

ARTICLES

THE DAY MAY COME: LEGAL RIGHTS FOR ANIMALS

By
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This article examines the main arguments used for denying moral rights to nonhuman animals, the rights to life and bodily integrity in particular. Because these arguments are deficient, animals should not be denied legal rights on the basis of their presumed moral inferiority to humans.

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I. INTRODUCTION

The day *may come*, when the rest of animal creation may acquire those rights which never could have been withheld from them but by the hand of human tyranny.¹

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¹ Jeremy Bentham, *The Principles of Morals and Legislation*, ch. XVII, § I, 311 (Hafner 1948) (originally published 1879) (emphasis added).

Moral philosophy, often referred to as “ethics,” is an area that shares many of the same questions faced by scholars who critically reflect on the foundations and workings of the law. Questions about justice and fairness are among the most obvious. So, too, are some of the questions that are central to the animal protection movement; those dealing with the nature and status of persons, in particular. This article describes how this concept has been treated by representative moral philosophers, explains something about the nature and importance of moral rights, and explores different ways of approaching the question, “Who has moral rights?” It then brings these observations to bear on questions about legal rights, both those that are possessed by human beings, at least in many parts of the world, and those that are not possessed by any other animals, anywhere in the world.

Before turning to these matters, however, the idea of “Body and Law” is worth some discussion. Among the questions of interest to moral philosophers, the following five are perhaps the most obvious:

1. What do we mean by “body?”
2. Does what is done to any bodies matter morally?
3. If what is done to some bodies matters morally, what/whose bodies are these?
4. If what is done to some bodies matters morally, why does it matter?
5. If what is done to some bodies matters morally, how much does it matter?

Competing answers to the second question are of particular interest. Anthropocentrism² answers that all and only human bodies matter morally. By itself, of course, this reply does not answer any of the other questions just enumerated. Still, if true, the anthropocentric position offers a plausible basis for believing that *those whose bodies matter morally* (namely, all and only human beings) should have an important *legal* status, in particular that all human beings, and only human beings, should have legal rights to the integrity and protection of their bodies. Moreover, if this were true, as it may be, then it would undermine possible grounds for recognizing legal rights in the case of nonhuman animals. Thus, the obvious importance of the anthropocentric position.

Very different results suggest themselves if we adopt the non-anthropocentric position: if it turns out that what is done to the bodies of (at least) some nonhuman animals matters morally, then it may be that these animals, not just all human animals, should have legal rights to the integrity and protection of their bodies. Thus, the obvious importance of the non-anthropocentric position and, more generally, the logical bearing moral questions about the body has on legal questions concerning the integrity and protection of bodies.

This article explores various aspects of the conflict between the anthropocentric and non-anthropocentric positions, including the role

² Assumption that humans are the central element of the universe.

the concept of “person” plays in both. The possible truth of what is said is another matter entirely, one that I have endeavored to address more adequately on several occasions in the past.³

II. DICTIONARY DEFINITIONS

Standard dictionary definitions define “person” as “a human being.”⁴ Most contemporary moral philosophers deny this, and with good reason. Worshipers who believe in the god of Judaism or Christianity, for example, believe in a personal deity, but few believe that god is a human being living somewhere in the sky. Belief in seraphim, cherubim, archangels, and angels is similar: beings who are not human, but who are persons, are supposed to exist. Science fiction, too, where intelligent life inhabits planets beyond earth, sounds the same theme.

In all these cases, the existence of persons who are not human is presented as an intelligible idea. Granted, it may turn out that no personal deity exists, that there are no seraphim or cherubim, and that extraterrestrial persons are a figment of Steven Spielberg’s overactive imagination. Even so, nonexistence in these cases will not follow just because extra-terrestrials and the other persons are not human.

Of course, even if it is false that *only* human beings are persons, it could still be true that *all* human beings are persons. And this, if true, could be importantly true. However, whether it is true or not (this article argues that it is not) is again not something that dictionary definitions can decide. All of which is to say that if we are to make any headway, we need to do something more than, and something different from, looking up the meanings of words in *Der Duden*.

In addition to the dictionary definition, contemporary moral philosophers have remarked on two senses of “person,” one descriptive, the other normative. I begin with the former.

III. DESCRIPTIVE PERSONHOOD

In the descriptive sense, to say that someone is a person is to say that they possess a family of capacities that nonpersons lack. What these capacities are is open to debate; with some philosophers favoring one set of capacities, and others different ones.⁵ If we set aside corporations and ships (which do exist and are classified as persons in the law), as well as deities and angels (who might exist and would be per-

³ Tom Regan, *The Case for Animal Rights* (2d prtg, U. of Cal. Press 1985) (this is where my most sustained treatment can be found); my most recent treatments are Tom Regan, *Animal Rights, Human Wrongs: An Introduction to Moral Philosophy* (Rowman & Littlefield Publishers 2003); see also Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Rowman & Littlefield Publishers 2004).

⁴ See e.g. *Webster’s Dictionary For Everyday Use* 275 (John G. Allee ed., Literary Press 1981).

⁵ For additional criticisms of the centrality of personhood in moral theory, see Tom Regan, *Putting People in Their Place*, in *Defending Animal Rights* 85 (U. of Ill. Press 2001).

sons if they do), and focus on paradigm flesh and blood persons (“embodied persons”), we are left with a number of relevant candidate capacities. The capacities for embodied persons include the following: sensory awareness, sentiency (understood as the capacity to feel pleasure and pain), communicative abilities, desires, emotions, beliefs, preferences, memories of the past, expectations about the future, intentionality (understood as the ability to act purposefully), reason, self consciousness, and moral autonomy.

Some candidate capacities merit elaboration; self-consciousness is one. Paradigm embodied persons are not only aware of the world, they are aware of being in it. In other words, that they are in the world is itself an object of their consciousness. Memory is relevant in this context, as is a sense of the future. As self-conscious beings, embodied persons know that they have existed in the world in the past and, in the normal course of events, that they will continue to do so in the future. At the same time, embodied persons understand that a day will come when their body will pass away. In this respect, unlike what is true of flowers and vegetables, for example, it makes sense to say that persons want to go on living or that they want to die. With respect to the future, moreover, persons can make plans and pursue projects, both in the short term and the long run.

It is to be noted that while in the world, the experiential life of embodied persons goes comparatively well or ill for the one whose life it is; embodied people have an experiential welfare (they are more or less satisfied, gratified, fulfilled, and the like). This assumes, of course, that persons retain their identity over time, an idea that has challenged philosophers for centuries but one that will be tabled on this occasion.

Moral autonomy also merits further comment. Individuals are morally autonomous to the extent that they are able to reflect on right and wrong and, having done so, are free to decide what they choose to do. Without autonomy of this sort, individuals cannot be morally responsible for their actions; with it, they can be. Again, whether anyone actually is morally autonomous is another of philosophy’s daunting problems. For our purposes, it is enough to recognize the relevance of moral autonomy to questions concerning personhood. Indeed, some philosophers believe that individuals cannot be persons if they are not morally autonomous.⁶

Among the possibilities that present themselves concerning the relationship between the complete inventory of the capacities previously enumerated (“CI”)⁷ and being a person, what I call the univocal

⁶ John Christman, [Archival Information] *The Stanford Encyclopedia of Philosophy, Autonomy in Moral and Political Philosophy*, (Edward N. Zalta ed., Fall Ed. 2003), <http://plato.stanford.edu/archives/fall2003/entries/autonomy-moral/> (last substantive content change Aug. 27, 2003).

⁷ Sensory awareness, sentiency, communicative abilities, desires, emotions, beliefs, preferences, memories of the past, expectations about the future, intentionality, reason, self consciousness, and moral autonomy. *Supra*, ¶ 1, § III.

view maintains that CI is the sole test for personhood, in the descriptive sense. In other words, according to the univocal view, any individual who satisfies CI is a person, and any individual who does not satisfy CI is not a person.⁸ According to this view, satisfying CI is both a necessary and sufficient condition of being a person, in the descriptive sense. Some of the problems the univocal view faces will be explored below.

IV. NORMATIVE PERSONHOOD

As was mentioned earlier, philosophers recognize a second sense (the normative sense) of personhood. In this sense, persons are individuals who have rights, duties, or both. Among these same philosophers, none deny that people have moral duties. By contrast, many deny that people have moral rights, including such familiar rights as the rights to life and bodily integrity.⁹ And even among those philosophers who believe in moral rights, there is sharp disagreement concerning what moral rights are, what moral rights people have, and why people have the rights they do.¹⁰

The existence of these disagreements should not surprise us. Important ideas are always controversial, and the more important they are, the more controversial they are likely to be. It says something about the importance of moral rights that few ideas in moral and political theory rival this one when it comes to the depth and breadth of the controversies surrounding it.

These controversies will not be resolved here. The constraints of time alone would mitigate against this prospect. Still, enough can be said about moral rights to help forward a more limited objective. To do this, we need to make two controversial assumptions and impose one important limitation. The two assumptions are (1) that those of us reading these words are paradigm examples of normative persons, and (2) that persons in the normative sense (“normative persons”) do have moral rights, including the rights to life and bodily integrity. As to the limitation: in what follows I limit my remarks to so-called *negative* moral rights (rights not to be harmed or interfered with), tabling discussion of *positive* moral rights (rights to be helped or assisted).

V. NO TRESPASSING¹¹

Possession of negative moral rights (“rights” or “moral rights”) confers a distinctive moral status on those who have them. To possess these rights is to have a kind of protective moral shield, something

⁸ Immanuel Kant is the most famous (but hardly the only) proponent of this view.

⁹ See e.g. R. M. Hare, *Moral Thinking: Its Levels, Method, and Point* (Oxford U. Press 1981).

¹⁰ See e.g. *Theories of Rights* (Jeremy Waldron ed., Oxford U. Press 1981).

¹¹ Discussion of negative rights in terms of “No Trespass” is excerpted from my contribution to Carl Cohen & Tom Regan, *The Animal Rights Debate 195–97* (Rowman & Littlefield 2001).

that we might picture as an invisible “No Trespassing” sign.¹² If we assume so that normative persons have such rights, we can ask what this invisible sign prohibits. It prohibits two things, in general. First, others are not morally free to harm us. This means that, judged from the moral point of view, others are not free to take our life or injure our body as they please. Second, others are not morally free to interfere with our free choice. This means that, judged from the moral point of view, others are not free to limit our choices as they please. In both cases, the “No Trespassing” sign is meant to protect those with rights by morally limiting the freedom of others.

This does not mean that it is always wrong to take someone’s life, injure them, or restrict their freedom. When people exceed their rights by violating ours, we act within our rights if we respond in ways that can harm or limit the freedom of the violators. For example, suppose a thief attacks you. No rights proponent believes that you would be doing something wrong if you used physical force sufficient to defend yourself, even if this harms your assailant. Such occurrences are the exception and not the rule, with most people behaving in ways that respect the rights of other human beings. But even if the world happened to be different in this respect, the central point would be the same: what we are free to do when someone violates our rights does not translate into the freedom to violate their rights.

VI. TRUMP¹³

The moral limits that possession of rights places on the freedom of others extends to society at large. Even if society in general, not a particular individual, would benefit if the rights of a comparatively small number of its members were violated, that would not make the violation morally acceptable to any serious defender of moral rights. The well-known and justly condemned Tuskegee syphilis study provides a tragic example of this general point.¹⁴ Here, in brief, is one of the most shameful stories in the history of medical research in America.

In 1932 at Tuskegee Institute, one of the nation’s oldest, most respected African-American institutions of higher learning, approximately 400 African American men volunteered to receive what they were told was “special treatment” for their “bad blood.” They did not know that in fact they suffered from syphilis and that the “medicine” they were given was in fact not medicine and would have no therapeutic effect. Also unknown to them was that the study was conducted to determine how long it would take the men to die if their condition went untreated. Researchers believed that to learn this would be important for understanding syphilis, which might benefit those who suffered

¹² Robert Nozick, *Anarchy, State, and Utopia* 26–35 (Basic Books 1974).

¹³ Discussion of negative rights in terms of “Trump” is excerpted from my contribution to *The Animal Rights Debate*, *supra* n. 11.

¹⁴ [Abstract] Syphilis Study Legacy Committee, *Final Report*, <http://hsc.virginia.edu/hs-library/historical/apology/report.html> (May 20, 1996).

from this disease in the future. Remarkably, in a country founded on “the rights of man,” this study was carried out on uninformed, trusting, African-American men from 1932 to 1972 with funds from, and with the knowing support of, the United States government.

Those who conducted this study did not respect the bodily integrity or the lives of the men they studied. The participants were not treated with the respect to which all humans are morally entitled, as a matter of moral right. When, in 1997, former President Bill Clinton, speaking for the nation, apologized to the few surviving human “guinea pigs” used in the Tuskegee study, and to the descendants of those who had died,¹⁵ the apology came more than 60 years too late.

Proponents of moral rights categorically deny the permissibility of treating people in the way these men were treated. When actions that would advance the collective good clash with the rights of the individual, then the individual’s rights “trump.”¹⁶ Even if tens of thousands of future syphilis sufferers benefited from the Tuskegee study, that would not justify violating the rights of the men who unwittingly participated. We are not to do evil so that good may come, and one way of doing evil is to violate somebody’s rights.

VII. RESPECT FOR THE INDIVIDUAL

At its deepest level, to act in ways that are respectful of individual rights is to act in ways that are respectful of the individuals whose rights they are. It is because people have rights to life, bodily integrity, and liberty that serial murderers commit grievous moral wrongs when they take the life of their victims, child molesters act wrongly when they injure their victims, and kidnappers wrong their captives when they deprive them of their freedom. In each of these and all analogous cases, there is an essential moral sameness in the wrong that is done: when our individual rights are violated, we are treated with a lack of respect.

VIII. WHO HAS RIGHTS?

The attribution of rights to human (“embodied”) persons frequently is associated with the belief that persons in the descriptive sense have a value that is unique among terrestrial forms of life. In Kant’s terminology, human persons have worth and dignity, while no other terrestrial being does.¹⁷ As persons, we exist as ends in our-

¹⁵ The White House: Office of the Press Secretary, *Apology For Study Done in Tuskegee*, <http://clinton4.nara.gov/textonly/New/Remarks/Fri/19970516-898.html> (May 16, 1997).

¹⁶ Ronald Dworkin, *Rights as Trump*, in *Theories of Rights*, 153, 153–67 (Jeremy Waldron ed., Oxford U. Press 1984).

¹⁷ Lori Gruen, [Archival Information] *The Stanford Encyclopedia of Philosophy, The Moral Status of Animals* (Edward N. Zalta ed., Fall Ed. 2003), <http://plato.stanford.edu/archives/fall2003/entries/moral-animal/> (last substantive content change July 2, 2003).

selves; the rest of nature exists as a means to our ends.¹⁸ We have basic moral rights, and nothing else on the face of the earth does.

Kant's position has many virtues, one of which is its ability to provide a normative foundation for human legal rights. The reasoning is simple: embodied persons have a unique kind of value that grounds their basic moral rights. Because they have such rights, justice demands that their rights be recognized and protected as a matter of law. To the extent that embodied persons have legal rights that coincide with their basic moral rights, they are treated with the respect they are due. Likewise, to the extent that they are denied legal rights that coincide with their basic moral rights, they are treated with a lack of respect. Thus, not only was it morally wrong to treat the men used in the Tuskegee experiment in the manner in which they were treated because their basic moral rights were violated, but it should also have been legally impermissible to do what was done.

Similar legal prohibitions could be justified in the case of animals, given Kant's position, if animals were persons in the univocal descriptive sense. But, argues Kant, no animals are persons in this sense. Why not? Because animals are not morally autonomous.¹⁹ As such, Kant classifies animals as *things*, mere means that exist to serve some end, that end being "man."²⁰ Within the Kantian worldview, therefore, we find no claim made on behalf of legal rights for animals comparable to those recognized in the case of human beings. In fact, we find just the opposite. For if Kant's position is satisfactory, animals not only lack moral rights; the suggestion that they be accorded legal rights, comparable to those that are or should be possessed by human persons, lacks a recognizable Kantian justification. However, for reasons explained below, Kant's moral theory is anything but satisfactory.

IX. THE MORAL STATUS OF CHILDREN

Kant is among philosophy's most logically astute practitioners. He understands very well that you cannot derive values from facts. He does not reason that because, among terrestrial beings, human beings and only human beings are persons in the descriptive sense, it follows that human beings and only human beings have basic moral rights. Instead, Kant postulates that human beings have a special kind of value.²¹

Why Kant makes this postulate is much debated among his interpreters, and nothing can settle the dust raised by partisans of one interpretation or another. The interpretation I favor views him as believing that human persons must be thought of as existing as ends

¹⁸ *Id.*

¹⁹ Immanuel Kant, *Lectures on Ethics* 434-36 (Peter Heath & J.B. Schneewind eds., trans. Peter Heath, Cambridge U. Press 1997).

²⁰ *Id.* at 212.

²¹ Immanuel Kant, *The Groundwork of the Metaphysics of Morals* (Mary Gregor ed. & trans., Cambridge U. Press 1998).

in themselves if, in a coherent fashion, we are to explain first, why we have those duties we do, to ourselves and to other human persons, and second, why we do not have these same duties to other forms of life, including non-human animals.²²

While the spirit of Kant's reasoning is admirable, the letter is not. Setting animals to one side for the moment, far too few human beings exist as ends in themselves and have basic moral rights, given his position. Consider, for example, that at the present time there are millions of children under the age of two alive in the world. Except for a minority of tragic cases, all of these children possess most of the capacities enumerated in CI, including sensory awareness, sentience, communicative abilities, desires, emotions, beliefs, preferences, memories of the past, expectations about the future, intentionality, and reason.

Moreover, as is true of paradigm embodied persons, the experiential life of these children goes comparatively well or ill for them; though still quite young, each child has an experiential welfare, meaning each is more or less satisfied, gratified, fulfilled, and the like. They are "subjects of a life, their life,"²³ as lived by them.

Despite all of these, there are two CI capacities these children do not possess. Children do not possess either moral autonomy or the degree of self-consciousness presupposed by understanding one's own mortality. It will suffice here to limit the discussion to moral autonomy since the absence of this capacity illustrates why these children fail to qualify as persons, according to Kant. And this is no minor failing. On the contrary, because children are not morally autonomous embodied persons in the descriptive sense, they are not embodied persons in the normative sense. Under Kant's view, not only is it true that they have no duties to others, it is also true that others have no duties to them, and true as well that they have no rights. Thus it emerges that, for all its many merits, Kant's position lacks the theoretical wherewithal to explain why we would be doing anything wrong to these children themselves if, for example, having selected some number of the poorest and least cared-for among them, we began to take their life or invade their bodies in the hope of finding medicines or procedures that might benefit others.

Now, no moral philosopher worthy of the name will sanction such routine abuse of children. All moral philosophers worthy of the name will endeavor to explain why their moral outlook prohibits it. The hard question for philosophers is how most adequately to ground our universally shared condemnation.

I have examined what I believe are the most important moral theories that explicitly or implicitly deny that young children have rights.²⁴ While all of these moral outlooks (consistent forms of utilita-

²² Regan, *supra* n. 3 (both points are explored at length in these works).

²³ See *supra* n. 3 (this concept explored in all three works).

²⁴ Regan, *Animal Rights, Human Wrongs: An Introduction to Moral Philosophy*, *supra* n. 3.

rianism and contract theories of morality, for example, in addition to Kant's position) have distinctive strengths that are worth preserving,²⁵ each is plagued by insurmountable problems, including their common failure to adequately ground the universally shared condemnation cited above. That condemnation concerns the wrong that would be done to the children if they were used for the purpose imagined. It is the wrong that would be done to them that these theories cannot explicate.

Kant cannot do this because young children are not persons, thus are not directly owed any duties, thus can have no wrong done to them. Rawlsian contractarians cannot do this because young children lack a "sense of justice," thus cannot participate in forging the social contract, thus have no independent moral standing, thus (again) can have no wrong done to them.²⁶ Act utilitarians²⁷ cannot do this because they are at a very serious risk of having to favor the kind of child abuse under review;²⁸ more, act utilitarianism is also deficient because, while it offers an intelligible explanation of why some acts are wrong, it cannot explain how we can do anything wrong *to* somebody, children included.

To the extent, therefore, that an adequate moral outlook must have the wherewithal to explain the wrong that would be done to the children in our example, and in view of the failures of the alternative positions just illustrated, moral outlooks that attempt to dispense with or deny children's rights are inadequate. The only fully adequate way to account for the universal protection these children deserve is to recognize—indeed, to insist upon—their basic moral rights to life and bodily integrity.

This conclusion is controversial. However, if we assume its truth, for the sake of argument, we can begin to revise the letter of Kant's methodology while retaining its spirit. Kant postulates that human persons exist as ends in themselves because having this value is necessary to forge a coherent account of those duties we have to ourselves and to other embodied persons. This includes the duty not to take human life or invade a human body in the hope of securing benefits for others. Accordingly, if we have this same duty to young children, even though they fail to qualify as persons in the Kantian sense, we should postulate the same kind of value in their case. Like us, these children exist as ends in themselves even though they are not morally autonomous. Like us, they are owed various duties directly, the duty of re-

²⁵ *Id.*

²⁶ David William Archard, *The Stanford Encyclopedia of Philosophy, Children's Rights* (Edward N. Zalta ed., Fall Ed. 2003), <http://plato.stanford.edu/archives/win2002/entries/rights-children/> (last substantive content change Oct. 16, 2002).

²⁷ Andrew Jack, *Research Centre, Utilitarianism*, <http://www.bloomsburymagazine.com/ARC/detail.asp?entryid=103052&bid=2;select AJ> (accessed Mar. 14, 2004).

²⁸ *Id.* According to act utilitarianism, whether experimenting on these children would be wrong depends on the actual consequences, and the overall benefit may outweigh the cost; i.e., the ends justify the means.

spectful treatment paramount among them. Like us, they have basic moral rights, the rights to life and bodily integrity in particular. And like us, therefore, they should have these rights protected as a matter of law.

X. ENFRANCHISING ANIMALS

Moral philosophers do not agree about much, but the principle of consistency enjoys universal acceptance. The principle of consistency requires that similar cases be judged similarly. For example, if one judges that Bill did something wrong to Hillary because of a, b, and c; if one agrees that Hillary did something to Bill that had these same features (a, b, c); and if one is unable to cite a morally relevant difference, then (logically) one must make the same judgment about Hillary's behavior: what she did to Bill must be judged wrong, too.

The principle of consistency plays a role in one argument concerning the legal rights of animals, the general outline of which reads as follows:

- Human children, while they have many CI capacities, are not persons in the univocal sense because they lack moral autonomy.
- Although these children are not persons in the univocal sense, they must be viewed as existing as ends in themselves, and as having basic moral rights, if we are to give an adequate account of our duties to them.
- Many nonhuman animals have the same CI capacities as these children but, like these children, are not persons in the univocal sense because they lack moral autonomy.
- In the absence of a morally relevant difference between these animals and these children, therefore, these animals should be viewed as existing as ends in themselves, and as having basic moral rights.
- If the basic moral rights of these children provides a satisfactory basis for establishing their legal rights to life and bodily integrity, then the same holds in the case of these animals: their basic moral rights provide a satisfactory basis for establishing their legal rights.

An argument of this kind encounters a family of familiar objections including, "animals cannot have moral or legal rights because they cannot understand what rights are," "animals cannot have moral or legal rights because they cannot claim their rights," "animals cannot have moral or legal rights because they do not respect our rights," and "animals cannot have moral or legal rights because they do not respect the rights of one another."

Not one of these objections can withstand a moment's critical reflection. We do not and should not say that human children lack moral and legal rights because they cannot understand what rights are, or because they cannot claim their rights, or because they do not respect our rights. What we should not say in the case of children, we should not say it in the case of animals, for the same reasons.

Other standard objections dispute the belief that nonhuman animals have the same CI capacities as those possessed by human children. Among these critics, some maintain that other animals lack each and every one of these capacities.²⁹ Others, while conceding that animals have a few of these capacities (sensation and sentience, for example), deny that they have all the capacities that human children have.³⁰ Whichever option is favored, critics allude to the alleged deficiency as a morally relevant difference on which to rest their belief that human children have a moral status that nonhuman animals lack.

To ask whether any other animals have a mental life and, if so, how complex that life is, is to raise controversial issues certainly. The arguments on both sides have been discussed at length over the past quarter century and more. My position, initially presented in *The Case for Animal Rights*,³¹ is that at least mammals and birds possess the same CI capacities as the human children who have figured in the present discussion, and that arguments to the contrary fail.

The difference in potentiality between human children and nonhuman animals forms the basis of another common objection. These children have a potential that other animals lack: in the normal course of events, human children will become persons in the univocal descriptive sense. It is claimed that this is the morally relevant difference that grounds moral and legal rights for human children, but not for other animals.

The potentiality objection has a degree of plausibility that the previously mentioned objections do not. Cats and chickens, dogs and dolphins, mice and moose will obviously never grow-up to be human adult persons. On the other hand, most human children will. Here, then, we have a difference. The question is how much of a difference it is. Once its full implications are considered, it should be clear that it fails to mark the kind of difference proponents assume it does.

Three objections deserve to be briefly noted. First, we do not normally believe that those who potentially possess rights therefore actually possess them. For example, the day before their eighteenth birthday, American youth have the potential to become legal voters; but they do not have the right to vote before they are eighteen because of this potential. Logically, there is no reason to understand the relationship between having the potential to become a person and having the rights of a person any differently.

Second, if it were true that the potential to become a person was sufficient for having the rights of persons, the implications for abortion policies, for example, would be severe and uncompromising. From the

²⁹ See e.g. Peter Carruthers, *The Animal Issue: Moral Theory in Practice* (Cambridge U. Press 1992).

³⁰ See e.g. R. G. Frey, *Interests and Rights: The Case Against Animals* (Oxford U. Press 1980).

³¹ Regan, *supra* n. 3 (all 3 works discuss this point).

moment of conception onward, at least in normal circumstances, each unique form of human life has the potential to become a person. Thus, if having this potential is sufficient for having the rights of persons, not only do these unique forms of human life have the right to life; more, it would be exceedingly difficult to avoid the conclusion that at least most, and possibly all, abortions violate this right. This is not an implication that would be acceptable to many opponents of animal rights.

Third, many human children, whether because of genetic inheritance or injury, lack the potential to become persons. Yet we do not believe that these children must therefore lack such basic rights as the right to life and to bodily integrity. If these children have these rights while lacking the potential to become persons, it must be a double standard to insist that nonhuman animals, who also lack this potential, must lack these rights.

“But,” it will be said, “these children are *human beings*, the animals, not. *That’s* the morally relevant difference.” Once again, the difference is a real one. But, once again, it is not morally relevant. Just as it is not true that persons in the descriptive sense have rights because they are persons in that sense, so it is not true that human persons have rights simply because they are human beings. To their credit, those partisans of human rights who persist in thinking otherwise take a commendable stand in favor of human dignity; it is the reasons they have for doing so that are flawed.

XI. LEGAL PREJUDICE

We do well to remember how often and how resolutely the law has helped protect and perpetuate the worst forms of prejudice. For almost 100 years after the creation of the United States, persons of African descent legally could be owned, bought, and sold. For almost 150 years after the creation of the United States, women legally could not vote, could not file for divorce, and could not claim child custody. If racism and sexism could take up comfortable lodging in the legal traditions of a nation supposedly founded on human equality, it should hardly be surprising, even while it remains dismaying, that speciesism should do the same. An individual’s race, gender, ethnicity, and class provide no basis whatsoever for ascribing different moral or legal rights. The same is no less true of a difference in species. Only prejudice permits the contrary.

To bring about the kind of change in our legal systems that a non-speciesist moral outlook requires will not be easy. If anything, the challenge is more difficult than the ones faced by those who have worked, and others who continue to work, to eradicate the enduring vestiges of racism and sexism in the law. The kind of change that must flow from legally protecting the life and bodily integrity of other animals borders on the incalculable. The type of culture that must emerge from such protection seems unimaginable, so accustomed are we to

treating other animals as mere means to our ends. One might say that it is only several thousand years of human arrogance that stands in the way.

Jeremy Bentham understood this well. Recall his famous words, written more than 200 years ago, and quoted at the beginning of this article: “The day *may come*, when the rest of animal creation may acquire those rights which never could have been withholden from them but by the hand of human tyranny.”³² “The day *may come*,” he wrote; not “the day *will come*.” Whether *may* becomes *will* obviously depends on many factors. No single key can unlock the vast storehouse of speciesist prejudice at home in the law. Still, no locks are opened if no keys are forged.

³² Bentham, *supra* n. 1 (emphasis added).