M., Freedom and Reason, Oxford, 1969.
- Harlow, Harry F., "Mice, Monkeys, Men and Motives", Psych.  
Rev., 60, 1953.
- Hart, H.L.A., "Are There Any Natural Rights?" in Anthony  
Quinton, ed., Political Philosophy, Oxford, 1971.
- Hart, H.L.A., "Ascription of Responsibility and Rights", in  
A. Flew, ed., Logic and Language, 1st and 2nd Series,  
New York, 1965.
- Hediger, Heinz, Wild Animals in Captivity, New York, 1964.

- Kaufman, Arnold S., "A Sketch of a Liberal Theory of Fundamental Human Rights", Monist, 52, 1968.
- Lamont, W.D., Principles of Moral Judgment, Oxford, 1946.
- Lamont, W.D., "Symposium: Rights", Ar. Soc. Supp., 24, 1950.
- Lehrman, Daniel S., "Behavioral Science, Engineering and Poetry", in E. Tobach, L.R. Aronson and E. Shaw, eds., The Biopsychology of Development, New York, 1971.
- Lemmon, E.J., "Moral Dilemmas", Phil. Rev., 71, 1962.
- Lorenz, Konrad, King Solomon's Ring, London, 1961.
- Lorenz, Konrad, On Aggression, London, 1967.
- Macdonald, Margaret, "Natural Rights" in P. Laslett, ed., Philosophy, Politics and Society, Oxford, 1967.
- Malcolm, Norman, "Thoughtless Brutes", Proc. Amer. Phil. Ass., 46, 1972-73.
- McCloskey, H.J., "Rights", Phil. Q., 15, 1965.
- McGinn, Thomas, "Ecology and Ethics", Intern. Phil. Q., 14, 1974.
- Melden, A.I., "The Concept of Universal Human Rights" in Science, Language and Human Rights, Amer. Phil. Assoc., 1952.
- Melden, A.I., Rights and Right Conduct, Oxford, 1959.
- Midgley, Mary, "The Concept of Beastliness: Philosophy, Ethics and Animal Behaviour", Philosophy, 48, 1973.
- Nielsen, Kai, "Scepticism and Human Rights", Monist, 52, 1968.
- Plamenatz, J.P., "Symposium: Rights", Ar. Soc. Supp., 24, 1950.
- Plamenatz, J.P., Consent, Freedom and Political Obligation, Oxford, 1968, Chap. 4.

Ritchie, D.G., Natural Rights, London, 1894, reissued  
London, 1952.

Ross, W.D., The Right and the Good, Oxford, 1963.

Salt, H.S., Animals' Rights, London, 1892.

Scheffer, Victor B., The Year of the Whale, New York, 1969.

Shields, Allan, "Wilderness: Its Meaning and Value",  
S. J. Phil., 11, 1973.

Small, George L., The Blue Whale, New York, 1971.

Tinbergen, N., The Study of Instinct, Oxford, 1969.

Uexküll, Jakob von, "A Stroll Through the Worlds of  
Animals and Men" in C.H. Schiller, ed., Instinctive  
Behavior, New York, 1957.

Vlastos, Gregory, "Justice and Equality", in R.B. Brandt,  
ed., Social Justice, Englewood Cliffs, 1962.

Wasserstrom, Richard, "Rights, Human Rights, and Racial  
Discrimination", J. Phil., 61, 1964.

Wellman, Carl, The Language of Ethics, Cambridge, 1961.

Williams, Bernard, "The Idea of Equality", in P. Laslett,  
Philosophy, Politics and Society II, Oxford, 1962.