

Becky Clay

Dr. Margaret Gilbert

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1. Rights Talk

Rights Talk and Its Effect on Animals

Abstract. Whether or not animals possess rights can potentially effect the treatment they receive. The main concern that arises is not how the word “right” is defined, but rather, it lies in the criteria needed in order to qualify for rights. There are three main senses of a right that best illustrate the effects of “rights talk” and the treatment of animals: interest theory, choice theory and rights as side constraints. Upon thorough examination of each sense, a clear perspective of the importance of rights talk is achieved, and a conclusion in favor of animal rights seems plausible.

The question of whether or not animals possess rights can potentially have a direct effect on the treatment they receive. There are three key senses of a right that, in my opinion, best illustrate just how significant that impact is. These three senses are: 1) interest theory rights, 2) choice theory rights, and 3) rights as side-constraints. While only two of these theories leave room for the possibility of animal rights, the third view offers an equally important perspective of how the criteria for possessing a right can determine the consideration for animals.

The “interest theory” of rights, as presented by Joseph Raz in his essay “On the Nature of Rights,” states that a person has a right if they meet two criteria: 1) they can have rights, and 2) if their interest is a sufficient reason for holding someone else to be under a duty. According to Raz, someone that is capable of having rights is one that coheres with his “Principle of Capacity

to have Rights” which states that one is capable of possessing rights only if his well-being is of “ultimate value” (Raz 195). Ultimate value, according to Raz, is to have intrinsic value. In other words, Raz’s interest theory suggests that in order for one to possess a right, one must stand in a position to benefit from another’s duty.

Because it is (arguably) possible for an animal to have a well-being of ultimate value, and to also stand to benefit from another’s duty (for example, receiving food and shelter), the animal meets Raz’s two criteria for possessing a right. If the value of an animal is inherent, and food and shelter is essential to his well-being, it can be plausibly stated then, that under the interest theory and in compliance with Raz’s criteria, animals are worthy contenders for having rights.

In another rights theory, the “choice theory,” Herbert Hart states that to have rights is to have the control to limit another person’s duty. He argues, “it is hard to think of rights except as capable of exercise and this conception of rights correlative to obligations as legal powers accommodates this feature” (Hart 184). Hart defines this “control” by way of three distinguishable measures that a right holder must have: 1) the ability to waive or extinguish the duty or leave it in existence, 2) after breach, the right holder may enforce the duty by suing for compensation or leave it unenforced, and 3) the ability to waive or extinguish the obligation to pay compensation to which the breach gives rise. In other words, the only people capable of having official “rights,” according to Hart, are those that can choose to make agreements with each other and are capable of exercising these three measures of control.

Due to these strict provisions, it appears that Hart has eliminated any possibility for animals to possess rights. While Hart does not deny animals’ protection from cruel treatment, he argues that this protection stems from the “duties of the criminal law prohibiting cruelty to them,” and not the animals’ actual possession of such rights (Hart 185). Because animals

(seemingly) lack both the capacity to make agreements and the capacity to possess any of the three measures of control, it seems rather obvious that there is no room for them to possess rights under this theory.

Rights as “side-constraints,” as presented by Douglas Husak, act to “protect their possessors from being subjected to treatment solely in accordance with the outcomes of utilitarian calculations” (Husak 234). A utilitarian calculation, according to Husak, is the doctrine that an act is right as long as it benefits the majority. It appears then that Husak’s rights, at least sometimes, “trump” utilitarian considerations. But while Husak set the framework for this theory of rights, it is Regan who provided the eligibility requirements for those who were capable of obtaining such rights. Regan determines that any creature that is an “experiencing subject of a life” (Olen 400) has inherent value and that animals are not to be treated as mere things since such mistreatment would deny them that value.

Rights as side-constraints appear then, very blatantly, to include rights for animals. Regan argues very strongly that animals and humans share an equal inherent value and that members of each class have importance that is independent of their usefulness to others. On this view, to deny animals’ rights would be the equivalent of denying that human’s have rights, which is a conclusion that does not seem to be parallel with the one that Regan holds regarding human rights.

As seen in each of these three views illustrated, the criteria used to determine capable right holders can easily either exclude or include the rights of animals, despite whether or not such outcomes are intended. By limiting rights to strictly humans, as Hart has done, animals can potentially become mere objects of existence, lacking any value of their own that would otherwise deem them worthy of moral consideration. While such possible consequences are not

definitive outcomes of a society that lacks animal rights, the plausibility of such outcomes makes the theory worthy of consideration. It is for these reasons that, in order to ensure that the moral treatment of animals is preserved, careful thought must always be prescribed when any discourse on rights is attempted.

Works Cited

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