

BETWEEN THE SPECIES

Chasing Secretariat's Consent: The Impossibility of Permissible Animal Sports

ABSTRACT

Tom Regan argued that animal sports cannot be morally permissible because they are cruel and the animals do not voluntarily participate. While Regan is correct about actual animal sports, we should ask whether substantially revised animal sports could be permissible. We can imagine significant changes to certain animal sports, such as horse racing, that would avoid cruelty and even allow the animals to make their own choices. Where alternative options are freely available, we can consider the horses to have preference autonomy in that they make their own decisions, and we could thereby claim that we have their hypothetical consent. Though this scenario would be sufficient to constitute permissible animal games, these activities could not amount to sports because the events would be unpredictable with the animals not following the rules in the precise way that sport requires. Therefore, permissible animal sports are not possible.

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I. Secretariat's Drive to Win

I thoroughly believe that Secretariat wanted to win horse races. I will neither argue for this claim nor insist that I can sufficiently support it. Nevertheless, it is one of my beliefs. Even while we acknowledge that most animals in sports are forced, often through violence, to partake, we can still accept that some of those animal participants may happily engage in the sport. Surely some horses enjoy racing on their own, and some may even be able to enjoy the human-organized races where they must compete within what must seem to them to be an arbitrary and restrictive system. It is at least conceivable that horse racing, perhaps along with other, similar animal sports, could both be actually cruel and be potentially enjoyable for some animal participants.

If I turned out to be right, what would follow? While I believe some interesting things would result, it will still not be enough to save animal sports. For this paper, I will use “animal” to refer to non-human animals, and “animal sports” to refer to any sports that purposely involve animals, such as hunting, bull fighting, horse and dog racing, etc. Golf is not an animal sport even if it has something to say about a squirrel moving the ball (replace the ball without penalty), because the squirrel's involvement is not purposefully included.

To judge the permissibility of animal sports, we begin with Tom Regan's two main arguments against animal sports. Regan's first argument is that, as a matter of fact, all animal sports are cruel, and always have been (Regan 2013 [2005], 141-58). In some cases, the sports are necessarily cruel, such as with hunting (Regan 1999, 93; Regan 2013 [2005], 141-50) and with much of rodeo sports (Regan 2013 [2005], 150-4). Regan's second argument is that animal sports both are immoral and

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are not really true sports because sports require voluntary participation, which the animals do not give (Regan 2013 [2005], 142-6).

While Regan's arguments show the impermissibility of actual animal sports, more should be said about animal sports when taken in their best possible light. It is not difficult to imagine away the cruelty of some sports, but it is much more difficult to obtain voluntary participation. Yet, we certainly watch animals, such as our pets, voluntarily play games. We can think of those animals as hypothetically consenting to those games. We can thereby devise sports in ways that optimize the possibility of obtaining the animals' hypothetical consent. However, making it possible for animals to hypothetically consent would require allowing them to have the genuine option to act as they wish. This allowance would, in turn, make the sport unpredictable and undermine any attempt to ensure that the competitors adhere to the sport's rules. That is, the very requirements that would allow for the animals to voluntarily participate would also preclude the putative animal sports from counting as sports at all.

I will thus argue that Regan is right to rule out the possibility of permissible animal sports. When we attempt to put animal sports in their best moral light, we realize that what it takes to make the sport morally permissible also undermines it from counting as a sport. Therefore, we will see that animal sports, as such, cannot be morally permissible.

II. Respecting Animal Rights

We will start out by reviewing the case for animal rights, as provided by the work of Tom Regan. Such a beginning will give the context from which we can judge the moral permis-

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sibility of animal sports. If Regan is correct that animals have rights, then we will see that animals can only be permissibly used in sports if the sports both lack cruelty and allow for voluntary animal participation.

Regan's argument for animal rights begins by determining what kind of ontological status ought to ground rights. Should a being have rights because it is a human, a person, or something else? Regan introduces a new category, subject-of-a-life, which he believes is more general than humanity or personhood, but also more substantial than being alive or merely being conscious (Regan 1982, 94, 135-6; Regan 2001, 200-4; Regan 2004 [1983], 243; Regan 2013 [2005], 50). In *Empty Cages: Facing the Challenge of Animal Rights*, Regan includes within subject-of-a-life both an awareness of the world around you and an awareness of what happens to you (including your body, your freedom, and your life), where these senses of awareness make a difference to your life (Regan 2013 [2005], 50). In his earlier *The Case for Animal Rights*, Regan provides additional features: the ability to have beliefs, desires, perceptions, memories, a sense of the future (including your own), an emotional life, preferences, as well as the ability to act on the preceding features, a sense of identity, and a sense of individual welfare that is tied to your identity (Regan 2004 [1983], 243).

Regan argues that subject-of-a-life provides the proper grounding for rights because the included features make sense of why a being should have rights (Regan 2001, 201-2; Regan 2004 [1983], 243; Regan 2013 [2005], 50). Generally speaking, rights protect a being's interests against unjustified encroachment. For that reason, it would not make sense to impute rights to types of beings who are conscious or alive but who lack interests. Having interests requires some sense of things going

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well or poorly for you: if you cannot distinguish things going well or poorly, then you cannot distinguish your rights being violated from them being upheld. Subject-of-a-life references the type of being that sees herself as having interests, where she can feel that her interests can be violated or protected. Hence, it makes sense for subjects-of-a-life to have rights, where rights would not make sense for anything less than a subject-of-a-life.

Further, Regan warns against making the grounding of rights more narrow than subject-of-a-life. Were we to say that humans hold rights because they are humans, then that would risk begging the question since there's nothing peculiarly shared among all humans that makes them the unique holder of rights (Regan 1982, 82; Regan 2013 [2005], 44). Overly specific answers that seem to pick out humans alone (such as robust notions of rationality, the use of language, self-awareness, etc.), will rule out certain humans who we believe do have rights, such as young children (Regan 1982, 120-3; Regan 2001, 199-201; Regan 2013 [2005], 45-7). These answers, then, do not work either.

Once we accept that subjects-of-a-life are the proper holders of rights, we quickly learn that animals have rights because they can have interests in the relevant ways. In *Empty Cages*, Regan argues that we can clearly tell that humans and animals have similar behaviors, neurological systems, and origins, which suggests that animals are capable of some similar interests (Regan 2013 [2005], 53-8). In *The Case for Animal Rights*, Regan argues that though animals are not moral agents, they are "moral patients." Moral patients cannot be held morally accountable because they cannot act from duty in the way that moral agency requires (Regan 2004 [1983], 152). Yet, moral agents can have duties to moral patients who have the requi-

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site interests and vulnerabilities that duty requires responding to (Regan 2004 [1983], 154-65). Since animals can be moral patients, they qualify as subjects-of-a-life and, therefore, can have rights (Regan 2004 [1983], 295-7).

For Regan, rights are universal (applying to all subjects-of-a-life) and equal (applying to them all equally) (Regan 1999, 92; Regan 2004 [1983], 267-8; Regan 2013 [2005], 39). Further, basic rights do not require the right holder to do something to activate the right (other rights may require activation) (Regan 2004 [1983], 268, 273-6). One of the foremost basic rights is the right to be treated respectfully: having rights entails that others have duties to respect those rights, which further requires respecting the being holding the rights in the first place. The right to be respected just follows from what it means to be a genuine right holder (Regan 2001, 196-7; Regan 2004 [1983], 276-9; Regan 2013 [2005], 38-9, 42).

Since animals are subjects-of-a-life, it follows that they have rights, that their basic rights are equal to human rights, and that their rights include a right to be respected. Clearly, animal rights rule out animal sports that include cruelty. Let's use "cruelty" to refer to egregiously harming animals, such as by killing them, risking their lives, risking their health in significant ways, purposely causing them pain, and/or using violence to force them to do things they may not otherwise choose to do. Sports that involve killing, maiming, or purposely harming animals, such as hunting or bull fighting, are clearly cruel and one cannot possibly engage in them without disrespecting animals. Further, since sports are merely for human enjoyment, they offer no competing human rights to potentially excuse the grave disrespect that is involved in cruelty. Cruel sports certainly cannot be justified. Perhaps animal sports with the

cruelty removed could still be justified. As we will see in the next section, truly respecting animal rights will also require obtaining their hypothetical consent.

III. Obtaining Hypothetical Consent from Animals

To ensure that we respect animal rights in animal sports, we first need to remove cruelty. Horse racing is in fact cruel. In a *New York Times* article, it was noted that 24 horses die per week at racetracks in the United States, which establishes a significant risk of death (Bogdanich et al. 2012). The same article pointed out that from 2009 to 2012, trainers were caught illegally drugging horses 3,800 times, which risks their health (Bogdanich et al. 2012). Further, 3,600 horses died racing or training in that three-year period (Bogdanich et al. 2012). These horrifying statistics alone establish the cruelty of the sport. The consistent use of whips, kicking the horses, etc., further shows that cruelty is a regular, unquestioned part of horse racing.

While this cruelty must be acknowledged, the philosophical issues require further examination since we can imagine a scenario where tough regulations with effective enforcement could work around the currently existing barbarity. Thus, we can imagine horse racing with whatever changes are necessary to remove every bit of cruelty: no jockey whips, no kicking the horses, no steroids, etc. Let's stipulate whatever it takes to imagine the sport as cruelty-free so that we can ask if horse racing would then be morally permissible.

The immediate worry that subsequently appears is that we are not respecting animals by simply not being cruel to them. Respect surely requires more than not being cruel. In fact, if we coerce animals to engage in activities that they do not enjoy or

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would not choose themselves, we are in no fashion respecting them. Roughly, coercion involves the use of a threat to make someone, including animals, do something that they would not freely choose without the threat. We can imagine both cruel coercion, which includes threats of violence, and non-cruel coercion, which would include non-violent threats such as threatening a student's grade or withholding treats from a horse. It is important to note that there's a fine line between positive reinforcement and certain cases of non-cruel coercion. In a given case, one may wonder whether a treat is being withheld as a threat (perform or no treat) or being offered as an incentive (perform and receive a treat). For now, I will put this issue to the side. Later, I will consider why positive reinforcement would not resolve the problems being discussed in this paper. Even when coercion is not cruel, it cannot be respectful to use non-violent threats to make someone do what you want, especially when they do not wish to perform the action themselves.

Even non-cruel coercion involves making the animals perform some task that they otherwise would not choose for themselves. That is why, as noted earlier, Regan adds a second condition for animal sports to be permissible: "to participate in a sport in its true sense requires voluntary participation on the part of those who compete. This is why baseball, soccer, and golf are sports and why (in part) the bloodbath of Christians in the Coliseum was not" (Regan 2013 [2005], 143). Regan adds: "there is no true sport where there is no volunteering" (Regan 2013 [2005], 146). Two issues require further exploration for Regan's second condition: whether Regan is right that voluntary participation is required to be a true sport (and not just a moral sport), and whether we can ever gain animals' voluntary participation.

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Regan claims that animal sports are not just immoral, but that they are not even *true* sports. For Regan, a true sport requires full, voluntary participation from the competitors. While it is clear that the murdering of Christians in the Coliseum would not be a sport, as Regan notes above, it would be less clear whether gladiator fights in the Coliseum, where the gladiators were slaves, would count. Surely Regan would not count them as true sports, but we can imagine a position that included them as sports, even if we think that no reasonable position would include them as morally permissible sports.

Let's next consider street racing: the illegal racing of cars along open city streets. While all the competitors within street racing volunteer to participate, the race will involve non-voluntary bystanders as props to be raced around. Again, this non-voluntary bystander inclusion would surely be sufficient, for Regan, to exclude street racing as a true sport. Again, though, we can imagine a position that included street racing as a true but immoral sport.

Here, I will not weigh in on Regan's voluntariness condition for being a sport. I will simply point out that there is room for reasonable disagreement for more contentious cases, such as gladiator fights or street racing. My intuitions align with Regan's: I doubt that gladiator fights, street racing, or animal sports are true sports. On the other hand, it is important to note that "sport" is surely not a normatively loaded term. Since there surely can be immoral sports, one has to wonder whether these sports with non-voluntary participants (serving either as competitors or props) are simply very immoral sports. I intend to side-step this tricky issue by asking not whether animal sports can be true sports, but whether there can be moral

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animal sports. I will contend that it is the attempt to make the sports moral that prevents them from being true sports.

As already mentioned, to make animal sports moral, cruelty must be eliminated and the animals must somehow voluntarily participate. That takes us to the second issue: How can we determine whether the animals are voluntarily participating? We can develop an answer based on Regan's views on animal autonomy. In *The Case for Animal Rights*, Regan argues that preference autonomy requires "the ability to initiate action with a view to satisfying [preferences]" (Regan 2004[1983], 84-85). One determines an animal's autonomous choice, Regan contends, in the same fashion one would for a human: you give them options and observe their behavior (Regan 2004[1983], 85). Where an animal regularly chooses one option over another regularly available alternative or over novel alternatives, the chosen option represents the animal's autonomous preferences (Regan 2004 [1983], 85).

Hence, to see if animals voluntarily participate in sports, it would be necessary to give them alternatives and see if they choose sports over other forms of play or simply lounging around. To ensure there is no non-cruel coercion, it would be important that the animals are not made to choose sports simply because that was the choice that allowed them to have treats. If they did regularly choose sports (without a treat to pressure this choice), then that would suggest that they are autonomously choosing the sports. While we cannot obtain animal consent due to the language barrier, we can consider animals as hypothetically consenting to any actions that they autonomously choose. Thus, we use autonomous choices to indicate hypothetical consent. Our subsequent task is to determine whether there could be a sport that lacks cruelty and that

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animals hypothetically consent to partake in. If such as sport existed, perhaps it could respect animal rights.

IV. Hypothetically Consenting to Animal Games

I began with the conjecture that some horses, such as Secretariat, may enjoy racing. There is some anecdotal and fairly speculative evidence in favor of that idea. In a 2013 article in *The New Atlantis* (which is also critical of the cruelty in horse racing), Noemie Emery provides some of this speculative evidence. She points out that when horses lose their riders, they almost always continue the race, doing their best to win (Emery 2013, 72). Further, the horses tend to respond accurately to winning and losing, showing signs of pride and shame when appropriate (Emery 2013, 72). Additionally, some racehorses seem to become depressed when they retire (Emery 2013, 73).

We should not too easily dismiss this evidence. Regan has argued that there is significant evidence that animals can form complex beliefs, desires, and interests (Regan 2004[1983], 34-81). Moreover, there is abundant scientific evidence that animals engage in play for fun (Pellis 2002, 421-7; Balcombe 2006, 68-9; Bekoff 2008, 53-7; Bekoff and Pierce 2010, 117), and that their play is complex in various ways, including a certain amount of rule following (Pellis 2002, 423; Balcombe 2006, 70-1; Bekoff 2008, 87-100; Bekoff and Pierce 2010, 120-5; de Waal 2013, 230-1). It is plausible that animals could autonomously choose to participate in certain sports and we can certainly imagine animals enjoying a race.

At the same time, we ought to be wary of our biases that make us wish to believe that animals are enjoying the very activities that we humans are making them perform. Jason Wyckoff calls this kind of bias a form of “dominionism,” which involves the

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creation of a knowledge system that implicitly takes animals to be objects rather than subjects (Wyckoff 2015). Though animals can have complex interests, we must be careful, according to Wyckoff, when attributing interests to animals since we cannot speak to them. In particular, we are prone to imputing false animal interests that instead fit our human interests. Humans who support horse racing (and pretty much everyone that Emery references surely does) are more likely to see horses as enjoying the races. Accordingly, we have to be careful when drawing conclusions from these interpretations.

Similar to Regan's view on animal autonomy, Wyckoff urges us to allow the animals to speak for themselves through their "nonlinguistic expressions of preference" (2015, 127). Following Regan and Wyckoff, we can tone down any conclusions we draw from Emery's evidence. We cannot be certain that horses enjoy racing, but we can conclude that it is possible that they could. Even if it turned out that no horses actually enjoy current conditions, we can certainly imagine horses who would enjoy cruelty-free racing. That possibility will serve as our starting point.

Given the possibility that horses may enjoy racing, we can devise a method to determine which ones wish to race at a given time. We would then stipulate whatever conditions it takes to provide the horses genuine alternatives both to going to the start line and to competing once there. The latter is practically simple: with no whips, no kicking, and no violence of any kind allowed, it will be quite difficult to make the horses race against their will (positive reinforcement offers a complicated alternative to violence, which, as mentioned, we will discuss later). The horses can choose not to start, not to run fast, or to do something other than what the race requires. One can fig-

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ure out if the horse wishes to go to the starting line by giving multiple alternative options. The horse should never be forced out of their stall or into the starting gate, and they should have the freedom to lay around, play somewhere else, or even run on their own. Once the horses have multiple options, only the horses that wish to race will both show up at the starting line and engage in the actual race.

With these parameters, we can obtain the horses' hypothetical consent. In the scenario devised here – the best case for a morally permissible animal sport – we have arranged the activity so that there is no cruelty and the horses participate voluntarily. To avoid begging any questions, let's say that we have preliminarily established that we can gain horses' hypothetical consent to animal games. We have yet to establish that this activity counts as a sport. As noted, Regan doubted that it was possible for there to be true animal sports. While we are not pursuing that general issue, we can now ask whether there can be morally permissible animal sports.

V. Against the Possibility of Permissible Animal Sports

It is doubtful that permissible animal games could count as animal sports. To explain why, it will be necessary to figure out what constitutes a sport. It is notoriously difficult to define "sport" in part because so many distinct practices count as sports (McBride 1975; Morgan 1977; Wertz 1995; McFee 2004, 15-32). Some sports involve teams, balls, and physical contact, while other sports involve individuals performing gracefully on complex apparatuses. It is likely impossible to find necessary and sufficient conditions that can be met by all and only sports.

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Even without an incontestable definition of sport, we can find certain traits that generally pick out what count as sports (Morgan 1977; Wertz 1995). We are then seeking out neither a definition nor necessary and sufficient conditions, but rather traits that are typically associated with sports. For this purpose, we can use attempts to define sport without regard for the original philosopher's intention to choose traits that they saw as leading to a definition. We will slightly repurpose their allegedly defining traits to instead develop traits that typically pick out sports (following the methodology of Morgan 1977; Wertz 1995; McFee 2004, 27).

Bernard Suits attempts to define sports, which he sees as essentially games. To this end, Suits starts with characteristics for games that he believes are also required for sports: (a) there should be a goal, (b) a set means for achieving the goal, (c) rules, and (d) a lusory attitude (Suits 1988 [1973], 39-43). A person has a lusory attitude if she accepts and follows the rules for no reason other than that they are the rules. A person with a lusory attitude does not seek out extrinsic motivation for following the rules. In moving from games to sports, Suits adds (e) the game should involve skill, (f) the skill should be physical, (g) the game should have a wide following, and (h) its following should achieve a certain amount of stability (Suits 1988 [1973], 43-45). David Fairchild is similarly attempting to define sports when he incorporates Suits' traits and then adds a few more: (i) there are professional versions, (j) it develops a tradition, and (k) chance is not a major factor in winning (Fairchild 1978, 229).

Since we will not use these eleven traits as necessary and sufficient conditions, we need not quibble over whether each one does its job of picking out sports well. It is instead useful

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here to note which characteristics assist with judging permissible animal sports. For that reason, let's set aside (g), (h), (i) and (j). Each of these traits applies to most animal sports as they currently exist: they have professional versions with wide followings and established traditions, which ensures stability (even if that stability is regretful given their cruelty). Further, these points cannot be assessed for our imagined, putatively permissible animal sports since we cannot know in advance how audiences would react to such sports.

That leaves us with traits (a) – (f) and (k). My concern, which I will develop through examining these remaining seven traits, is that the act of requiring voluntary animal participation prevents the resulting animal games from counting as sports. Though many of these traits can be found in permissible animal games, the voluntariness undermines the possibility that the animals will predictably behave in the ways that sport requires.

Let's begin with the traits requiring physical skill, (e) and (f). These requirements are easily met insofar as animal sports, in pretty much all versions, require that the animals have certain physical skills; the animals are never being directly tested for their mental abilities, but are tested with respect to speed, strength, agility, and control.

Next, consider the traits that require (a) goals and (b) means for achieving them. We can certainly devise animal games so that there are concrete goals and means for achieving them. A race is a straightforward example. The goal is to cross the finish line first, and the means is running the race. It is less clear whether meeting (a) and (b) requires knowingly doing so. In typical sports, the competitors certainly know their goals and

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purposefully act toward them. Yet, we cannot beg the question against cruel animal sports. Many people would accept that not all of the horses have the same conception of the goal as the jockey. This point though would not make most people deny that horse racing is a sport. We once again face a reasonable understanding of (immoral) sports where (a) and (b) can be met without the competitors thinking of the goal and the means in the appropriate way. For our purposes, we can cautiously concede that horse races can act in accord with these two traits.

The sticking points will be (c) rules, (d) a lusory attitude, and (k) luck not determining victory. Animals are unlikely to adopt a lusory attitude since we cannot expect them to see our rules as regulating their behaviors just because they are the rules we have set. Rules in general are more complex than goals or the means for achieving the goals. While we can imagine horses who wish to win a race, it is much harder to imagine that they could knowingly adopt our rules that limit their actions in particular ways. One reason that cruelty is prevalent in animal sports is that cruelty ensures that the activities proceed in accordance with the rules. Jockeys whip or kick their horses if the horses do something that is deemed aberrant according to the rules. Training can similarly be roughly applied to teach the animals to follow human rules. Without violence, it is much harder to convey the rules to the animals. Positive reinforcement can definitely assist here, though it will create other issues that we will discuss shortly.

Since rules are complex and not easily conveyed without language, we will struggle to ensure that animals follow rules, and it is especially unlikely that the animals will do so with a lusory attitude. This point does not require the view that animals cannot understand rules. As noted earlier, there is sig-

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nificant scientific evidence that animals engage in games that do seem to involve rule following (Pellis 2002, 423; Balcombe 2006, 70-71; Bekoff 2008, 87-100; Bekoff and Pierce 2010, 120-5; de Waal 2013, 230-1). The point here is simply that we cannot ensure that animals will follow the rules since we cannot convey our rules precisely to them.

In response to these worries, we can imagine the animals as props. This position ought to be considered with caution due to Wyckoff's worries about dominionism. It is worrisome to treat the animals as props, and doing so risks that we are being biased when we think that they voluntarily agree to act as props. This competitor/prop distinction, however, can be more philosophical than practical. We can envision the rider as following the rules with a lusory attitude, for the purpose of saying that the condition for being a "sport" is met, while the horse is simply attempting to meet the goal. In this way, it need not be worrisome to consider the animal to be a fully voluntary prop. The human competitors both understand the rules and act with a lusory attitude. The humans then attempt to use the animals in ways that are in accordance with the rules. Provided that animals could voluntarily participate as props, this response could give some room for meeting traits (c) rules and (d) a lusory attitude.

Whether as competitors or key props, we will not be able to ensure that the animals will voluntarily engage in the sports in the ways that we humans have deemed appropriate. We can devise goals that the animals can meet, means for the animals to meet those goals, and rules that work around the animals (such as with human competitors following the rules). Yet, none of this fine-tuning of the activities will entail that the animals will choose to engage in the sport in the way in which we have

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devised, especially without any use of force or violence. The animals are free to act within their own understandings of the activities, including choosing to not engage in the alleged sport at all. Even where the animals are props, they can choose to act differently than the human competitor wishes. Thus, even while the human competitor is following the rules, it does not entail that the animal will act accordingly. Given the animals' freedom, the outcome of the sport ends up being entirely random from our perspective; in other words, winning depends on luck.

Moral animal games would fail to have trait (k) in that the outcome would indeed be based mostly on luck. Since we cannot know in advance which animals will participate, which animals will try their hardest to win, and which animals will follow the rules as we have devised them, we cannot know which animal will win. Whether the animals are competitors or props, their unpredictable behavior reduces the sporting activity to a matter of chance.

Perhaps using positive reinforcement to predictably direct the animals' behavior can avoid the dependence on luck without using cruelty or coercion. Positive reinforcement can be used to train the animals, to make them act in accord with the rules, and to make the outcome based more on manageable and predictable sport performances. Positive reinforcement may seem to make animal sports morally permissible.

The problem is that selective positive reinforcement, where treats are given only for certain behaviors, will amount to the non-cruel coercion of the animals, especially given the language barrier. To obtain the animals' hypothetical consent, we urged that animals be given meaningful alternatives. If trainers

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only reward animals if the animals make the choices that the sport requires, then the promise of a treat becomes a threat in itself – namely the threat of not receiving a treat due to choosing alternative options. Among humans, the fine line between genuine positive reinforcement and non-cruel coercion can be navigated through verbal explanation. We can explain to someone why we are using positive reinforcement (we want them to see the value of making the choice, for example), we can ask them whether the choice was worth it after they have made it, and we can determine if the person would now autonomously make the choice themselves by asking them. On the other hand, selective positive reinforcement counts as non-cruel coercion of animals because it prevents us from determining the preference autonomy of the animals. The animals are choosing based on the treat as opposed to based on their own wishes. We cannot explain to them that we are using the treat to help them value the choice in itself, and we also cannot ask them to explain to us if they are later choosing to act autonomously or because they simply fear losing out on the treat. Selective positive reinforcement for animals undermines the voluntary participation requirement and amounts to non-cruel coercion because, as far as we can determine, the animal is only choosing out of fear of missing out. If positive reinforcement is not selective (the animal receives treats no matter what they do), then it will no longer motivate the animal to specifically act as the sport requires. Therefore, using positive reinforcement is not sufficient for animal sports to be permissible since selective positive reinforcement prevents us from determining animal autonomy, which is necessary to meet the condition that the animals voluntarily participate.

As another potential worry, perhaps we should not refer to this unpredictability as luck since the animals are indeed

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making choices. Luck does not determine which animal wins as much as the animals' own choices do. The problem is that sports involve organized activities where being best at the activity is meant to largely determine the outcome. It is fairly characteristic of sport that the participants are trying to win. Where some are choosing not to compete or choosing to follow their own rules, and where we cannot predict these choices, it is not clear that we have something recognizable as sport. There is sufficient difference between a sport and an unpredictable activity where it is unclear who will actually compete according to the rules that it is simply not possible to call the latter a sport, even without having a formal definition of sport. It is unimportant whether we refer to this unpredictability as being based in luck – it is the fact of the unpredictability that undermines the activity from counting as a sport.

Even with just one trait definitely lacking, I believe there is good reason to exclude voluntary, cruelty-free animal games from being sports. These games will consist of animals, whether as competitors or props, doing as they please in the manners in which they please. While some of them may choose to engage appropriately in the alleged sport, their doing so will be entirely unpredictable. The activity will be unruly in a way that is characteristic of children or animals playing for fun, but not of organized sport. Thus, in making the animal games morally permissible, we end up undermining them from being sports. Permissibility derives from removing cruelty and allowing freedom for the animals. Yet, these moves prevent us from being able to control the animals in a way that would allow the activity to be a sport. Thus, there can be permissible animal games, but there cannot be permissible animal sports. If there can be animal sports at all (which we have not fully weighed on here), they will not be morally permissible.

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VI. Letting the Horses Play

We began by wondering whether animal sports could be made morally permissible. Following Tom Regan's arguments, we acknowledged that actual animal sports are in fact cruel and far from morally permissible. Pointing out the actual cruelty is immensely important. It leaves open, though, the question of whether animal sports could be made morally permissible.

We can seemingly devise animal sports that lack cruelty. As we noted, Regan raised an additional concern for animal sports: the animals should be able to voluntarily participate or refuse to do so. With theories of preference autonomy and hypothetical consent devised to apply to animals, we could develop animal games where the animals had sufficient alternatives such that it made sense to consider their participation to be voluntary. In such cases, the games would be both cruelty free and have voluntarily participation from the animals. We can say that these animal games would be morally permissible.

While these games could be morally permissible, that does not establish that there can be permissible animal sports. We would be considering a game where the animals choose to act as they please. While some may act in ways that are largely consistent with the intentions of the people organizing the alleged sport, it will be entirely unpredictable which ones will refuse to act and which ones may act in inconsistent ways. A horse may choose to race appropriately five times in a row and then choose to sit out or run the wrong way in the next race. Voluntary participation, without force, violence, coercion, and any way to directly communicate, will lead to a good bit of randomness, which contrasts with the organized nature of sports. Animal games could be fun for the animals, fun for the audience, and sometimes involve animals competing to achieve a

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goal. Yet, our rumination on morally permissible animal games leads us to conclude, in agreement with Regan, that morally permissible animal *sports* are impossible.

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