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Philosophy 101

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### **Animals Should Have Certain Legal Rights**

In the Genesis story of creation, God created humans in His own image - He created the animals of the Earth, and gave *man* dominion over them. This was the rationalization behind a long history of abuse, overwork, and neglect of many animals in Christian civilization. Many people came to believe that since God created animals for mankind, an animal's life was worth only as much as it was useful to man. Though this justification is rarely used today, many philosophers continue to argue for a version of Carl Cohen's position that holds that animals have no rights because they "lack the capacity for free moral judgment." I will argue against Cohen, and in favor of Peter Singer's doctrine that animals have certain rights. In particular, I will make the legal argument that animals have certain special rights, and that any party with legal standing should be allowed to bring action against violators of animal's rights.

Carl Cohen claims without justification that "a right is a claim that one party may exercise against another...[and] a party can be a single person, a group, a community, or all humankind." Limiting rights to human beings is not only arbitrary, but also legally invalid. A right is a legal construct, "an abstract idea of that which is due to a person, governmental body, etc., by law or tradition or nature." A perfect example of a legally constructed right was the creation of the American corporation as a "legal person" by Supreme Court decision following the Civil War. This decision was based on the 14<sup>th</sup>

Amendment's guarantee of life, liberty, and property to all persons under the law. Clever corporate lawyers extended these rights to corporations, and it is feasible to extend some of the same rights to animals using that very justification. It is reasonable to apply to animals humane treatment requirements, such as the right to protection from abuse, the right to natural activities such as periodic exercise, etc. The law can set out specific qualifications that a (human) party must meet in order to bring legal action against any other (human) party who violates these humane standards. There are in fact already several laws for precisely such purposes, such as the Animal Health and Protection Act and the Laboratory Animal Protection Act.

Carl Cohen argues that only humans can have rights because only they have "the capacity for free moral judgment." However, a whole group of humans lack this capacity, as Cohen himself points out: the brain-damaged, the comatose, and the senile. However, he has completely left out children who have not yet reached an age of moral capacity, and the criminally insane who seem to practice anti-morality yet maintain some human rights. All of these groups of people have certain limited rights under the law and retain their rights despite the fact that they do not have moral capacity. Similarly, although animals lack the full human capacity for moral judgment, they are still entitled to certain basic rights. Cohen tries to defend his position by arguing that these qualities belong to the *species*, rather than to certain individuals within it. He argues that humans who lack this capacity *still* have rights because they belong to the human species. However, this argument is circular and begs the question of what is the difference between morally incapacitated human beings and morally incapable animals. One might pose to Cohen the hypothetical circumstance of a parrot with cognitive abilities higher than that of some

human beings, yet still denied the right to life due to their rank in a hierarchy of species devised by humans.

Carl Cohen supports the doctrine of “speciesism,” which is the modern equivalent of the Genesis doctrine. This doctrine, following Immanuel Kant, claims that humans are innately superior to animals (because of their moral capacity) and thus humans may use animals to suit their own needs. Thus, according to “speciesism,” humans are ends in themselves, while animals can be treated as merely means to human ends. This position is problematic not only for the argument above but also because of what I call the *egocentric fallacy*. Cohen is essentially arguing that humans are higher on the moral plane than animals because he is a human being and clearly would not want to self-identify as inferior to another species. The egocentric fallacy is extremely common among fallacious arguments because it is convenient for human beings to think that they are at the center of the moral and material universe.

Cohen also makes the slippery slope argument – that once we grant some animals rights, we must grant the same rights to all animals. For instance, if we grant rights to dogs, we must grant the same rights to rats and mosquitoes. However, this argument is absurd – there is a gradation in the animal kingdom based on the complexity of the central nervous system. Clearly animals are not granted the full rights of a human being, agreeing with Cohen. However, certain vertebrate animals will have some rights, and some animals (such as mosquitoes) may have none at all. There is not a requirement that rights must fall discreetly between humans and other animals. The most just and realistic scheme would provide a hierarchy of rights for different kinds of animals.

Finally, the largest moral error Carl Cohen makes is to assume that rights depend on the object receiving the right, rather than the subject's obligation to respect the object's rights. In Cohen's formulation, only objects capable of moral choice are allowed to have rights. A more rational approach would be to inquire into the moral status of the *subject vis-à-vis* his or her relationship to the object. In this formulation, only the *subject* in the situation needs to be capable of moral choice. Thus, if a human being cruelly and mercilessly treats a deer, then the human being may be said to be violating the *animal rights* of the deer since the human is fully capable of moral choice. However, if under the same situation, a lion attacks and viciously rips the deer to pieces for sustenance, then the lion *cannot* be said to be violating any rights, since the lion is *incapable* of moral choice and thus cannot have responsibility.

A controversial empirical point must also be considered about the biology of certain animals – do they have elements of rudimentary morality? Many animals have shown enormously complex social organizations, elaborate cognitive abilities, and complex emotional capability. Bees have complex signaling patterns used to organize their hives, to warn other colony members of danger, and to indicate the direction of food. Chimpanzees have been taught the rudiments of counting, and even how to type. Moreover, dolphins and dogs are well known for their emotional attachments to, and psychological involvement with, their human caretakers. All these animal examples point to a continuity between the human animal and other non-human animals. If human animals have certain legal and moral rights, then due to their continuity with other animals, non-human animals should also share some, but not all, of these rights.

There are many concrete examples of animals displaying human-level morality. There is a case reported in the Chicago Zoo when a human baby fell into the gorilla cage, and one of the female gorillas came to its rescue. She held the child like it was one of her own, and protected it from the other gorillas. She waited for the zoo caretakers to come and calmly gave the baby to them. There are also many reports of household pets showing remarkable kindness and sacrifice for their caretakers. Some have been known to risk their own lives, even death, in order to save their caretakers. Selfless sacrifice is probably the best example of moral behavior, especially in Kantian morality.

Carl Cohen's conclusion that animals have no rights depends on several false assumptions about the legal notion of rights, the source of moral rights and obligations, the superiority of human life over all other species, the discrete separation of humans from other animals, and the biological capacity for moral behavior among other species. By failing to prove that non-human animals are mentally, morally, or otherwise inferior to human beings, Cohen has failed to show that animals deserve no rights. Certainly, however, we cannot deny that non-human animals lack the full capacity of humans, and therefore are not entitled to the identical set of rights. Legal rights should be arranged on a graduated scale corresponding to our best understanding of the particular species' capacity for social communication, cognitive abilities, and capabilities to experience emotions.