Fox's Critique of Animal Liberation

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Recent and forthcoming critiques of arguments dealing with animal rights have done much to sharpen the issues involved.[1] Indeed, the critics have done so much to increase our understanding that it is all the more regrettable to find one of them disputing (in his terms) an "animal liberationist's" position without taking the trouble to understand it clearly. The critic I have in mind is Michael Fox (see his article in this issue), and the animal liberationist's position, so-called, is mine.[2] In fact, Fox disputes both my position as well as Peter Singer's.[3] It should go without saying that it is not part of my task to assess the accuracy of Fox's interpretation of Singer or to defend Singer against Fox's criticisms if and when they do apply. My task, rather, is to gauge the accuracy of Fox's presentation of my position and the severity of his objections to it. But I shall also have something to say about Fox's own position on rights.

Permit me to begin with a seemingly minor point. Toward the end of his essay Fox states the following: "There are also repeated examples, both in Singer's book . . . and in Regan's article . . . of a disturbing penchant for equating experiments on animals with Nazi death-camp experiments performed on hapless, unanesthetized human beings. The overall impression one gains from such lurid passages . . . is that in their zeal to help launch a new and popular movement for animal rights they [Singer and Regan] cast their usual caution to the breeze. Or are we, instead, merely being subjected to the self-righteousness of recent converts?" (pp. 117–18). Strong language, this speculation about self-righteousness. But this and kindred instances

1. For a very helpful general review, see Jan Narveson, "Animal Rights," *Canadian Journal of Philosophy* 7 (March 1977): 161–78; and for my reply to his principal argument against attributing rights to animals, see "Narveson on Rational Egoism and the Rights of Animals" on pp. 179–86. Another helpful critique, which is restricted to an examination of a particular argument for animal rights, is R. G. Frey, "Animal Rights" (forthcoming in *Analysis*). For a response to Frey, see Dale Jamieson and Tom Regan, "Animal Rights: A Reply to Frey" (also forthcoming in *Analysis*).

2. The essay Fox refers to is "The Moral Basis of Vegetarianism," *Canadian Journal of Philosophy* 5, no. 2 (October 1975): 181–214. Page references to this paper are henceforth given in the main body of the essay.

3. Peter Singer, *Animal Liberation: A New Ethic for Our Treatment of Animals* (New York: New York Review, 1975).

aside,[4] it bears noting that, in the essay of mine which Fox examines. I cite no examples of experiments on animals and deal exclusively with the question of the moral basis of vegetarianism. There being no examples of the use of animals in experimentation, it can hardly be supposed that my essay contains "repeated examples" of the same. Though minor in itself, this misrepresentation is symptomatic of Fox's account of what I do say. If he cannot be trusted to report accurately on the examples I use, how much less likely is it that he can be counted on to characterize my arguments accurately?

That Fox does not disappoint our expectations in this regard is easy to demonstrate. As early as the second paragraph we are told that "[b]oth Singer and Regan assert that animals' painful and pleasurable experiences are qualitatively and quantitatively the same as those of humans and that, hence, animals have a capacity to enjoy life equal to that of humans" (p. 107). Fox "confesses" that he has "no idea how to interpret or evaluate" this "peculiar claim." Neither, I think, do I, and it is something of a relief to me that I have never advanced any such thing. Where, exactly, is it that I am supposed to "assert" this? Fox does not say. Nor is the absence of supporting evidence peculiar to this case. To use Fox's expression, we find in his essay a "disturbing penchant" for attributing assertions, claims, and the like to the authors whose work he is putatively examining, without the benefit of supporting textual evidence. So far as I can gather, however, what I do say that bears on the present matter, and what Fox evidently misunderstands, is this: "[I]f it is true that animals can and do experience pain; and if, furthermore, it is true, as I think it is, that pain is an intrinsic evil; then it must be true that the painful experience of an animal is, considered intrinsically, just as much of an evil as a comparable experience of a human being" (p. 186). Now, perhaps Fox would want to dispute this by claiming that the experience humans have of pain (or pleasure) never is "comparable" in any relevant sense with what animals experience; certainly it is open to him to challenge my position along these lines.[5] But the view, which is implied by the subsequent argument in the essay of mine Fox examines, that some of the painful and pleasant ex-

4. Though not, strictly speaking, relevant to the argument I develop here, I cannot forebear commenting on two cases where Fox accuses me of being "naive." "[I]t is surely naive in the extreme," he says, "to blithely brush aside as of no consequence . . . all the data on the important differences between animals and humans which have been gathered [by scientists] to date" (p. 111). Uncharacteristically, Fox gives a page reference where, it must be assumed, one can find me "blithely brush[ing] [these data] aside as of no consequence." The reference is to p. 191 of my essay. I invite anyone to locate on that page where it is that I "blithely brush [these data] aside as of no consequence." A second alleged case of my "naivete" is this. "Regan assumes," Fox states, "that the use of language is an uncomplicated phenomenon and that granting animals the same language capacities as humans is unproblematic. This is certainly empirically false, but it is also philosophically naive" (p. 111, n. 8). Characteristically, no textual evidence is given by Fox in support of his claim that "Regan assumes" any of this. I mention the concept and the use of language on pp. 184–85, but nowhere, I think, do I assume that "the use of language is an uncomplicated phenomenon." I hope it does not seem self-righteous of me to expect that, if Fox is of an opposite opinion, he ought to take the time and make the effort to support this and his other charge of "naivete."

5. See Narveson, pp. 165 ff.

periences of some animals are comparable with some of the painful and pleasant experiences of some humans is not the same as, nor does it entail, the unqualified view (whatever it may mean) that "animals' painful and pleasurable experiences are qualitatively and quantitatively the same as humans." As for Fox's further claim—namely, that I think that "animals have a capacity to enjoy life equal to that of humans"—that, too, is distinct from, and does not follow from, anything that I do "assert," only here I cannot even think of any passage which could plausibly be misinterpreted to yield this position.

Advancing slowly, we find Fox alleging in this same (the second) paragraph that "it is very difficult to see how animals' having interests per se entails their having equal interests with human beings and, as a consequence, the associated moral rights the latter possess. Singer and Regan, in other words, take animals' capacity to enjoy and suffer as the sole fact that is morally relevant to these alleged entailments" (p. 107). I am not sure I understand what views are being attributed to me. In particular, it is unclear how the sentence containing the words "in other words" can be an alternative way of stating what is expressed by the sentences preceding it only . . . in other words. But I think it not uncharitable to suppose that the views with which I am being credited at least include the following: (1) that animals have interests; (2) that their having interests "entails their having equal interests with human beings"; (3) that, in the case of human beings, their having an interest in x entails their having a right to x; so that (4) the fact that animals have an interest (e.g., in avoiding undeserved pain) entails that they have a corresponding right (the right not to be made to suffer undeserved pain); and (5) that, at least in the case of animals, it is their capacity to suffer and enjoy that is "the sole fact that is morally relevant to these alleged entailments."

Now, if these are the views being attributed to me, I think I can say that it is only 1 that I have advanced. Animals do have interests, I contend (p. 194),[6] and it is interesting to note, for what it is worth, that Fox apparently agrees (p. 106). But I cannot understand how anyone who gave my essay even the most cursory reading could come away from it thinking that I held views 2–5. Consider 3, for example. No one could reasonably credit me with subscribing to this view if I explicitly disavow arguing for the view that human beings do have rights, and explicitly disavow this I do. "I have not," I state,

6. I have tried to clarify and defend this claim elsewhere (see "McCloskey on Why Animals Cannot Have Rights," *Philosophical Quarterly* 26 [1976]: 251–57, and "Feinberg on What Sorts of Beings Can Have Rights," *Southern Journal of Philosophy* [Winter 1977]). I am no longer satisfied with what I say about or how I use the concept of interests in the "Vegetarianism" essay. In particular I now think it is quite false to say, as I do there (p. 193), that "[t]o be a subject of interest . . . does appear to be a necessary condition of being human," where "being a subject of interests" means "being a subject who is interested in things" (e.g., having desires, wants). An irreversibly comatose human being is a human being though permanently lacking in such interests. Independently of this matter, but related to the question of the connection between interests and rights, see R. G. Frey's defense of McCloskey against my objections ("Interests and Animal Rights") and my reply ("Frey on Interests and Animal Rights") both in the October 1977 issue of *Philosophical Quarterly*.

"argued . . . that human beings do have natural rights" (p. 213).[7] With regard to the particular right, and the way of trying to establish it, mentioned in 3, moreover—namely, the right of humans to be spared undeserved pain because they have an interest in avoiding it—I explicitly state that "whether such an argument can succeed, I cannot say" (p. 194); and again, later on, I remark that "none of this" (that is, none of my discussion of the argument that attempts to ground the right in question on the presence of interests) "even if correct, establishes that animals (or humans) have an equal natural right to be spared undeserved pain. For my arguments are arguments about arguments for and against the ascription or withholding of this right to humans and animals; they are not intended to show that humans or animals do or do not have this right" (p. 195). It is simply not true, therefore, that I either assert 3 or that it follows from anything I do assert. And the same is true of 4 and 5. Since, as is abundantly clear from the passages just quoted, I do not myself advance a view to the effect that satisfying some condition, *c*, entails that those beings who satisfy it have a right to be spared undeserved pain, or any other right for that matter, it is a gross distortion of my argument to state or imply that I hold a position of this kind.

But what of 2—the view, again, that animals having interests "entails their having equal interests with human beings"? In the interest of avoiding monotony I wish I could find a different, a really clever way of saying "I do not maintain this; and it does not follow from anything I do maintain." But that's just what needs saying because that happens to be what is true. What I do say, as I have said, is that animals do have interests; and what I do assume is that some of the painful (and pleasurable) experiences of some animals are comparable with some of the painful (and pleasurable) experiences of some humans. Thus, my position, given these assumptions, might be stated as follows: some animals and some humans have an equal interest in avoiding pain that is equally bad. Once again, perhaps I am mistaken in believing this, but I do not see how I could be mistaken in believing that here we have a position that is logically distinct from 2.

I might summarize the main elements of my reply so far in the following way: Fox represents me as maintaining that animals do have rights, while I am careful not to maintain this; and he also represents me as maintaining that their having rights is entailed by (is a consequence of) their having the capacity to suffer and enjoy, a position which, again, I am careful not to maintain. Indeed, so far am I from maintaining that the capacity to enjoy and suffer is "the sole fact that is relevant" to the question of animal rights that I actually argue that we have as much reason for attributing one right to animals—namely, the right to life—as we have for attributing this right to infants and severely mentally enfeebled humans, quite independently of the capacity to enjoy and suffer (see pp. 205–14). Suppose, however, for the sake of argument, that I do maintain the view Fox attributes to me. What is supposed to be wrong with attributing rights to animals on the basis of their

7. Fox and I differ on the terminology we use; he writes about "basic moral rights," I write about "natural rights." I assume we have the same rights in mind.

capacity to experience pain and pleasure? It is interesting to note that Fox never explicitly contests the view that the having of this capacity is a logically sufficient condition of having basic moral rights, a noteworthy omission, it seems to me, since this is all that anyone wanting to establish that many animals do have rights would have to show. What Fox does criticize is the view that the possession of this capacity is "a prerequisite" for having rights. This cannot be right, Fox argues (p. 110), since if it were someone who lacked the capacity to feel pain he would therefore necessarily lack basic moral rights, which is absurd; and the same would be true, though Fox does not mention this, of someone who happened to lack the capacity to experience pleasure. That would be no reason for concluding that their basic moral rights had "vanish[ed]" (ibid.). Suppose we concede the soundness of Fox's objection; then it would follow that anyone who could fairly be interpreted as holding the view he contests would have to abandon it.[8] Quite incredibly, it seems to me, Fox must be included among those who hold the view in question. The capacity to suffer and enjoy, he says, "*is a necessary* but not a sufficient *condition for the granting of the rights in question*" (p. 110, my emphasis). Why Fox would not want to allow that this capacity is a sufficient condition is clear enough; if it were, many animals would qualify as rights possessors. But how, after he has argued that the possession of this capacity is not a "prerequisite" for the possession of basic moral rights, he then can go on to maintain that it is "a necessary . . . condition for the granting of the rights in question" exceeds my ability to understand. Given even the most sympathetic reading, I do not see how Fox can be spared the charge of inconsistency.

This inconsistency in Fox's position vis-à-vis the criteria for rights possession is not the only problem he must face. It is not even the only instance of inconsistency, as an examination of the following two claims (p. 112) reveals:

A. "Autonomy, which thus entails certain cognitive capacities, is necessary (and, together with the capacity to enjoy and suffer, sufficient) for the possession of moral rights." [Hereafter I refer to this claim as "the capacity criterion."]

B. ". . . [A]ll (and only) those beings which are members of a species of which it is true in general (i.e., typically the case at maturity, assuming normal development) that members of the species in question can be considered autonomous agents are beings endowed with moral rights." [Hereafter I refer to this claim as "the species criterion."]

Now, the species criterion evidently is intended by Fox to account for his belief that those human beings who are not themselves autonomous (e.g., severely mentally enfeebled humans) nevertheless have basic moral rights. Suppose it did account for this. Then it would follow that being autonomous is not a necessary condition of having rights, in which case the capacity criterion would have to be abandoned. If, on the other hand, the capacity cri-

8. Fox attributes this view, not without reason it seems to me, to Singer (see Singer, p. 9). I have myself disputed this position (see "Feinberg on What Sorts of Beings Can Have Rights").

terion is retained, then only those beings who are themselves autonomous could have rights, in which case the species criterion would have to be abandoned. So far is it from being the case that the species criterion "follows" from a set of premises which includes the capacity criterion, as Fox apparently believes, that the two criteria actually are inconsistent: one cannot hold both that autonomy is a necessary condition of rights possession and that beings who themselves lack autonomy might nevertheless possess rights.

One way to avoid this inconsistency would be to abandon the capacity criterion, or at least that part of it that makes autonomy a necessary condition of rights possession; instead, it, like the capacity to enjoy and suffer, might be regarded as a sufficient condition. But Fox can be counted on not to want to do this, since altering the capacity criterion in this way would open the door for including many animals in the class of rights holders. If respect for consistency requires that a choice be made between the capacity and the species criterion, it is the latter which Fox is most likely to abandon, though at a cost. What that cost is I shall explain later. First, though, I want to indicate why I think Fox should choose not to accept the species criterion.

Imagine the following situation: A being (A) has the capacities *a*, *b*, *c*, *n*, but lacks autonomy; moreover, it is not true of the species to which A belongs that its members "typically" are autonomous. Another being (B) is exactly like A when it comes to the possession of individual capacities *a*, *b*, *c*, *n*, and, furthermore, is like A in lacking autonomy; as it happens, however, B belongs to a species of which it is true "in general" that its members are "typically" autonomous. Given these conditions, Fox's species criterion entails that B has basic moral rights but A does not. Given this criterion, in other words, what we are being asked to believe is that two beings, exactly like one another in respect to their own capacities, might nevertheless differ in this quite fundamental respect: the one does possess basic moral rights and the other does not (and, indeed, cannot). Maybe I am mistaken about this, but I regard this as a *reductio* of Fox's species criterion. I simply cannot see how a criterion for rights possession can be correct which allows, as this one does, that two beings might conceivably both have the same capacities but differ with respect to the possession of rights.

The preceding argument is made all the more damaging to the species criterion if a case can be made for the possibility that A and B can conceivably belong to the same species (e.g., *Homo sapiens*). Whether a case can be made depends on how fluid our conception of a species is. It would certainly seem to be the case, however, that a species can tolerate changes in what is true "in general" of its members without thereby ceasing to be the same species. If this is so, then why may not the following be true of A and B: A belonged to the species *Homo sapiens* at a time when autonomy was not a capacity which its members had "in general"; B belonged to this same species when this capacity was "typically" shared by its members? If this is possible, then Fox's species criterion not only implies, what seems fatal enough, that two beings exactly like one another in terms of their own capacities can nevertheless differ in that the one has, while the other lacks, basic moral rights;

more than this, two beings which have the same capacities and which belong to the same species can nonetheless differ in that one possesses, while the other lacks, basic moral rights. If there is any rational means by which to salvage a position concerning the criteria of rights possession that would allow this, I do not know what it could be.

A final, related objection asks how mere membership in a species, whatever might be true "in general" of its members, could provide us with a basis for believing that all, least of all only, the members of this (or those) species are, in Fox's words, "endowed with rights." In footnote 10 Fox endeavors "to anticipate a possible objection." "[I]ndividual beings (say, one or more extraterrestrials)," he says, "may be granted moral rights on the same basis (i.e., if they show evidence of autonomy, etc.), without our knowing the general characteristics of their species." Here Fox misses the implications for the species criterion of his own example. For suppose we do as he says and grant moral rights to a few extraterrestrials only to discover, later on, that these few are the exception and not the rule: in general, that is, members of their species are not autonomous, etc. Are we then seriously to consider that we were mistaken in the first place, that these few autonomous, etc., fellows not only do not but cannot have rights, not because of anything they lack, but instead because of some impersonal fact about what is true "in general" of those beings which belong to their species? Perhaps, once again, my intuitions lead me astray, but I should have thought that we would not revise our initial judgment for this reason; rather, I think we would continue to believe that the few autonomous extraterrestrials had basic moral rights (assuming that we believed that humans who were autonomous had them). In view of this last, as well as the previous objections, I therefore conclude that the species criterion, considered in itself, is fundamentally defective. Thus, if, as I have argued earlier, respect for consistency must force Fox to choose between the capacity and the species criterion, reason would dictate that he not choose the species criterion.

Fox's selection of the capacity criterion, however, involves a considerable cost. For that criterion, as we know, specifies that autonomy is a necessary condition of rights possession, and this is a condition which many, many human beings (e.g., those who are severely mentally enfeebled) cannot meet. Thus, if Fox opts for the capacity criterion, he must abandon his belief that those humans who lack autonomy nonetheless have basic moral rights; whereas, if he continues to believe that these humans have these rights, then he must give up the view that autonomy is a necessary condition for rights possession. Once again, he cannot have it both ways. The fact that he must choose between these two options does not of course necessitate that he choose the one rather than the other. But if he chooses to go on believing that infant and severely mentally enfeebled humans have basic moral rights and since, as I have argued in the foregoing, we cannot account for anyone's possessing basic moral rights by determining what is true "in general" of the members of the species to which he/she/it belongs, then some other criterion for attributing these rights to these humans must be forthcoming, a criterion which they themselves can meet because of their capacities.

What this criterion is, is difficult to say. Indeed, there appear to be problems inherent in all the candidates. But if, upon canvassing the possible criteria, we examine those which seem to be the most plausible, then what we find, I think, is this: That the most plausible argument(s) for attributing basic moral rights to infant and severely mentally enfeebled humans also implies that many nonhuman animals have these rights. That is what I argued in the essay Fox ostensibly examines, that is what I have argued elsewhere,[9] and that is the position I believe Fox himself is driven to, given the failure of his species criterion and assuming that he continues to believe that the humans in question do have basic moral rights. But since, as Fox's essay more than amply demonstrates, what I am saying here can easily be misunderstood, permit me to say, again, that I am not claiming, and if what I am claiming is correct it would not follow, that animals do have rights, or that there is some characteristic, *c*, such that any being's having *c* entails that he/she/it has rights. My arguments, once again, are arguments about arguments, and all that I have ever tried to conclude, thus far at least, is that we have as much reason to believe that some animals have rights as we have for believing that some humans (namely, infants and the severely mentally enfeebled) do. Though controversial, and though still justly to be subjected to ongoing critical scrutiny, I do not believe that Professor Fox has provided us with any good reason either for denying or modifying this position.

9. Frey, in his "Animal Rights," criticizes this way of arguing, and Jamieson and I defend it. I also discuss this argument in my reply to Narveson.