

DUTIES TO ANIMALS:
RAWLS' ALLEGED DILEMMA

In his spirited paper, "Duties to Animals: Rawls' Dilemma,"¹ Tom Regan accuses Rawls of a fundamental equivocation in his moral attitude toward animals. Regan contends that while Rawls recognizes a natural duty not to be cruel to animals, he simultaneously holds that only people are owed the natural duties of justice. But if being a person is necessary condition for receiving the duties of justice, Regan asks, why isn't it likewise a decisive consideration for determining entitlement to the natural duty of not being harmed? Rawls, Regan argues, is faced with the following dilemma: either being a moral person is a "decisive consideration for determining those to whom we have natural duties,"² or it is not. If the former, then Rawls fails to account for the acknowledged natural duty not to harm animals; but if the latter, Rawls has no grounds for denying animals the protection of any of the other natural duties of justice. Regan considers several possible replies that might lift Rawls off the horns of this purported dilemma, but finds each of them lacking. He concludes that Rawls can avoid his pointy perch only by abandoning either the natural duty not to be cruel to animals, or else the claim that moral personality is the basis of entitlement to the natural duties of justice. Regan argues, of course, for the latter. Justice as fairness, he suggests, has been neither just nor fair to animals. They have been arbitrarily excluded from the protection of Rawls' principles of justice.

Regan's critique, however, is itself unfair to Rawls. Regan misinterprets a central aspect of Rawls' theory and then finds the resulting views

contradictory. Indeed they are. But they are not Rawls' views! In the following comments, I shall therefore state what I take to be Regan's misreading of Rawls' statements on the rights of animals, and show how a clarification of Rawls' views eliminates any appearance of self-contradiction. I shall also briefly go beyond the question of the internal consistency of A Theory of Justice and suggest the way in which a Kantian theory, such as Rawls', might account for some of the rights of animals which Regan is so eager to defend. For I suspect that such an extension of a contractarian theory of justice may prove more congenial to Regan's own views than does the utilitarianism of Peter Singer and other out-spoken defenders of animal rights.

I

Regan's basic argument contends that Rawls inconsistently makes the following claims:

(1) We have a natural duty not to be cruel to animals;

(2) We do not have a natural duty of justice to animals, because the duty of justice is owed only to persons; indeed,

(3) All natural duties are due only to persons.

(1) and (3) are obviously inconsistent. But although (2) and (3) are plausible interpretations of Rawls' views,³ (1) is not. Rawls does not, to my knowledge, ever hold that we have a natural duty of non-cruelty to animals. To see this, let us cursorily review his account of such duties.

Recall, first of all, that Rawls is developing a theory of justice, which in his view is a set of principles "assigning rights and duties in the basic institutions of society" and which "define the appropriate distribution of the benefits and burdens of social cooperation" (p. 4).⁴ Rawls further assumes that he is giving a

theory for a "well-ordered society," that is, a "society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles" (p. 5). Finally, Rawls assumes a certain conception of the persons that inhabit this well-ordered society. He characterizes them as "free," "equal," and rational beings (pp. 11-13, and 241-57), and as "moral persons," agents capable of having a conception of their good (as expressed by a rational plan of life) and who are "capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice" (p. 505). Throughout A Theory of Justice, Rawls insists that the key features of his theory, especially the central theoretical construction of the original position, are explicitly designed to represent or to model this account of the role of the principles of justice in a just society and his particular conception of the human beings who are its subjects.⁵ The principles of justice are therefore chosen by theoretically defined beings, rational agents who are carefully characterized to incorporate aspects of a specific conception of a liberal society and its citizens.

Given this account of the principles of social justice, it is not surprising that the selection of the principles of justice for individuals is similarly constrained. As part of his overall theory of justice, Rawls specifies two groups of principles for individuals, the "obligations of fairness" and the so-called "natural duties." Only the latter is of concern to us now. The "natural duties" are those moral requirements which it would be rational for the parties in the original position to impose on all persons, irrespective of their voluntary acts and their other institutional

obligations. But given their function and their theoretical derivation, the natural duties are necessarily extended only to rational moral agents; "they obtain between all as equal moral persons" (p. 115). The argument of sec. 51, for example, attempts to derive the duty to support and further just institutions merely from the nature of the persons in the original position and their desire to establish a well-ordered society (p. 334). Rawls similarly argues for the natural duties of mutual respect and mutual aid on the ground that they are required for our assumed conception of the person as a moral being (pp. 337-9). Even the discussion of sec. 19, which lists the natural duty not to inflict unnecessary suffering, explicitly links natural duties with the notion of the equality of moral personhood and the representation of that idea in its derivation from the original position (pp. 114-5). Nowhere is there any suggestion that we have any natural duty to any non-human being, nor could such a suggestion make any sense given Rawls' general account of the principles of justice for individuals.

Why then does Regan attribute (1) to Rawls? Apparently, his entire case rests on the single paragraph in which Rawls notes that "certainly it is wrong to be cruel to animals," and that animals' capacities for "feelings of pleasure and pain and for the forms of life of which <they> are capable clearly impose duties of compassion and humanity" (p. 512). But the whole point of that paragraph (which Regan acknowledges in passing) is to state that any such duties are "outside the scope of the theory of justice." All that has preceded in A Theory of Justice, especially the sec. 77 account of moral personality as the "decisive consideration" determining entitlement to considerations of justice, is part of Rawls' theory of justice. Moreover, the secs. 19 and 51

discussions of the principles for individuals, which specify the natural duties, are also explicitly included as parts of that theory (e.g. pp. 108, 116, and 333). However, "our conduct toward animals," Rawls insists, "is not regulated by these principles" (p. 504). Regan has apparently equated Rawls' statement that we do have some duty of non-cruelty to animals (due to some broad moral or metaphysical view that goes beyond a theory of justice and about which he refuses to speculate) with the claim that persons have a natural duty not to harm each other. Since Rawls explicitly denies that these two ideas should be equated, and since there is nothing in his writings that commits him to their equivalence, I conclude that Regan wrongly attributes (1) to Rawls. Therefore, we need not believe that there is anything contradictory in Rawls' views on natural duties and the rights of animals.

II

In the middle part of his paper, Regan discusses three replies to Rawls' purported dilemma (though he surprisingly doesn't consider the reply which simply shows that Rawls does not hold each of the contradictory positions attributed to him). In the course of considering (and rejecting) these replies, Regan misreads Rawls' theory in a way which illuminates his basic problem with the text. I shall therefore briefly comment on a couple of his arguments.

One rejected suggestion is that animals are denied the protection of the principles of justice because Rawls' hypothetical contractors know that they won't be animals and therefore have no interest in providing protection for them. In his consideration of this suggestion, Regan argues that it is illegitimate to specify that the contractors know that they are and will continue to be human beings,

for this, he contends would arbitrarily prejudice the outcome of their deliberations in favor of one species, and thus run "counter to what the 'veil of ignorance' is supposed to accomplish."⁶ But Regan here misinterprets the primary function of the veil of ignorance, for its basic role is not to guarantee the impartiality of the chosen principles, but rather to theoretically represent certain Kantian notions concerning the nature of moral principles and agents. In particular it is designed to model the Kantian idea of a categorical imperative, a principle that would be autonomously chosen by free and equal rational beings who merely regard themselves as such and who seek to express that nature in their choices. Thus, the function of the "veil-of-ignorance" is to insure that "the parties are not to be influenced by any particular information that is not part of their representation as free moral persons with a determinate (but unknown) conception of the good."⁷ Regan's contention that the parties in the original position should weigh the possibility that they might be (or actually are) animals significantly misinterprets this most fundamental aspect of Rawls' thought.

Regan does anticipate an objection "that the supposition that any person in the original position could become a non-human animal would render the very point of the original position incoherent."⁸ The argument given in support of this claim is not, however, the one just adduced. Regan's imaginary interlocutor observes that the principles of justice serve to govern the distribution of harms and benefits to those who are possible beneficiaries, that is, beings capable of being helped or harmed or of having a good or bad life. Since animals presumably are incapable of such individual welfare, they are not fit subjects for the principles of justice. Regan has, I believe, a telling reply to this

argument. Since many "higher animals" clearly have desires and preferences, memories and beliefs, and since they obviously have a psychophysical identity over time, it makes perfectly good sense to speak of them faring ill or well and consequently of having a good or bad life. But Regan's discussion is once again inadequate as a critique of Rawls' understanding of the nature and purpose of the original position.⁹ The purpose of his contractors is not simply to further their own well-being, but rather to establish a mode of existence that best expresses and preserves their nature as free and equal rational beings. Since such moral persons are, by definition, those who can have a sense of justice and who are capable of formulating and revising a rational plan of life, it makes no sense to entertain the thought of parties in the original position who are not rational beings.

III

Rawls' theory of justice, as I have defended it, is based on a particular conception of the moral agent. Such a being must have the potential for acting from a sense-of-justice and must be capable of formulating and pursuing a rational life plan. The scope of the protection of the principles of justice is therefore necessarily limited to rational moral agents. But need such beings be limited to human beings? Couldn't some of Regan's "higher animals" minimally qualify as rational beings of the requisite sort, such that they would be directly entitled to the protection of all of the principles of justice? I do not see why not.

Suppose that we were to learn that dolphins, for example, have a sense of their own identity, have a conception of their own good, recognize and act from general principles of mutually advantageous social behavior, and so on. (Such speculation is not

implausible given the actual recorded behavior of these mammals.) They might even have a higher-order interest in primary goods, such as liberty, which they recognize as a necessary means for achieving their more particular desires. Were these claims shown to be the case, a Rawlsian-Kantian view would necessarily extend the principles of justice to cover these animals, for there would no longer be any non-arbitrary way to exclude them from the original position. Their unusual bodies, strange language, and peculiar conceptions of the good would be just as morally irrelevant as the racial, linguistic, and idiosyncratic behavioral differences amongst human beings. Moreover, even if for some reason the dolphins could not press their claims to just treatment (due perhaps to their linguistic deficiencies), human agents would have natural duties to respect and protect their rights, just as we now owe these duties to infants and the temporarily verbally incapacitated.

I conclude with the suggestion that considerations similar to the ones just mentioned may account for Regan's intuitions concerning our duties to the higher animals, though unfortunately he stresses the animals' abilities merely to have "good lives" rather than their similarities to rational agents. I suspect, however, though unfortunately I cannot pursue the idea further in the present paper, that extending this line of argument (by, for example, showing that higher animals differ from human beings only in the degree to which they are moral agents in the Kantian sense) would better support whatever rights are properly attributable to animals than would any kind of utilitarianism. Regan himself has effectively shown the defects of the latter view. I therefore urge him to turn his considerable philosophical talents to a more sympathetic and fair treatment of the contractarian tradition.

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NOTES

¹This journal, pp. 76-82.

²Regan, p. 77.

³These characterizations of Rawls' positions purposely oversimplify his views so as to make Regan's point as strong as possible. We should note, however, (as Regan himself concedes) that in A Theory of Justice Rawls regards the capacity for moral personality only as a sufficient condition for receiving justice. "Whether moral personality is also a necessary condition I shall leave aside (p. 506)." Nevertheless, I will follow Regan in treating it as a necessary condition, or, as he frequently states it, the "decisive consideration." Similarly I shall ignore Regan's distinction between Rawls' "strong" and "weak" positions, since if Rawls can be defended while holding the stronger thesis, he is surely exculpated on the weaker view as well.

⁴Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971). Page references in the text are to this edition.

⁵This argument is even more explicitly developed in Rawls' recent articles, particularly his "Kantian Constructivism in Moral Theory," The Journal of Philosophy LXXVII (1980), pp. 516-517, 520-522, and 525. See also my "Fairness to Justice as Fairness," in H. Miller and W. Williams, eds., The Limits of Utilitarianism (Minneapolis: University of Minnesota Press, 1982).

⁶Regan, p. 78.

⁷Rawls, "Kantian Constructivism," p. 459. See also A Theory of Justice, sec. 40

⁸Regan, p. 78.

⁹Here, as throughout my note, I am merely considering Regan's criticism of Rawls as internally contradictory. It suffices, therefore, to show that Regan has misinterpreted Rawls. I do not contend that Regan may not have independent reasons for rejecting Rawls' views on duties to animals.