



AMERICAN UNIVERSITY OF BEIRUT

THE THREE DISTINCT SENSES OF INHERENT VALUE IN  
THE ANIMAL RIGHTS DEBATE

by  
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submitted in partial fulfillment of the requirements  
for the degree of Master of Arts  
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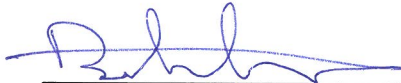
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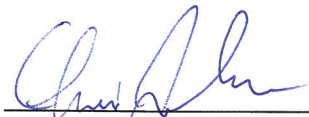
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## AN ABSTRACT OF THE THESIS OF

Leila Mohammad El-Alti for Master of Arts  
Major: Philosophy

Title: The Three Distinct Senses of Inherent Value in the Animal Rights Debate

Medicine and biomedical sciences have attained progress, and praise, unprecedented in history. The growth of biomedical ethics goes hand in hand with the growth of the biomedical sciences. One of the aspects of bioethics which has been receiving growing attention over the past few decades is the issue of using nonhuman animals in medical research. The ethical problems relating to such use of nonhuman animals are posed by the animal rights movement on biomedical scientists through arguing that animals have moral claims on humans and that these claims are widely ignored in favor of scientific goals. Because the ethical debate on the use of animals in medical research boils down to whether or not animals have moral standing, we simply cannot reach a clear answer without first going into a debate on their rights.

In this thesis, I will highlight the most crucial points in *The Animal Rights Debate*, a book involving the two sides of the debate; with an argument for and another against animal rights, as accounted for respectively by Tom Regan and one of his most known opponents, Carl Cohen. I will consider in more detail one of the objections which Cohen presents to Regan's inherent value; a distinction between two senses of inherent value, one with and another without moral content. I will argue that Regan commits a mistake when he fails to account for an inherent value with no moral content, and that Cohen commits another mistake when he only accounts for two senses of inherent value, as he excludes a group of humans who lack moral agency, and thus fall under neither of his categories. I will then suggest a third sense of inherent value to accommodate for that special group of humans.

I will also argue that animals fall under the new proposed category of inherent value, defending this claim through considering the argument from marginal cases, presented by Peter Singer in "Speciesism and Moral Status". I will then present major counterarguments to Singer's account to show that, because there are reasonable objections to these arguments, they are not sufficient to refute the argument from marginal cases. Implications of this new category of inherent value on the animal rights debate and on the use of animals in medical research will also be discussed.

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To Bechara

# CHAPTER ONE

## INTRODUCTION

Medicine and biomedical sciences have attained progress, and praise, unprecedented in history. We are today treating diseases that were once impossible to cure. Procedures once complex, with complications many times fatal, have become painless today, requiring minimal effort and time to successfully complete. What killed a human being yesterday not only became possible to treat but also quite easy to control and even prevent. People trust medical doctors to diagnose their conditions correctly and prescribe the correct treatment, be it medical or surgical.

Medicine today is capable of prolonging life expectancy, improving quality of lives, conquering disease, and saving many from otherwise certain deaths. Rarely do we question the knowledge medical professionals have, because a big part of that knowledge is evidence-based. A great number of studies and clinical trials have been done and will continue to be conducted in search for more effective treatments or cures for new diseases. And not only do we pride ourselves in such knowledge and achievements, we also want medicine to grow further. It is estimated that the amount of money spent on medical research in the US alone has doubled over a decade to reach 95 billion dollars in 2005<sup>1</sup>.

The growth of biomedical ethics goes hand in hand with the growth of the biomedical sciences. For areas of study so influential on people all around the world, and

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<sup>1</sup> NBC News (2005). Retrieved from [http://www.nbcnews.com/id/9407342/ns/health-health\\_care/t/billion-year-spent-medical-research/](http://www.nbcnews.com/id/9407342/ns/health-health_care/t/billion-year-spent-medical-research/) on April 14, 2014.

intimately connected with their lives, the ethical conduct in medicine and medical research became a topic of heated debate among many. The attention this branch of ethics is receiving is also unprecedented. Medicine is becoming more sophisticated and complex and so are its morally relevant dilemmas. From simple issues such as obtaining informed consent and recruitment of subjects in clinical trials, to more intense debates on abortion, cloning, and euthanasia; the moral dilemmas relevant to medicine and medical research are ever-present and attract public attention worldwide.

Bioethics is a “generic term” for what is understood to be divided into three categories: “medical ethics, animal ethics, and environmental ethics”<sup>2</sup>. The need for bioethics started to reveal itself following the research atrocities which took place in the last century, including the use of experimental tuberculosis vaccines done without informed consent on German children in 1931, the Tuskegee Syphilis study in the States between 1932 and 1972 which was conducted on 399 African American men and involved deceiving them into thinking they were receiving treatment but were instead left untreated in order to understand the long-term effects of syphilis<sup>3</sup>, and the research experiments conducted on Jews by the Nazis<sup>4</sup>. The Nuremberg Code (1947), the Declaration of Helsinki (1964), and the Belmont Report (1974) followed to provide guidelines for

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<sup>2</sup> Gordon, J. S. (2012). Bioethics. From the *Internet Encyclopedia of Philosophy* (University of Tennessee). Retrieved from <http://www.iep.utm.edu/bioethic/#Hc> on February 20, 2014.

<sup>3</sup> Regan, T. (2004). *Empty Cages: Facing the Challenge of Animal Rights*. Oxford: Rowman & Littlefield Publishers, Inc. Pp. 38.

<sup>4</sup> Gordon, J. S. (2012). Bioethics. From the *Internet Encyclopedia of Philosophy* (University of Tennessee). Retrieved from <http://www.iep.utm.edu/bioethic/#Hc> on February 20, 2014.

research conduct, which later lead to the development of Institutional Review Boards to reinforce ethical conduct of research.<sup>5</sup>

One of the aspects of bioethics which has been receiving growing attention over the past few decades is the issue of using nonhuman animals in medical research. One example includes the use of animals in clinical trials in their primary phases to test of a new drug, device, or therapy to determine the potential toxicity of the intervention preceding their test on human volunteers<sup>6</sup>. It is estimated that in the number of animals used in laboratories worldwide falls between 40 and 100 million<sup>7</sup>, and over 3.6 million experiments were initiated in 2009 which animals would experience pain, suffering, and lasting harm<sup>8</sup>. Nearly all laboratory animals experience stress and distress, as witnessed by alteration in physiological parameters such as heart rate, blood pressure, and hormonal changes; especially during human handling, movement of cages, blood sampling, or insertion of tubes in the mouth to administer drugs<sup>9</sup>.

The ethical problems relating to such use of nonhuman animals are posed by the animal rights movement on biomedical scientists through arguing that animals have

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<sup>5</sup> Ibid.

<sup>6</sup> U.S. Food and Drug Administration (2013). Inside Clinical Trials: Testing Medical Products in People. Retrieved from <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143531.htm> on April 28, 2014.

<sup>7</sup> Ryder, R.D. Speciesism in the laboratory. In P. Singer (Ed.), *In Defense of Animals: The Second Wave* (2006). Oxford: Blackwell Publishing Ltd. Pp. 97.

<sup>8</sup> Knight, A. (2011). *The costs and benefits of animal experiments*. Great Britain: CPI Antony Rowe. Pp 12

<sup>9</sup> Ibid., Pp 31-32.

moral claims on humans and that these claims are widely ignored in favor of scientific goals.

[...] the goals of scientific research have always taken precedence over ethical concerns about animals. Even when researchers are careful to minimize pain and suffering, this is only done when causing pain and suffering is not necessary to meet scientific goals.<sup>10</sup>

There is a kind of a consensus that one should lead an ethical life, and in which benevolence, justice, and fairness are respected virtues<sup>11</sup>. The use of nonhuman animals for human benefit, in general, such as in the case of medical experiments, is based on a utilitarian argument<sup>12</sup> insofar as it supposes that human interests are more important than those of nonhuman animals and that the benefits of such research to humans outweighs the harm being done to nonhuman animals; and hence through such research we would be satisfying the interests of the maximum number of people. However, this argument rests on a moral distinction between human and non-human animal, which gives more weight to human interests over those of animals<sup>13</sup>.

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<sup>10</sup> Clune, A. (1996). Biomedical Testing on Nonhuman Animals: An attempt at a 'Rapprochement' between 'Utilitarianism' and Theories of Inherent Value. *Monist: An International Quarterly Journal of General Philosophical Inquiry*, 79(2), Pp. 230-246.

<sup>11</sup> Matheny, G. Utilitarianism and animals. In P. Singer (Ed.), *In Defense of Animals: The Second Wave* (2006). Oxford: Blackwell Publishing Ltd. Pp. 13.

<sup>12</sup> Knight, A. (2011). *The Costs and Benefits of Animal Experiments*. Great Britain: CPI Antony Rowe. Pp 3.

<sup>13</sup> For the sake of brevity, from this point on, I will use animals to mean nonhuman animals and humans to refer to human animals.

The underlying assumption is that it is more permissible to cause pain, distress or even death to nonhuman animals than to humans.<sup>14</sup>

Thus, the complexity of the ethical debate on the use of animals in medical research lies in a questionable moral standing of animals. The animal welfare movement poses a moral “problem for scientists involved in biomedical research”<sup>15</sup> through arguing that the use of animals for human benefit is morally wrong simply because animals have capacities that are morally relevant, including but not limited to, the capacity to suffer. Even though the mental and psychological capacities that animals have are constantly debated, it is not uncommon to accept that “many animals appear to have beliefs, desires, goals, and autonomy (at least when it comes to preferences)”<sup>16</sup>.

On the other side of the argument, scientists pose a problem to defenders of animal welfare through claiming that experimenting on animals in medical research helps alleviate “vast amounts of humans suffering”<sup>17</sup>. The argument is that we have made great progress in different areas in modern medicine because of the animal models used in research studies. Some of these advances include AIDS, cardiovascular disease, diabetes,

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<sup>14</sup> Perry, C. K. (2001). A compassionate autonomy alternative to speciesism. *Theoretical Medicine*, 22. Pp. 237.

<sup>15</sup> Clune, A. (1996). Biomedical Testing on Nonhuman Animals: An attempt at a 'Rapprochement' between 'Utilitarianism' and Theories of Inherent Value. *Monist: An International Quarterly Journal of General Philosophical Inquiry*, 79(2), Pp. 230-246.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

Parkinson's disease, organ transplantation and others<sup>18</sup>. Hence, it is assumed that such benefits should be given more weight than animal suffering.

[...] scientific use of animals, particularly for medical experiments, is commonly considered more legitimate than any other use of animals, as it serves a consensual good of humans, and as it is considered necessary for the advancement of science in certain circumstances where humans are not used due to their safety being upheld [...]<sup>19</sup>

Of course, such a claim already presupposes a moral distinction between human and animal, since we obviously do not employ the same logic when involving human subjects in research studies. For instance, there is consensus that the syphilis experiments mentioned earlier were unethical because we simply cannot experiment on a group of people for the sake of scientific progress, because these people have moral standing. Therefore, to accept experimenting on animals means that they have little, if any, moral standing. This claim, however, has been challenged by many philosophers including Tom Regan, Peter Singer, D. Thomas, Tom Beauchamp, and others.

Because the ethical debate on the use of animals in medical research boils down to whether or not animals have moral standing, we simply cannot reach a clear answer without first going into a debate on their rights. In this thesis, I intend to defend animal rights, building on a debate which takes place between Tom Regan and Carl Cohen. In chapter two, I highlight the most crucial points in *The Animal Rights Debate*, a book involving the two sides of the debate; with an argument for and another against animal

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<sup>18</sup> Ibid.

<sup>19</sup> Rudnick, A. (2007). Other-Consciousness and the Use of Animals as Illustrated in Medical Experiments. *Journal of Applied Philosophy*, 24(2), Pp 207.

rights, as accounted for respectively by Regan and one of his most known opponents, Cohen. In that chapter, I present a summary of Regan's account as well as Cohen's major objections to it.

In chapter three, I consider in more detail one of the objections which Cohen presents to Regan's account of inherent value; a distinction between two senses of inherent value, one with and another without moral content. The objection originally consists of an accusation of committing a fallacy: equivocation. Even though Regan is innocent of committing equivocation, I argue that Regan does commit a mistake when he fails to account for an inherent value with no moral content, such as in the case of plants and great works of arts (made by nature or man). However, Cohen commits another mistake when he only accounts for two senses of inherent value, as he excludes a group of humans who lack moral agency, and thus fall under neither of his categories. This group consists of intellectually disabled humans, who cannot possibly have a morally-neutral inherent value, but whose value cannot stem from moral agency either, since they lack the requisite capacities for this agency. In order to accommodate for that special group of humans, I suggest a third sense of inherent value which falls in between Cohen's original two categories.

In chapter four, I argue that animals also fall under the new proposed category of inherent value, defending this claim through considering the argument from marginal cases, presented by Peter Singer in "Speciesism and Moral Status". The main purpose of doing so is to say that, if the argument from marginal cases holds against some major objections to it, then animals *do* have a moral status and consequently do not belong to a



category of morally-neutral inherent value but rather share the same sense of inherent value as the mentally challenged humans. I present major counterarguments to Singer's account and show that, because there are reasonable objections to these arguments, they are not sufficient to refute the argument from marginal cases. I conclude the chapter by presenting the three categories of inherent value.

In the final chapter, I discuss the implications of this new category of inherent value first on the animal rights debate and later on the use of animals in medical research. The effect of this thesis on the animal rights debate includes serving as a critique to both Regan and Cohen; reaching conclusions regarding moral status of animals which are similar to Regan's, and hence, providing further defense for animal rights; and providing a solution to the pervasive moral distinction between humans and animals. Regarding medical research, I suggest that animals must be treated in the same manner as mentally challenged human participants in research studies, with the ethical committees for animal care consenting on the animals' behalf, and in that sense playing the role of the guardian or legal representative of the intellectually disabled human. At the end of the chapter, I propose several potential guidelines for the treatment of animals participating in medical research.

## CHAPTER TWO

### THE ANIMAL RIGHTS DEBATE

This chapter will be an overview of the debate between Carl Cohen and Tom Regan regarding animal rights. The issues discussed within this chapter will be related to their arguments as they are presented in *The Animal Rights Debate*<sup>20</sup>. I will start by summarizing the main points in Regan's argument then discussing Cohen's major objections to it.

#### A. Regan's Rights Theory

The umbrella under which Regan proposes his argument is one that fits within the parameters of "recognition of moral rights"<sup>21</sup>. Both he and Cohen agree that humans possess *negative* moral rights, that is, "rights not to be harmed or interfered with"<sup>22</sup> but disagree on whether animals possess these negative rights as humans do<sup>23</sup>. Regan's claim is based upon the assumption that humans inherently have these rights, and questions why the possibility of animals also having these negative moral rights is important.

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<sup>20</sup> Cohen, C. and Regan, T. (2001). *The Animal Rights Debate*. Rowman & Littlefield Publishers, Inc.

<sup>21</sup> Regan, T. The nature and importance of rights. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp. 151

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., Pp. 152.

The premise of moral rights as stated by Regan works under two, general prohibitions:

First, others are not morally free to harm us; to say this is to say that, judged from the moral point of view, others are not free to interfere with our life or injure our bodies as they please. Second, others are not free to interfere with our free choice; to say this is to say that others are not free to limit our choices as they please.<sup>24</sup>

Furthermore, he uses the example of the Tuskegee syphilis experiment to point out the concept of how the benefit of society at large does not justify infringement upon the rights of the individual<sup>25</sup>. Therefore, the basic assumption of the argument is the presupposition of animals having moral rights, and in particular, negative moral rights as defined beforehand. In order for Regan to show that animals do have rights, he proposes that “animals hav[ing] rights can be understood only after critically examining ways of thinking about morality that deny rights to animals and, sometimes, to humans, too”<sup>26</sup>. His argument is encompassing in terms of the method in which he tackles the subject of morality by responding to the “weaknesses in other ways of thinking about morality”<sup>27</sup>.

Regan points out double standards in our outlook regarding the way in which humans view the mistreatment of animals whereby they originally, and more specifically when dealing with reprimanding their children, oppose the mistreatment or cruelty against animals, but, clearly, are not consistent in their views regarding this idea when it concerns

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid., Pp. 154.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., Pp. 155.

the use of animals for other human interests<sup>28</sup>. The justification for this becomes a matter of “duties *involving* animals” versus “duties *to* [animals]”, and he labels such outlooks as “*indirect duty views*”<sup>29</sup>.

Indirect duty views function on the simple logic, that an animal belongs to someone, and as such, harming that animal is equated with harming the property of another person; therefore, the moral reprobation becomes aligned with the injustice done to the human/owner and not to the animal that was harmed<sup>30</sup>. According to Regan, there could be several reasons as to why indirect duty views function in this manner, and effectively deny all duties to animals. He suggests that in order to explain the morality behind what makes particular actions right or wrong depends on the common basis in many indirect duty views: interests<sup>31</sup>.

There are two types of interests that Regan uses in his discussion, *Preference Interests* which refer to “what people are interested in, what they want to do or possess [...] [that] help define who we are [and] also help describe how we differ”<sup>32</sup>; and *Welfare Interests* which refer to “what is in our interests, those things and conditions that are

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<sup>28</sup> Regan, T. Indirect duty views. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp. 157.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., Pp. 158.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

necessary if we are to have a minimally satisfactory existence”<sup>33</sup>. Those who ascribe to indirect duty views do not believe that interests of animals – that is, if they have any – are as morally relevant as those of humans. It is through this logic that many assume that “because we cannot have direct duties to those whose interests are not directly relevant to morality, this way of viewing interests yields the conclusion that we do not have direct duties to animals”<sup>34</sup>. However, in order for this claim to stand, then the main assumption and basis to the argument would have to be that animals do not feel anything as humans do, which, clearly, is false<sup>35</sup>.

Nevertheless, this denial of, what essentially is common sense, is vital to the understanding of the thought process behind the argument: the basis then becomes that animals not only experience things less intensely but that “animals do not experience anything, that their mental life is totally nonexistent”<sup>36</sup> and are then equivalent to inanimate objects concerning the duties that humans owe them, as suggested by Cartesianism<sup>37</sup>.

Regan refers to the Cartesian model to show how it has influenced, and continues to influence, the manner in which humans view animal experiences. He notes how Descartes supports his view of the lack of mental life in animals because they are

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid., Pp. 159.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., Pp. 160.

unable to communicate, that is, they cannot utilize language as humans do<sup>38</sup>. To those with this mentality, he counters that humans themselves function, in the early periods of their lives, preverbally, and that:

Unless matters are prejudged arbitrarily, once we concede the *reality* of nonverbal awareness in humans, we must acknowledge the *possibility* of nonverbal awareness in animals. And once we acknowledge this latter possibility, we cannot deny mental awareness to animals merely because they are unable to use a language.<sup>39</sup>

Regan uses evolutionary theory as a basis to supporting the presence of acute mental awareness in animals by pointing out the basic premise of the theory:

Evolutionary theory teaches us that what is more mentally complex evolves from what is less mentally complex, not that what is more mentally complex, the human mind in particular, springs full blown from what lacks mind altogether [...] viewed in evolutionary terms, other-than-human minds populate the non-human world.<sup>40</sup>

Further evidence to that is related to human anatomy and physiology, where the similarities with animals are quite clearly present and undeniable; therefore, with these two main Darwinian attributes, Regan concludes this part by stating that:

Any plausible account of the moral status of animals must be consistent with the convictions of common sense, bolstered by the findings of an informed science.<sup>41</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid., Pp. 161.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., Pp. 163.

Not many contemporary philosophers and thinkers continue to hold to strict Cartesian thought regarding animals' conscious experiences. Instead, many use the contractarianism to justify their position.

From the contractarian perspective, morality consists of a set of rules that all the contractors should follow because doing so is in each contractor's rational self-interest.<sup>42</sup>

The basic assumption here is that each party is completely aware of the contract they are placing themselves in, and animals, who are incapable of understanding contracts, cannot "participate"<sup>43</sup>, and as such "what interests they have are not directly relevant to morality"<sup>44</sup>.

Regan states that contractarianism has two major weaknesses: a distorted notion of justice and how this leads to a distortion in morality of its implications<sup>45</sup>. The basis for his argument is that contractarianism favors the one who creates the contract, and if applied to humans, then clearly this can become an exclusionary process since it is fundamentally not "bound by elementary justice"<sup>46</sup> and thus, the interests of some groups can very easily be ignored for the benefit of others. Therefore, this distortion creates "morally unacceptable implications" if read in a situation where there are vulnerable

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid., Pp. 164.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., Pp. 165.

groups<sup>47</sup>, and, hence Regan concludes that this moral mindset is simply not credible

because it is:

A way of thinking about morality that has so little to recommend it when it comes to how other humans may be treated cannot have anything more to recommend it when it comes to the treatment of other animals.<sup>48</sup>

Regan focuses the latter part of his argument on Rawls' contractarianism; which provides an original interpretation of the theory – one which still denies that we owe direct duties to animals – but which removes all the 'apparent' injustices of simple contractarianism through employing the *veil of ignorance*.

As would-be contractors, Rawls invites us to ignore those characteristics that make us different – such characteristics as our race and class, intelligence and skill, even our date of birth and where we live.<sup>49</sup>

Regan points out that even though Rawlsian contractarianism manages to remove most prejudices from its concept, it still excludes a large portion of people from its protective umbrella; namely children, and mentally disadvantaged human beings since they would lack the required *sense of justice*<sup>50</sup>. Thus, Rawlsian contractarianism

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., Pp.166.

<sup>50</sup> Ibid., Pp.168.



takes away from vulnerable groups the direct duties that we owe them<sup>51</sup>. Regan extends his argument to tackle how Rawls' prejudices leads to speciesism since

The interests of some human beings cannot be ignored, and cannot count for less than, the like interests of other human beings simply because they do not belong to the "right" race or gender. The same is true when it comes to species membership.<sup>52</sup>

According to Regan, the direct duty views can be categorized under two moral outlooks: the cruelty-kindness view and utilitarianism. The former simply states that we have a direct duty to animals to be kind and not cruel to them<sup>53</sup>. Many philosophers only see value in this paradigm because of its possible effect on human character and not as a duty to the animals themselves<sup>54</sup>. Nonetheless, Regan insists that:

The cruelty-kindness view makes an important contribution to our understanding of morality [...] by recognizing that direct duties are owed to non-human animals, it overcomes the prejudice of speciesism common to both simple and Rawlsian versions of contractarianism.<sup>55</sup>

The major problem that Regan finds in this view is that it judges the quality of the character doing the act instead of the act itself, and in that sense becomes merely

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid., Pp.170.

<sup>53</sup> Regan, T. Direct duty views. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp. 175.

<sup>54</sup> Ibid., Pp.175-176.

<sup>55</sup> Ibid., Pp.176.

focused on the moral assessment of the person, therefore, “the truth about moral right and wrong [...] will not be found in the cruelty-kindness view”<sup>56</sup>.

Regarding utilitarianism, Regan discusses *preference utilitarianism* (mainly discussed by Peter Singer and R.G, Frey) which rests on two basic principles:

The first is the principle of equality everyone’s preferences count and similar preferences must be counted as having similar weight or importance [...] the second principle [...] is that of utility: we ought to do the act that brings about the best overall balance between total preference satisfactions and total preference frustration for everyone affected.<sup>57</sup>

In the context of animal rights, a utilitarian must then take the preferences of animals into account since favoritism cannot be a part of utilitarianism<sup>58</sup>. Nonetheless, Regan finds that this view is unsatisfactory as a way through which we think about morality since it has to account for everyone’s preference including the assailant, for example, in a particular context.

The very idea of guarantying a place for these preferences [...] is morally offensive. We are not to evaluate the violation of human dignity by first asking how much the violators want to do it. The preferences of those who act this way should play no role whatsoever in the determination of the wrong they do.<sup>59</sup>

Therefore by relying on preference utilitarianism, faulty conclusions can be reached<sup>60</sup> especially seeing as it also relies on justifying an action based upon the “*overall*

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<sup>56</sup> Ibid., Pp.180.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., Pp. 181.

<sup>59</sup> Ibid., Pp. 183.

<sup>60</sup> Ibid., Pp. 184.

consequences”<sup>61</sup> obtained, thus allowing all sorts of wrongful acts to be not only permitted but also obligatory<sup>62</sup>. Thus, utilitarianism cannot offer a morally acceptable system since it cannot give an absolute answer when it comes to “evaluating the morality of humans or [treatment] of animals”<sup>63</sup>.

Regan then turns to the issue of animal rights by organizing it into four separate questions, “(1) questions of fact; (2) questions of value; (3) questions of logic; and (4) practical questions, those that ask what changes, if any, should be made, given how the other questions have been answered”<sup>64</sup>.

(1) Concerning questions of fact, the main issue is that we cannot know if our behavior in the present can have long-term effects in a given situation; however, this only relates to human beings. When it comes to animals, “we are asked to say what we know about animal psychology here and now”<sup>65</sup> and what we know, as mentioned earlier, is that they are clearly similar to us in terms of behavior, psychology, and anatomy as supported by science and the evolutionary theory<sup>66</sup>.

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., Pp. 188.

<sup>64</sup> Regan, T. Animal rights. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp. 207.

<sup>65</sup> Ibid., Pp. 208.

<sup>66</sup> Ibid.

(2) Although facts can be relevant, they are not the main concern of questions of value. Although there is no agreement on the topic at hand: whether animals are valued or not does not negate the fact that they are subjects-of-a-life, that is, they “are the experiencing centers of their lives”<sup>67</sup>. Regan finds that the “lexical gaps”<sup>68</sup> are a barrier since,

What our language lacks is a commonly used word or expression that applies to the area where humans and animals overlap psychologically [which] subject-of-a-life is intended to fill.<sup>69</sup>

Subject-of-a-life, he continues, is morally important because through it we can reach answers to questions of inherent value of these subjects<sup>70</sup>. Once we add to this the aforementioned scientific fact of resembling kinship to animals then all becomes “equal because all equally share the same moral status”<sup>71</sup>.

(3) In questions of logic, Regan offers a summary of the systematic method in which he had reached the conclusion that animals have rights. He reiterates that the argument given by contractarianism, both simple and Rawlsian, is unsatisfactory and that animals are owed direct duties<sup>72</sup>. To consider human interests only is also unsatisfactory

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<sup>67</sup> Ibid., Pp. 209.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid., Pp. 210.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

since it is speciesist, therefore non-human morality matters morally as well. In addition, basing morality on direct duties owed to animals is also inadequate since it favors the moral character of people while doing an act related to the animals involved in a given situation. Preference utilitarianism dispenses with the idea of moral rights, thus fails to acknowledge the rights of humans. A moral outlook that does not distinguish between humans and persons, and therefore does not “recognize the inherent value of humans who are not persons”<sup>73</sup> is not morally sound. Furthermore, an outlook that does not accept that animals have an experiential welfare, and, finally, a view that non-human animals denied of the inherent value as subjects-of-a-life are also unsatisfactory and speciesist.<sup>74</sup>

Therefore, Regan concludes the case for animal rights, given the former arguments, by showing how, if based on a strict and non-arbitrary morality, animals have inherent value, and

Because all those who possess inherent value possess the equal right to be treated with respect, it follows that all those human beings and all those animal beings who possess inherent value share the equal right to respectful treatment.<sup>75</sup>

Regan then replies, to several of the major objections that some might have regarding animal rights. Many believe that the concept of animals having rights is absurd because then they would also have to enjoy the civilian and cultural rights that we have, such as marriage or vote, which is ridiculous. Regan uses the example of human children,

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<sup>73</sup> Ibid., Pp. 211.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., Pp. 212.

and how they are not expected to engage in any of those ‘rights’, nonetheless they have the right to be respected. Animals, similarly, have no use of such rights, but they do have the right to be treated with respect.<sup>76</sup>

Another common argument is that there is no reciprocity in rights; that is, animals do not respect human rights in return. Regan responds to this by saying that this does not negate the rights that must be attributed to animals, and again uses the example of human children. He points out that adult humans do not necessarily expect the child to reciprocate, but nonetheless, they respect the child’s rights. In this case, there is “no nonprejudicial reason to demand that animals conform to a different standard”<sup>77</sup>.

To the question of “Where do you draw the line? How do you know which animals are subject-of-a-life and which are not?”<sup>78</sup>, Regan answers that there is no concrete answer to this beyond common sense. Humans assume that consciousness defines them, but no one can yet really tell how this consciousness is formed. Yet it cannot be denied that

Similarly, we do not need to know exactly where an animal is located on the phylogenic scale to be a subject-of-a-life before we can know that the animals who concern us [...] are subjects-of-a-life. We do not need to know everything before we know something.<sup>79</sup>

The objection to animal rights that addresses meat eating is justified by Regan with a simple reply of how other animals are forced to eat meat in order to survive, but

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<sup>76</sup> Ibid., Pp. 214.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid., Pp. 215.

humans are not because they choose to eat meat. Furthermore, he states that it is inconsistent to choose only a single aspect that animals do, such as meat-eating, and imitate it out of all other behaviors, such as living in the wild, not wearing clothes etc.<sup>80</sup>.

Others maintain that only humans have inherent value, therefore only they can be treated with respect. If so, replies Regan, we are assuming that all humans are similarly intelligent, or have the same level of reason or autonomy, which is not true, yet we think that they all have the same value. Therefore, by only limiting this value to humans, despite their possible usefulness to others, we are being speciesists<sup>81</sup>.

Some might still maintain that animals have, if not non-existent value, then less value than humans, but this argument is based on the supposition that animals lack the main human traits such as reason or intellect. However, so do some humans, yet they are not denied their inherent value. For Regan, this manner of thinking is faulty since

All who have inherent value have it equally, all who exist as subjects-of-a-life have the same morally significant value – whether they be human animals or not.<sup>82</sup>

To the argument that based on the premise that only humans have souls, Regan approaches it by pointing out that it is best to deal with issues of morality rationally, not by adding assumptions that cannot be validated. Having said that, he then continues to negate the logic that follows from such an argument: if animals have no souls, then they only have

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid., Pp. 216.

<sup>82</sup> Ibid.

this earthly life to live, therefore it is morally wrong for humans to make it worse for animals by subjecting them to ill treatment<sup>83</sup>.

## **B. Cohen's Reply**

Cohen's reply to Regan is centered around the concept of moral rights as Regan uses it. Cohen claims that the idea of animal rights is false since

A decent regard for animal suffering does not oblige us to apply to rats and chicken the concept of a moral right – a concept that makes good sense only in the human moral world.<sup>84</sup>

Cohen further claims that not only is Regan's absolutist approach mistaken but it is also dangerous; since animals like rats and chicken are incapable of making moral judgments; therefore, they cannot be moral agents<sup>85</sup>. More importantly, if one is to take Regan's stand seriously, it would be dangerous to human lives since we use these animals for protection and improvement, which, in his opinion are obligations<sup>86</sup> as the use of animals is morally right when it concerns vital services to human needs<sup>87</sup>.

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<sup>83</sup> Ibid., Pp. 217.

<sup>84</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 225.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid., Pp. 226.



The main focus of Cohen's reply is that we *do* have certain obligations towards animals such as avoiding needless pain or suffering; in other words, we have obligations to act humanely as moral agents<sup>88</sup>. However, he maintains that

A critical distinction must be borne in mind throughout: rights and obligations are not fully reciprocal. Although some of our obligations are a consequence of the rights held by other humans [...] many of the obligations we owe do not arise from the rights of the beings to whom they are owed.<sup>89</sup>

He finds Regan's proposal to be "morally perverse"<sup>90</sup> since it does not take human needs into consideration. Thus, Cohen firmly believes that if the use of animals serves important human interests then it is morally right<sup>91</sup>.

Cohen does not justify cruelty to animals, but contests Regan's abolitionism since the use of animals in some contexts is justifiable, such as in biomedicine<sup>92</sup>. He tackles the idea of inherent rights as presented by Regan, and in particular, the idea of subjects-of-a-life. He states that Regan is not very clear about the hierarchy of morality in animals, and Cohen believes that Regan is intentionally vague about this idea because he would have to confront:

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid., Pp. 227.

<sup>92</sup> Ibid.

[...] the fact that *there are differences in the moral status of different species*. This is an admission he is loathe to make, of course, because once we have agreed that there are differences (among species) having moral import, it no longer makes sense to refuse to draw moral distinctions between humans and other mammalian species.<sup>93</sup>

Cohen uses the example of fish to show how Regan is not taking into consideration the human aspect: humans have eaten fish for thousands of years, but if Regan believes that fish lead internal lives, therefore, it is morally wrong to eat fish. If that case is true, and eating any sort of meat is wrong, then people would have to depend on plants for food and clothing. Yet, Cohen points out that Regan is also quite unclear about whether plants are a subject-of-a-life.<sup>94</sup>

Returning to the idea of the price of animal rights, Cohen states that avoiding the use of animals in medicine would lead to a disaster because the achievements medicine has accomplished with the help of animal models are “so precious to humankind as to be beyond calculation”<sup>95</sup>, all of which Regan is willfully ignoring. Furthermore, Regan’s position of completely changing the dietary needs of humans everywhere is not only impossible, according to Cohen, but also inhumane, because it will result in the deaths of millions of human cultures who depend on various animals for their nutrition, without which they would starve and die<sup>96</sup>.

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<sup>93</sup> Ibid., Pp. 229.

<sup>94</sup> Ibid., Pp. 230.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., Pp. 232.

Cohen attacks Regan's account of the value of animals in biomedicine, and calls it to be "so simple-minded and unrefined that it is hardly worth taking seriously"<sup>97</sup> because he finds that Regan's use of outdated examples to validate his points to be inexcusable, and that Regan's approach to the topic is completely ignorant regarding how research on animals in the contemporary world aids humanity<sup>98</sup>. He also claims that Regan is being manipulative in the way he phrases his questions by presenting animal research as indefensible and building his question of morality upon that<sup>99</sup>.

Cohen points out that "although not foolproof, [animal research] reliability is very high. That is the verdict of the history of science and of the entire medical world"<sup>100</sup>. Cohen agrees with Regan that reduction of animal use is feasible, and that animals should not be killed on purpose; however, Cohen points out that it would be impossible to replace animals completely in science<sup>101</sup>.

Therefore, regarding the question that Regan poses as to whether animal research is right, Cohen answers:

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<sup>97</sup> Ibid., Pp. 236.

<sup>98</sup> Ibid., Pp. 235.

<sup>99</sup> Ibid., Pp. 238.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid., Pp. 240.

[...] *if it is true* that the use of animals in medicine is a methodology that is scientifically defensible, and *if, using it, important human interests in safety and health are advanced to a degree that would be otherwise unobtainable* – premises established and confirmed and reconfirmed repeatedly with abundant and compelling detail, and asserted without reservation by the very finest scientific minds in the very finest medical centers [...] – then the use of animal models is *right*, and the use of animals in testing vaccines and new drugs is most certainly right.<sup>102</sup>

Cohen then approaches the manner in which Regan has built his case. Regan asserts that all animals, humans and nonhuman, belong to a moral community because there are forms of subjective experiences that are shared amongst them<sup>103</sup>; however, he contends, we can never draw moral conclusions about a being based on some facts of their subjective experience, particularly as it relates to Regan’s case and how he has linked the “realm of physiological subjectivity”<sup>104</sup> with that of moral rights.

Cohen finds transition that Regan has done faulty in terms of inferring that a being is a subject-of-a-life, leads to the possession of inherent value, and consequently, moral rights. One of the reasons this is wrong is because Cohen believes that Regan is “build[ing] a set of judgments about what he thinks is actually going on in the brains of rats or chickens”<sup>105</sup> when, according to his sources – although he acknowledges that some

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<sup>102</sup> Ibid., Pp. 239.

<sup>103</sup> Ibid., Pp. 244.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

animals do, in fact, have complex experiences – the emotions we believe animals are feeling are based on conjecture and projection of human emotions onto animals<sup>106</sup>

Cohen then tackles the issue of inherent value as proposed by Regan, that what has subjective experience is therefore inherently valuable, as lacking in foundation because moral rights cannot simply be inferred from interests such as survival and reproduction<sup>107</sup>. Cohen then breaks apart Regan’s argument into its pieces according to how he had defined inherent value, and shows how, according to him, there are two senses of the term and they are not interchangeable: the first is, “inherent value in the very widely applicable sense that every unique life, not replaceable by other lives or things, has some worth in itself,”<sup>108</sup> the second is, “inherent value in the far narrower sense arises from the possession of the capacity to make moral judgments, the value of beings with duties and the consciousness of duties”<sup>109</sup>.

Cohen claims that having inherent value in the first sense, does not mean that it immediately ascribes to the second, moral sense, and that Regan is wrong by extending the realm of moral rights to include all animals by “drawing inferences from inherent value in the second sense”<sup>110</sup>.

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<sup>106</sup> Ibid., Pp. 245.

<sup>107</sup> Ibid., Pp. 247.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid., Pp. 248.

The inherent value which is the basis of human rights, according to Cohen, is quite different from that which subjects-of-a-life may possess. He finds that in Regan's argument "we repeatedly encounter the same fallacious passage from the premise that animals have interests to the conclusion that animals have rights"<sup>111</sup>.

Cohen points out that there is a major weakness in Regan's argument, especially when he talks about plants and how they fit into the categorical subject-of-a-life paradigm. He finds that Regan attempted to run away from this conundrum because it would expose faults in the reasoning of his argument regarding inherent value and thus, would have ascribe moral rights to plants – which is why Regan tried to elude answering the question by "leav[ing] it open for others to explore"<sup>112</sup>.

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<sup>111</sup> Ibid., Pp. 250.

<sup>112</sup> Ibid., Pp. 251.

## CHAPTER THREE

### THE THIRD SENSE OF INHERENT VALUE

#### A. The Objection

Let us recall Cohen's objection as he states it in reply to Regan's inherent value as discussed in the previous chapter:

(1) Inherent value in the very widely applicable sense that every unique life, not replaceable by other lives or things, has some worth in itself. In this sense every rat, and every octopus too, has inherent value. This value may be minimal; it certainly has no awesome moral content – but it is fair to say that, being irreplaceable and unique, even primitive living things ought not to be destroyed for no reason whatever.

(2) Inherent value in the far narrower sense arises from the possession of the capacity to make moral judgments, the value of beings with duties and the consciousness of duties. This is the rich philosophical sense of value made famous by Immanuel Kant and employed by many moral thinkers since; it is the sense of inherent worth flowing from the special *dignity* of those who have moral will. The value of agents who have a moral will does indeed *inhere* in them and entitles them to be treated as ends, and never as means only. Beings with value in this sense – human beings, of course – have rights.<sup>113</sup>

Taken at face value, Cohen's objection fails to present its intended threat to the validity of Regan's argument, for two reasons:

(1) Cohen's objection revolves around an accusation of equivocation on the term "inherent value", and so if Regan is innocent of committing that fallacy, the objection would no longer be applicable. However, Cohen fails to point to two distinct places in

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<sup>113</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 247.

Regan's text where the term is used to mean different things. Regan's reply<sup>114</sup> to Cohen's objection specifically entails an answer to that. Regan says that nowhere in *The Case for Animal Rights* does he commit an equivocation on the phrase "inherent value". He states that the distinction made by Cohen is one which never appears, not even implicitly, in his book; and that both senses of 'inherent values' as defined by Cohen are not pertinent to Regan's argument.

First, Regan says that he neither defines 'inherent value' as applicable to every "unique and irreplaceable"<sup>115</sup> living being in one place, nor does he define the phrase in terms of humans who are moral agents someplace else in his text. Second, Regan claims that he only understands and uses one sense of 'inherent value', which is the morally relevant one<sup>116</sup>. This reply, I think, sufficiently answers the objection on equivocation.

Where is it, exactly, that I will be found using "inherent value" to mean "each living creature is unique and irreplaceable," at one place, only to use this very same expression, at some other place, to mean "all humans, as moral agents, have value in themselves"? The place will not be found because the place does not exist. It is inherent value in its moral sense, as I understand it, not some morally neutral way of understating this idea that informs the argument.<sup>117</sup>

(2) It could be argued that one of the most important claims Regan makes in *The Case for Animal Rights* involves an attempt to undermine the very distinction Cohen

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<sup>114</sup> Regan, T. Reply to Carl Cohen. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 289.

<sup>115</sup> *Ibid.*, Pp 290.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*



presents in his objection. Regan does not equate moral agents with humans and moral patients with animals, precisely because not all humans are moral agents, as he repeatedly denies that moral agency is the root of inherent value<sup>118</sup> and accordingly the reason why rights are attributed to humans. Because this is the claim which appears in the second category of Cohen's objection, one might be inclined to think that the objection really misses the point which Regan is arguing for.

## **B. The Distinction**

But let us not be hasty in dismissing Cohen's objection without further scrutiny. Even though originally intended as an accusation of a fallacy, what Cohen presents on Regan's "inherent value", is still quite interesting because it could be interpreted as entailing not only an objection, but also a distinction in the senses we understand the expression. Let us then suppose that what Cohen objects to does not include any fallacies, but merely an objection to Regan's use of only one sense of "inherent value"; when Cohen thinks that more than one sense should apply. If we look at Cohen's two categories this way, it could be understood as an attempt to point out Regan's failure of acknowledging two distinct senses of "inherent value". Now, assuming this, one could note two things about Cohen's distinction:

(1) On Cohen's second category: Cohen thinks that being a subject-of-a-life, to use Regan's words, is not a sufficient condition for rights; and that Regan's use of inherent

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<sup>118</sup> Ibid., Pp 289.

value as an intermediate step between being a subject-of-a-life and having rights does not help his argument at all, because the inherent value of which he speaks can be understood in more than one way. Cohen's objection taken in context of what he wrote in answer to Regan, in *The Animal Rights Debate*, involves a distinction in the senses through which we understand the term 'inherent value'. Humans, he claims, are different by virtue of leading a moral life, not *only* because they have subjective experiences like animals. Thus, even though Regan denies that moral agency is the reason why humans possess inherent value, Cohen thinks there is something beyond just being a subject-of-a-life which makes humans valuable in themselves.

The lives we humans lead are indeed moral lives, pervaded by duties and rights. But this moral character of our lives is not a byproduct of our subjective awareness. Our rights are not ours because we experience our lives as our own. Nonhuman creatures may have subjective interests like ours in survival and reproduction, and they may be supposed to have subjective experience of some sort. But from those interests moral rights cannot be inferred.<sup>119</sup>

The distinction between the inherent value of human and that of animal, highlights a few points about the whole animal rights debate; not only that taking place between Regan and Cohen, but in most debates on whether or not animals are worthy of any moral consideration, whether they have rights, and whether it is right or wrong (or totally irrelevant) to use them for human benefit. It is often, and for a good reason, assumed that rational humans are distinct from all other animals. Humans are extremely complex, their lives are rich, and they possess cognitive and emotional capacities that are

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<sup>119</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 247

morally relevant. Next to a rational, autonomous human the capacities of even the smartest animals fade in comparison.

Comparing animal to human and distinguishing between the two on the basis of capacities is neither novel nor uncommon to ethical debates, and I hardly think it will absent itself from them any time soon. Many thinkers throughout history, as well as in our current days, either explicitly state or implicitly assume a certain moral distinction between humans and animals. Kant, Descartes, R. G. Frey<sup>120</sup>, Tibor Machan<sup>121</sup>, Alan C. Clune<sup>122</sup>, J. A. Gray<sup>123</sup>, Bonnie Steinbock<sup>124</sup>, and many others have assumed this. And in a way, whether defending or opposing animal rights, I think, the comparison and distinction is inescapable. Tom Beauchamp, for example, recognizes the challenging nature this distinction is in his essay, “Opposing views on animal experimentation: Do animals have rights?”.

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<sup>120</sup> Frey, R.G. Organs for transplant: Animals, moral standing, and one view of the ethics of xenotransplantation. In Armstrong S. J. and Botzler R. G (eds) *The Animal Ethics Reader* (2003). Routledge. Pp. 359-367.

<sup>121</sup> Machan, T. (2004). *Putting humans first: Why we are nature's favorite*. Rowman & Littlefield publishers, Inc.

<sup>122</sup> Clune, A. (1996). Biomedical Testing on Nonhuman Animals: An attempt at a 'Rapprochement' between 'Utilitarianism' and Theories of Inherent Value. *Monist: An International Quarterly Journal of General Philosophical Inquiry*, 79(2), Pp. 230-246.

<sup>123</sup> Gray, J.A. (1991). In Defense of Speciesism. In Baird and Rosenbaum (Eds) *Animal Experimentation: The Moral Issues*. Pp 67-70.

<sup>124</sup> Steinbock, B. (1978). Speciesism and the Idea of Equality. *Philosophy*, 53 (204), 247-256.

The implicit contrast between human life and animal life in [the] literature is at the center of the problem of animal rights and human obligations to animals.<sup>125</sup>

Because it often haunts arguments, the moral distinction between human and animal is the reason why animal rights discussion is in many instances impotent. Those who defend animal rights sometimes either fail to acknowledge or attempt to undermine the distinction; while those who argue against animal rights are sometimes guilty of inadequately defending the distinction because they often blatantly assume it as correct. Hence, this distinction, peculiar as it is, is both problematic and essential to the animal rights debate and should be keenly pursued.

(2) On Cohen's first category: While one could still argue that Cohen's second category misses the point presented in Regan's argument, there is one way the distinction might still be problematic. In his reply to Cohen's objection, Regan only answers to the accusation of equivocation and does not dwell on the possibility of another sense in which the phrase could be understood. Regan asserts that there is only one way in which he understands and uses 'inherent value', and in doing so excludes the possibility of there being something with inherent value which is not morally relevant. In that sense, Regan does not commit equivocation, but dismisses a morally 'neutral' way in which inherent value can be understood, particularly because he necessarily associates inherent value to subjective experiences, making the possession of inherent value exclusive to those who are subjects-of-a-life. Cohen wants to argue that there is indeed a category of inherent value which lacks moral content, and that animals fall under that category.

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<sup>125</sup> Beauchamp, T (1997). *Opposing views on animal experimentation: Do animals have rights?* *Ethics and Behavior*, 7(2), Pp 114.

Regan assumes that any individual who is a subject-of-a-life has inherent value; however, there is a sense of “inherent value” which he fails to account for: a value which inheres in something, and is yet morally irrelevant. While being a subject-of-a-life might indeed give that subject inherent value – also conceded by Cohen – this does not imply that this value is morally relevant or is a sufficient reason for the subject to be endowed with rights. In this sense, we can say that Cohen’s distinction could still cast doubt on the basis for Regan’s rights view. If there is more than one way to understand inherent value, then Regan’s argument would fail to provide sufficient grounds for animal rights.

Because Cohen’s objection to Regan’s ‘inherent value’ is vital to the latter’s argument and to the animal rights debate, in general, I chose to pursue this further. If Cohen is right, and there exists more than one sense in which ‘inherent value’ can be understood, then Regan’s account for ‘inherent value’ presented in *The Case for Animal Rights* becomes incomplete, and his position on animal rights becomes questionable. If Cohen’s distinction fails, we need to understand the reasons behind this failure and find out whether it has repercussions on the moral distinction between human and animal.

### **C. The Morally Irrelevant Inherent Value**

In his reply to Cohen’s objection, Regan denies that he commits equivocation and states that he only employs one sense of inherent value.

Where is it, exactly, that I will be found using “inherent value” to mean “each living creature is unique and irreplaceable,” at one place, only to use this very same expression, at some other place, to mean “all humans, as moral agents, have value in themselves”? The place will not be found because the place does not exist. It is inherent value in its moral sense, as I understand it, not some morally neutral way of understating this idea that informs the argument.<sup>126</sup>

Now while Cohen argues for only two senses of ‘inherent value’, Regan argues for one. What we should be exploring next is whether there truly are things with inherent value and no moral content, as Cohen claims. There are, in fact, two candidates for this category which we will explore one-by-one; they are: (1) living objects with inherent value but no subjective experience, and (2) some non-living objects with inherent value. Let us go over them and examine how they fit in the Regan/Cohen debate.

### ***1. Plants***

Regan does not dwell much and does not quite inform the reader about the inherent value status of plants, but keeps the door open to anyone who might want to extend the concept of inherent value to plants and offer what Regan calls a “principled, nonarbitrary, nonprejudicial, and rational defense of doing so”<sup>127</sup>. Regan is simply content that the discussion on plants’ inherent value has no effect on the animal rights debate.

Cohen thinks that Regan’s reluctance to answer the question of plants’ inherent value is due to its problematic nature, precisely because Regan fails to distinguish between

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<sup>126</sup> Regan, T. Reply to Carl Cohen. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. 290.

<sup>127</sup> Regan, T. Animal Rights. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 217.

the two senses of inherent value. Because Regan only acknowledges only kind of inherent value – that which is necessarily linked to a subject-of-a-life – he is wary of pursuing the discussion on plants further, because whether he affirms or denies that the value of plants inheres in them, the conclusion would be problematic, as plants are not capable of having subjective experiences, yet would possess inherent value. Cohen thinks that, like animals, plants do have inherent value, but one that does not give them rights<sup>128</sup>. It is definitely wrong to burn an ancient tree for no reason, but many will agree that this sense of wrongness is not *moral*, in the same sense as it is wrong to burn a child, for instance. It would be wrong to burn that tree because it is valuable and irreplaceable but not because it has any capacity which is morally relevant.

## ***2. Non-Living Objects***

The second group which is missing from Cohen's categories would be that of things, which like plants, have no subjective experiences, but unlike plants, are not living. These are non-living objects that have inherent value. For instance, it is undeniable that *Baalbek*, the *Mona Lisa*, or *Niagara Falls* have inherent value by virtue of being magnificent pieces of art – be it man-made or occurring in nature – in addition to being unique and irreplaceable, to use Cohen's terms. Although the destruction of any one of those for no reason would be wrong, this sense of wrongness, however, is not moral in nature. In other words, the value of *Baalbek*, *Mona Lisa*, and *Niagara Falls* is not morally

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<sup>128</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 250-251.

relevant. Only insofar as being great pieces of art, those objects possess value that inheres in them yet does not provide moral worth.

#### **D. The Amended First Category**

Because there is a sense of inherent value with no moral content<sup>129</sup>, unaccounted for by Regan, who denies there is a way to understand inherent value other than that which is morally relevant; I will further consider Cohen's distinction and for the time being accept the two categories he presented in the original objection. However, the categories should be further examined for exhaustiveness, and for whether or not animals' inherent value remains, as Cohen suggests, with no moral content. But first, an amendment to the first category is in order. Objects, with inherent value which sense is morally irrelevant, which are discussed above, should be added to the first category. Thus, plants and this group of objects, along with animals, would all fall into Cohen's first category, which should now appear as follows:

Inherent value in the very widely applicable sense that every unique life [**or valuable thing**], not replaceable by other lives or things, has some worth in itself. In this sense every rat, and every octopus too, [**and plants**] [**as well as unique and irreplaceable non-living thing such as great pieces of art, whether occurring in nature or made by man**] [**have**] inherent value. This value may be minimal; it certainly has no awesome moral content –

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<sup>129</sup> Lacking moral content is used here to mean that subjects with the sense of inherent value have no rights and we owe them no direct moral obligations, as they have no capacities that are morally relevant. We cannot talk, for instance, about torturing a flower or a painting. This category of inherent value stems from the uniqueness and irreplaceability of the subjects which falls under it, and not from any characteristic which has implications on our moral judgment and conduct.



but it is fair to say that, being irreplaceable and unique, [**these living and non-living things**] ought not to be destroyed for no reason whatever.<sup>130</sup>

### **E. The Humans With No Category**

By amending Cohen's first category, we now have animals, plants, and some non-living objects under one sense of inherent value; and rational, autonomous moral agents under the second. However, there is one group of individuals which is yet to be accounted for in the two categories, and it might prove problematic to what is previously discussed. This problematic group is thought by many to possess inherent value, yet does not quite fit the distinction Cohen presents. This group includes humans who lack the mental, emotional, and psychosocial capacities of an average rational, adult human; such as children, the mentally retarded/intellectually disabled, the mentally ill, the comatose, the brain-damaged, and the senile.

It can be argued that children are a special category of humans who have the potential to be fully rational adult humans one day, and that they should be treated in accordance of the persons they will one day become. It could also be argued that the comatose, brain-damaged, and senile individuals were once fully rational, autonomous persons who suffered an unfortunate turn of events in their lives. Therefore, for the sake of the persons they once were, they should not be treated differently from other rational persons. Thus, for the sake of being practical, children, the comatose, the brain-damaged,

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<sup>130</sup> The words in bold are my own addition to the original quote, which reference appears in footnote number 113.

and the senile will be excluded from our discussion. This leaves persons with mental illness and intellectual disability.

Mental illness<sup>131</sup> is extremely diverse in classification and the capacities within each diagnosis differ from one patient to another; whereby we have different intelligence and functionality levels, as well as different symptoms and behaviors. Again, for the sake of being practical and for the implications of the argument on animal rights, I will be excluding the mentally ill from the group as well. This leaves us with the intellectually disabled individuals.

Intellectual disability is a reference to a below-normal mental capacity<sup>132</sup> or “a limitation in intellectual functioning”<sup>133</sup>, and it is a term replacing ‘mental retardation’, which according to the DSM IV is defined as follows:

- A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning).
- B. Concurrent deficits or impairments in present adaptive functioning (i.e. the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- C. The onset is before age 18 years.<sup>134</sup>

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<sup>131</sup> I take mental illness to be equivalent to mental disorders, which might in some cases have the same cognitive capacities of the intellectually disabled, but for reasons of practicality I will not be including them in the discussion.

<sup>132</sup> Baldor, R. (2014). Primary care of the adult with intellectual disability (mental retardation). Retrieved from [www.uptodate.com](http://www.uptodate.com) on March 13, 2014.

<sup>133</sup> Quoted from the American Association on Intellectual and Developmental Disabilities website, Retrieved from [aaidd.org/intellectual-disability/definition](http://aaidd.org/intellectual-disability/definition) on March 30, 2014.

<sup>134</sup> American Psychiatric Association (2000). DSM-IV-TR, Washington DC. Pp 52.

The severity of the individual's intellectual impairment can be classified into: *mild* (IQ level 50-55 to approximately 70), *moderate* (IQ level 35-40 to 50-55), *severe* (IQ level 20-25 to 35-40), and *profound* mental retardation (IQ level below 20 or 25).<sup>135</sup> Many individuals with intellectual disability show (in addition to problems in language, social interaction, as well as cognitive delays and physical abnormalities<sup>136</sup>) symptoms of challenging behaviors such as aggression, eating inedible things, non-compliance, inappropriate social conduct and others<sup>137</sup>.

Looking back at Cohen's categories, one question remains: under which of Cohen's two categories of 'inherent value' do we place the intellectually disabled humans? Do we place them with Cohen's rat, octopus, plants, and pieces of art that have inherent value by virtue of being unique and irreplaceable, but which values are not sufficient to produce rights? Or do we place them with other humans, disregarding that mentally challenged have far lesser capacities than rational humans? The peculiar thing about this group of individuals is that they belong to the Cohen's second category in species membership, but have capacities similar to many animals<sup>138</sup>.

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<sup>135</sup> Ibid.

<sup>136</sup> Zeldin, A.S. & Bazzano, A. (2014). Intellectual disability. Retrieved from [emedicine.medscape.com](http://emedicine.medscape.com) on March 15, 2014.

<sup>137</sup> Holden, B. & Gitlesen, J.P (2003). Prevalence of psychiatric symptoms in adults with mental retardation and challenging behavior. *Research in Developmental Disabilities*, 24, Pp 323-332.

<sup>138</sup> For the sake of the argument, I am going to assume that the category of mentally challenged humans have the same cognitive/mental capacities of animals, even though some animals surpass humans with certain mental deficits in mental, emotional, and cognitive capabilities, as explained by Peter Singer in "Speciesism and Moral Status", which reference appears in footnote number 146.

Because I think we are more inclined to say that mentally challenged<sup>139</sup> humans belong in the second category, where most other humans belong, I will start with this option first.

Let us consider the definition provided in Cohen's second category again: "[...] arises from the possession of the capacity to make moral judgments, the value of beings with duties and the consciousness of duties [...] it is the sense of inherent worth flowing from the special *dignity* of those who have moral will. The value of agents who have a moral will does indeed *inhere* in them and entitles them to be treated as ends, and never as means only"<sup>140</sup>. We would want to place mentally challenged humans in this category precisely because we would not want to treat them as means, but always as ends; and because we generally believe that they have equal moral status to other rational humans. However, because of the definition provided by Cohen, it would be logically inconsistent to include mentally challenged individuals under this category.

Because the inherent value pertaining to members of category two stems from the members' moral agency, mentally challenged individuals cannot be a part of this definition because they lack the moral agency requisite for this sense of inherent value, and consequently of the category. Mentally challenged individuals lack the capacity to make moral judgments, to have moral will, and to comprehend the concept of duties. Because of their membership in the *Homo sapiens* species, we intuitively think that they belong under the category in which all other members of the species fall, and we tend to assign to

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<sup>139</sup> I use the terms 'intellectually disabled' and 'mentally challenged' interchangeably.

<sup>140</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 247.

mentally challenged individuals the same sense of inherent value as rational adult humans. But this is mistaken, as we have seen in the previous discussion.

Because mentally challenged persons lack the capacity for moral agency, which by Cohen's definition is the root of rights (i.e. moral agency, as per Cohen's definition), then these individuals cannot possibly belong to the second category of inherent value. Of course, one could deny that moral agency is the root of inherent value in the moral sense, like Regan does, but this would be completely contradictory to what Cohen intended to say and would defeat the purpose of the objection he presented in the first place.

But if we are to place the mentally challenged humans in Cohen's first category, we would not be denying that they have inherent value, but like animals, plants, and extraordinary works of art, their value would be morally irrelevant. This means that it would be wrong to harm a mentally challenged human for no reason, but it also means that those individuals have no rights since their value is not moral in nature. This would imply that rational persons, for instance, can freely experiment on mentally challenged humans for their own benefit like they do with animals, since both belong in the same category and are thus equal. There are at least three reasons why this arrangement would not work:

(1) I hardly think this is what Cohen intended to say when he proposed his two categories;

(2) Not only do people often regard the moral status of any mentally challenged individual as equal to any other rational human, in many cases we tend to think those

individuals deserve more protection because they lack the capacity to think for themselves and look after their own benefits<sup>141</sup>;

(3) Many people, including myself, would agree that the thought of using the bodies of mentally retarded humans for scientific experiments is morally repugnant. Because of the above reasons, I will consider placing the mentally challenged humans in Cohen's first category inappropriate.

However, if mentally challenged individuals neither fit in a category of a morally irrelevant inherent value, nor in a category in which inherent value stems from moral agency; then Cohen's categories should either be collapsed or expanded in order to make room for intellectually disabled humans. Thus, because we cannot place them in either one of Cohen's categories, this would mean that: (1) there is actually only one category of inherent value and that Regan was correct about assuming it; or (2) Cohen commits a false dilemma and there is, in fact, more than two ways in which inherent value can be understood.

First, option number one can be easily dismissed because it takes us back to the root of the problem, which was the cause of Cohen's objection in the first place, as it has

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<sup>141</sup> This is to note that not only are mentally disabled individuals often considered to have an equal moral status like rational, autonomous humans, they are also considered, in many IRB guidelines, under the category of vulnerable populations, whereby IRBs require extra measures to protect their rights (such as a surrogate rational person to consent on behalf of the mentally disabled individual). Further safeguards might be requested depending on the research study and its invasiveness. The IRB at the American University of Beirut, for instance, states, in its principles and procedures, that "special consent provisions are expected when persons who are mentally disabled or incapable of providing legally enforceable consent [...] [which] must be provided in signed informed consent document by a parent, guardian, officer of the court, or an individual authorized to act in the best interests of the potential subject." Retrieved from the American University of Beirut's Institutional Review Board Principles and Procedures, version (#6) dated September 2013, [www.aub.edu.lb/irb/pages/policies.aspx](http://www.aub.edu.lb/irb/pages/policies.aspx), on March 7, 2014.

already been discussed at the beginning of this chapter. Second, if we do collapse Cohen's categories and come up with one sense of inherent value applicable to everything, it would be absurd to think of inherent value of humans being equal to that of a tree or a bug or a work of art. Humans are different by virtue of their capacities which are morally relevant.

If Regan is guilty of assuming that inherent value could be understood in only one way, Cohen is also guilty of assuming it could be understood in two. Cohen neglects a group of individuals which does not fit either sense of 'inherent value' he presents in his objection: the mentally challenged individuals who are a category of humans assumed to have rights but, like animals, lack moral agency, and hence cannot be placed in either one of Cohen's proposed categories.

#### **F. The Third Sense of Inherent Value**

To overcome this, more than one solution might be available, but I will dedicate the next few pages to discuss one of them. I will propose adding one more category of inherent value which falls in between the original two. The purpose of creating such a category would be to accommodate for a group of individuals unaccounted for in Cohen's distinction of inherent values. This category of inherent value includes individuals who lack the requirements to fit Cohen's second category but whose inherent value, unlike in his first category, is morally relevant. For now, I will only place mentally challenged individuals in the new category. The debate on animals, their placement in the categories, and their rights will follow.

The category which I propose takes second place on the list, and falls between Cohen's original two. Cohen's first category, in addition to the amendments suggested in the discussion above, remains the same; and so does his original second category, which now moves to slot number 3.

The new category includes human beings who lack the capacity to be moral agents, are not rational or autonomous, but are intellectually disabled, yet still have experience subjective experiences, are sentient, and can have preferences and beliefs. These capacities are considered morally relevant, though not comparable to moral agency, as these individuals were never moral agents and will never become so, in the near or far future. Since these individuals are believed to possess inherent value in a moral sense, they are thought to possess rights, though fewer in number and more basic than those enjoyed by moral agents.

This is not to be understood as a weaker sense of inherent value or a somehow inferior value to that attributed to moral agents, but a distinct sense stemming, not from a moral will, but from limited capacities of these individuals, which are morally relevant in ways the value of a tree or a precious painting are not. Because of these limited capacities, many of the rights exercised by members of the third category, are inapplicable to intellectually disabled individuals. Thus, rights such as freedom of speech, right to vote, and others are not given to members of the second group, not because they are of an inferior moral status, but because these rights are simply not applicable to them. This means that, hypothetically speaking, if mentally challenged individuals were ever to



become moral agents somehow, those persons would possess the full range of rights other moral agents enjoy.

Now because individuals of the second category have inherent value which is morally relevant, and by virtue of that, possess a few basic rights; members of the third category of inherent value cannot use members of the second category for their own benefit. In other words, the rights attributed to mentally challenged individuals are translated into obligations in moral agents. These obligations are sufficient to stop a moral agent from treating an autistic teenager, for instance, as means to her own ends. More discussion on the rights of the second group and obligations of the third will follow in the next chapter.

Let us now see how the new category of inherent value fits between Cohen's original two: Inherent value falling in between the very wide and the very narrow sense, applies to individuals, whose life is "unique and not replaceable by other lives or things", yet lack the cognitive capacities requisite for moral judgments, moral will, duties, and consciousness of duties; but who would otherwise be deemed moral agents – and thus, of a different sense of inherent value – should they possess these capacities. Individuals of this value have subjective experiences, are sentient, have beliefs and preferences. This value is different in sense from that of the previous category, in that it is morally relevant, since subjects of this category possess capacities that plants and extraordinary works of art<sup>142</sup> – man-made or occurring in nature – lack. This value is also different in sense from that of the following category, since it is not rooted in moral agency. Individuals of this category

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<sup>142</sup> I intentionally do not mention animals here, as I will argue about their placement as members of this category in the coming chapter.

have rights, though more basic, and fewer in number, than those possessed by individuals in category three; but which still entitles them to a moral status so that they are treated as ends in themselves. Intellectually disabled human beings fall under this category.<sup>143</sup>

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<sup>143</sup> This is the new category of inherent value, as I propose it. The quotation present in the text is taken from the phrase Cohen used in his first category. The reference appears in footnote number 113.

## CHAPTER FOUR

### THE ARGUMENT FROM MARGINAL CASES

#### **A. Moral Relevance**

According to the discussion on inherent value in the previous chapter, intellectually disabled humans fall under a category of inherent value, which does not stem from moral agency, but is still morally relevant. When we say that the inherent value of certain individuals is morally relevant, it is understood to have implications on their moral standing and their qualification for moral consideration involving our intuitions and judgments in ethical debates. For instance, based on what was discussed earlier, because rational humans have inherent value which is rooted in their capacity for moral agency, it is said that they have moral status and full range of rights. In the case of mentally challenged humans, the value which inheres in them, is said to be morally relevant insofar as it provides ground for moral consideration. They too are considered to have rights – even though more basic and fewer in number than those held by moral agents – and in that sense, are also said to have a moral status.

Let us recap why intellectually disabled humans are placed in the new category of inherent value. These humans, though members of the same species as those in category three of inherent value, it is contradictory to place them under the same category because they lack moral agency. However, we cannot say that mentally challenged individuals fall under a morally-irrelevant-sense of inherent value, since we intuitively attribute rights to

them. And because they do not belong to either category, they are said to have be of another sense of inherent value, which is morally relevant but does not stem from moral agency. Members of the new category are human who are not rational, but are sentient and have subjective experiences, beliefs, and preferences. The problem which then arises is that of the inherent value of animals, which seem to possess the same capacities stated, but are not human.

According to the new arrangement of categories in the preceding chapter, animals are considered to have inherent value which is morally irrelevant, as plants or extraordinary works of art. I think their placement under the first category is problematic for at least two reasons. First, I think it is counterintuitive to assume that the inherent value of a dog, for instance, is the same as that of a plant or a painting, because a dog possesses capacities the other two lack; such as sentience, subjective experiences, preferences, and others. Second, these capacities are in many ways similar to those held by members of the new proposed category, and it would be inconsistent to assume that different senses of inherent value apply to individuals with similar capacities only because they belong to different species.

However, the issue which remains in question is not that a different sense of inherent value is assigned to animals, as much as it is the relevance of that value to the resulting moral status. Thus, looking back at the inherent value categories, the problem is not only that we understand the value which inheres in animals in a different manner than we do in the case of mentally challenged humans, but also that the moral status which follows from the second sense is given to one but not to the other.

In the next few pages, I will consider the moral relevance of animals' inherent value through the lens of the argument from marginal cases. The discussions Singer and Wilson present in their two essays concern the moral status of animals in comparison to that of intellectually disabled humans, and I will use this analogy to guide the argument that mentally challenged humans and animals alike qualify for moral consideration. In that case, if the moral status of animals is successfully shown to be equal to that of humans with cognitive disability, then saying that inherent value of animals is morally irrelevant – as discussed in the previous chapter – would be incorrect. I will first state the argument from marginal cases, go over the two arguments which can refute it, and then showing that there are reasonable objections to each of these two arguments. By doing so, I aim to establish premise (2) of the argument, which appears below.

- (1) If animals' inherent value is morally irrelevant, then they do not have moral status.
- (2) But animals do have moral status (based on the argument from marginal cases).
- (3) Then, animals' inherent value is not morally irrelevant.
- (4) Therefore, animals' inherent value is morally relevant.

The conclusion which follows – that the inherent value of animals is morally relevant – necessarily places animals in the second category of inherent value, with intellectually disabled humans.

It is important to note that Regan does talk about the argument from marginal cases in *The Radical Egalitarian Case for Animal Rights*<sup>144</sup> when he defends the claim that

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<sup>144</sup> Regan, T. (2001). The radical egalitarian case for animal rights. In Pojman, L.P. (Ed.) *Environmental Ethics Readings in theory and application, 3rd edition*. Belmont, CA: Wadsworth. Pp. 40-45.

not only humans have inherent value, as some might argue, based on the capacities they possess. The reason this is not the case is because many humans lack those capacities and are still thought to have inherent value.

[...] there are many, many humans who will fail to meet these standards and yet who are reasonably viewed as having value above and beyond their usefulness to other. Shall we claim that only humans belong to the right species – the species *Homo Sapiens*? But this is blatant speciesism.<sup>145</sup>

Regan states that some might still say that animals have less inherent value than humans have; however, if we accept this, we would have to make the same judgment in cases of humans who are mentally challenged.

Because Regan's rights' view bases holding inherent value on being a subject-of-a-life, the inherent value of animals Regan speaks of in the argument from marginal cases is already established, because they are subjects of a life. Regan also assumes that all those who have inherent value have it equally, thus the inherent value of moral agents and moral patients is equal. However, since I am attempting to introduce a new category of inherent value based on Carl Cohen's objection, as discussed in chapter three, I aim to *establish* that the inherent value of animals is morally relevant and hence belongs to this new category, with mentally challenged humans. This is why I refrain from using Regan's argument from marginal cases and resort to using Singer's view on the matter instead.

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<sup>145</sup> Ibid., Pp. 44.

## B. The Argument

I will discuss the argument from marginal cases as presented by Peter Singer in his essay “Speciesism and Moral Status”<sup>146</sup>. In the essay, Singer presents analogies between different cognitive abilities of animals and mentally challenged humans based on recent studies done on great apes, grey parrots, and dogs, which demonstrate that capacities of these animals in many instances are superior to capacities of severely intellectually disabled humans. Examples include a gorilla scoring an IQ ranging between seventy five and ninety; a breed of dogs capable of comprehending two hundred to three hundred words; and a grey parrot grasping around a hundred words, understanding basic concepts of color and shape, answering new questions, as well as being able to count to seven.<sup>147</sup>

Singer points out that in certain cases of severe mental incapacity, the individual afflicted with the illness exhibits capacities far less sophisticated than the animals presented in the examples above. In certain cases of intellectual disability, such as in autism, individuals who suffer from the illness lack the capacity to feel empathy, pretence and consideration for the intentions of others<sup>148</sup>. Whereas certain species of animals are considered to be “genuine thinkers”, which refers to creatures that demonstrate

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<sup>146</sup> Singer, P. (2009). Speciesism and moral status. *Metaphilosophy*, 40 (3-4), Pp. 567-581.

<sup>147</sup> Singer uses the following references to clarify his analogy, in Speciesism and moral status. *Metaphilosophy*, 40 (3-4), Pp. 568-569:

“Irene Pepperberg, *The Alex Studies: Cognitive and Communicative Abilities of Grey Parrots* (Cambridge, Mass: Harvard University Press, 1999).

Essays in part 2 of Paola Cavalieri and Peter Singer, eds., *The Great Ape Project: Equality Beyond Humanity* (New York: St. Martin’s Press, 1994)

Research by Juliane Kamiski and Sebastian Tempelmann, cited by Virginia Morell in “Minds of Their Own,” *National Geographic*, March 2008.”

<sup>148</sup> Frith, U. (1996). Social communication and its disorder in autism and Asperger syndrome. *Journal of Psychopharmacology*, 10(1), Pp. 49.

ways reveal thoughts about their environment, and this behavior cannot be explained in non-psychological terms (such as conditioning)<sup>149</sup>.

The weight of the evidence points strongly to the impossibility of characterizing all animal behavior in non-psychological terms. There is a basic distinction, then, between creatures that behave in ways that require psychological explanation and those that do not. This may mark a morally significant dividing line.<sup>150</sup>

Singer states that because it is assumed by many that the moral status of humans stems from the special capacities (be it for moral agency, rationality, autonomy, or intellectual ability) that they have, but is also considered equal among all humans, even those who lack such capacities; then it would be inconsistent if we do not extend that moral status to animals as well. In other words, assuming that superior capacities are the reason why a superior moral status is attributed to humans, how could all human life be equal in value, and still be superior to that of animals, when some humans clearly possess equal or lesser capacities than some animals?

We cannot assume that without falling into the trap of speciesism, which is the term Singer uses as a parallel to sexism, racism, etc.<sup>151</sup>. This would indeed be inconsistent. Hence, if we are to say that animals lack moral status, then we have to accept that mentally challenged humans lack moral status as well<sup>152</sup>. There are very few arguments willing to

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<sup>149</sup> Bermudez, J.L. (2007). Thinking without words: An overview for animal ethics. *The Journal of Ethics*, 11, Pp. 319-335.

<sup>150</sup> Ibid., Pp. 322.

<sup>151</sup> Singer, P. (2009). Speciesism and Moral Status. *Metaphilosophy*, 40 (3-4), Pp. 571-572.

<sup>152</sup> Wilson, S.D (2010). Animals and Ethics. From *Internet Encyclopedia of Philosophy* (University of Tennessee). Retrieved from <http://www.iep.utm.edu/anim-eth/> on December 3, 2013.



support such a premise<sup>153</sup>, debates on the moral status of intellectually disabled humans are almost non-existent<sup>154</sup>, and it is taken for granted that they do indeed have moral status.

If we are to deny animals moral status, we would have to deny moral status to mentally challenged individuals as well, and because we seem to be intuitively opposed to do the latter, we cannot deny moral status to animals. This argument was stated by Scott D. Wilson in “Animals and Ethics”, and goes as follows:

- (1) If we are justified in denying direct moral status to animals then we are justified in denying direct moral status to the marginal cases.
- (2) We are not justified in denying direct moral status to the marginal cases.
- (3) Therefore we are not justified denying direct moral status to animals.<sup>155</sup>

Also stated by Scott D. Wilson in “Animals and Ethics”, are the two ways to refute the above argument from marginal cases. We can either negate the second premise by denying that mentally challenged humans have rights and consequently denying that animals have rights as well, or negating the first premise by arguing that there is something intrinsically valuable about being human, which members of other species lack.<sup>156</sup> These two views are offered by R. G. Frey and supporters of speciesism Tibor Machan and J. A. Gray, consecutively. I will go over each one separately and explore how they affect the debate on the moral status of animals.

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<sup>153</sup> Such as the argument presented by R. G. Frey, which will be discussed later in the chapter.

<sup>154</sup> Wasserman, D., Asch, A., Blustein, J. and Putnam, D. (2012). Cognitive Disability and Moral Status By. *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/fall2013/entries/cognitive-disability/>>.

<sup>155</sup> Wilson, S.D (2010). Animals and Ethics. From *Internet Encyclopedia of Philosophy* (University of Tennessee). Retrieved from <http://www.iep.utm.edu/anim-eth/> on December 3, 2013.

<sup>156</sup> Ibid.

### C. On Frey

The first objection to the argument from marginal cases can be presented by R.G. Frey who casts doubt on the moral status of mentally challenged humans, and by doing so negates the second premise provided in Wilson's argument above. Frey's argument is part of an essay<sup>157</sup> written in reply to D. Thomas's article, "Laboratory Animals and the Art of Empathy"<sup>158</sup>, which discusses the importance of empathy as a guide to our moral judgments and behavior, in the context of using animals for medical experiments conducted for human benefit.

Thomas suggests that we attempt to understand things from the viewpoint of the victim, and be consistent doing this; which is why he thinks we should have the same moral disapproval toward animal experimentation as we have toward non-consensual experiments on humans.

In truth, there is no ethically relevant criterion which differentiates experimenting non-consensually on people from experimenting on animals. Ultimately, all that the proponent of vivisection has to fall back on is the fact that humans belong to one species and other animals belong to other species: "we are human and they are only animals"<sup>159</sup>.

Thomas states that assuming one life is more important than another is the root of what is wrong with our moral judgments and what leads to terrible consequences, examples of which are the non-consensual syphilis experiments carried on African

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<sup>157</sup> Frey, R.G (2005). Pain, vivisection, and the value of life. *Journal of Medical Ethics*; 31, Pp. 202–204.

<sup>158</sup> Thomas, D. (2005). Laboratory Animals and the Art of Empathy. *Journal of Medical Ethics*, 31, Pp. 197-204.

<sup>159</sup> Ibid., Pp 200

Americans, Nazi medical experiments on Jews, and others. These non-consensual experiments demonstrate why relative value of lives is dangerous for ethical behavior.

The important point is that the Nazis experimented on Jews because they regarded them as being of less value; those carrying out syphilis experiments on black men in Alabama no doubt privately justified them on the basis that they were “only” blacks.<sup>160</sup>

If we are to accept such cruel experiments to be conducted on animals, then we should be willing to accept cruel experiments on members of our own species as well (like in the examples above). Claiming that humans have more value does not in any way justify why they can use other species for their benefit.

Why should the fact [...] that A has more value than B mean that A is at liberty to cause pain to B for A’s benefit?<sup>161</sup>

The reply Frey presents to Thomas’s above argument includes at least two main objections: one involving Thomas’ suggested use of empathy to guide ethical behavior and the other concerning the relative values of lives.

(1) Thomas’s appeal to empathy does not seem to explain the wrongness or rightness of a certain action. For instance, even if we empathize with an animal in pain, this does not explain why the infliction of pain itself is wrong.

[...] empathy will get us, as feeling creatures, to put ourselves into the positions of other feeling creatures, to the fullest extent we can; but how do we get from there to the claim that inflicting pain in this case is wrong?<sup>162</sup>

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<sup>160</sup> Ibid., Pp 199

<sup>161</sup> Ibid.

<sup>162</sup> Ibid., Pp. 202

It is not a matter of debate, says Frey, whether or not animals feel pain, but whether the infliction of this pain is done for a good reason. The researcher who conducts experiments on animals does not exactly have to say that the animals under experiments have no capacity for pain, or that they *want* to experience this pain; but that researcher, the vivisectionist as Frey refers to him, only needs to address whether inflicting pain on these animals is justified. Thomas's appeal to empathy as quoted above fails to give that kind of justification.

(2) Because Frey's account of the value of an individual's life is based on the quality of that life, he thinks Thomas's assumption that giving more value to certain lives leads to terrible ethical behavior, is mistaken. Frey does not think that attributing different values to different lives leads to atrocities like the ones Thomas mentions as examples.

This is, in disguise, a slippery slope argument, and I think evidence is required in order to convince me that regarding anencephalic infants or people in permanently vegetative states as having lives of very much lesser value than normal adult human life leads straight to the Nazi camps.<sup>163</sup>

The value of life, as Frey describes it, stems from its quality which is based on its richness and content, which in turn depends on certain capacities that allow for this richness and different contents. Besides the quality of an individual's life, Frey does not think there are other criteria to contribute to its value.<sup>164</sup>

Based on this account, we conclude that the rich lives of rational humans have the most value. However, because Frey only takes the quality of life into account, with no

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<sup>163</sup> Ibid., Pp 203

<sup>164</sup> Ibid.

consideration to the species individuals belong to, the implications of Frey's argument falls heavy on animals just as it does on humans whose lives lack richness. In certain cases, the lives of animals exceed in quality and richness, and hence also in value, the lives of severely mentally challenged humans, according to Frey.

[...] some human lives have fallen so far in value, quality, richness, and scope for enrichment that some animal lives exceed in value those human lives. Anencephalic infants and people in permanently vegetative states are cases in point. It was comforting in the past to think that all human lives were more valuable than any animal life, but the quality of life of a perfectly healthy dog or cat must vastly exceed the quality of any human life that has ceased to have experiences of any sort, that has ceased to have in essence any sort of content.<sup>165</sup>

Frey states that if we do have to experiment on living organisms, then our choice should always fall on the life with a lower quality. Thus, even if they belong to different species, in cases where we have to make a choice between a severely mentally incapacitated human and a dog for instance, we should choose the human to experiment on.

There are three reasons why Frey's argument fails to provide sufficient support to the claim that the moral status of intellectually disabled humans is inferior to that of rational humans: (1) the vagueness of the terms "quality" and "richness" of life, (2) the counterintuitive implications of the argument, and (3) the failure of the argument to answer Thomas's question on the justification of using individuals with a lower quality of life.

(1) Taken at face value, the terms "quality" of life and "richness" seem simple to understand. It is easy to picture a rational person with different interests, whose life is full of interesting events and activities, in comparison to a person in a constant vegetative

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<sup>165</sup> Ibid.

state in the ICU of one of the hospitals. The image seems clear enough. However, upon further reflection, the terms come out as vague and open to many interpretations.

“Richness” is a very broad and subjective term to use for evaluating a life. How is “richness” determined? What counts as “rich”? Should the person have multiple interests in order to have a rich life? What of a person who dedicates her life to pursue a single goal; does that make her life lacking in richness? What of prisoners, the homeless, and persons with depression? Are, then, people in possession of more capacities to enrich their lives, such as higher-than-average IQ levels, considered of more value than those with average IQ levels? Does the concept of “richness” relate to changes the person goes through in time? Clearly, a person in a vegetative state, in Frey’s quote above, might have been in an accident which lead to his brain death. This poses no problem for Frey, because richness here does not appear to be related to the person’s *past* rich life. Does the same logic apply to children who have not yet acquired capacities which enables them to lead “rich lives”? Is a child’s life considered of lesser value than an adult’s, then? If so, then implications will be very hard to accept.

The importance of answering these questions lies in their implications on our moral judgments and behavior, because, according to Frey, the way we should treat others depends *only* on the value of their lives, which is based on its richness. However, if “richness” remains an elusive criterion, then practical implications remain in question.

(2) Frey’s argument has serious counterintuitive implications on using mentally challenged humans for the benefit of persons with higher/richer qualities of lives. While this may elevate the status of animals over some humans, considering that Frey’s account

is not speciesist, the implications of what Frey proposes are still counterintuitive. Frey himself admits that such propositions to use anencephalic infants for medical experiments, for instance, have been known to cause outrage.<sup>166</sup> Nevertheless, acknowledgment of the difficulty of applying such a theory does not make it easier to accept that theory or its embrace its implications, precisely because “our moral intuitions tell us that the [intellectually disabled] often deserve more rather than less moral protection than do normal adults”.<sup>167</sup>

As I stated in the previous chapter, people often regard the moral status of intellectually disabled humans as equal to that of normal adult humans, and think of the former as special individuals who need more, rather than less, protection. Thus, the idea of experimenting on such individuals is horrifying, to say the least.<sup>168</sup>

(3) Even if we do accept Frey’s account of quality being the determining factor for the value of life, this does not justify why those individuals with superior value of life can use for their own benefit those whose lives are of lesser value. Thus even if there are truly individuals whose lives are more valuable than others, it does not follow that they are free to inflict pain on them, for instance. This issue was addressed by Thomas’s original argument<sup>169</sup>, which Frey fails to attend to. Thomas illustrates the problem further through making an analogy between a man who has a culturally rich life and helps a lot of people,

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<sup>166</sup> Ibid., Pp. 203

<sup>167</sup> Beauchamp, T. (1997). Opposing views on animal experimentation: Do animals have rights? *Ethics and Behavior*, 7(2), Pp.120.

<sup>168</sup> Refer to page 45.

<sup>169</sup> Quote appears on page 58, footnote number 161.

and another man who leads a nonproductive life, has a drinking problem, and is abusive toward his family. We cannot imagine, for instance, that because the latter man has a less rich life the former man can use him for his benefit.

We might well say that the life of Renaissance Man has more quality and value than that of Uncouth Brute, but would it follow that the former could with ethical approval cause harm to the latter for his own benefit? Surely not.<sup>170</sup>

#### **D. On Gray And Machan**

In his text *In Defense of Speciesism*, J. A. Gray distinguishes ethical principles from moral choices. For Gray, we need not question whether ethical principles apply to different species. If the wrongness of a certain action is established, it remains wrong regardless of which species the victim belongs to.

If it is wrong to inflict pain unnecessarily, it is equally wrong whether the pain is inflicted upon a human being, a rat, or a spider.<sup>171</sup>

However, moral choice differs when we are forced to choose between the suffering of a human and that of an animal from another species. Moral choices, according to Gray, are even different when concerning two humans. To illustrate this, Gray gives two scenarios involving a mother's choice between saving one of her two children. In the first scenario, the mother has to save from a fire, one of two children, both equal in every aspect except that one of them is the mother's own child. The second scenario makes the mother's own child mentally challenged. Gray says that in the first scenario the mother is bound to

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<sup>170</sup> Thomas, D (2005). Commentary to Frey's Pain, vivisection, and the value of life. *Journal of Medical Ethics*; 31, Pp. 204.

<sup>171</sup> Gray, J.A. (1991). In Defense of Speciesism. In Baird and Rosenbaum (Eds) *Animal Experimentation: The Moral Issues*. Pp 68.



be biased toward her own child, but in the second scenario, if the degree of suffering involved outweighs the mother's bias, we would be inclined to think it morally acceptable for the mother to save the healthy child instead. In both cases, Gray attributes the mother's choice to biological causes.

Gray wants to make a similar analogy for the use of animals in medical research to alleviate the suffering of humans. In that sense, he puts us in the mother's shoes and presents us with the choice of saving the healthy child over the mentally challenged one; i.e. the human over the animal. He proposes that the principle of equal suffering be relaxed to accommodate for such moral choices. The objections to Gray's argument include the following:

(1) The analogy Gray presents between the mother's two choices and animal experimentation is far from correct. First, the mother's choice is not premeditated but rather comes from a spur-of-the-moment decision in contrast to medical experimentation on animals, which requires planning, intention, and careful execution. Second, the consequences of the mother's choice are more certain and immediate than those resulting from experimenting on animals. When the mother chooses a child to save, he lives and the other dies. However, when animals are involved in experiments, as Gray confesses, there might "not be [...] direct alleviation of suffering"<sup>172</sup>. Many times, the results of medical research on animals take years to appear and it is not always certain that they will be useful to humans.

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<sup>172</sup> Ibid., Pp 69.

A more correct analogy would therefore be a mother's choice between intentionally inflicting pain on the mentally challenged child to come up with a possible cure for the normal child's ailment. If we base our acceptance of using animals in medical research on our acceptance of such an analogy, then there might be consistency in our assumptions. But because many people are not willing to take this leap, except in arguments like Frey's which has been tackled above, the analogy does not work.

(2) The general objections to speciesism apply to Gray's argument. Gray assumes that we have special duties toward our own species but does not justify that claim. However, if we follow such logic, we could also say that we have special duties toward people of our own race, gender, nationality, religion etc. without providing any further justification. Belonging to a certain group does not provide sufficient justification for treating its member differently from others who do not belong to the same group. In the case of speciesism, treating individuals differently because they belong to one species rather than to another is thus not acceptable, since membership to a species does not justify special moral consideration.

(3) It is not clear how ethical principles which "should not be qualified by species"<sup>173</sup> be relaxed when involving "the condition of equality for suffering for animals and for human beings"<sup>174</sup>. What use would ethical principles have if in practice they are used based on assumptions with no justification and bent according to what we deem

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<sup>173</sup> Ibid., Pp. 68.

<sup>174</sup> Ibid., Pp. 69.

appropriate to our own theory? If ethical principles are to remain only theoretical, then ethical debate becomes useless in terms of its application to our moral conduct.

The second argument in support of speciesism can be found in Tibor Machan's *Putting Humans First: Why We Are Nature's Favorite*<sup>175</sup>. In contrast to Gray's account, which does not rest on the premise that humans are special as compared to other animals, as much as it does on the moral choices we make; Machan's argument sets to defend the premise that there is something intrinsically valuable about being human, even when that human lacks the capacities other members of his species possess.

Machan denies that animals have rights because their behavior is highly dependent on instinct and more importantly because they do not possess a moral nature, in comparison to humans who "alone possess the capacity for free choice and the responsibility to act ethically"<sup>176</sup>, "alone are equipped to deal with moral issues"<sup>177</sup>, and "the only living beings capable of understanding a moral appeal"<sup>178</sup>.

At this point, one is inclined to say that not *all* humans have the above capacities. Similar to animals, mentally challenged humans do not possess capacities for understanding moral situations, making moral judgments, or acting upon those judgments. However, Machan does not think it is correct to make an analogy between an intellectually

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<sup>175</sup>Machan, T.R. (2004). *Putting humans first: Why we are nature's favorite*. Rowman & Littlefield publishers, Inc.

<sup>176</sup> Ibid., Pp. 10

<sup>177</sup> Ibid., Pp. 12

<sup>178</sup> Ibid.

disabled human and an animal because it is normal for an animal not to have a moral nature, but it is abnormal for a human not to be a moral agent.

To be sure, some people – infants and certain invalids – cannot be characterized as fully responsible moral agents. There are some who have become so ill or incapacitated that we excuse their conduct even when they act in way we would normally consider reprehensible. But these are exceptions, explained by reference to the special conditions of debilitation or disease.<sup>179</sup>

Thus, in order to pass moral judgments, we should look at the norm of the species, not at the exceptional cases.

To convey information about something, one starts by considering the thing as it exists normally, not abnormally [...] to investigate human beings and their lives, one focuses on the normal, healthy cases, not the special or exceptional ones.<sup>180</sup>

The fact of occasional borderline cases is simply irrelevant to the normal case – what is crucial is the generalization that human beings are basically different from other animals.<sup>181</sup>

Machan's account for human rights rests on a term he borrows from Ayn Rand: "volitional consciousness". This term describes the consciousness which gives humans the ability to become moral agents<sup>182</sup>. Volitional consciousness applies to all humans except those who "lack moral agency altogether"<sup>183</sup> such as brain dead patients. On this account, mentally challenged humans who retain a small amount of consciousness

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<sup>179</sup> Ibid., Pp. 38

<sup>180</sup> Ibid., Pp. 16

<sup>181</sup> Ibid., Pp. 40

<sup>182</sup> Ibid., Pp. 16

<sup>183</sup> Ibid.

are *not* considered to completely lack moral agency, as a brain dead patient does. Thus, even if a certain intellectually disabled human cannot make moral decisions, he is still considered a moral agent with rights.<sup>184</sup>

Objections to Machan's defense of speciesism are presented in a paper dedicated fully to reply to the argument he presents in his book. This paper, *Putting Humans First?* by Graham and Nobis, highlights several weaknesses in Machan's account. I will go over two objections in reply to "volitional consciousness" and the *norm* view.

(1) Graham and Nobis point out that Machan's use of "volitional consciousness" is arbitrary.

Machan defines *any* level of consciousness found in a human being as "volitional" but defines any level of consciousness found in animals as not volitional.<sup>185</sup>

In many cases mentally challenged individuals, who are conscious, lack the capacity for moral judgment. To accept Machan's view is to also assume that such individuals still have "volitional consciousness". To do so, makes it a question-begging account, because we would be assuming that these humans possess this volition simply because they're human and because a human's consciousness is necessarily volitional<sup>186</sup>

<sup>187</sup>. Volitional consciousness becomes – opposite to what Machan defines it as the capacity

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<sup>184</sup> Graham, D. & Nobis, N. (2006). Putting humans first? *The Journal of Ayn Rand Studies*, 8(1), Pp. 91.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid., Pp. 92

<sup>187</sup> Again, except in the cases of patients in vegetative states.

which makes us moral agents – dependent on “having human DNA and the slightest degree of sentience”<sup>188</sup>.

(2) Machan’s suggested assessment of individual cases based on the normal, rather than the exceptional cases, of these individuals is a claim he does not defend. It seems like Machan is asking for the judgment of the individual to be done, not based on the individual himself, but on the normal members of that individual’s species. This assumption is false.

If a doctor studied only humans who had normal, healthy pancreases, she should learn little about how to treat humans who have diabetes. And if she studied only humans who have good vision, she would learn little about treating the causes of blindness in humans.<sup>189</sup>

Moral judgments of an individual are no different from the example above.

Graham and Nobis suggest that judgment should be made based on the traits of the individual person, not on what is considered normal in the species.

After all, normal humans are not serial killers, does that mean when deciding how to regard an exceptional, abnormal human like Ted Bundy<sup>190</sup>, we should consider only normal humans? To do so would ignore this individual’s special, and morally relevant, features.<sup>191</sup>

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<sup>188</sup> Ibid.

<sup>189</sup> Ibid., Pp. 93

<sup>190</sup> A serial killer

<sup>191</sup> Ibid., Pp. 92

## E. Back to Cohen

Because I have shown above that there are reasonable objections to the argument which claims that mentally challenged humans have no rights (Frey) and to the two arguments which are in favor of speciesism (Gray and Machan); therefore, the inherent value of animals is morally relevant and this necessarily places animals, with intellectually disabled humans, in the second category of inherent value, discussed in the previous chapter. The three categories of inherent value should now appear as follows:

(1) Inherent value in the very widely applicable sense that every unique life [**or valuable thing**], not replaceable by other lives or things, has some worth in itself. In this sense every rat, and every octopus too, [**and plants**] [**as well as unique and irreplaceable non-living thing such as great pieces of art, whether occurring in nature or made by man**] [**have**] inherent value. This value may be minimal; it certainly has no awesome moral content – but it is fair to say that, being irreplaceable and unique, [**these living and non-living things**] ought not to be destroyed for no reason whatever.<sup>192</sup>

(2) Inherent value falling in between the very wide and the very narrow sense, applies to individuals, whose life is “unique and not replaceable by other lives or things”, yet lack the cognitive capacities requisite for moral judgments, moral will, duties, and consciousness of duties; but who would otherwise be deemed moral agents – and thus, of a different sense of inherent value – should they possess these capacities. Individuals of this value have subjective experiences, are sentient, have beliefs and preferences. This value is different in sense from that of the previous category, in that it is morally relevant, since subjects of this category possess capacities that plants and extraordinary works of art – man-made or occurring in nature – lack. This value is also different in sense from that of the following category, since it is not rooted in moral agency. Individuals of this category have rights, though more basic, and fewer in number, than those possessed by individuals in category three; but which still entitles them to a moral status so that they are treated as ends in themselves. Intellectually disabled human beings [**and sentient animals or animals that have sufficient consciousness for subjective experiences**] fall under this category.

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<sup>192</sup> The words in bold are my own addition to the original quote, which reference appears in footnote number 113.

(3) Inherent value in the far narrower sense arises from the possession of the capacity to make moral judgments, the value of beings with duties and the consciousness of duties. This is the rich philosophical sense of value made famous by Immanuel Kant and employed by many moral thinkers since; it is the sense of inherent worth flowing from the special dignity of those who have moral will. The value of agents who have a moral will does indeed inhere in them and entitles them to be treated as ends, and never as means only. Beings with value in this sense – human beings, of course – have rights.<sup>193</sup>

Carl Cohen himself objects to the argument from marginal cases based on a view similar to Machan's. Cohen states that only humans have the capacity to form a moral community and thus, saying that animals have rights would be meaningless because they lack the capacity requisite for respecting those rights. It is a common misunderstanding, he says, to conclude that rights cannot be rooted in moral capacities because if they were then humans who lack these capacities would also lack rights, which they do not.<sup>194</sup>

Human children, like elderly adults, have rights *because they are human*. Morality is an essential feature of human life; all humans are moral creatures, infants and senile included. [...] rights are *universally* human, arise in the human realm, and apply to humans generally. [...] Humans are of such a kind that rights pertain to them as humans; humans live lives that will be, or have been, or remain *essentially* moral. [...] On the contrary, animals are of such a kind that rights never pertain to them; what humans retain when disabled, rats never had.<sup>195</sup>

Cohen's objection on the argument from marginal cases is murky as he does not mention the case of severely mentally challenged humans who, in contrast to children and

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<sup>193</sup> Cohen, C. Reply to Tom Regan. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp 247.

<sup>194</sup> Hsieh, D. M. (2005). On the margins of humanity. Pp. 9.

<sup>195</sup> Cohen, C. (2001). In defense of the use of animals, in *The Animal Rights Debate*. Pp. 36-37.



the senile whose moral capacities change over time, completely lack moral capacities<sup>196</sup>.

What Cohen is attempting to argue for above seems similar to Machan's account in that it is the norm for humans to possess moral capacities but not the norm for animals because rights "never pertain to them"<sup>197</sup>. Thus, human who lack such capacities would still have rights. In that sense, the same objections that apply to Machan's argument apply to Cohen's as well.

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<sup>196</sup> Hsieh , D. M. (2005). On the margins of humanity. Pp. 9.

<sup>197</sup> Cohen, C. (2001). In defense of the use of animals, in *The Animal Rights Debate*. Pp. 37.

## CHAPTER FIVE

### IMPLICATIONS ON THE RIGHTS' DEBATE AND MEDICAL RESEARCH

In chapter two, after summarizing the major points of Tom Regan's argument as it appears in *The Animal Rights Debate* and going over Carl Cohen's major objections to the former's account, I expanded on one objection Cohen presents to Regan's inherent value in chapter three. In that objection, I dissected the two distinct categories Cohen proposes and went over why some might claim that the objection does not challenge Regan's account. Then, I stated why Cohen's distinction is worth pursuing. I then pointed out that there is a sense of inherent value missing from Regan's account: that with no moral content. Plants and certain non-living objects fell under that category, which I then amended. By looking further into the distinction, I argued that there is a group of humans which falls under neither category presented by Cohen, and hence, suggested that they be placed in a separate category of inherent value falling in between Cohen's original two.

In chapter four, and in order to argue that animals should be placed under the new proposed category instead of remaining in Cohen's original first, I explored the moral standing of animals through examining the argument from marginal cases as presented by Peter Singer. My argument was, if through Singer's account I was able to show that animals do have a moral status, then they would not belong under a category of inherent value with no moral content; and hence, would be moved to fall under the second sense of inherent value as I proposed it in the chapter three.

After highlighting the major points in Singer's argument, I introduced two ways it could be refuted: either by denying that intellectually disabled humans have rights and

consequently denying that animals have rights as well, or arguing that there is something intrinsically valuable about being human, which excluded animals from the formula of rights. The accounts I presented were written by R.G Frey, J. A. Gray, and T. Machan. To each account, I included major objections as I saw them or as accounted for in other writings. Once I showed that there were reasonable objections to all the arguments presented by the three philosophers aforementioned, I concluded that based on the argument from marginal cases, animals could be moved to the new second category of inherent value with the intellectually disabled humans.

Based on this new finding, we can now discuss the implications of the new proposed category of inherent value on (1) the animal rights debate, and on (2) animal rights and their use in medical research.

### **A. Implications On The Debate**

Part of why this thesis is important to the animal rights debate is that it accomplishes the following: (1) it serves as a critique to both Regan and Cohen; (2) the conclusions reached regarding moral status of animals are similar to Regan's, and hence, the thesis provides further support for animal rights; and (3) it provides a solution to the pervasive moral distinction between humans and animals.

(1) The thesis can be seen as a critique to Regan's and Cohen's inherent value as presented in *The Animal Rights Debate*, however, it does not intend to refute Regan's argument. On the contrary, my aim was to defend Regan's inherent value as applied to animals and eventually lead the discussion to converge with Regan's conclusions. In my

argument, I accounted for different senses of inherent value (i.e. inherent value understood as stemming from different sources), but which implications on morality remain the same as Regan suggested. Since the inherent value of animals, as that of mentally challenged humans, is morally relevant; animals would *still* have moral standing, but their inherent value, although equal to that of moral agents, stems from something different.

(2) Note that in the first category of inherent value (with no moral content), the inherent value of plants and extraordinary pieces of art stems from their being *unique and irreplaceable*, as Cohen describes. In the second category, which I propose, the individuals are unique and irreplaceable *and* subjects-of-a-life, as Regan describes. In the third sense, the individuals are unique and irreplaceable, subjects-of-a-life, *and* moral agents. Following that categorization, the inherent value in the third category stems from something the other two lack (moral agency), and the inherent value in the second category stems from something those in the first category lack (subjective experiences).

This does not imply that members of category three have a higher inherent value and consequently a higher moral status than those in the second category, only that they have *more* rights. Inherent value as I discussed it is a categorical concept like Regan suggests; it does not come in degrees, but rather an individual either has it or lacks it. The value of members of the first category inheres in them but does not provide moral worth. However, in the second and third category, the inherent value of the members is morally relevant and therefore provides moral standing to all those included under its umbrella.

The conclusions that follow are similar to Regan's in that the moral status of animals is unaffected by the different senses of inherent value, because even if animals

only have basic rights, they are sufficient for a moral status. My conclusions are quite simple: that mentally challenged humans and animals should be morally regarded in the same way when it comes to their use in medical research, since they both possess the negative rights as described by Tom Regan. It would be absurd to give a dog the right to vote, for instance, but this is the case only insofar as this right is simply inapplicable in the case of the dog, not at all because the dog's inherent value is inferior to that of a moral agent.

(3) In this thesis, I attempted to find a solution for the pervasive moral distinction between humans and animals, which is why I presented an account which acknowledges this distinction instead of attempting to undermine it. I think trying to ignore or undermine that distinction is a mistake because it will simply keep showing up in the debate on animal rights. I was able to account for both a morally irrelevant sense of inherent value (as presented in Cohen's first category), maintain a sense of inherent value which stems from moral agency (in the third category), and provide an account for a morally relevant inherent value for animals. This, I think, ought to appeal to many thinkers who claim that the inherent value of rational humans stems from more than just them being subjects-of-a-life. This argument could also be viewed as the missing link between our obligations toward mentally challenged humans *and* animals, and is also able to take into consideration our different capacities as rational adults and moral agents (which we do not share with members of category two).

The argument I presented also answers to Machan's claim (in agreement with Cohen's original distinction):

Any principle or concept of “animal rights” rests on a category mistake – that is, the logical error of treating two different kinds of entities as equivalent in a way that they are not at all equivalent.<sup>198</sup>

However, the argument I presented might still face the same challenge Regan’s account does: the question on where to draw the line regarding which animals to be included under the morally relevant inherent value. In the second category, I only added sentient animals, because sentience seems to be required for learning through association, such as in the cases of pain and pleasure<sup>199</sup>. This seems to be relevant to all animals that have subjective experiences. I will reiterate Regan’s reply regarding this matter by saying that it is not required to know everything, to mean that we know something<sup>200</sup>; and hence, animals who we now know to have subjective experiences should fall under the morally relevant sense of inherent value; until further examination is done on many other species of animals to determine whether they have consciousness, sentience, and subjective experiences.

Another question this account might face is: why add a third category when Cohen’s original second category could have been amended to include both mentally challenged humans and animals? The answer to this lies in finding a solution to the moral distinction between human and animal, which haunts animal rights debate, as discussed in the previous page. By acknowledging the distinction and accounting for the different

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<sup>198</sup> Machan, T.R. (2004). *Putting humans first: Why we are nature’s favorite*. Rowman & Littlefield publishers, Inc. Pp. 10.

<sup>199</sup> Bermudez, J.L. (2007). Thinking Without Words: An Overview for Animal Ethics. *The Journal of Ethics*, 11, Pp. 322.

<sup>200</sup> Quote present on page 21, footnote number 81.

senses in which inherent value arises in the case of moral agents and animals, this argument becomes more immune to the common objection: "...but humans are different in morally significant ways".

## **B. Implications On Animal Rights And Medical Research**

In the chapter, "The Nature and Importance of Rights", Regan states that even regarding humans rights, there are disagreements among people. These disagreements appear in debates about whether people have rights, what kind of rights they have, and what rights are in general.<sup>201</sup>

People can agree that humans have moral rights and disagree over what rights are. They can even agree that humans have moral rights, agree about what rights are, and still disagree when it comes to saying what rights humans have. For example, some proponents of moral rights believe humans possess only *negative* moral rights [...], while others believe that we also have *positive* moral rights.<sup>202</sup>

I use the above quote to point out that the issue of possessing rights is a very complex subject of debate, even when applied to humans. It is definitely not any different when concerning animals; on the contrary, if anything, it becomes even more vulnerable to criticism and more intense debates. I would like to think that people generally agree that humans have both *negative*, as understood as the right not to be harmed or interfered with<sup>203</sup>, and *positive* rights, as understood as the rights to be helped<sup>204</sup>, for instance.

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<sup>201</sup> Regan, T. The nature and importance of rights. In Cohen and Regan *The Animal Rights Debate* (2001). Rowman & Littlefield Publishers, Inc. Pp. 151.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

Mentally challenged humans “are valued as partially conscious, partially self-conscious, or partially autonomous beings, with unique personalities, and are accordingly granted human rights”<sup>205</sup>. Assuming that we agree that mentally challenged humans possess *at least* some negative rights such as the right not to be harmed (not to be experimented on, for example); I would like to make a similar claim for animals. Since both animals and intellectually disabled humans fall under the new suggested category of inherent value, as we have seen in the previous discussion, I propose that a sentient animal has the same negative rights applicable to a mentally challenged human. While I would want to be hopeful and claim that animals, as mentally challenged humans, also have some positive rights (to be helped, for example); for the purpose of this thesis, I am content to include only negative rights at this stage.

Of course, there are some positive rights which are not applicable in the case of both animals and the intellectually disabled. Singer states that “it would be meaningless to attribute to nonhuman animals such rights as the right to vote, to freedom of speech, or freedom of religion. But then, it is equally meaningless to give such rights to two-year-old humans”<sup>206</sup>.

Based on the above, and because both animals and intellectually disabled humans cannot themselves voluntarily consent to participating in research, the use of

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<sup>204</sup> Ibid.

<sup>205</sup> Knight, A. (2011). *The costs and benefits of animal experiments*. Great Britain: CPI Antony Rowe. Pp. 3.

<sup>206</sup> Singer, P. Introduction. In P. Singer (Ed.), *In Defense of Animals: The Second Wave* (2006). Oxford: Blackwell Publishing Ltd. Pp.5.



former should be regarded in the same manner as having mentally challenged human participants in an analogous research study. This has implications on the guidelines of ethical committees for animal use and care. I suggest the following changes:

(1) Because in cases of a mentally challenged human, a guardian or legal representative consents on his/her behalf, taking into consideration the interests of the potential participant and the potential risks the study might entail, Institutional Animal Care and Use Committees, IACUCs, should take over the role of the guardian to animals under research, to consent on the animals' behalf taking into consideration the interests and potential risks involved in the study. This implies that:

a. Animals, as mentally challenged humans, should be considered vulnerable populations, and their welfare and the protection of their interests should take precedence over the goals of the research study.

b. Studies that could potentially cause a significant amount of stress, pain, and distress to the animals involved, should be rejected.

c. Research studies, which would be normally refused by the guardian or legal representative of a mentally challenged human, should also be rejected by IACUCs.

d. Animals involved in research studies should be well-attended to and made as comfortable as possible in the laboratory whereby they would have food, water, hours of sleep, spacious place to move and play, and any social interaction they need. Veterinarian care should be made available at all times to make sure animals are healthy.

e. Animals should not undergo procedures that might affect the quality of their lives and cause pain, distress, changes in physiological functions, etc., such as harmful genetic modifications and invasive procedures.

f. Any sick or severely distressed animal should be excluded from the study.

g. Animals cannot be killed or disposed of when the research study is over or when an animal becomes sick or distressed; but instead should be released in their natural habitat or given to animal care facilities or shelters.

h. An unexpected death of an animal should be investigated, as a death of a mentally challenged human would be. The research question and methodology should be re-examined and ethically reviewed again.

(2) Normal adult human subjects should always be a first choice for study, before animals are considered for two reasons:

a. These humans can *voluntarily* consent to participate in research studies

b. Humans, in general, benefit from medical research as these studies help alleviate the pain of other humans (in comparison to animals who do not benefit at all from experiments conducted for human benefit).

(3) Active search for alternatives to animal models should start now, so that in the near future, all medical experiments on animals will cease.

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