



Between the Species

# Moral Agents and Moral Patients

EVELYN PLUHAR  
Pennsylvania State University



PHILOSOPHY

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New York: Dover, 1979

Editors' Note: The following paper was presented at the Pacific Division meeting of the Society for the Study of Ethics and Animals in San Francisco, March, 1987.

You and I are moral agents. We are capable of understanding and acting upon moral principles.[1] Provided that we do not act under duress, we are responsible for what we do. As moral agents, we alone have moral obligations and can be held accountable for flouting those obligations. All moral codes are addressed to us. So are the following questions: Are we, as moral agents, all morally considerable; i.e., are others (also moral agents) directly obligated to take our interests into account when their actions would affect us? Are we all equally morally significant, entitled to be treated not merely as means to further others' purposes? Can any beings who are not moral agents be morally considerable; i.e., are there any moral patients?[2] If there are moral patients, are they as morally significant as we are? Are some moral patients more morally significant than others? These are all fundamental, extraordinarily important questions. They are also extraordinarily difficult to answer.

#### Some Candidates for Moral Patency

Let us begin by considering some candidates for moral patency. Those most under discussion have been (1) agents who are not moral agents, (2) self-conscious beings, (3) conscious beings, (4) living beings, or (increasingly under discussion) (5) natural objects or systems. Philosophers have argued that morally relevant similarities between beings in a given category and moral agents (who most assume are morally considerable) justify the ascription of rights or moral standing to those beings. Space limitations prevent me from considering the last two mentioned categories (living beings and natural objects or systems) here. This limitation is in no way meant to suggest that such beings could not be morally considerable. We will have quite enough complications if we confine our attention to the first three candidates for moral patency. A brief look

at each follows.

(1) Agents need not be moral agents. One may act purposefully without being capable of comprehending moral principles. Besides "agents," beings in this category can be called (like moral agents) "persons" in Joel Feinberg's sense and "subjects-of-lives" in Tom Regan's sense. According to Feinberg, "In the commonsense way of thinking, persons are those beings who, among other things, are conscious, have a concept and awareness of themselves, are capable of experiencing emotions, can plan ahead, can act on their plans, and can feel pleasure and pain." [3] "Person" is a notoriously slippery term. Some use it interchangeably with "human" or mean by it no more than "morally considerable." Some would restrict it to moral agents. By contrast, I find Feinberg's formulation admirable, and whenever persons are referred to in the remainder of this paper, it will be in this sense only. However, the ambiguities and distracting emotive content one often finds in discussions of persons may well have led Regan to re-name the category: "individuals are subjects-of-a-life if they have beliefs and desires; perceptions, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential lives fare well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests." [4] If there are moral patients, these beings appear to be strong candidates for that position.

(2) Other beings have lesser abilities. Can a self-conscious being fail to be an agent, person, or subject-of-a-life? Yes, if that being's ability to act to fulfill goals is severely diminished or non-existent. The being may be physically or mentally incapable of agency but have some awareness (perhaps rudimentary at best) of self. Possibly, such beings are moral patients. Many would deny this.

(3) Beings who can be aware, in some sense, of their surroundings but not of themselves are often called "merely" conscious.

They too might be moral patients. The legitimacy of this moral patient candidate is far more hotly disputed than the two others mentioned above. The further we depart from the qualities which characterize moral agency, the more contestable our candidates for moral patient become. (Of course, one must not allow the relative popularity or unpopularity of our candidates to decide the issue. It may not be coincidental that we see ourselves as the paradigms of moral considerability. One's decisions about who or what "measures up" morally may be far from objective.)

The categories above plainly cut across species lines. No one denies that there are humans who are "merely" conscious, but it is also true that some agents are not human. Agency as such requires self-consciousness, desires, and some degree of reasoning ability; it does not require heights of intellectual sophistication in the way moral agency does. For example, we do not require agents to be skilled in deductive reasoning (let alone predicate logic), but we do require some inductive abilities. Again, one can plan for the next five minutes, for the next hour, for the next week, or for years in advance and be an agent. You don't have to plan for the next fifty years in order to be an agent. Some understanding is surely required for agency; the ability to read The New York Times is not. There is no reason to think that the skills required for purposeful action are restricted to members of the human species, and ample reason to think they are not. Recent ethological studies support this conclusion.[5]

Nevertheless, some humans continue to express considerable skepticism about the possibility of nonhuman agency. For example, the Cartesian view that thought requires linguistic ability has been revived in a highly sophisticated form by R. G. Frey.[6] He denies that nonhuman animals can have desires (and thus that they can act purposefully) on the grounds that beliefs are required for desires and linguistic ability is required for beliefs (an ability he assumes nonhuman animals lack). This view has been skillfully refuted by others on a number of grounds,[7] so I will not pursue it further here, except to make one observation. Those who, like Descartes (but unlike Frey), refuse to extend their skepticism about nonhuman

mentality to human beings, would have us accept the following rather dubious contrast: a screaming, struggling child being dragged to the doctor for her second shot has beliefs about what is in store for her and desires to stay home instead, but a yelling, thrashing cat on the way to the vet for his second visit is just exercising his limbs and vocal cords!

In addition to double-standard thinking, one also finds the fallacy of false dilemma committed by some critics of nonhuman agency. For example, Michael A. Fox has said that animals cannot lead lives or be autonomous because autonomy requires that one can "generate a life plan" to guide one's life as a whole.[8] But surely this is to conflate "highly autonomous" with "autonomous." No distinction is made between the purposeful agent who acts with a life plan in view and the purposeful agent who has shorter-range plans. As Regan has argued, many nonhuman animals may lack the high level of autonomy required for moral agency, but they do exhibit "preference autonomy." [9] This description fits many young and "defective" humans as well. All are agents.

Sadly, there are other humans who do not even have preference autonomy. Conscious humans exist who cannot act to satisfy very fundamental needs. Although at one point Regan claims that such humans are "subjects-of-lives," [10] they are not, since they fail to satisfy (at the very least) his action requirement.

It is important to remember these realities about humans and nonhumans as we consider abstract arguments about moral patient. But how do we even begin to determine whether there are moral patients (i.e., beings who are morally considerable without being moral agents)? What characteristics must a being possess to be morally considerable? How can we defend the claim that, e.g., "mere" agency is sufficient for moral considerability but that "mere" consciousness is not? Or that only moral agency suffices for moral considerability? And how can we argue about degrees, if any, of moral significance? What would even count as a resolution of these problems?



Rights Views, Perfectionism,  
and Utilitarianism

We must first identify the structural features of different types of views on moral considerability and significance. I will be distinguishing rights views from perfectionistic and utilitarian views.

Rights views all propose characteristics which are claimed to be sufficient (and possibly also necessary) for moral considerability and maximum moral significance.[11] "Rights" are spoken of here in Feinberg's sense of "valid claims." [12] It is basic moral rights which are relevant here, the rights to life, liberty, and well-being. On any of these views, morally considerable beings are due treatment which is commensurate with their moral significance. Maximally morally significant beings are to be treated as ends in themselves rather than mere means. Less significant morally considerable beings, if any, may have their rights overridden in favor of those who are more morally significant. It is important to bear in mind that whatever characteristic (X) a given rights view proposes as sufficient, moral considerability is really a cluster of characteristics (t, u, v, ...). For example, if moral agency is the proposed characteristic, being a person (which is itself a cluster of characteristics) who is capable of understanding and acting in accordance with moral principles would be the relevant constitutive features. Brief characterizations of the different types of rights views, along with convenient names for them, appear below.

1. The Total View: Being an X is sufficient and necessary for moral considerability. All X's are equally morally significant and possess the full range of rights. According to this view, being merely t or u or v or ..., cannot be sufficient for moral considerability. E.g., one might claim that being a moral agent is necessary and sufficient for moral considerability. Being a person or agent who is not a moral agent would not qualify one for moral considerability (although moral agents might still have indirect duties to one).

2. The Partial View: Being an X is sufficient for moral considerability and necessary for the whole range of rights. Being t or u or v or ... is sufficient for

moral considerability and sufficient for restricted rights. E.g., one could claim that moral agents are due the full range of rights but that being a "mere" agent is sufficient for moral considerability and only some rights. Concerning moral significance, partial views fall into three sub-categories:

a. The Equality View: All those who are morally considerable are equally morally significant. E.g., moral agents, "mere" agents, and the "merely" self-conscious could be claimed to all be ends in themselves, although all would not have the same rights (such as the right to liberty).

b. The Additive View: Being t or u or v or ... is sufficient for moral considerability. However, the more such characteristics one has, the more morally significant one becomes. Those who are maximally morally significant have all the relevant characteristics; i.e., they are X. E.g., the "merely" self-conscious may be claimed to be less morally significant than "mere" agents, who are in turn less morally significant than moral agents.

c. The Combination View: A sub-cluster of the characteristics constitutive of being X are sufficient for moral considerability and equal moral significance with respect to X's. Possessing only some of the characteristics of the sub-cluster is sufficient for moral considerability but results in a lesser degree of moral significance. E.G., one could claim that being a moral agent (X in this case) makes one maximally morally significant and that being a subject-of-a-life who is not a moral agent is also sufficient for maximum moral significance, but that being a self-conscious nonagent or being "merely" conscious results in a lesser degree of moral significance.

Now, I must introduce a further compli-



cation in my characterization of types of rights views. The total and partial views can each be modified to allow potential X's or those who are potentially t or u, etc., to be morally considerable. Potential morally counts just as much as actuality on what Feinberg calls "The Strict Potentiality Criterion." According to "The Gradualist Potentiality Criterion," the closer one comes to being the specified sort of being (i.e., the more one's potential is actualized), the more morally significant one becomes.[13] The different rights views could be modified in either way,[14] although the gradualist approach is more plausible. Whatever is decided, we must be careful to distinguish being a potential X (or t or u, etc.) from being a near X (or t or u, etc.) who can never become X (or t or u, etc.). On the modified total view, potential X's are morally considerable, but near X's who are not potential X's are not, even if they have the same actual characteristics. On the modified partial view, being t or u, etc., but falling short of being X, is sufficient for moral considerability whether or not one is a potential X.

These rights views, modified or unmodified, are to be distinguished sharply from perfectionism. According to this view, possessing a given characteristic (e.g., intelligence) is sufficient for some degree of moral significance but not for maximum moral significance. One's moral significance is claimed to increase as the degree to which one possesses the favored characteristic increases. Nietzsche is the most famous advocate of this view.

Perfectionism and the rights views must also be distinguished from utilitarianism (nothing hinges here on the distinction between rule- and act-utilitarianism). Unlike the rights views, utilitarianism is opposed to rights (although some utilitarians tolerate a watered-down notion of rights); unlike perfectionism, it awards no increasing moral significance to higher degrees of intelligence or other favored characteristics. In an important respect, utilitarianism can be construed as denying that one has direct duties to any individual. One's duty on classical utilitarianism is to promote happiness as such; insofar as it is individuals who are the receptacles of happiness, one has indirect duties to them. Nonhedonistic versions have the same implication.[15]

## Regan's Defense of Moral Patency

These alternatives are radically different. Just how difficult it is to defend one's choice among them is well illustrated by the work of Tom Regan, one of the most skillful proponents of moral patency. The Case for Animal Rights is a magnificent achievement. However, Regan's attack on certain views of moral considerability and significance leaves some key objections un-forested. After raising these objections, I will offer a possible solution which has been inspired by the work of Alan Gewirth.

Regan defends a rights view. He agrees that moral agency is sufficient for moral considerability and basic moral rights but denies that it is necessary. Those humans and nonhumans who, like moral agents, are subjects-of-lives but are not moral agents, are moral patients. They are morally considerable and just as morally significant as moral agents. He does not insist that being a subject-of-a-life is necessary for moral considerability, although he suspects that it may be. He seriously doubts that any who are not subjects-of-lives could be as morally significant as those who are.[16] Thus, Regan proposes a combination rights view: being X, where X refers to being a moral agent, is sufficient for moral considerability and maximum moral significance, but a sub-cluster of the characteristics which constitute moral agency, viz., being the subject-of-a-life, is also sufficient for moral considerability and maximum moral significance. Those who don't have all the characteristics in the sub-cluster (e.g., the "merely" conscious) may be morally considerable but not as morally significant. Regan's strategy is to reject alternative views, to postulate the equal inherent value of moral agents and certain others, and to propose "being the subject-of-a-life" as the relevant moral similarity between moral agents and these others. They are due equal respect, he says.

How does one test alternative views on moral considerability and significance? Regan argues that we require such a view to display adequacy of scope, precision, and conformity with our reflective intuitions. The last test is the critical one. It requires that we judge the view coolly, rationally, clearly, with as much information as we can gather, and that we take an impartial

attitude. Regan refers to impartiality in this context as "the formal principle of justice." It enjoins us to treat similar cases similarly and dissimilar cases dissimilarly.[17] Regan opposes views which deny moral considerability to those who are not moral agents or which assign them lesser moral significance. According to him, how do these views fail to be adequate?

Here is one important argument: "Nor can we avoid recognizing that moral patients fall within the [respect] principle's scope on the grounds that they have no inherent value or less inherent value than moral agents; this will not do because attempts to disenfranchise moral patients in this way will lay the groundwork for a perfectionist theory of justice, a theory that will either sanction unjust treatment of some moral agents or avoid this--but only at the price of arbitrariness.[18] Regan is saying that those who favor moral agents, exclusively or to a greater degree, are either consistent or inconsistent perfectionists. Inconsistent perfectionists refuse to discriminate against moral agents who are less intelligent, reflective, happy, etc., than other moral agents, but those who fall short of being moral agents are morally penalized for their lesser abilities.[19] Consistent perfectionists, on the other hand, will have to assign lesser and greater moral significance to moral agents too, depending on their abilities. Such a view fails to provide an adequate interpretation of justice, Regan says.

Regan is right in holding that perfectionism would serve very ill as a basis for a view which postulates the moral primacy of moral agents. Obviously, the inconsistent version fails the test of rationality. But two major problems remain. First, the consistent version needs to be shown to be inadequate. Second, Regan's criticisms do not touch the nonperfectionistic alternatives, most importantly the total view and the additive view.

Concerning the first problem, Regan does offer an argument against the consistent version of perfectionism, certainly an important competitor of his rights view. He argues that this view must be rejected as unjust because it bases moral significance on the presence or absence of abilities over whose acquisition one has no control. Whe-

ther, and to what degree, one is intelligent, skillful, etc., depends on "the natural lottery." Those who come up short don't deserve to have lesser moral significance any more than those at the other end of the ability scale deserve more.[20] Such treatment is radically unfair.

This objection won't do, however. First, if Regan is arguing that moral considerability and significance must not be based on characteristics over which one has no control, his own view is in trouble. We do not choose to be subjects-of-lives any more than an amoeba chooses not to be one. I don't think Regan would want to say that there is no moral distinction between the two. Second, while I agree with Regan that perfectionism is unjust, at this point how is one to argue for this without begging the question? Perfectionists would claim that their view passes Regan's tests, including the test of impartial reflection. They certainly do treat similar cases similarly and dissimilar cases dissimilarly, given their criteria of moral significance. How can they be answered?

Moreover, what about rights views opposed to Regan's own which are not reducible to perfectionism? The total version of the primacy of moral agency view holds that being a moral agent is necessary and sufficient for moral considerability. Those "disenfranchised" from the moral community are excluded because they are not moral agents, not because they are "lesser" moral agents. Similarly, the additive version of the primacy of moral agency view holds that the different characteristics which make one a moral agent are each morally significant and that the more of these characteristics one possesses the more morally significant one is. One's status has nothing to do with the degree to which one possesses a given morally relevant characteristic. Is there a way to show these views wrong?

Regan does indeed offer arguments which would apply to these views. He does an excellent job arguing against particular moral agency views such as those held by and Rawls.[21] The trouble is that these views could be amended in the light of several of his criticisms; he needs objections so fundamental that any primacy of moral agency view would be subject to them. He presses just



such an objection against Kant (who holds a total view). Those who deny that nonrational beings are morally considerable fail to pass the test of impartiality, he urges. Let's grant that it would be wrong to torture a moral agent for fun. Now, imagine torturing someone who isn't a moral agent, like a human child (to avoid the potentiality complication, let's stipulate that the child is severely retarded). Few would deny that the child suffers just as a moral agent would. But this, and this alone, Regan says, is the morally relevant similarity between the two in this hypothetical case: "The issue concerns their shared capacity for suffering, not their differing abilities; otherwise we flaunt the requirement of formal justice: we allow dissimilar treatment of relevantly similar cases."<sup>[22]</sup> The same kind of criticism would apply to the additive view, according to which the child's suffering would not count as much as the suffering of a moral agent. Regan claims that all such views are arbitrary: the kind of harm inflicted is the same, regardless of whether one is a moral agent.

This is similar to Regan's criticism of perfectionism, and, unfortunately, it too fails to forestall a very difficult reply. The total and additive view advocates would emphatically deny that their views fail to be impartial. The cases of the moral agent and the retarded child are relevantly dissimilar, they would say: to claim that suffering is the sole issue is to beg the question against these views.

The trouble is that impartiality is a formal requirement which all but the non-universal ethical egoist (whose view has plenty of other problems) would embrace. This principle cannot decide the issue. Regan is aware of this; he point out that a normative interpretation of justice is required to spell out what counts as a morally relevant similarity or dissimilarity.<sup>[23]</sup> But how are we to decide which interpretation of justice to adopt? By applying the same tests of scope, precision, and conformity to our reflective intuitions, which must be cool, clear, rational, informed, and impartial, in the formal sense. The total and additive view advocates, as well as the perfectionist and the utilitarian<sup>[24]</sup> would all say that their views do pass these tests. How is one to reply to them? To show, as Regan

does in Chapter 7, that the subject-of-a-life view passes the tests just isn't enough. It seems we have reached a relativistic impasse.<sup>[25]</sup>

#### A Possible Solution

At this point, I would like to suggest a possible way out. I am going to use a line of reasoning developed by ethical theorist Alan Gewirth to sketch a defense of a combination view very like Regan's. If this line of reasoning is correct, it will illuminate what is wrong with the alternative views. Gewirth himself believes his view to have very different implications, but I will argue that this is not the case.

All moral codes are action guides addressed to those of us capable of understanding and acting on them. In his important book, Reason and Morality,<sup>[26]</sup> Gewirth argues that those of us trying to determine which moral code, if any, to follow must begin by asking what is required for action itself. Doing so will provide us with reasons to become active moral agents and will in addition allow us to reject a number of ethical views.

Only agents are capable of action. Agents are able to control their own behavior, have knowledge of the relevant proximate circumstances of their actions, and have goals or purposes they wish to fulfill.<sup>[27]</sup> As reflective agents (the only agents who could ever be moral agents), we are able to identify the necessary preconditions of our agency. We require (1) the ability to have purposes and (2) the freedom which would allow us to pursue those purposes. The ability to have purposes itself has preconditions: life and minimal mental and physical capabilities. Beyond these basic conditions, a certain quality of life is required for purposiveness: one must not have to fear constantly losing what has already been attained, and one must have the opportunity to increase one's gains. The life and quality of life conditions are combined by Gewirth under the heading of "well-being." This term designates the abilities and conditions necessary for agents to maintain and obtain what they desire in general.<sup>[28]</sup> Freedom and well-being are, then, necessary for agents to achieve their goals.

The next step in Gewirth's transcendental argument is to say that all reflective agents at least implicitly claim freedom and well-being as rights. These claims are prescriptions which mean at the minimum that others should not interfere with one's freedom and well-being.[29] Any reflective agents who do not make such claims at least implicitly could not desire to fulfill their purposes—which would mean that they are not agents at all.[31] All reflective agents must, on pain of contradiction, make these claims.[31]

At this point, reflective agents are not yet active moral agents because they are considering only their own interests. The extension to others (and thus the transformation to moral agency in the active sense) occurs when those agents realize that what justifies their rights claims is the fact that they are agents. The fact that one is Arabella Wopenschmidt, white American physicist, is irrelevant to one's claims. Agents who claim freedom and well-being, claims that are justified by their purposive natures, who deny the freedom and well-being of other agents contradict themselves. This is the heart of Gewirth's argument for what he calls "the supreme principle of morality: Act in accord with the generic rights of your recipients as well as yourself" (the principle of generic consistency [PGC]).[32] Further reflection on our part indicates that some recipients of our action are due more than our noninterference. We have positive obligations too: to help them avoid harm when doing so causes us no comparable losses and to aid those who, through no fault of their own, cannot achieve well-being.[33]

Following this line of reasoning, it is clear that a perfectionistic view is unjustified. Agents with more abilities are not to be favored. Arabella Wopenschmidt may be a more intelligent, thoughtful agent than Hulk Hogan, but that gives her no moral premium. What counts--and what is sufficient for the full range of basic moral rights, other things being equal--is that both are purposeful beings. Utilitarianism is also undercut by this reasoning: we owe agents respect for their rights as agents. The PGC enjoins us to respect other purposive beings as we do ourselves; it does not impose on us the overriding duty to maximize happiness or other nonmoral goods. Gewirth appeals to us as

rational, reflective agents who wish both to be consistent and to achieve our purposes when he leads us to reject these views.

Next, Gewirth's line of reasoning leads us to reject the view that moral agency is necessary for moral considerability and maximum moral significance. The PGC applies to all who have purposes they want to fulfill, for they require freedom and well-being just as we do. They do not have to claim freedom and well-being as rights in order to be morally considerable. Not all agents have the ability to conceptualize the PGC. They are still, as agents, due moral rights.[34] (Of course, their right to freedom may have to be abridged when they threaten the freedom or well-being of others. That holds for moral agents too.) According to this line of reasoning, those with "preference autonomy" are fully included in the moral community: as moral patients rather than as moral agents.

What about those who are not quite agents? Do they lack moral considerability? Or are they of lesser moral significance? Gewirth's short answer is that as long as they have purposes or desires, they are morally considerable. Having purposes one wants to fulfill or have fulfilled is the basis for the claim to the right of well-being. Having the right to freedom is based on another aspect of agency, the ability to fulfill purposes. Those who lack that ability will have no right to unrestricted freedom but will retain the right to well-being. Moreover, Gewirth holds that potential agents are due "preparatory" rights to aid them in achieving agency.[35] He believes (rightly, I think) that potential agency is morally relevant, but he also holds that those who are only potentially purposive are less morally significant than those who already have even rudimentary desires. Thus, he believes that infants, who have rudimentary desires, are due a full right to well-being, whereas fetuses (who can have no desires, according to his possibly mistaken view) are not due the same full protection (i.e., in a conflict between their lives and the life or well-being of a purposive being, they should be sacrificed if there is no other way to resolve the conflict).[36]

Those beings with desires or purposes who are not yet able to carry out their own purposes do not have the full range of rights due an agent, but they are most emphatically



equally morally considerable on Gewirth's view. We moral agents have more positive obligations to them than we do to other moral agents: we should act to further their well-being whenever we reasonably can. Thus, "deficient" humans are on equal moral footing with normal humans, so long as they have even primitive desires.[37] We see that Gewirth rejects what I have called the additive view; fewer rights don't translate into decreased moral significance.

I disagree with Gewirth about some of the implications he believes his view to have. For example, he does not believe that nonhuman animals can occupy the same moral position as normal and deficient humans. His belief is in part based on false empirical assumptions and in part based on a pervasive homocentric bias evident in his work. On the empirical side, he doubts that animals can be agents; he even assumes that severely deficient humans are far closer to agency than nonhuman animals.[38] The truth is the opposite. Animals in the wild, apart from the extremely young, far eclipse some humans in their mental development and their capacity to achieve their goals. Gewirth's homocentrism is evident too: he takes himself to be defending the view that basic rights are human,[39] that "all humans are actual, prospective, or potential agents"[40] (contrary to what he later admits about defective humans), that having rights is necessarily connected to being human,[41] and that "for human rights to be had one must only be human." [42]

When his views are separated from mistaken assumptions and the inconsistencies of homocentrism, we see that what remains is that (1) all moral agents are morally considerable and maximally morally significant, (2) all agents, human and nonhuman, are likewise maximally significant, (3) purposive beings, human and nonhuman, with a restricted or nonexistent ability to carry out their purposes are equally morally significant, although they cannot be said to have the right to freedom, (4) potential agents who are not yet purposive are morally considerable but not as morally significant as the others above. This view is an example of what I have called the combination view. If the reasoning here is correct, the alternative rights and nonrights views are unacceptable to the rational agent.

On the face of it, this Gewirthian combination view goes further than Regan's rights view. Regan argues for the equal inherent worth of all subjects-of-lives, which as he has defined it means "all agents." Beings with desires who are unable by their very nature to carry out those desires would appear to be excluded. Yet, Regan notes that severely deficient humans, who cannot satisfy even "basic needs and correlative desires," are subjects-of-lives.[43] This puzzle is resolved when one realizes that Regan has given us another, less restrictive definition of his key moral notion: "A sufficient condition of being owed such duties [of justice] is that one have a welfare—that one be the experiencing subject of a life that fares well or ill for one as an individual—independently of whether one has a conception of what this is." [44] Deficient humans are included under this definition, and rightly so. According to this "welfare criterion," one need not be an agent to be fully morally significant.



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But what status, on such a view, does the so-called "merely" conscious being have? Do we have direct duties to such a being, or is it merely "a sacred symbol of the real

thing," as Feinberg would say,[45] to be protected on utilitarian grounds alone? Regan suggests this may be so when he speculates that such a being may be a mere receptacle for intrinsic value rather than being valuable in its own right.[46] (It is fascinating that he and Singer, who differ on so much else, reach the same conclusion here: both treat the self-conscious as irreplaceable and the "merely" conscious as replaceable receptacles of value.)

I can only speculate here about this very troubling issue. Is self-consciousness a prerequisite for having preferences, desires, or purposes (i.e., is it a precondition for having a welfare)? If it is, then I have serious doubts about whether anything living is merely conscious. The newborn has preferences, although it is not self-conscious in the fully reflexive sense of the term. Might it not be self-conscious in another sense, having something akin to what Sartre calls a "horizon" surrounding its consciousness[47]—being thus very simply self-aware? If this is denied—if fully reflexive self-consciousness is declared to be the only kind—then it seems that one does not have to be self-conscious to have preferences. Having preferences enables one to have a welfare, and this—following the reasoning sketched above—is sufficient for moral considerability.[47] The only conscious being I can conceive of who would not be morally considerable would be one who could not care about what states it undergoes, who could not have preferences, even potentially. Perhaps a highly sophisticated robot could fit this description, but the humans and nonhumans we have contact with in this world do not.

If conscious beings who are not, and never will be, reflexively self-conscious are morally considerable, can they be said to be as morally significant as other moral patients and agents? Or do they just have the right not to be tortured wantonly? I want to suggest that they are owed the same respectful treatment due other moral patients and agents. Since they care about what happens to them (without knowing that they do), it would be wrong to treat them as mere means. However, this does not necessarily mean that, in a case of unavoidable conflict between their lives and the lives of moral agents or reflexively self-conscious moral patients, we

should flip a coin to determine who dies. Suppose that a "merely" conscious being and a reflexively self-conscious being must have our assistance in order to live, but we only have the resources to save one. Now suppose that either being would be harmed by death, at least in the sense that any further experiences would be precluded for that being. Regan has argued that if we must choose between harming one morally considerable being rather than another in such a situation and if one of the beings would be harmed less by our actions than the other, we ought to harm that being rather than the other. Such a decision would in no way imply a lack of equal respect for the two beings. He goes on to suggest that loss of life may be a much greater harm to one being than to another.[49] Perhaps—we must be very cautious here—a reflexively self-conscious being would be more harmed by death than one who is not. If this can be made out, and if it would be wrong to cause one being more harm than another when that can be avoided, and if both would otherwise die, then the "merely" conscious being should die instead of the reflexively self-conscious being. Note, however, that this line of reasoning would not justify experimenting on the former being in order to save the life of the latter. We would not be showing equal respect for the two if we did this, since we would be treating the former as a mere means.

If what has been said in the last section of this paper is correct, there are a great many moral patients we moral agents are obligated to consider. Determining the extent to which we should not interfere with those beings and the extent to which we should assist them is no easy matter. One hopes that one day we will come much closer to giving other morally considerable beings the respect which is due them, whatever our specific obligations may be. Our record so far has been nothing short of dismal.

#### Notes

1. Some philosophers would dispute this way of characterizing moral agency. Lawrence Johnson, for example, has argued that one need not understand ethical principles, or indeed possess moral concepts at all, in order to be a moral agent (see his "Can Animals Be Moral Agents?," Ethics & Animals 4/2 (1983): 50-61). However, if we were to broaden the category of moral agent in this

way, many who now believe it is prima facie wrong to harm moral agents would simply retract and reformulate this view. I prefer to follow Steve F. Sapontzis here. He argues that animals are not "moral beings" (moral agents in the reflective sense) but can indeed be-virtuous (see his "Are Animals Moral Beings?," American Philosophical Quarterly 17/1 (1980): 45-52).

2. It is convenient for the purposes of this paper to define "moral agent" and "moral patient" in mutually exclusive terms. Tom Regan does this too (The Case for Animal Rights (Berkeley: University of California Press, 1983): 151-6). However, I depart from his sense of "moral patient" in two respects. Regan's "moral patient" applies to a very specific group, viz., subjects-of-lives. I prefer not to restrict the term this way. Moreover, in his sense, being a moral patient carries no implication that anyone has moral obligations to one. It seems more natural to me to build in this implication.

3. Joel Feinberg, "Abortion," In Tom Regan (ed.), Matters of Life and Death, Second Edition (New York: Random House, 1986), pp. 261-2.

4. Regan, op. cit., 243.

5. See Donald Griffin, The Question of Animal Awareness (New York: Rockefeller University Press, 1981) and his Animal Thinking (Cambridge: Harvard University Press, 1984). Also, see Stephen Walker, Animal Thought (London: Routledge and Kegan Paul, 1983) and Stephen Clark, The Nature of the Beast (Oxford: Oxford University Press, 1982).

6. Interests and Rights (Oxford: The Clarendon Press, 1980).

7. For excellent critiques, see Regan, op. cit., 38-49, and S. F. Sapontzis, "Interests and Animals, Needs and Language," Ethics & Animals 4/2 (1983): 38-49.

8. Michael A. Fox, The Case for Animal Experimentation (Berkeley: University of California Press, 1986): 28-9.

9. Regan, op. cit., 84-6.

10. Ibid., 244. But they do have a

welfare: their lives "fare well or ill for them logically independently" of their value for others. That does not make them "subjects-of-lives" as he has defined the notion, however. I will argue later that Regan really offers two criteria for moral considerability, both of which he calls "being the subject-of-a-life."

11. In this context, "necessary" means "required for one to be justified in attributing moral considerability" and "sufficient" means "justifying ground for the attribution of moral considerability." What sort of justification one can get depends on which metaethical theory is correct. All the major theories except one, emotivism, imply that some sort of justification is possible, and emotivism is rightly not much defended these days. (For a more detailed discussion of ethical justification, see my "The Justification of an Environmental Ethic," Environmental Ethics 5/1 (1983): 56-60.)

12. Joel Feinberg, "The Nature and Value of Rights," The Journal of Value Inquiry 4 (1970). This is the sense Regan adopts too; see Chapter 8 of The Case for Animal Rights.

13. Feinberg, "Abortion," 266-7.

14. Feinberg and others have argued that potentiality views commit a fatal logical error. The strict view is said to confuse being potentially qualified for rights with having rights. The gradualist view is said to confuse being almost qualified for rights with being partially qualified for rights or being qualified for weak rights (Feinberg, ibid., 267, 269.). The criticism of gradualism would also apply to the additive view.

I believe this criticism misconstrues potentiality views. The strict view claims that being an actual or potential X is sufficient for moral rights, not that being a potential rights-bearer is equivalent to being a rights-bearer. Nor does the gradualist view claim that being almost qualified for rights is equivalent to being qualified for partial rights; it takes rights claims to be ordered on a continuum, increasing in strength as one's potential is actualized. (this view is particularly plausible given Feinberg's analysis of rights as valid claims.) The critics interpret potentiality views as presupposing their very denials;

this is unwarranted.

15. An interesting apparent exception to this is Peter Singer's version of preference utilitarianism (see his "Killing Humans and Killing Animals," Inquiry 22/1-2 (1979): 145-56). He holds that the basic moral principle is to maximize preference satisfaction. He argues that reflexively self-conscious individuals are not "mere receptacles of value" as the "merely" conscious are said to be; they are said to be prima facie irreplaceable, unlike the latter, because of their preference to live. This argument fails for a variety of reasons. Most important, self-conscious beings turn out to be just as replaceable on this form of utilitarianism as on any other. I discuss this argument in my "On Replaceability," Ethics & Animals 3/4 (1982): 96-105. See Tom Regan's excellent dissection of Singer's view in The Case for Animal Rights, 206-11.

16. Regan, ibid, 246.

17. Ibid, Chapter 4.

18. Ibid., 260-1.

19. Ibid., 240.

20. Ibid., 234.

21. Ibid., Chapter 5, especially sections 5.4 and 5.5.

22. Ibid., 183. Another argument against the total view which Regan could have pressed (but wisely did not) is that moral agents would not deny basic moral rights to those less fortunate than themselves (i.e., those who cannot be moral agents). The argument is that denial of rights in these cases is unjust, that such beings, who had no choice about their condition, do not deserve such treatment. The problem is that this argument presupposes that those who are not moral agents are morally considerable. The principle of justice, of treatment according to desert, does not apply to those without moral considerability. Thus, this argument simply begs the question against the total view. (This very same argument is at the heart of some recent defenses of speciesism. See Michael Wreen, "In Defense of Speciesism," Ethics & Animals 5/3 (1984): 47-60. Michael A. Fox also employed this argument in The

Case for Animal Experimentation, 61. I have criticized Wreen's article in Ethics & Animals 5/4 (1984). For further responses and replies between us, see the 1986 issues of Between the Species.)

23. Regan, op. cit., 232.

24. Utilitarians are apt to dismiss appeals to intuitions, but they have no quarrel against rationality, coolness, conceptual clarity, being informed, and being impartial.

25. One might think that a Rawls-type approach to justice would help here, but it would not. Rawls' view, purged of its arbitrariness (Regan rightly points out that those behind the veil of ignorance should not be allowed to know that they will be human, moral agents in the society whose rules they are deciding (op. cit., 170-3)), would seem to ensure an egalitarian outcome for moral agents and patients, but it does not. Apart from the dubious assumption that self-interest lies at the basis of ethics, this (otherwise nonarbitrary) Rawlsian view cannot exclude the dedicated perfectionists, Kantians, and others we have been discussing. These people would interpret justice in the ways their theories prescribe, regardless of the consequences they might suffer when incarnated in their chosen society.

26. Alan Gewirth, Reason and Morality (Chicago: University of Chicago Press, 1978). A much briefer description of his theory appears in Part 1 of his Human Rights: Essays on Justification and Applications (Chicago: University of Chicago Press, 1982).

27. Reason and Morality, 27.

28. Ibid., 64.

29. Ibid., 78.

30. Gewirth argues that those agents who deliberately act to limit their own freedom or well-being are still, as they act (i.e., qua agents), claiming the right to noninterference. (He further notes that mental, physical, or economic constraints are generally the reasons for such behavior) (ibid., 264-7).

31. Gewirth cautions us that he is not

claiming that "X needs freedom and well-being in order to act" logically necessitates "X has the right to freedom and well-being." The necessity arises within the agent's viewpoint: from "X regards freedom and well-being as necessary goods" it does follow that "X rationally claims the rights to freedom and well-being" (*ibid.*, 160-1). The distinction is crucial; this is Gewirth's way of not being trapped by the "is/ought" problem.

32. *Ibid.*, 112. For Gewirth's extended statement and defense of the PGC, see Reason and Morality, Chapter 3. A briefer account is given in "The Basis and Content of Human Rights," Essay 1 in his Human Rights.

33. Reason and Morality, 312-7.

34. Gewirth is inconsistent on this very important point. His definition of "agent" at the outset of his argument ("a being with purposes he or she wants to fulfill, who has control over his or her actions, and who knows the relevant proximate circumstances of those actions") includes no reference to the ability to reflect on the abstract preconditions of actions. He also makes a point of arguing that agents with very low-level abilities are nevertheless agents with full moral rights (*ibid.*, 140). He repeats this in his later book Human Rights, arguing that "minimal rationality" in the sense spelled out above is all that is required for agency and the rights to freedom and well-being (p. 8). Beings who are only preferentially autonomous fit this description. But in other passages in which agency is characterized, he interpolates the requirement that one be capable of reflecting on the preconditions of action and of claiming these as rights (pp., 120, 138). See Human Rights, 11: "For a person to have human rights, then, is for him to be in a position to make morally justified stringent, effective demands on other persons that they not interfere with his having the necessary goods of action and that they also help him to attain these goods when he cannot do so by his own efforts." In Reason and Morality, this interpolation is not found; see pages 124, 133, and 180.

The interpolation should never have been made. First, the reasoning which leads to the PGC hinges on the reflective agent's recognizing that he or she has the rights to freedom and well-being because these are the

preconditions for action. All beings like the agent in the respect that they too need freedom and well-being in order to fulfill their purposes are then accorded the same rights by that agent. Plainly, it is not necessary that these others also be capable of conceptualizing the PGC. Second, as we shall see, Gewirth holds that some beings who are not even preferentially autonomous (i.e., who are not even agents in the minimal sense) are due the right to well-being. These beings (e.g., children and the mentally defective) need have no concept of the right to well-being (let alone be able to claim it as a right) in order to have that right. This is an extremely important part of Gewirth's overall view. If he wants to retain it, he must drop his repeated insistence that only intellectually sophisticated moral agents can have rights.

35. Reason and Morality, 142.

36. *Ibid.*, 142-3

37. *Ibid.*, 141-2.

38. See his description of their respective abilities on pages 141-2, 144.

39. *Ibid.*, 317. He does, however, argue that nonhuman animals have the right not to have pain wantonly inflicted on them (p. 144).

40. *Ibid.*, 64.

41. *Ibid.*, 103.

42. *Ibid.*, 317. As the title of his more recent book, Human Rights, tells us, he has not retreated from a homocentric position.

43. Regan, op. cit., 244.

44. *Ibid.*, 171.

45. Feinberg, "Abortion," 273.

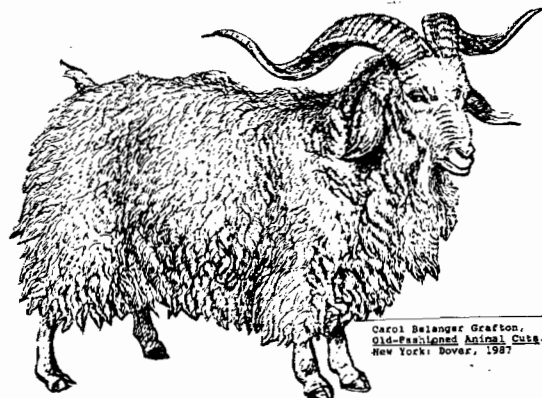
46. Regan, op. cit., 246.

47. Jean-Paul Sartre, The Transcendence of the Ego (New York: Noonday Press, 1971): 75.

48. One philosopher who seems to think

that only the reflexively self-conscious can have a genuine welfare is the Michael A. Fox of The Case for Animal Experimentation. He there claims that it is "completely spurious" to speak of the lives of those who are not reflexively self-conscious as "more or less 'full,' 'satisfying,' and so forth," since these beings cannot "reflectively evaluate the quality of their lives and find them a cause of satisfaction or regret" (pp. 28-9). Because of their lack of reflection, Fox says that their "pleasurable experiences are not valuable to them" (27), and in general "their lives also cannot have intrinsic value or value to themselves" (48). Fox's view implies that, in a crucial sense, such beings cannot fare well or ill because they are unable to care about what happens to them. (Fox does continue to use the word "welfare" on occasion when referring to those he believes are not reflexively self-conscious. He also grants that "it would be meaningful to say that it is in their interest (accords with their observed preferences) to have pleasurable experiences repeat themselves" (27). But as the implied reductionism in this quote, in addition to the previous quotes, indicates, this is "welfare" and "interest" in a very attenuated sense of these terms at best.)

Although Fox makes all the above claims about nonhuman animals, they apply rather more accurately to very young or impaired humans. Before we decide that the lives of babies and the severely senile cannot be "more or less satisfying," let's consider their "observed preferences" when they are cuddled or beaten. Don't they give every indication that they are satisfied or greatly distressed by what is being done to them? Must they be able to tell themselves "my life-quality has now taken a distinct down-



Carol Belanger Grafton,  
Old-Fashioned Animal Cuts.  
New York: Dover, 1987.

## NUMBER 87

Might have been a rabbit,  
or maybe a white rat.  
Just another specimen,  
but I recall it's number was "87."  
I think we poured something into its eyes,  
or tried to give it cancer.  
Funding is getting tighter,  
a back-up disease is good business.  
People believe we cure them  
by what goes on here.  
I guess we are akin to gods.  
I've forgotten our original theory,  
but it still pays my salary.  
Lucky that animals don't have feelings,  
or we might be held accountable  
for number 87.

Kathleen Malley

ward turn" in order to be dissatisfied by a beating? Apart from language, a tortured baby and a tortured normal human adult display remarkably similar "observed preferences." How can Fox account for this? Doesn't the principle of parsimony suggest that both care about what is happening to them?

49. Regan, op. cit., 324-5. I strongly disagree with the way Regan applies this principle, however. He says that "no reasonable person would deny" that the death of a normal human is a greater harm to that human than the death of a dog is to the dog. He suggests that we ought to throw the dog out of the proverbial lifeboat if there isn't sufficient room on board for all the humans and the dog. This seems to be a totally uncharacteristic touch of human chauvinism on Regan's part. For a thoughtful discussion of this problem, see Henry Cohen's review of The Case for Animal Rights in Ethics & Animals 5/1 (1984): 11-4.