



October 2023

The Is-Ought Gap and Policy Failure: An Examination of Tom Regan's "The Case for Animal Rights"

Lon Niedermayer
info@ubiquitypress.com

Follow this and additional works at: <https://digitalcommons.cwu.edu/ijurca>

Recommended Citation

Niedermayer, Lon (2023) "The Is-Ought Gap and Policy Failure: An Examination of Tom Regan's "The Case for Animal Rights"," *International Journal of Undergraduate Research and Creative Activities*: Vol. 3: Iss. 2, Article 25.

Available at: <https://digitalcommons.cwu.edu/ijurca/vol3/iss2/25>

This Article is brought to you for free and open access by ScholarWorks@CWU. It has been accepted for inclusion in *International Journal of Undergraduate Research and Creative Activities* by an authorized editor of ScholarWorks@CWU. For more information, please contact scholarworks@cwu.edu.

The Is-Ought Gap and Policy Failure: An Examination of Tom Regan's "The Case for Animal Rights"

Abstract

Regan's essay makes an impassioned and reasonable argument that the problem with our use of non-human animals is not how cruelly or kindly we treat them, but that we use them at all. He examines various ethical positions on the treatment of animals and concludes that as living beings, animals have as much right to life as humans. His conclusion, however, is untenable as policy on two fronts. First, it is drastically counter to existing attitudes. Second, his argument rests on a particular notion of rights. David Hume's "Is-Ought Gap" is relevant because, just as observable fact cannot by itself support normative principles, normative principles alone cannot translate into action. Attitudes toward – and obfuscating practices by – animal-using industries must change, but gradually or else risk rejection. Regan dismisses what he calls "contractarianism" in favour of egalitarian rights for animals, but evidence suggests otherwise. Policies and rights are effective only so long as they are acknowledged. Whatever rights animals deserve, they only receive the ones humans grant them. Changes in the treatment of animals will only come about only when and if enough people want them to – the goal is to somehow make them want to.

The Is-Ought Gap and Policy Failure: An Examination of Tom Regan's "The Case for Animal Rights"

Lon Niedermaier
University of Regina

Published online: 30 July 2011
© Lon Niedermaier 2011

Abstract

Regan's essay makes an impassioned and reasonable argument that the problem with our use of non-human animals is not how cruelly or kindly we treat them, but that we use them at all. He examines various ethical positions on the treatment of animals and concludes that as living beings, animals have as much right to life as humans. His conclusion, however, is untenable as policy on two fronts. First, it is drastically counter to existing attitudes. Second, his argument rests on a particular notion of rights. David Hume's "Is-Ought Gap" is relevant because, just as observable fact cannot by itself support normative principles, normative principles alone cannot translate into action. Attitudes toward – and obfuscating practices by – animal-using industries must change, but gradually or else risk rejection. Regan dismisses what he calls "contractarianism" in favour of egalitarian rights for animals, but evidence suggests otherwise. Policies and rights are effective only so long as they are acknowledged. Whatever rights animals deserve, they only receive the ones humans grant them. Changes in the treatment of animals will only come about only when and if enough people want them to – the goal is to somehow make them want to.

We do know that many...of these animals are the subjects of a life in the sense explained and so have inherent value if we do....reason compels us to recognize the equal inherent value of these animals. (Tom Regan¹)

When addressing the issue of rights for non-human animals (henceforth referred to as "animals") it is noteworthy, as David DeGrazia points out, that of all of the ethical discourse on the subject, the opinion that current practices are immoral is practically unanimous – the focus of discussion is merely to what degree.² Of the different views on that discussion I have studied, the view presented by Tom Regan in his essay "The

¹Tom Regan, "The Case for Animal Rights," *The Environmental Ethics and Policy Book*, 3rd ed., Eds. Donald VanDeVeer and Christine Pierce (Belmont: Wadsworth, 2003), 148.

²David DeGrazia, "The Moral Status of Animals and Their Use in Research: A Philosophical View." *Kennedy Institute of Ethics Journal*, Vol. 1, No. 1 (March 1991), 49.

Case for Animal Rights” seems to be the one with the most reasonable argument. His main thesis is that the fundamental problem with our use of animals is not how cruelly or kindly we treat them, but that we use them at all.³ He feels that the assumption that animals can be viewed in terms of their usefulness to humans rather than in their own inherent value is the source of all inhumane treatment. Discussing the comfort of caged animals or painlessness of killing livestock – while still caging and killing them – would be to Regan like rearranging the deckchairs on the Titanic. Until this attitude changes, says Regan, the problem will not improve.⁴ This thesis is problematic to me not because it is wrong (Regan does make a very compelling argument in its favour) but because, as I will show, its reliance on a radical change in attitude among a large number of people makes it highly impractical. Furthermore, while I am convinced that his is a good argument, I am not convinced that it is entirely correct. A policy needs to account for what people are willing to abide by, and any policy – however well-intentioned or reasonable – which does not is as good as no policy at all.

In the sections that follow, I will present a summation of Regan's argument, explain why it is unlikely to receive popular support, and then attempt to find ways to implement his ideas as far as they can go and perhaps adjust them to more closely fit my own ideas on the subject.

[E]ven with the stuff we preach about the “sanctity of life,” we don’t practice it...look at what we kill: mosquitoes and flies ’cause they’re pests...chickens and pigs ’cause we’re hungry. (George Carlin⁵)

I shall try in this first section to cover the primary points in Regan's essay. His article addresses several prevailing notions about how to treat animals and provides some conjecture about their feasibility. I will review them briefly and highlight a few points to discuss further. He starts with the idea that animals are incapable of suffering or that their suffering only matters in terms of “damage to property.”⁶ He rightly counters that this is contrary to all available evidence: animals give every indication that they can suffer. The next model is “contractarianism” which contends that moral rights are not inherent, but merely a set of customs – either explicit or implied – agreed upon and recognized by active members of a society.⁷ Those who do not directly contribute to the society, such as children or animals, can be protected by those who do based on preference or sentiment. If an individual elicits little sentiment (such as a rat or other

³ Regan, 143.

⁴ Ibid.

⁵ George Carlin, *Back in Town*, (Atlantic, 1996).

⁶ Regan, 144.

⁷ Ibid.

“pest”) it receives little consideration. Regan opines that this would not be so objectionable but that humans receive disproportionately preferential treatment.⁸

Next is the cruelty/kindness view which considers the actor in terms of their cruelty or kindness to others (including animals).⁹ Regan objects that kindness can be misguided or limited in scope, and that the mere absence of cruelty is insufficient for justice. His next example is utilitarianism, which he objects to in the usual way (harming the few to benefit the many, unpredictability of consequences) but also by its tendency of reducing individuals to mere vessels of pleasure and pain.¹⁰ Regan's final example – and the one he has been leading up to – is what he calls the “rights view.”¹¹ He contends that any individual, human or non-human, is most importantly the possessor of a life and therefore has inherent value independent of their usefulness to others. To treat any such without respect or to insist that some (such as humans) have more value than others is pure prejudice. It is this view, claims Regan, which obliges us to refrain from any instrumental use of animals. The two main points I wish to take from this section regard contractarianism and the rights view. Of particular interest to me are the issues raised in each case about unfair distinction made between human and non-human or perceiving others as means rather than individuals. In the next section, I will put forward some challenges to these issues.

That's the problem: we only want to save the cute animals, don't we? Why don't we just have animal auditions? (Denis Leary¹²)

The prominent philosopher David Hume first raised the problem of the so-called “Is-Ought Gap.” The problem as originally presented was that any discussion of what one ought to do based on how the world is is missing at least one normative proposition, and that no form of ethical behaviour can be deduced purely from physical observation.¹³ Less well-discussed, however, is the reverse: an ethical belief by itself has no direct bearing on behaviour unless it is accompanied by the capability and the will to act on it. Without getting into the pros and cons of either (each would merit a paper on its own) I refer to the examples of alcohol prohibition in North America in the 1920s and the current controversy of file-sharing on the internet. In both cases, the

⁸ Regan, 145.

⁹ Ibid.

¹⁰ Regan, 146.

¹¹ Regan, 147.

¹² Denis Leary, *No Cure for Cancer*, (A&M, 1993).

¹³ David Hume, *Treatise of Human Nature, Vol. II*, (London: Aldine 1960), 177.

normative aspects of each are fairly well-known but are ignored by the majority of the population. While there are certainly ethical counterarguments to be made in each case, the relevant part to this discussion is that as policy both are ineffective. If a policy runs counter to existing beliefs or habits, people will find a way around it. Unfortunately for Tom Regan's impassioned and well-crafted recommendation, people do have beliefs and habits strongly contrary to it.

Scott Plous has done extensive research into human attitudes to animals and determined that our ability to use animals is based on four psychological factors: dissociation from harm, conflict reduction, ingroup-outgroup bias, and the similarity principal.¹⁴ Dissociation is the inability (or unwillingness) to see harmful behaviour due to distance, language use, or presentation.¹⁵ Livestock farms tend to be remotely located, processing methods tend to contain a lot of jargon, and animal products are rarely sold in a form that resembles the original animal. Conflict reduction is used to offset the emotional effects when dissociation is challenged.¹⁶ The popular perception of animal treatment is that they feel less pain than humans, are better off in captivity than in the wild,¹⁷ or actually benefit from periodic culls of their population. Ingroup-outgroup bias is the tendency to see the world as “us versus them” with preference, of course, given to us.¹⁸ The outgroup is then entitled to fewer rights, if any at all. The similarity principal states that people feel more favourably inclined toward those who are more like them and less to those who are different.¹⁹ Plous’ study identified major differences in regard for humans, other primates, non-primate mammals, birds, reptiles, fish and insects.²⁰

Of the preceding, dissociation and conflict reduction seem the most accessible through education and industry transparency. Ingroup-outgroup bias and the similarity principle would likely be more resistant, but theoretically animals could be brought inside our consideration. These measures would increase our empathy, but this may not be enough. Susan Opatow attempts to discern what factors influence our “scope of justice,” defined as “the psychological boundary within which considerations of

¹⁴ S. Plous, “Psychological Mechanisms in the Human Use of Animals.” *Journal of Social Issues*, Vol. 49, No. 1 (Spring 1993), 13.

¹⁵ Plous, 14.

¹⁶ Plous, 25.

¹⁷ They are thought to have comfortable surroundings, regular meals, no predators (except maybe humans).

¹⁸ Plous, 29.

¹⁹ Plous, 32.

²⁰ Plous, 34.

fairness and moral rules and values govern our conduct.”²¹ She also identified similarity to humans and perceived conflict as factors, but also included utility of animals to humans.²² One surprise in the results occurred when Opotow controlled for gender: females predictably scored higher than males for empathy with animals, but scored virtually identically for scope of justice, suggesting a lack of correspondence between empathy and scope of justice.²³ Unfortunately, focusing our efforts on the already daunting task of building empathy for animals may still not result in establishing animal rights.

I mentioned earlier how I wished to revisit Regan's notions of contractarianism and the rights view. Both of these, I feel, suffer from the is-ought gap. I will address these in order, as the first will inform the second. Regan's main objection to contractarianism is that it unfairly privileges humanity over animals, but as shown above, we naturally tend to do this. Further, we tend to do the same within humanity itself, prioritizing by family, society, state, race, et cetera²⁴ despite Regan's assertions to the contrary. We are “bond-forming creatures” that, within reason, should make such distinctions.²⁵ The difficulty here, of course, is that this type of reasoning can lead to prejudice and unfair treatment. Again, though this ought not to be the case, it very often is. Regarding the rights view, Regan submits that all life is inherently valuable simply by being life, but this view rests on the assumption that all lives are equally valuable and have equal rights – an assumption for which he does not provide support. His objection that we see animals as resources ignores the fact that we also see most humans as resources as well, without necessarily devaluing them. The clerk at the bookstore, for example, may be a good person and is of course deserving of respect, but this is not relevant – nor should it be – to the fact that at the moment you merely need them to sell you a book. The contractarian view that individuals have worth based on preference appears to be more in keeping with the evidence. Even Regan cannot step outside this framework by the very fact that he, a contributing member of the human moral community, must advocate for animals, rather than animals doing so for themselves. Regardless of what rights animals should have, they get the ones we humans give them.

²¹ Susan Opotow, “Animals and the Scope of Justice.” *Journal of Social Issues*, Vol. 49, No. 1 (Spring 1993), 71.

²² Opotow, 73.

²³ Opotow, 80.

²⁴ Mary Midgley, cited in DeGrazia, 53.

²⁵ *Ibid.*

It doesn't matter how big the warnings are...you could have cigarettes that come in a black pack, with a skull and a cross-bone on the front, called "Tumors," and smokers would be lined up around the block. (Denis Leary²⁶)

If we were to accept Regan's argument that all creatures are rights-bearers (not too difficult to imagine) and adopt his recommendation of total abolition of all hunting, animal testing and livestock agriculture,²⁷ the result would simply be a massive increase in black-market animal trading and poaching. Such a law would be too radical to be accepted, and likely thought by many to be unjust (despite actually being more just). Change of this magnitude must come by degrees over time. The abolition of slavery in the United States would have been much harder to implement if it also immediately included the right for black people to own land and to vote. (These rights would of course have been just, but too drastic to accept all at once.) A steady progression of changes, starting with better treatment and eventually leading to abolition in the future, seems more plausible. As stated above, changes need to be made, and even Regan acknowledges that any such changes would be something of an improvement.²⁸

What sorts of changes, then, should we start with? Education seems to me to be an important first step. Many people are not even aware of the issues let alone why they are a problem. Plous mentions the issue of dissociation, but more importantly that this trait is encouraged and reinforced by various animal-using industries.²⁹ Hunters and trappers speak of "harvesting crops" (killing animals) scientists use "bio-reactors" (test animals) and farmers "produce beef" (slaughter cows). Farms are still portrayed in popular culture as idyllic pastoral residences completely unlike the grim reality of high-capacity industrial farming. Butchers display cuts of meat which look nothing like parts of an animal. Transparency in the industry is a must, but care ought to be taken not to overstate the case either. As has been seen with famine relief or anti-smoking ads (see above quote) too much exposure actually desensitizes people and fosters resentment. Industry transparency will also aid policy-makers in determining how animals are treated and set appropriate standards. As people become more aware of what is happening, the will to act (or at least reduce their meat intake) will increase. If people would not knowingly condone this behaviour, then I believe – and I think Regan would agree – that they should know. But what if people do find out and still wish to continue? (It is possible: I, for one, know about some of the conditions of animal consumption but still occasionally eat meat.) At this point, we should probably revisit contractarianism and ask ourselves if we value our own needs over that of the animals

²⁶ Leary.

²⁷ Regan, 143.

²⁸ Ibid.

²⁹ Plous, 15.

to be used. The answer to that will be up to the conscience of the individual, but I believe that the more informed the agent is of the animals involved, the more consideration (and thus contractarian “rights”) they will be given.

To be fair, I do acknowledge some difficulties with this approach. I advocate slow change when there are some potentially urgent changes that should be made, and this slow change would likely give some advantage to those who profit by animal abuse. I cannot say without knowing particular cases, but repeat that small tangible change is still better than no change despite best intentions. I also acknowledge that wherever a metaphorical line is drawn, there will always be those who feel it goes too far and others not far enough. Contractarianism, however, relies on majority consensus and should find some accommodation which is generally acceptable. Regan’s charge of potential bias also hits home, but again we already do this and just need to improve our awareness of others to reduce their “otherness” to us.

Viruses, mold, mildew, maggots, fungus, weeds, E. coli bacteria, “the Crabs” – nothin’ sacred about those things. So at best the “sanctity of life” is kind of a selective thing. (George Carlin³⁰)

Thus far we have looked at Tom Regan’s view that any creature, by virtue of being alive, is inherently valuable and not to be used for the benefit of others. We have heard his arguments against various ethical compromises in favour of using animals. He seems to have presented a strong case, but might have artificially distinguished contractarianism and the rights view. We have then examined some psychological factors about why animals can be used by humans without feelings of remorse, and why policies designed to prevent this would likely fail. Finally, we have looked at what measures might produce more tangible results, namely gradual stages and increased awareness at all levels. What can we conclude? Despite Regan’s misgivings, I believe that the contractarian approach is the most promising. Indeed, Regan’s own suggestion of the rights view seems to be merely a construct of contractarianism: the possession of rights has to be recognized and enforceable or else they may as well not be rights. What ought to be is not the same as what is; we are human, we favour others in a human way, and any rules we establish will be for human behaviour, not animal. Animals will likely not be aware of such rules, let alone abide by them. Policies, despite the negative connotations of the word, are by their nature anthropocentric. That we value animals is laudable, and we should certainly do more, but in the end it will be because we want to.

³⁰ Carlin.

References

Carlin, George. *Back in Town*. Atlantic, 1996.

DeGrazia, David. "The Moral Status of Animals and Their Use in Research: A Philosophical View." *Kennedy Institute of Ethics Journal*, Vol. 1, No. 1 (March 1991): 48-70.

Hume, David. *Treatise of Human Nature*, Vol. II. London: Aldine 1960.

Leary, Denis. *No Cure for Cancer*. A&M, 1993.

Opatow, Susan. "Animals and the Scope of Justice." *Journal of Social Issues*, Vol. 49, No. 1 (Spring 1993): 71-85.

Plous, S. "Psychological Mechanisms in the Human Use of Animals." *Journal of Social Issues*, Vol. 49, No. 1 (Spring 1993): 11-52.

Regan, Tom. "The Case for Animal Rights." in *The Environmental Ethics and Policy Book*, 3rd ed., Eds. Donald VanDeVeer and Christine Pierce. Belmont: Wadsworth, 2003: 143-149.