

Article

Must We Value Life to Have a Right to It?

In her recent article "Death, Misfortune, and Species Inequality,"¹ Ruth Cigman gives clear, careful expression to an argument which seems well on its way to becoming a classic among opponents of animal rights.² Cigman's argument runs as follows:

A right to X entails the right to be protected against certain actions which will result in the misfortune, or possible misfortune, of not-X. A condition for being the subject of a right is therefore the capacity to be the subject of the corresponding misfortune. (49) For a creature to be a possible subject of the misfortune of death, life itself must be an object of value for it, and this possibility is presupposed by the right to life; otherwise the right to life would be a right to be protected from something which could not conceivably be a misfortune, which does not make sense. (59)

The relationship between capacity and desire in this context must be examined. My suggestion is that, when we fill in the concept of desiring not to die in a way which is relevant to the misfortune of death and the right to life, we shall have to withhold this from animals. (49-50)

For convenient reference we may reduce this argument to the following compact form:

P1: Only beings capable of valuing life itself can suffer the misfortune of death.

P2: Only beings capable of

suffering the misfortune of death can have a right to life.

P3: Animals are incapable of valuing life itself.

C: Therefore, animals cannot have a right to life.

Each of the premises of this argument is dubious. Even P2, which seems the safest of the lot, would be challenged by some rights theorists, such as H. L. A. Hart, who hold that rights are not essentially devices for protecting interests but for securing choices.³ However, we will not pursue this line of criticism here. Whether a careful analysis of rights would reveal that the right to life protects our interest in life, secures our choice to remain alive, or something else, this right seems clearly tied to death being a misfortune.

P3 would certainly be attacked by many advocates of animal rights who emphasize "the evolutionary continuity of mental experience"⁴ and would claim that many animals have sufficiently extensive temporal awareness, self-consciousness, and other requisite aspects of rationality to value life itself. However, I will leave the comparison of animal with human psychology, rationality, and values to those who have carefully studied the matter, e.g., the ethologists. The truth or falsity of P3 is at least as much a factual as a conceptual issue and is, therefore, not resolvable by philosophers. Cigman emphasizes the complexity of experience in which the human awareness and evaluation of death occurs, and it seems reasonable to agree with her presumption that many of the animals animal rightists seek to protect, e.g., rabbits and chickens, lack that complexity of experience. So, let us pass by objections to P3.

The line of questioning I wish to pursue here concerns P1: must one value life itself in order to suffer death as a misfortune? I question P1

because in so many other cases it is not the case that one has to value X itself in order to have a right to X. Consequently, agreeing that if one has a right to X then not-X must be a misfortune for him, it follows that not-X can be a misfortune for an individual even though he does not value X itself.⁵

Cigman's argument is a specific case of the following argument form:

P1': Only beings capable of valuing X itself can suffer the misfortune of not-X.

P2': Only beings capable of suffering not-X as a misfortune can have a right to X.

P3': B is incapable of valuing X itself.

C': Therefore, B cannot have a right to X.

Reflection on our current practice of according rights will show that there is something wrong with arguments of this form. Further reflection will show how P1' (and P3') can be revised to yield an acceptable argument form. However, that form will not exclude the possibility of animal rights.

Before proceeding with this analysis, we must clarify what "valuing X itself" refers to. It would be obvious that we can have a right to X even though we do not value X itself, if "valuing X itself" meant "X has intrinsic value for us rather than (or in addition to) instrumental value." Whatever "intrinsic value" may mean, it is clear that we have rights to things which are of merely instrumental value for us, e.g., a speedy trial. Cigman's insistence that misfortunes be tied to desires (57), her use of the phrase "life itself as an object of value" (59), her rejection of a utilitarian alternative because "it does not justify calling death a misfortune for the animal who dies" (54), and her rejection of Thomas Nagel's analysis of the misfortune of death because it

does not require that "life is something most of us value and want to experience for as long as possible" (56) give the impression that some sort of shadowy intrinsic value in life vs. merely instrumental value for life distinction is at work in her argument. Be that as it may, this distinction is incidental to the argument and should not mislead on into dismissing the argument out of hand. The distinction on which this argument turns is that between having an interest in X and taking an interest in X, and "valuing life itself" should be interpreted as "taking an interest in life."

One can "have an interest" in something which affects one's well-being but of which one is ignorant or unconcerned. Vitamins, pesticides, and heavy metals in drinking water will all affect one's well-being even though one has never heard of them or even though one is unconcerned about them because one does not believe they will affect one's well-being. However, "taking an interest" requires that one be aware of the item in question, believe that it affects one's well-being, and, consequently, consciously give a value (positive or negative) to the item. Cigman does not employ the language of interests, but the following passages make clear that she is relying on this distinction:

Death is not a misfortune merely because it is a bad condition to be in, relative to being alive, healthy, and so on; rather it is a misfortune because life is something most of us value and want to experience for as long as possible. (56, emphasis added)

I reject the suggestion that a categorical desire, or anything of this nature, is attributable to animals. For consider what would have to be the case if this were so. First, animals would have to possess essentially the same

conceptions of life and death as persons do. The subject of a categorical desire must either understand death as a condition which closes a possible future forever, and leaves behind one a world in which one has no part as an agent or conscious being of any sort, or he must grasp, and then reject, this conception of death, in favor of a belief in immortality. Either way, the radical and exclusive nature of the transition from life to death must be understood--it must at least be appreciated why people think in these terms--so that the full significance of the idea that "X is a reason for living" may be grasped. (58-59, emphasis added)

It seems accurate to paraphrase Cigman as claiming that although animals may have an interest in life (since it is a good condition to be in relative to death), they cannot take an interest in life (since they are incapable of understanding the full significance of death).

This distinction between things which affect our interests but in which we do not take an interest is certainly a real one. But is it relevant to the issue of what it makes sense to say an individual has a right to?

Is it possible to have a right to something which affects one's interests but of which one is ignorant? Certainly. People have rights to inheritances they do not know about. Even patients who are unaware of "The Patient's Bill of Rights" have a right to see their medical records. And people who have never heard of "The Universal Declaration of the Rights of Man" and have grown up in cultures which not only deny them human

rights but also have taught them to believe they are subhuman are still entitled to human rights. There is no conceptual, moral, or legal difficulty with ascribing a right to X to someone who is unaware either of X or of the possibility that he could have X or the right to X. Having a right to X does not require that we actually know about, desire, or value X itself.

It might be objected that it is not actually valuing X itself that is required for the right to X but the capacity to value X itself which is required. Most fundamental moral principles involve the idea of capacity, e.g., the capacity to suffer in utilitarianism and the capacity to reason in Kantianism. Cigman also emphasizes the capacity to suffer a misfortune. So, perhaps the proper question is: is it possible to have a right to something which affects one's interests but which one is incapable of understanding or valuing? Again, there are some fairly obvious cases of this. Severely retarded, brain-damaged, and senile people have legal rights, property rights, civil rights, and human rights which they are incapable of understanding and valuing. They may value the medical care and other benefits property, social welfare programs, legal procedures, and other things to which they have a right secure for them, but they are incapable of understanding or valuing property, social welfare institutions, legal procedures, human respect, and moral obligation themselves. Consequently, current moral and legal practice show that an individual can have a right to X even though he is incapable of understanding and valuing X.

This conclusion might be criticized for ignoring the normality dimension of the idea of "capacity". Cigman emphasizes what people normally value in her discussion of the misfortune of death and in circumventing the possible counterexample of suicidal people.

Similarly, Stanley Benn contends that animal rights arguments referring to inconsistency in extending rights to subrational humans while denying them to more rational animals are fallacious because rights are extended primarily not to individuals but to species based on the capabilities of normal members of the species.⁶ So, the proper question may be: is it possible to have a right to something which affects one's interests but which even normal beings of one's kind are incapable of understanding or valuing? Of course, it is impossible for us to refer to any actual cases concerning human beings where this happens. Such examples would require that we understand things human beings are incapable of understanding. However, the following non-human example seems plausible enough to show at least that a positive answer to this question is not nonsensical.

Cigman acknowledges, as do most opponents of an animal right to life, that animals should be spared unnecessary suffering. Now, industrial pollution causes many animals avoidable suffering, but animals are incapable of understanding how industrial pollutants affect their habitats, undermine their health, and cause them to suffer. It follows that although animals suffer from a polluted environment, they are incapable of valuing a pollutant-free environment. But does it also follow, as Cigman would have to claim, that it would be nonsensical to say that animals whose well-being is destroyed by industrial pollution are suffering a misfortune in losing their healthy habitats and have a right (call it the "right to a healthful environment") to be protected against industrial pollution? We encounter no conceptual difficulty in asserting that people have a right to a healthful environment. Is the fact that people normally can but animals normally cannot understand how industrial pollutants cause them to suffer morally

significant enough to show that animals cannot conceivably share in this right? Since many of the forms of suffering caused by industrial pollutants, e. g., blindness, debilitation, cancer, and birth defects, are shared by human and non-human animals, reference to the normal capacity for understanding which differentiates human from non-human animals would seem not only to be insufficiently weighty to justify such a claim but also to be so totally beside the point as to be a blatant rationalization of anthropocentric prejudice.

It might be objected that

(a) since animals take an interest in suffering, suffering can be misfortune for them;

(b) consequently, animals can, at least as far as Cigman's argument is concerned, have a right not to suffer;

(c) the right to a healthful environment is just a part of this right not to suffer, since a healthful environment is essential to avoid suffering;

(d) therefore, the example of the right to a healthful environment does not show that animals can have rights to things they are incapable of valuing.

An obvious problem with such an objection is that a healthful environment is not really "a part of" not suffering. However, setting aside such technical problems, we may note that using (a) and (b) in conjunction with the following modification of (c) yields the conclusion that animals can have a right to life:

(c') the right to life is a part of the right not to suffer, since life is essential to avoid suffering.

One can avoid suffering by dying, of course, but what is ordinarily valued under the label of "avoiding suffering" is not merely the absence of suffering but a life free of suffering. It is such a life that requires a healthful environment, so any sort of "negative

utilitarianism" rebuttal here is already ruled out by (c). Consequently, the pattern of analysis in (a) through (d) cannot be used to support the claim that animals cannot have a right to life.

I find the inability to understand what is causing one to suffer to be morally insignificant where avoidable suffering is involved, and the almost universal rejection of cruelty to animals, without requiring prior analysis of their level of understanding, suggests that my judgment is not anomalous. Until more persuasive argument is forthcoming, I conclude that beings can have rights to things which normal beings of their kinds are incapable of understanding and valuing.

These three possibilities, ignorance, individual inability to understand, and normal inability to understand, seem to cover the field. So, I conclude that taking an interest in or valuing X itself is not a necessary condition for having a right to X. Since all the cases just discussed satisfy P3', the problem with the above argument form must lie in P1' or P2'. But Cigman's claim that rights entail corresponding misfortunes (P2') was conceded, so the failure of this argument form must lie in P1', the claim that suffering the misfortune of not-X requires taking an interest in X. In all the above examples, the individuals who did not or could not take an interest in X nonetheless had an interest in X. This suggests that we can correct the above argument form by substituting the following for P1' (and P3'):

P1'' Only beings which have an interest in X can suffer the misfortune of not-X.

P3'' B has no interest in X.

P1'' not only accommodates the above counterexamples to P1'; it also excludes stones, works of art, machines, and other inanimate objects

which are incapable of having rights if anything is. Such things cannot have interests, since they have no well-being of their own, any evaluation of their condition being derived from other beings which have or take an interest in them. The case of plants and insentient animals is a bit more problematic. Since they can flourish or wither, it makes sense to say they have a well-being of their own, an excellence or virtue of their own nature, as Aristotle would say. On the other hand, they cannot be covered by standard moral principles, such as the principle of utility, which are concerned with happiness and not merely with flourishing. I suggest handling this problem in the following way: since moral principles are fundamentally concerned with happiness or rationality, not with growth or even health, we should interpret "B has an interest in X" in the morally relevant sense to mean "X has (or will have or is likely to have) an effect on B's feelings of well-being (e.g., pleasure, feeling fit, enthusiasm, contentment) or his judgments about his well-being." It follows that plants and insentient animals do not have interests in the morally relevant sense and that all beings have morally relevant interests only where their feelings or judgments of well-being are involved. It further follows, according to the revised argument form, that no being can have rights in areas where its feelings or judgments of well-being are not affected.⁷ That seems to be placing the distinction where it belongs.

Returning to the specific case of the misfortune of death and the right to life, the only way to save Cigman's argument would seem to be somehow to show that death and the right to life is a special case: although in all the sorts of cases just discussed being a possible subject of misfortune and rights does not require the ability to take an interest, in the case of the

misfortune of death and the right to life one must be able to value life itself because I do not know how to fill in that blank, which leaves me with the following speculation and conclusion.

Speculation: We commonly call death a misfortune, so when Cigman claims that the right to life presupposes the possibility of suffering the misfortune of death, that seems reasonable enough. However, as she progresses through her argument, she ties "misfortune" to valuing, in the sense of taking an interest, thereby giving "misfortune" a technical meaning which does not quite fit with its common use. It would not be more unusual to describe a pelican born blind as "unfortunate" or having "suffered a misfortune" or even "tragic" (since it will certainly die from this affliction) than it would be to so describe a human infant born blind. This unnoticed equivocation on "misfortune" (technical use in P1 but common use in P2) is what makes the argument seem plausible.

Conclusion: P1 is false. One can suffer the misfortune of death even though one lacks the intellectual capacity for taking an interest in or valuing life itself. Assuming no after-life awaits one--the traditional assumption in the case of animals--that is not hard to understand: death is ordinarily a misfortune for an individual (whether he knows it or not) because it totally eliminates the possibility of his further happiness. For a highly rational, self-conscious being the misfortune of death may have additional sources, e.g., the frustration of categorical desires, but this annihilation of the possibility of happiness is sufficient to render death a serious enough, morally significant loss to be a misfortune. That death is commonly not considered a misfortune but a blessing when this possibility has already been eliminated by disease or

accident adds credence to this interpretation. Consequently, even if animals cannot attend to, understand the importance of, and value life itself, it does not follow that they cannot suffer the misfortune of death nor that it would be nonsensical to extend the right to life to them to protect them from this misfortune.

One last criticism might be made at this point: it might be objected that for an individual to suffer the misfortune of death, death must be a misfortune for him and this is not accounted for by the above analysis. Cigman writes:

If the worst that can be said of the quick and painless death of an animal is that it removes a quantity of pleasurable experience from the world, this does not justify call that death a misfortune for the animal who dies. (54)

Phrases of the form "not-X is a misfortune for B" are ambiguous. They may be equivalent to "not-X is B's misfortune" or to "B considers not-X a misfortune." Even this latter option is ambiguous, since it may be equivalent to "B judges not-X to be a misfortune" or to "B directly experiences not-X to be a misfortune."

Surveying these alternatives, we can see that the last is too strong for an acceptable analysis of the misfortune of death. There are some forms of death which we cannot directly experience but which we want to be protected against by the right to life and, therefore, want to have counted as misfortunes. For example, we cannot directly experience a sudden death while in a deep sleep to be a misfortune.⁸ On the other hand, the second alternative is too weak, since we can judge to be misfortunes things which do not affect our lives. For example, I would judge that the members of The People's Temple who suffered a mass death in Guyana three

years ago suffered a misfortune, but it certainly does not follow that I have suffered the misfortune of death. This leaves only the "not-X is B's misfortune" alternative as a suitable interpretation of "death is a misfortune for B," and the above analysis of the misfortune of death accounts for that alternative. Death is a misfortune for an animal because it is its possibility of future happiness, and not merely some anonymous "quantity of pleasurable experience," which is destroyed by its death. So, the claim that to suffer the misfortune of death must be a misfortune for the one who dies does not constitute an objection to an animal's death being a misfortune.⁹

Common usage confirms this conclusion. Recent a young woman was walking along a San Francisco street on a stormy night. As she walked past an old building, a large piece of the building's concrete parapet fell from the sixth floor and struck her on the head. She never knew what hit her; she died instantly. No one would feel any hesitation in saying this was a misfortune for the young woman (not just for her family and friends), even though she experienced no fear of impending death nor any sense of frustration of her plans for the future. The misfortune is that here was a young woman "cut off in the prime of life," a young woman "with her whole life ahead of her," a young woman who will never have the chance to experience "the joys life might have brought her." These common expressions do not refer to the young woman's philosophy of life, feelings at dying, or prospects for the future. They refer to the happy life she might have had but now never will, and that is very sad. The same can be said for a caracul lamb killed less than a day out of its mother's womb or a baby seal killed when only a few days old or a veal calf slaughtered when only a few months old.

Their early deaths are misfortunes for them, for they, too, are cut off in the prime of life, had their whole lives ahead of them, and will never know the joys life might have brought them. These cases, too, are very sad, and if we can set aside our sentimental bias in favor of our own species, we can see that we have the same reasons for saying that a misfortune has befallen these animals as we do for saying that a misfortune has befallen the young woman killed by the falling parapet.

In closing I would like briefly to discuss one other, unfortunate classic to be found in Cigman's paper. She asserts that advocates of animal rights who draw an analogy between speciesism and racism and sexism are claiming that

as women and blacks should have equal rights to those of men and whites, animals should have rights equal to those of persons, because difference of species does not constitute a morally relevant difference. (47)

Apparently, many people have been offended by the suggestion that there is an analogy between speciesism and racism and sexism.¹⁰ They seem to feel that it is absurd to suggest that animal welfare issues have the same moral importance as human justice issues and that the analogy demeans efforts to secure human justice. Perhaps it is these feelings which lead opponents of animal rights so often to misrepresent the animal rights movement as a call for equal rights.

The prejudice of speciesism does not lie in denying animals the same set of rights enjoyed by humans. Animals have no interest in equal educational or vocational opportunities, so it would be nonsensical to suggest that they should share human rights to them. Similarly, the prejudice of speciesism does not lie in believing that human life, with its greater

range of capabilities for making the world a morally better place, has a greater moral worth than animal life. Peter Singer, for example, explicitly acknowledges that if one is forced to choose between preserving a human life or an animal's life, it would (in most cases) not be speciesist to prefer the human life.¹¹ The prejudice of speciesism lies in denying the interests of animals equal consideration with the like interests of humans.

Just as it would be immoral to follow Swift's modest proposal¹² routinely (and avoidably) to sacrifice some people's interest in life to fulfill others' interest in food, so it should be immoral routinely (and avoidably) to sacrifice animals' interest in life for that purpose. Species differences do not morally justify such routine, avoidable sacrifice of animal interests in favor of human interests. This is the sort of proposal animal rightists are making. The analogy, then, between speciesism and racism and sexism is that humans regard animals as beings whose interests may be routinely sacrificed for the fulfillment of their (human) desires, much as whites and men have regarded blacks and women as beings whose interests do not merit equal consideration with their own.

The animal rights movement presents at least as serious a challenge to contemporary morality and lifestyle as do the civil rights and women's movements, if seriousness be measured by the number of individuals involved, the fact that life or death is often at issue, or the changes in morality and lifestyle that the success of the movement would occasion. This movement neither insults the moral significance of the civil rights and women's rights movements nor makes absurd claims that can be demonstrated to be nonsensical. William James said that reaction to philosophical movements passes through several phases, the first of which is to portray the movement as

nonsense. Hopefully, criticism of animal rights will soon exit this phase.

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NOTES

1. Philosophy & Public Affairs, 10/1 (1981).
2. The following all employ similar lines of argument: H. J. McCloskey, "Rights," Philosophical Quarterly 15/59 (1965); Jan Narveson, "Animal Rights," Canadian Journal of Philosophy VII/1 (1977); Bonnie Steinbock, "Speciesism and the Idea of Equality," Philosophy 53/204 (1978); Leslie Francis and Richard Norman, "Some Animals are More Equal than Others," Philosophy 53/206 (1978); R. G. Frey, Interests and Rights (Oxford: The Clarendon Press, 1980); and Meredith Williams, "Rights, Interests, and Moral Equality," Environmental Ethics 2/2 (1980).
3. H. L. A. Hart, "Bentham on Legal Rights, in Oxford Essays in Jurisprudence (second series), ed. A. W. B. Simpson (Oxford: The Clarendon Press, 1973).
4. This is the subtitle of Donald R. Griffin's The Question of Animal Awareness (New York: The Rockefeller University Press, 1976). Even as severe a critic of Peter Singer's position as Richard A. Watson would seem ready to dispute P3; see his "Self-Consciousness and the Rights of Nonhuman Animals and Nature," Environmental Ethics 1/2 (1979).
5. Readers who may be concerned that I am now talking about "valuing" while P1 talks about being "capable of valuing," need not worry. After establishing the

meaning of "valuing" something, I intend to discuss the moral (in)significance both of valuing life itself and of the capacity for valuing life itself.

6. Nomos IX: Equality, pp. 62 ff. The relevant passages can also be found on pages 160-161 of Peter Singer's "All Animals Are Equal," in Animal Rights and Human Obligations, eds. Tom Regan and Peter Singer (Englewood Cliffs: Prentice-Hall, 1976).
7. Acknowledging the possibility of extended rights, such as those of a trustee administering an orphan's estate, would require some qualification of this conclusion. But such qualifications, e.g., "one can have rights only in those areas which affect one's feelings or judgments about one's well-being or the well-being of those as whose agent one is acting," would not undermine the present argument. Nor would adding the usual caveats concerning capacity and normalcy.
8. Suffering a loss is not essentially tied to suffering unpleasant feelings at the loss. "He suffered a great loss without even knowing it" is not a paradoxical statement; it refers to such mundane things as unknowingly putting a rare penny in a gumball machine and failing to answer a phone call which would have earned one a great prize. Failing to recognize this difference between suffering a loss and other kinds of suffering may have misled some philosophers into believing that only those capable of experiencing some feeling of grief, frustration, etc., at (the prospect of) death are capable of suffering the misfortune of death. Also, the possibility of suffering a loss without suffering unpleasant feelings at the loss should not be confused with the possibility of suffering a loss where what is lost will not affect

one's feelings even in the conditional sense that if one had had X (or if X had occurred), then one's life would have been happier (or more satisfying or less unpleasant, etc.). How this latter possibility is to be understood and what, if any, moral significance it may have are controversies we need not enter into here, for I am not attempting to defend the possibility of an animal right to life on the basis of that latter possibility.

9. Epicurus contended that an individual's death could not be a misfortune for him because while he is alive he cannot suffer it and when he is dead he cannot suffer anything. The above analysis indicates that it is the living who suffer the misfortune of death. This is not self-contradictory, because (although some may brood about it beforehand) the living suffer this misfortune only when they die. Harry Silverstein has recently contended (in "The Evil of Death," The Journal of Philosophy LXXVII/7 (1980)) that such a "deprivation resolution" of "Epicurus' dilemma" will not work, because it includes a life-death comparison which presupposes that death has a value for the dead person, which is impossible. Silverstein confuses death as the loss of a possibility (further life) with death as the actualization of an alternative possibility (a world in which the individual is no longer alive). It is the former which (ordinarily) involves the misfortune of death., viz., the loss of the possibility of further happiness, and the subject of the loss of life is the living person who dies.
10. For example, see Francis and Norman, op. cit., p. 527 ("the equation of animal welfare with genuine liberation movements such as black liberation, women's liberation, or gay liberation has the

effect of trivializing those real liberation movements") and Watson, op. cit., p. 119 ("Singer's claim that the struggle against the tyranny of human over nonhuman animals is a struggle as important as any of the moral and social issues that have been fought over in recent years is insulting to past and recent victims of moral and social oppression").

11. Peter Singer, Animal Liberation (New York: Avon Books, 1977), pp. 20-22. As in other emergency situations, where one has to choose between saving the young or the old, the infirm or the healthy, etc., what would ordinarily not make a significant moral difference can make such a difference.
12. Swift proposed that the Irish problem, too many people and too little money, be solved by selling Irish infants for English roasts. Jonathan Swift, "A Modest Proposal for Preventing the Children of Poor Parents from Being a Burthen to Their Parents or Country, and for Making Them Beneficial to the People" (1729); reprinted in Animal Rights and Human Obligations.