

All That Dwell Therein: Essays on Animal Rights and Environmental Ethics. By Tom Regan. Berkeley and Los Angeles: University of California Press. 1982.

All That Dwell Therein is a collection from Tom Regan's recent journal articles and public lectures. Each essay is preceded by an introduction that gives autobiographical information about the circumstances under which it was written, relates it to other essays in the collection, and describes the controversies it engendered (providing bibliographical references). The whole collection also has its own Select Bibliography on the topic of animal rights (not including environmental ethics). These extra features of the book give it value beyond that of the articles contained in it.

On the other hand, *All That Dwell Therein* has the usual faults of a collection of previously published essays—repetition and self-contradiction. Starting afresh in each essay, an author goes over much of the same ground traversed earlier; and second thoughts, perhaps in response to public criticism of his earlier publications, often lead him to modify his previously expressed views. Because of these inherent faults, the rule is that occasional essays must be of very high quality to justify their collection in book form; and Regan's pieces, in both style and content, fall below the standard I consider appropriate.

In content, most of the essays are concerned with the proper status of the lower animals within ethical theory. Regan is well known as an advocate of better, more considerate treatment of lower animals, to the point of not using them for food or for medical experimentation. But to argue seriously for these views, he must derive them from a plausible ethical theory. The most important part of Regan's task is the discovery and exposition of such a theory; and, I shall argue, his near complete failure to find and expound one makes his book a failure overall.

One ethical theory that might serve the purpose is utilitarianism. It does seem that a utilitarian should oppose the infliction of suffering and promote the satisfaction of desires regardless of whether or not the subject is human. Perhaps it follows from this that animals deserve vastly better treatment than most of them receive; such is Peter Singer's line of thought (see his *Animal Liberation*).

But Regan is a consistent opponent of utilitarianism—in one place he calls it “my major theoretical nemesis” (p. 115). In “Utilitarianism, Vegetarianism, and Animal Rights,” he examines Singer's utilitarian arguments against killing and injuring animals and finds them wanting. His major objection is that the equal *counting* of similar interests, which is implicit in utilitarianism, does not imply the equal *treatment* of beings with similar interests overall (since more utility might be produced by sacrificing some for the sake of others). I would add that it certainly does not imply the equal treatment of beings whose interests are systematically different, as are those of normal human beings, and say, cattle. Furthermore, a typical human being will have a richness and variety of interests that no idiot, and *a fortiori* no cow, can have. If the disparity is great enough, a utilitarian may find himself *almost* dismissing cows' interests

from his calculations, since human beings' interests will vastly outweigh them. So utilitarianism does not clearly require vegetarianism and other "pro-animal" behavior; at least, the case is yet to be made.

These criticisms of Singer are well taken and should be remembered when Regan's own position is evaluated. While Singer's basic ethical theory does not seem to imply his strictures about the treatment of animals, neither, I shall claim, does Regan's imply his similar strictures; and in addition Regan's ethical theory is stated with extraordinary vagueness, whereas Singer is quite clear about his. In a comparison with Singer, Regan does not come off well.

As an alternative to utilitarianism, Regan proposes an ethical theory that relies heavily on a notion of fundamental *rights* and that requires us to ascribe to animals certain rights that are violated by much of the treatment they routinely receive.¹ In seeking to expound such a theory, Regan devotes most of his effort to the search for a criterion of rights-possession—a property, that is, that is necessary and sufficient for the possession of rights. Some of the criteria that have been proposed as at least necessary conditions are: rationality, a faculty of choosing, the ability to make long-range plans, the ability to make and keep promises, and the ability to understand the concept of rights. Other more-or-less intellectual capacities have also been proposed, and the mere potential for developing these capacities rather than their actual possession has also been suggested. Remarkably, Regan dismisses all these proposals out of hand, without discussing their plausibility.

In justification, he appeals to the principle that even the most defective human beings have rights. (Actually, he is inclined to except the irremediably comatose, though he finds no strong argument for doing so. See especially "An Examination and Defense of One Argument Concerning Animal Rights.") When it is added that the more intelligent of the lower animals are just like very defective human beings in all relevant respects, we get an "argument from marginal cases," whose conclusion is that the more intelligent lower animals have rights. Since infants, idiots, and chimpanzees are being ascribed rights, clearly no intellectual criterion of rights-possession that is at all stringent can be acceptable. But both premises of the argument from marginal cases are dubious.

As for the first premise, the pretense that even the most defective human beings have rights may be a sort of legal fiction, adopted because of the inexpediency of encouraging legal officials to attempt to distinguish between human beings who do and those who do not have rights (especially since the number of the latter will be quite small). Granted, we feel a certain repugnance at the thought of treating even the most defective human beings in certain ways. But we also feel repugnance at the thought of treating corpses, or patriotic and religious symbols, in certain ways: this does not show that they have rights.

The second premise is doubtful because human beings apparently possess potentialities not found in any other terrestrial species. Even a severely brain-damaged human being may stage a surprising recovery of his faculties; then we would want to say that he had rights all along (just as people do when they are asleep). Normal human infants, too, clearly have potentialities that set them apart from the lower animals. Perhaps these potentialities justify our ascribing rights to infants and many defective adults, while denying them to animals.

With two such plausible responses to it, Regan's argument from marginal cases must be adjudged quite weak. It is all the more unfortunate that his reliance on it prevents him from considering any of the interesting questions that arise about the various intellectual criteria of rights-possession.

By rejecting any intellectual criterion, Regan necessarily rejects (though without discussion) the social-contract tradition in rights theory, according to which the system of rights has been developed as an improvement over the "war of all against all." When rights are widely acknowledged, the individual can largely rely on others to control their own potentially aggressive behavior, rather than having to attempt to control it himself. He has no need for extreme self-defensive measures, such as "preemptive strikes." He need only bring *his own* behavior into conformity with his recognition of others' rights. But rights so conceived can be attributed only to responsible agents, those who possess what Regan calls autonomy. The lower animals would not qualify.

Just because lower animals lack self-control or autonomy, their place in the system of rights must be quite different from that of normal people, even on Regan's extremely egalitarian view. The recognition of others' rights is supposed to constrain a person's actions. If he knowingly violates their rights, most theorists would hold, he thereby forfeits some of his own rights and becomes a proper object of punishment. But no one expects such recognition to constrain the actions of lower animals. So if they are nevertheless accorded rights, they can evidently never do anything to forfeit them—they can never rightfully be punished for violating the rights of others. In a way, this is sensible enough. No one is proposing to *punish* a wolf for killing a lamb, even though he has done something that, if it had been done by an autonomous agent, would (according to Regan) have been a violation of the lamb's rights. But it is thus apparent that normal human beings are being held to a higher standard of conduct than are lower animals—are subject to sanctions that are not applied to the latter—even though both equally enjoy the protection of rights. This hardly seems fair to the people.

Though Regan often tells us that lower animals should occupy a moral position like that of feeble-minded human beings, a different analogy would in many cases be more apt. When we consider that some kinds of animals, especially carnivores, systematically trample on the alleged rights of other animals, we must liken their position in Regan's system more to that of criminally insane people. The criminally insane have rights but are not expected to control their own behavior. Instead, others exercise that control, in ways that would violate some of the rights of a normal human being. But there is a justification for classifying people as criminally insane—namely, that their derangement may be only temporary, that they are at least potentially rational—which is lacking in the case of lower animals. The analogy does not strongly support the claim that lower animals should be accorded rights.

In "Animals and the Law," Regan collects some old legal cases in which animals were the defendants; in some of them an animal was found guilty of a crime and punished. In our more enlightened age, animals are thought to have almost no place in courts of law. But Regan is not satisfied with this progress. He wants to bring animals back into the courts: not as defendants, but as plaintiffs, or as the injured parties on whose behalf the state undertakes prosecution. It seems to me that this would be the swing of the pendulum from one extreme to the other.

Regan finally proposes that, in a sense, the *possession of interests* is the criterion of rights-possession. As I shall explain, he discovers an ambiguity in the notion of *interests*, so that the criterion is not as clear-cut as it seems. But let us ignore that for a moment and ask what would follow from the proposition that animals, since they have interests, have rights.

The first point to note is that nothing follows directly about *which* rights

animals have. Even if we know that animals have rights, it will take further argument to show that they have this or that particular right. Regan never supplies any such further argument, beyond making the negative point that one's rights are limited by the extent of one's capacities (pp. 142 ff.).

Instead, he arbitrarily attributes to animals two rights: the *right to life*, and the *right to be spared gratuitous suffering*. Now, the term *gratuitous* in the latter phrase robs it of all force. For the mere fact that someone wants to do an action that causes suffering shows that—in his view, at least—the suffering is not gratuitous but is rather a concomitant of the achievement of some good, if not a good in itself. And in any case these rights are regarded by Regan as *prima facie* only, rather than as absolute side-constraints on action. “A right may always be overridden by more stringent moral demands” (p. 18). Perhaps this is the best view of rights; but then knowing someone's rights helps us determine how to treat him only insofar as we know how to measure “stringency,” and Regan's articulation of this notion is inadequate. He does say that the right to be spared suffering is not to be overridden solely in order to provide pleasure for others, unless the pleasure is much greater in amount than the pain and the pain itself absolutely small in amount (“trivial”) (pp. 18 ff.). Elsewhere (p. 91) he maintains that overriding someone's right (and thereby harming him) is justified only in order to prevent “vastly” greater harm to others. Besides their obvious vagueness (what order of magnitude is represented by “vastly”?), these principles have an *ad hoc* look; they are not very plausible candidates for the role of fundamental moral principle. And they do not provide a clear case for vegetarianism, as we can see by trying to use them to judge a human carnivore.

Let us take as our defendant a person who has killed a lower animal and eaten it, thereby harming it and overriding its right to life. If this is a “trivial” harm, then the carnivore may be justified on the grounds that he derived a lot of good out of eating the animal, an amount of positive utility that “vastly” exceeded the harm done.² Now, to evaluate this defense we must be able to compare amounts of utility between the members of different species. *Interpersonal* comparisons of utility are notoriously difficult; *interspecific* ones are even more problematic and ought not to be appealed to without discussion. But in “The Moral Basis of Vegetarianism,” Regan seems unaware of the problem. Note that we cannot just assume that the harm done in killing a lower animal is nontrivial. If we knew how to make interspecific utility comparisons, we might find that killing a fish, or even killing a cow, had a negative utility equivalent to pricking a person's finger with a pin.

But if killing a lower animal always produced a nontrivial amount of negative utility, then (in order to satisfy Regan) the carnivore would have to show that he would have been seriously harmed by not eating meat, in an amount vastly greater than the harm done by killing. No utility *gain* could justify his action in Regan's eyes, but only the *prevention* of a utility *loss*. Now this emphasis on the difference between gain and loss-prevention is implausible. It does not seem important whether an action increases or decreases utility compared with the starting point; what matters is whether utility is increased or decreased compared with the results of alternative actions. Here, then, we ought to compare the individual's utility level if he eats meat with his level if he does not, regardless of whether either level is higher or lower than his pre-meal level. Regan's radical distinction between acts that increase utility and those that prevent its decrease seems misguided.

Thus the only plausible part of Regan's divergence from utilitarianism is his

insistence that *much* more good than harm must result from a rights-violation (as compared with alternative actions) in order for it to be justified. Then even if we grant to lower animals the rights to life and to nonsuffering, this will not obviously imply that we should not use them for food; for the problem of interspecific utility comparisons has not yet been solved.

With regard to the nature of interests, Regan seems torn between two conceptions that yield quite different results. He identifies these two conceptions with *explicit or conscious interest*, on the one hand, and *conduciveness to one's good or welfare*, on the other. Roughly speaking, you have an "interest" in X in the first sense if you think X would be good for you; in the second sense, if it really would be.

Now, obviously, possession of an interest of the first kind requires sentience. Accordingly, "neither clams nor oysters, amoebae nor paramecia" can plausibly be assigned rights (p. 162). But what if the second conception of interests is the appropriate one; will this conclusion still hold? I would say yes—that possession of an interest of the second kind also requires sentience. But in "What Sorts of Beings Can Have Rights?" and in "The Nature and Possibility of an Environmental Ethic," Regan considers and very tentatively endorses the negative answer. He thus lends his support to the truly wild thesis that nonsentient beings can possess rights.

As an example, Regan offers his Datsun: putting antifreeze in its radiator in the winter makes it a better car (or keeps it from becoming a worse one), and hence contributes to its good, though the car is nonsentient (p. 178). The Datsun has a *good of its own*, independent of any person's interests in it; it has *inherent value*. Thus it has rights.

Now the same can be said, according to Regan, for other artifacts, for plants, and for natural objects such as mountains and rivers; so they, too, have rights. These provide a moral ground for objecting to the activities of real-estate developers and industrial polluters, a ground that is quite independent of the bad effects of their activities on *people* or even on *sentient beings*. We are within sight of a truly "environmental ethic," as opposed to a person-centered "management ethic."

Warming to his subject, Regan speculates that the failure to recognize the rights of nonsentient beings may be the result of an insidious prejudice—*sentientism*, akin to the dread racism, sexism, and speciesism (pp. 184-85). But he does not seriously demand that we stop discriminating against those that cannot feel in favor of those that can; for Regan's own championing of the nonsentient is never more than tentative, and he allows himself to suggest that normal human beings, because of their autonomy (which involves both sentience and intelligence), are of greater inherent value than are lower animals, not to mention plants and inanimate objects (pp. 137-38). If the difference in inherent value between the autonomous and the nonautonomous were great enough, this would be practically to bring in an intellectual criterion of rights-possession by the back door. Again, it is far from clear that Regan's principles have the revolutionary implications he proclaims for them.

As a weapon in the battle against developers and polluters, Regan's "environmental ethic" will be logically valueless (though it may have some rhetorical effect) until he produces a clearer account of inherent value. Some of his remarks suggest that everything has its own inherent value and hence its own *prima facie* right to exist. If so, then, since virtually any action will involve the going out of existence or the substantial modification of something or other, we can do *nothing* without violating some rights. Probably Regan

would want to hold that only some things have positive inherent value and that great differences in inherent value are important in deciding which *prima facie* rights are to be upheld. But then the whole burden of his policy recommendations will rest on his account of how much inherent value each thing has. In *All That Dwell Therein*, this account is incredibly sketchy. Furthermore, the environmental ethic may well undercut his argument for vegetarianism: if not only animals, but plants and inanimate objects, have a right to exist, then there will be nothing *especially* objectionable about eating animals.

Insofar as Regan does offer us an account of inherent value, it seems to me that he tacitly relies on two very dubious philosophical theses, the first of which is essentialism. In order to assess the inherent value of Regan's Datsun, we must be able to see which classification of it is relevant. It must be *essentially* a car, rather than a *subcompact sedan* or a *vehicle*. If it had many equally good classifications, we could not assign it a unique inherent value. But if we know it is essentially a car and nothing else, we can evaluate it relative to the purposes for which cars in general are built; we will know which modifications of it are improvements and which are impairments. Altering it so as to make it a pickup truck, for example, will completely destroy it, since it will no longer be a car; but if it had been essentially a *vehicle*, such a modification might actually have increased its inherent value.

The second dubious philosophical thesis is creationism. In order to carry over what Regan says about artifacts such as cars to natural objects such as mountains, we must view the latter as being really artifacts too—as having been *created* for some *purpose*. Only by knowing the purpose for which mountains are created can we judge whether, for example, a mining or timber-cutting operation will make it a worse mountain and hence reduce its inherent value.

In spite of an offhand reference to the wisdom of Aristotle and Aquinas (p. 180), Regan makes no attempt to resuscitate either of these philosophical theses. That heroic task must be taken on before he can hope to make his environmental ethic plausible to most contemporary philosophers. The prospects for success are dim.

In sum, I find too little clarity and cogency in these essays. Nor does their style—which sometimes falls into a logic-chopping imitation of G. E. Moore and which includes a couple of purple passages of bad rhetoric (“Animal Rights, Human Wrongs” is the worst offender)—do much to redeem them. The book will appeal chiefly to readers who pride themselves on keeping up with all the literature on animal rights and environmental ethics.

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1. “I believe utilitarianism places too much value on consequences and not enough value on individuals. And I believe this deficiency in utilitarianism points to the need to postulate basic moral rights for animals as well as humans” (p. 70; see also p. 90). Regan adds (p. 70) that those who disagree are simply prejudiced. Often he is more guarded (see especially pp. 118-19) and presents himself as merely raising the possibility that human beings, and therefore also animals, have rights. But unless this possibility has a fair degree of probability, Regan's discussions are largely uninteresting. Since the book stands or falls with the hypothesis that human beings have rights (as a premise for the argument that lower animals do, too), I shall treat this hypothesis as Regan's without qualification.

2. I assume that by *pain* and *suffering* Regan means negative utility in general and that by *pleasure* he means positive utility.