

Tom Regan's Philosophy of Animal Rights: Subjects-of-a-Life in the Context of Discussions of Intrinsic and Inherent Worth

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Abstract. Modern animal rights debates began in the 1970s, mainly as part of the budding field of applied ethics in Anglo-American philosophy. In just a short time, these animal rights discourses received international academic respect, especially through analytically trained philosophers. Central for this development was the analysis that rights language can be principally used species neutrally. This paper's contribution is to examine the central terms of Tom Regan's still widely discussed theory for their actuality and usefulness. Hence strengthening these arguments for modern animal rights theory as a serious approach in (inter)national ethical and legal disputes.

Keywords: rights, animal rights, dignity, Tom Regan, Peter Singer.

Tomo Regano gyvūnų filosofija: gyvybės subjektas diskusijų apie vidinę ir savaiminę vertę kontekste

Santrauka. Šiuolaikinė diskusija apie gyvūnų teises prasidėjo 8-ajame XX a. dešimtmetyje, daugiausia kaip dalis dar tik besiformuojančio taikomosios etikos lauko anglų ir amerikiečių filosofijoje. Gyvūnų teisių diskursas per trumpą laiką pelnė tarptautinį akademikų pripažinimą, ypač analitinės pakraipos filosofų dėka. Prie šių idėjų esmingai prisidėjo tyrimai, susiję su teisių kalba ir tuo, kaip ji gali būti vartojama rūšies požiūriu neutraliai. Straipsnio tikslas yra prisidėti prie diskurso tiriant pagrindinius Tomo Regano vis dar plačiai nagrinėjamos teorijos terminus, pagrįsti jų aktualumą ir pritaikomumą. Tai daroma siekiant sustiprinti moderniąją gyvūnų teisių teoriją kaip rimtą prieigą tarptautiniuose ir nacionaliniuose etiniuose ir teisiniuose ginčuose.

Pagrindiniai žodžiai: teisės, gyvūnų teisės, orumas, Tomas Reganas, Peteris Singeris

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Introduction

In contemporary discussions of human-animal ethics, particularly those pertaining to the basis for individual rights on the part of nonhuman animals, the writings of Tom Regan (alongside those of the utilitarian thinker Peter Singer) have played a central role ever since the 1970s. Reflections from the standpoint of value theory on the status of animals, often tied to the question of animal rights, extend even further back. The aim of the following discussion is to provide an overview of the highly varied approaches to animal rights that have emerged during this time, the central focus being Regan's work. There are two reasons for this focus on Regan: because his approach held a central position in international academic debates, and because his concept of "inherent worth" has often been compared with the concept of human worth or human dignity.

The Genesis of Modern Discussions of Animal Rights

Important preliminary work on the thematic of animal rights was completed by the British intellectual and politically active humanist Henry Salt (1851-1939). After publishing his book *"Animals' Rights: Considered in Relation to Social Progress"* (1892), Salt (1899) published an article in the *International Journal of Ethics* entitled "The Rights of Animals", which was the first academic essay to address animal ethics (Magel 1989: 9). But due to his spiritual worldview, Salt's efforts remain relatively unknown even today in academic philosophy.

Also relatively unknown is the first defense of animal rights offered by an academic philosopher, the German Leonard Nelson (1882-1927). Of relevance to animal ethics was his volume *System of Philosophical Ethics and Pedagogy*, published only after the Neokantian and socialist's death in 1932. The English translation of this text (Nelson 1956) and from there the seven page selection – titled "Duties to Animals" – reprinted in Godlovitch (1971) led Professor Raymond G. Frey (1979) to publish his article "Rights, Interests, Desires, and Beliefs", in which he presented a thoroughgoing and highly critical response to Nelson as well as to other texts of relevance to animal ethics such as Joel Feinberg's essay "The Rights of Animals and Unborn Generations." Frey's text has since become received as a modern classic in the animal rights debate, and once translated it rightfully found a central place in the first German-language anthology of essays on animal rights (Krebs 1997). Much earlier, thanks to the pioneering work of Dieter Birnbacher (1980), the rights philosopher Feinberg's essay was made available to a broader public in the anthology *Ökologie und Ethik* and would become the foundational and most frequently cited academic text. Nonetheless, by 1974, *The Philosopher's Index* (the most important bibliographic database for academic philosophy) included only five entries on "animal rights" or "animal liberation," and these were treated as secondary topics.

Only with the appearance of Peter Singer's essay "Animal Liberation" (1973) in *New York Review of Books*, "All Animals are Equal," (1974) which is widely cited and reprinted in academia since its publication, and Singer's utilitarian classic *Animal*

liberation (1975) did the contemporary debate about animal liberation and animal ethics begin. The following year, Tom Regan published “Feinberg on What Sorts of Beings Can Have Rights” (1976a; 1982) and “McCloskey on Why Animals Cannot Have Rights” (1976b), which were the first two academic essays worldwide since Salt to be published in defense of animal rights. – Here it is worth mentioning that the chapter “Animals and Morals” in Godlovitch (1971) already strongly criticized the prominent ethicist Richard Hare and the legal philosopher H. L. A. Hart for logical inconsistency in excluding animals “a priori” as right holders. In addition, Regan and Singer edited *Animal Rights and Human Obligations* (1976), the first academic anthology to include the concept of animal rights in its title. The first international university symposium on the theme of animal rights took place a year later, in August 1977 at Trinity College, Cambridge. In the preface to the resulting conference volume, *Animals' Rights - A Symposium* (Paterson and Ryder, 1979), Singer suggested that researchers a hundred years from now would be able to cite the occurrence of this symposium as the beginning of the contemporary academic animal rights movement. In the opinion of the social scientist Harold Guither (1998) it started the vigorous growth of a “radical social movement”, one whose academic and theoretical development the philosophers Lawrence and Susan Finsen see as intimately bound up with the motto “from compassion to respect.”

In the few years between the publication of Singer's *Animal Liberation* and Regan's *The Case for Animal Rights* (referred to in the following as CFAR) in 1983, the number of entries on animal rights in *The Philosopher's Index* increased from the five already mentioned to more than a hundred. By the middle of 2019, searches turned up between 600 and more than 900 relevant entries. And yet even today the concept of animal liberation is found a mere one hundred times in academic discussions. In this connection, some particularly noteworthy contributions from the standpoint of critical theory are included in John Sonbanmatsu's (2011) anthology *Critical Theory and Animal Liberation*.

Already in 1987, Singer (1987; Palmer 2008) devoted his frequently cited, in-depth, and aptly-titled essay “Animal Liberation or Animal Rights” to the relationship between his utilitarian concept of animal liberation and the deontological-Kantian approach to animal rights. Regan's (2001: 37) repeated rejection of utilitarianism is well summarized by his statement that “animal liberation is the goal for which the philosophy of animal rights is the philosophy.” For many animal ethicists this underscores the fundamental theoretical need to incorporate the concept of rights for (nonhuman) animals more clearly into the philosophical discussion.

It was not only in Salt's time that there were thinkers in the tradition of transcendental philosophy, such as Joseph Rickaby (1976) and David Ritchie (1976), who rejected the notion of animal rights as being in principle impossible and “absurd.” In contemporary German-language Kantian philosophy, two essays entitled “Haben Tiere Rechte?” [Do Animals Have Rights?], one by Michael Schlitt (1992) and another by Christian Krijnen (1997), indicate a consideration of the rights question as well. And yet it becomes apparent very quickly in Krijnen's discussion that in principle animals have no part in the transcendental premises that would permit them to claim rights; on Krijnen's (1999: 97)

view, “in the end, rational legislation is the only authoritative basis for reasons and hence for the validity” of rights. Similarly, Maria Woschnak’s (2003: 159) “Immanuel Kants Beitrag zur Tierschutzethik” [Immanuel Kant’s Contribution to the Ethics of Animal Protection] ends with the rather apodeictic conclusion that “animal rights are as nonsensical as they are impracticable.” At the same time, it should be noted that considerations of justice have led to a marked change in the argumentation offered by one of the most important contemporary Kantian philosophers. In her essay “A Kantian Case for Animal Rights,” the Harvard professor Christine Korsgaard (2012; 2013) presents a clear framework for animal rights by articulating a new way of reading Kant’s ethics - one that is naturally hotly contested in the dominant strain of anthropocentric Kantianism.

Many (rights) philosophers in the analytic-secular tradition approach the relationship between animals and rights less rigorously and with argumentation that in some respects is simpler. Already in 1974, in his article “The Rights of Animals and Unborn Generations,” Feinberg (1974: 43) was one of the first leading American analytic rights philosophers to treat the species-neutral connection between interests and rights as foundational. This essay includes a basic species-neutral definition of the concept of rights: “To have a right is to have a claim *to* something and *against* someone, the recognition of which is called for by legal rules or, in the case of moral rights, by the principles of an enlightened conscience.” In addition, Feinberg (1974: 50) asserts a connection between rights and interests, stating that “without interests a creature can have no ‘good’ of its own, the achievement of which can be its due.” This makes it possible in principle for animals to have rights, provided that we start from the proposition that they have interests.

According to the rights philosopher Helena Silverstein (1996), Feinberg (along with Regan) thus stands at the beginning of the modern intellectual animal rights movement; she speaks of “unleashing rights” for animals. This movement seeks a more secure rational basis for a fundamental shift from the more moderate reformist animal protection movement to an abolitionist animal rights movement. One approach (Rowland 1997; 2009; Lengauer, 2019) within this multifaceted debate is to bring about this shift by strengthening the connection between Kantian ethics and concepts drawn from classical contractualism. The first comprehensive volume to demonstrate the argumentative breadth and depth of the animal rights debate from the 1970s to the present is the impressive 500-page anthology *Animal Rights*, edited in 2008 by Clare Palmer (2008). Even though it was published in the renowned International Library of Essays on Rights series, this intellectual “archive” of animal rights philosophy remains largely ignored in the academic world (Lengauer, 2009).

Also of interest for the establishment of theoretical foundations are the ever more widely accepted species-neutral concepts of rights in various areas of philosophy. Peter Koller (2007: 86) offers a general conception in particularly incisive terms:

Accordingly a right, conceived in general terms, is a normative position. ...At the same time, all rights share a common form, which we may describe as their basic structure. Every right, regardless of its particular content, takes the form of a relational predicate with three terms and possessing the following variable components: (1) the subject or holder, (2) the addressees, and (3) the content or subject matter of the right.

In 2010 and 2013 the legal philosopher Matthew Kramer (2010; 2013) undertook a detailed examination of the meaning of interests and rights. So it should come as no surprise that even some utilitarian-minded ethicists, such as Jean-Claude Wolf and Birnbacher, attempt to unite their normative conceptions in a more thoroughgoing manner with theories of rights.

It was especially around the time of the publication of CFAR that basic questions arose regarding the possibility of uniting utilitarian or consequentialist approaches to ethics with theories of rights. R. G. Frey (1984), the editor of *Utility and Rights*, examined this matter in depth, along with L. W. Sumner, John Raz, J. L. Mackie, Richard Hare, and other leading theorists of the time. Among moderate utilitarians there was widespread agreement with the proposition, succinctly formulated in the title of an article (Pettit, 1988), that “the consequentialist can recognize rights.” In any case, in discussions of law and ethics there slowly emerged an openness to including considerations of a robust philosophical conception of animal rights. This is evident, for example, in Cass Sunstein and Martha Nussbaum’s (2004) anthology *Animal Rights: Current Debates and New Directions*, which includes contributions by legal theorists and philosophers. Not only is Sunstein one of the most frequently cited jurists in the United States, but he is also a leading figure in contemporary approaches to legal theory.

Among German-language publications, the comprehensive texts published by Saskia Stucki (2016, 2020) and Carolin Raspe (2013) merit mention. Stucki and Raspe are German-language advocates of strong personhood rights for animals, a notion that since its introduction has become central in Anglo-American debates. Particularly in the wake of Mary Anne Warren’s (1986) frequently cited essay “Difficulties with the Strong Animal Rights Position”, certain versions of “strong” animal rights have become subject to criticism, e.g., the views presented by Gary L. Francione’s (2008) collection of essays *Animals as Persons*. Of course, Regan accepts only some aspects of such strong positions regarding animal rights. In any event, leading international legal philosophers such as William Edmundson (2015) and Kramer (2010, 2013) no longer oppose fundamentally the normative concept of “weak” animal rights.

The endeavor to establish, through an appeal to theories of moral and legal rights, that (nonhuman) animals have a claim to freedom from pain and suffering derives support from concepts employed by the classical reformist animal rights movement, as detailed in Clare McCausland’s (2014) “The Five Freedoms of Animal Welfare are Rights.” For many philosophers, the question of killing is central to an effort to think about animal rights, as is clear from the very start in Singer as well as in Regan’s extensive discussion of the matter, and also in thinkers such as Tatjana Visak (2013; 2016). In this connection, as Benjamin Bramble and Robert Fischer (2015) demonstrate at length in their highly topical anthology aptly titled *The Moral Complexities of Eating Meat*, we need to be on guard against answers that are overly hasty and simple.

Regarding the killing question, it remains to examine the strengths and weaknesses of the central arguments in CFAR, where Regan argues for a principle of fundamental respect and a strong right to life for animals. Regan proceeds from animal rights and the

fundamental social implications that are to follow from them, implications that include radical changes in our current ways of treating animals. The most extreme implication for contemporary society would be the wholesale abandonment of livestock husbandry, painful animal experimentation, and hunting. Regan (2004) summarizes these ethical demands in the title of his book *Empty Cages: Facing the Challenge of Animal Rights*. He explains the succinct postulate “empty cages, not larger cages” by contrasting it with the prevailing conception of animal protection (2004:5): “Being kind to animals is not enough. Avoiding cruelty is not enough. Housing animals in more comfortable, larger cages is not enough. Whether we exploit animals to eat, to wear, to entertain us, or to learn, the truth of animal rights requires empty cages, not larger cages.” In spite of these radical demands, which he had previously presented in the chapter of CFAR (330ff.) entitled “Implications of the Rights View”, it was on the basis of a discussion published by the renowned philosopher Robert Nozick (1983) in the *New York Times Book Review* that Regan became known to a broader intellectual public as the leading new theorist of the animal rights movement. Thereafter, Regan’s academic reputation was solidified through extensive academic discussions of his book.

Tom Regan’s Introduction of Animal Rights into Philosophical Discourse

Regan born in 1938, received his Ph.D. in 1966 and was professor of philosophy from 1967 to 2001 at North Carolina State University. In 1975 he published his first essay on animal ethics (Regan 1975), “The Moral Basis of Vegetarianism.” He presented incisive analyses in leading philosophical journals with essays such as “Feinberg on What Sorts of Beings Can Have Rights,” “McCloskey on Why Animals Cannot Have Rights” (Regan 1976a; 1976b), “An Examination and Defense of One Argument Concerning Animal Rights” (Regan 1979), and “Utilitarianism, Vegetarianism, and Animal Rights” (Regan 1980). Following an intensive writing process that lasted nearly three years, these meticulous analyses culminated in his magnum opus *The Case for Animal Rights*. In the span of a packed 420 pages, Regan devotes nine chapters to a comprehensive and impressively detailed defense of animal rights.

In CFAR, Regan starts with two chapters strongly grounded in empirical research and guided by the analytical approach that dominates the philosophy of mind: Chapter One on “Animal Awareness” and Chapter Two on “The Complexity of Animal Awareness.” He then proceeds through Chapter Three (“Animal Welfare”) to Chapter Four (CFAR 121ff.), “Ethical Thinking and Theory,” which is the first chapter in the book to be oriented on theoretical foundations. The foundational criteria for an ethical theory include conceptual clarity, information, rationality, impartiality, coolness, and valid moral principles. Regan critically examines and substantiates valid moral principles through recourse to the evaluative criteria of consistency, adequacy of scope, precision, and conformity with our intuitions.

In CFAR (135), Regan formulates the goal of a well-grounded ethical theory in the following terms: What we must strive to achieve, to use a helpful expression of the Harvard philosopher John Rawls, is reflective equilibrium between our considered beliefs, on the one hand, and our moral principles, on the other.” Following some additional brief reflections on the advantages and disadvantages of consequentialist and Kantian theories, Regan proceeds to two detailed CFAR (150-232) chapters, Chapter Five on “Indirect Duty Views” and Chapter Six on “Direct Duty Views.” Whereas in Kant and in traditional Kantian and contractualist theories only indirect duties regarding animals found theoretical grounding, it was possible in classical hedonistic utilitarianism to argue for direct duties toward animals. And yet Regan treats as highly problematic even the direct duties advocated by the egalitarian form of modern preference utilitarianism, which Singer presents in *Animal Liberation* (1975) and *Practical Ethics* (2011). For utilitarian ethics, to the extent that it is consequentialist, views individual animals (and humans) as “replaceable receptacles” (CFAR 208) and thus, from the standpoint of categorical human and animal rights, must be rejected.

The fifth chapter also includes two foundational theoretical concepts. First, there is the matter of providing a definition of the relatively straightforward concept of a “moral agent”:

Moral agents are individuals who have a variety of sophisticated abilities, including in particular the ability to bring impartial moral principles to bear on the determination of what, all considered, morally ought to be done and, having made this determination, to freely choose or fail to choose to act as morality, as they conceive it, requires. Because moral agents have these abilities, it is fair to hold them morally accountable for what they do, assuming that the circumstances of their acting as they do in a particular case do not dictate otherwise. (CFAR 151)

On Regan’s view, moral agents are individuals who have the ability to determine, on the basis of moral principles, which actions would be morally required, and who are free to make a decision to act accordingly. It is only on this basis that moral agents can be held responsible for their conduct. But the concept of “moral patient” is more complex. A moral patient lacks the capacity to formulate and employ moral principles, as well as the capacity to decide which actions are morally correct. “Moral patients, in a word, cannot do what is right, nor can they do what is wrong.” (CFAR 152) Examples of moral patients would include human toddlers and babies, as well as mentally disabled or mentally ill persons. Other human beings can, under certain circumstances, count as moral patients.

This notion is even more complicated because Regan divides moral patients into two categories: (a) conscious, feeling beings who can experience pain and pleasure but lack additional mental capacities; (b) individuals who have additional cognitive capacities and a faculty of volition and thus are capable of states such as memory or belief. Animals are found in both categories (CFAR 153). Regan concludes by noting that when he employs the term ‘moral patient’ he is referring only to category b.

In Chapter Seven, “Justice and Equality,” which is the chapter on theoretical foundations that has received the most attention in international discussions, the central concepts are presented in section 7.5. Here the primary focus is on “inherent worth” and the “subject-

of-a-life” criterion. In the *Encyclopedia of Ethics*, Regan (2001b: 71) calls his Kantian approach “inherentism,” and in *Defending Animal Rights* he notes the central role played by this concept: “an idea that is central to my theory of rights [is] inherent value.” This is expressed with equal clarity in the new, detailed preface to the 2004 edition of CFAR (XXVII):

“If The Case has a central thesis, it is the respect principle, according to which all subjects-of-a-life, both human and nonhuman, share the fundamental right to be treated with respect. From this follows that no subject-of-a-life may be harmed merely on the grounds that others will benefit.”

Now which individuals satisfy the “subject-of-a-life” criterion? On Regan’s view, naturally all moral agents, but also moral patients in category b.

“Individuals are subjects-of-a-life if they have beliefs and desires; perception, 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 psycho-physical identity over time; and an individual welfare in the sense that their experiential life fares 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.” (CFAR 243)

And Regan connects individuals who fulfill the “subject-of-a-life” criterion with the deontological concept of “inherent value”: “Those who satisfy the subject-of-a-life criterion themselves have a distinctive kind of value--inherent value--and are not to be viewed or treated as mere receptacles.” (CFAR 243)

It becomes clear a few pages later that this notion is part of the Kantian idea of ends-in-themselves (CFAR 249): “To borrow part of a phrase from Kant, individuals who have inherent value must never be treated merely as a means to securing the best aggregate consequences.” This central normative concept of “inherent value” has a special meaning for Regan: Beings that possess such value have the status of irreducibility.

Critics of Regan have analyzed this notion intensively. Rem B. Edwards (1993: 231) for example, explains the important difference between intrinsic and inherent worth: “Intrinsically valuable things are experiences like pleasure or preference satisfactions. Inherently valuable things are individual subjects of a life.” Probably the most penetrating analysis of this idea was Lilly M. Russow’s (1988) aptly-titled “Regan on Inherent Value”. She notes the lack of clarity in the concept of inherent worth: Traditionally, something counts as having inherent worth if the experience of it is considered good in itself, e.g., the enjoyment one experiences when listening to a pleasant song. According to Russow (1988: 47), however, Regan applies the concept not to experiences but rather to beings.

If one wanted to do this while preserving some link with the traditional concept, one might suggest that a subject of experiences, a conscious being, has inherent value in that its experiences have intrinsic value. But this would not be the concept of inherent value that Regan wants, because it would make inherent value dependent on (although not necessarily reducible

to) intrinsic value. ...so too could one being have more inherent value than another if it were capable of having more intrinsically valuable experiences.

Mark Rowlands (2009: 62), a specialist in the philosophy of mind, comes to a similar conclusion:

Inherent value is simply incommensurable with intrinsic value: the two simply cannot be compared; they cannot be assessed by the same scale of measurement. ... Individuals who satisfy the subject-of-a-life criterion, have according to Regan ... inherent value. Thus, according to Regan, the inherent value of an individual subject-of-a-life is incommensurable with the intrinsic value of that subject's experiences or other mental states. Therefore, Regan argues, the former can never be overridden or outweighed by the latter.

This very line of questioning is also taken up in summer, 2016, in *The Moral Rights of Animals*, the first anthology devoted to Regan's theory of animal rights. This volume appeared over thirty years after CFAR and comprises fourteen contributions. In this volume, produced through the efforts of U.S. analytic philosopher Mylan Engel (2016), the essays address the concepts and implications of CFAR with an eye toward their current applicability and plausibility. Worth noting is Aaron Simmons's effort in "Do All Subjects of a Life Have an Equal Right to Life?" to defend a strong egalitarian right to life. At the same time, the approach offered by Alastair Norcross is particularly thought-provoking and informative. With impressive argumentation, this utilitarian attempts in "Subjects-of-a-Life, the Argument from Risk, and the Significance of Self-Consciousness" to use elements from Singer's position to improve on Regan's theory.

Particularly worth examining on this matter is Lisa Bortolotti's (2010) essay, which elaborates on the notion of a "subject-of-a-life" in the context of the concept of personhood and questions of intentionality. Unfortunately, a rather polemical approach is exhibited in the criticisms offered by the radical animal rights philosopher Julia Tanner (2009) in "The Epistemic Irresponsibility of the Subjects-of-a-Life Account" (2009) as well as in the sometimes overly simplistic arguments offered by the legal philosopher Gary Francione (1995), who addresses the frequently discussed dilemma of "Comparable Harm and Equal Inherent Value: The Problem of the Dog in the Lifeboat."

To conclude, I would like to note the analyses of Steven Buechler (2011: 205), which have some fundamental implications for philosophical discussions pertaining to social movements as well as for in-depth public discussions. His judgment that "the importance of cognitive appeals is effectively explored in the animal rights movement, in which protesters have strategically opted for logical, rational arguments specifically to deflect criticism of sentimentality and playing to emotions" is one that could be confirmed by other social scientists going back as far as the beginnings of the animal protection movement in the 1980s in nearly 200 published research works. Among these works, alongside Singer's *Animal Liberation*, Regan's distinctly more complex arguments in CFAR rank as foundational philosophical achievements that have generated respect, among the public as well as among a great many academics, for a new humanistic-emancipatory movement.

At the same time, it is important to bear in mind the following statement made by Peter Singer (1973: 21) in the first article he wrote for a general public on the question of animal advocacy:

Animal Liberation will require greater altruism on the part of mankind than any other liberation movement, since animals are incapable of demanding it for themselves, or of protesting against their exploitation by votes, demonstrations, or bombs. Is man capable of such genuine altruism? Who knows?

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