

Between the Species

**MAD BEARS AND INNOCENT  
HARES: REMARKS TOWARD A  
THEORY OF DIMINISHED  
RESPONSIBILITY**

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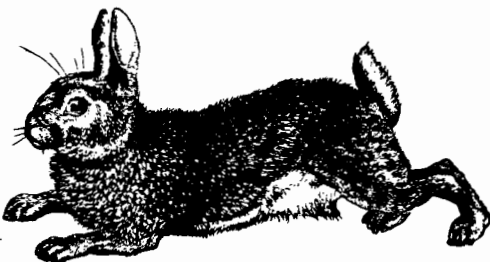


**PHILOSOPHY**

EDITORS' NOTE: The following papers by Professors Blatz and Sapontzis were presented at the meeting of the Society for the Study of Ethics and Animals held in Los Angeles, California, on March 27, 1986. These papers were presented in response to comments by Professor Dale Jamieson. Unfortunately, Prof. Jamieson's comments are not available for publication at this time. However, the following two paragraphs by Prof. Jamieson will serve to set the scene for the papers by Blatz and Sapontzis:

Three different kinds of arguments are typically employed by animal liberationists. First, it is sometimes argued that non-human animals are like us in ways that matter: they are conscious beings who can suffer or enjoy life, and just as it is a bad thing for us to suffer, so it is a bad thing for them to suffer. Second, it is sometimes argued that our bad treatment of non-human animals is wrong for characterological reasons: it both expresses what kind of people we are, and contributes to making us worse. Finally, it is sometimes argued that animals are innocent, and so do not deserve their fate at the hands of experimenters, slaughterers, hunters, and so forth.

This last argument--which I call the Innocence Argument--is one that I have felt uneasy about for quite some time, though in a paper that I jointly authored with Tom Regan, a version of it was endorsed. In this talk I would like to dig a little deeper into the Innocence Argument. In particular, I would like to see in what sense animals can be said to be innocent, and try to understand what implications, if any, this might have for how we ought to treat them.



Jim Harter, *Animals: 1986*  
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Animals can be innocent, though not in the way that moral agents can be. So say Dale Jamieson and Tom Regan in a recent article.[1] In what follows, I want to examine what leads them to this conclusion and to assess whether or not they were led astray. My ultimate concern is not a critical one, however. Instead, I would like to gather certain elements of a theory of full and diminished responsibility and try to place some non-humans within that theory. It is in these terms, I believe, that we need to discuss questions of non-human innocence. In closing, I offer some notes on the implications of these points for questions of the legitimacy of using animals as experimental subjects.

### That's What They Say

So what do Jamieson and Regan take as establishing that animals are not responsible for their actions? The answer seems more than a bit elusive to me. However, it might amount to the following.[2] Non-humans have no choice in what they do; therefore, they cannot be guilty for what they do. Indeed, it is urged that they cannot be sensibly said to be guilty. An alleged immediate consequence of this is that they cannot be sensibly said to be innocent either. If non-humans cannot be guilty, however, they can do no wrong. They cannot be faulted for their actions, and, perhaps as a consequence of this, they cannot be accused of acting wrongly, either. Thus, they are not responsible for their actions, as are moral or, presumably, any ethical agents; they are not liable to blame or punishment for their deeds. To be either, as I understand Jamieson and Regan, they would have to be the proper objects of treatment inflicted as just deserts for an offense of which they were guilty.

Also, as chronically non-guilty, it seems they would not be accountable, not such that they could be justifiably called upon to defend themselves.[3] No doubt. Jamieson and Regan would add that it would not even make sense to hold them to account, to call upon them for a defense of their behavior.

But this is not all. Jamieson and Regan even suggest that as chronically non-guilty, animals are not responsible in another way: they cannot even be said to "do wrong." [4] They cannot even be accorded the status of an agent of an act that is wrong.

Animals, then, utterly lack responsibility for wrong action. They do not or cannot deserve blame or punishment. They cannot be justifiably held to account. Indeed, they cannot even be the agents of acts that are wrong. Absence of avoidability makes for a chronic absence of guilt. In the bargain, it guarantees freedom from responsibility, as well as freedom from innocence as an ethical agent.

This does not mean that animals are not innocent in some other way, however. Non-humans can be said to suffer wrong without deserving it. And this fact, according to Jamieson and Regan, gives us another "intelligible sense of 'innocence'" to apply to animals, namely, that of being the undeserving recipient of harm.

Well, what about all of this? Are non-humans beyond blameworthiness, punishability, accountability, and the performance of acts that are wrong? Are they such that they "cannot be innocent (or for that matter cannot be guilty or responsible) in the sense that moral agents can be said to be"?[5] Are they innocent in some other sense, as in "innocent victims"? There is much to be said here.

## Innocence and Guilt

First, it seems highly artificial to speak of a being's innocence outside of the context of questions of responsibility. We are asked to assign innocence to the undeserving recipients of mistreatment. Children are innocent victims in war, as are other civilians. Non-human animals might be seen to be the innocent victims of a researcher's quest for tenure, and so it goes. Here, supposedly, we have examples of innocence where there is no tie to the absence of guilt or responsibility for wrong acts. But is this really so? What, after all, are we saying when we claim that someone is the undeserving recipient of harm, unless it is that the creature has done nothing to merit such treatment--that is, is guilty of, or responsible for, nothing which might justify this harm? Talk of the degree of innocence in innocent victims bears this out. Children and other beings are such completely innocent victims in war and other life destructive enterprises, simply because they have done nothing to deserve their suffering.

No doubt, the reply will be that I have

missed an important sense of the term "innocent." But should that reply be availing?

## Senses and Nonsense

The second complaint I have enters just here against Jamieson's and Regan's approach. We must not treat the issues of animal innocence and responsibility as matters to be decided by appeals to the various senses of the words "innocent" and "guilty." In the first place, and as many have argued, we cannot make good sense of talk about a sense, or the several different senses, of terms of utterances. And even if we could make sense of senses, it is a mistake to treat the questions of animal innocence and responsibility as questions of meanings, as though the answers to these inquiries are matters of definition, as opposed to normative theory. Let me concentrate on that last point for a moment.

Even if we could make sense of the talk of different senses and determine how to find the sense(s) of a term, and even if in following those procedures, we were to end up determining that in the sense that the terms "responsible" and "innocent" apply to ethical agents, they do not apply to non-human animals, the question would still be whether we ought not change the sense(s) of those terms and embrace an ethic in which animals are responsible, guilty, or innocent for the same reasons as are humans. Our question is what sort of ethic to have, one that accords non-human animals a place in the arena of responsible action or one that does not. And that is a question of basic ethical theory. It is not to be answered by some appeal to the sense of the terms used to articulate that theory. At least, it is not unless we are to beg the very question at issue.[6]

Perhaps, Jamieson and Regan were speaking of senses merely as a matter of convenience, and I ought not hold them to that terminology or to the attached methodology. Well then, let my remarks serve only as a means to focus the discussion.

Let me take up the question of whether, in a defensible ethic, animals are (or can be) innocent, guilty, or even responsible for wrong acts. Now, how might we proceed to answer this question, to select between non-human inclusive and exclusive theories of responsibility? Any attempt to settle the problem by an appeal to an ethical standard

will be question begging. And yet, what else besides such an appeal would be availing? Elsewhere, I have argued that at such junctures we need not resort to caprice but, instead, can and should fall back, at least partially, upon pragmatic concerns, taking what I have called "the functionalist approach." [7] In particular, I have pointed out that if an ethic is acceptable, then it has point; it has some feature(s) in virtue of which the code can make some impact upon our lives. In order to decide between two or more competing ethics, we then need at least to identify which has structural features that will give it point as an ethic. We need to select that code with features allowing it to make all the differences to our lives for which we might have any ethic. Not begging the question in such a procedure, then, will come out of not selecting codes whose point is described in ways unsatisfied by the point of any other ethic.

With respect to more particular features by which ethical theories differ, if we are to decide between two or more ethics on a functionalist approach, we would decide in favor of that one with structural features enabling it to make the particular difference to our lives that any ethic is supposed to make by virtue of the feature(s) whose particular shape is under discussion. And, of course, in deciding these matters, we must, in the first place, describe the particular purpose or the desired impact in question in a way that does not assume one or another of the contending ethical theories.

Should two theories serve that purpose equally well, then there would be nothing on which to base a choice between them. At least there would be nothing of a functionalist sort that is decisive specifically with respect to the feature in question. Perhaps, more general functionalist features such as over-all simplicity of application or normative decision making power can be decisive in such a case. Or, perhaps there is some other non-functionalist desideratum that will prevail in such a case, something besides a question begging appeal to conservation of pre-theoretic, normative intuitions! (But, perhaps not. That is a question for another time.) [8]

More specifically, for example, if we must choose between two or more ethics differing in who or what they allow to be responsible and, in what they allow those

beings to be responsible for, then, in pursuit of an ethic with point, we would select that code that most completely allows us to serve the purposes for which we have any ethic with a theory of responsibility. And the first order of business would be to state the point of such codes in a non-question begging way.

Let's try out this approach. Like Jamieson and Regan, let's ask which theories of responsibility, animal inclusive or animal exclusive, do or do not make sense. The sense we shall be concerned with, however, is the pragmatic concern of whether including or excluding non-humans will best serve the point of any theory of responsibility, any theory of how to justifiably regard and respond to beings in light of their deeds.

## The Point of Theories of Responsibility

No doubt the point of theories of responsibility will first be sought in the exacting of retribution or the forward looking enforcement of ethical rules. Isn't that what any code of justifiable responses to actions is supposed to accomplish for us, to exact retribution and/or to enforce rules? Well, on reflection, it is clear that this will not do. As Jamieson and Regan make clear, there is more to being responsible than merely being the fit subject of retributive or rule enforcement interference in our affairs.

In the first place, when we do have definite specifications of ethical standards, for example, in the form of legal statutes or recognized moral rules, there is the matter of being held to account for apparent departures from these. And the theory of responsibility includes guides for the conduct of this sort of investigative interference. Regulating such interference is part of the point of such a theory. At the same time, however, holding to account is itself neutral with respect to retributive and utilitarian concerns in punishment or blaming. After all, one thing that could be determined when a being is held to account is that it is not liable to blame or punishment, that it would be unjustified or out of place to inflict on that being a retributive or utilitarian sanction of some standard. The point of holding to account is to determine liability, not to administer the very thing to which agents can be liable. [9]

In addition, the slightest acquaintance with the common law will make clear that often what goes on in proceedings devoted to the determination of responsibility is really something different from the enforcement or exacting of retribution for breach of particular, recognized rules. Rather, in common law proceedings or any moral equivalent of them, individuals (or, formerly, the state) are attempting to decide whether the plaintiff has a complaint that merits corrective action and then to determine just what form that action should take.[10] The attempt is to provide just relief, if it is deemed that there has been some undue hardship imposed on the plaintiff, where this hardship is defined in terms other than those of the breaking of a particular statute or recognized rule. In these cases, the guidance in a theory of responsibility does not regulate responses to what is generally recognized by some standard as intolerable. Instead, it guides us in the determination of what is intolerable and in providing redress for that to those who have suffered from it. Here the functions of holding to account and meting out dessert are both present, but, in addition, we encounter the operation of a quasi-legislative or norm particularizing and specifying function through which the concrete boundaries of the intolerable are delineated.

Things are much too complex, then, to simply say that the point of a theory of responsibility is to provide guidance in administering retribution or rule enforcement. (Indeed, they are too complex to say that the point is to guide the administration of systems of retribution and/or rule enforcement.) We would be much better off to state the point more generally as that of providing guidance in responding to apparent cases of intolerable agency and in adjudicating disputes over just what is intolerable as opposed to tolerable behavior. Put this way, the point of theories of responsibility includes all the accountability, blame and punishment assignment, as well as quasi-legislative or norm specifying functions mentioned above.

This statement also emphasizes the responsive character of theories of responsibility and in that emphasis, carries the implication that the agency of those who are in the domain of responsible action is not to be interfered with unless that agency has apparently become intolerable. In this regard, theories of responsibility, when suited

to their point, end up treating as ethically significant their agents living a life of their own, unhampered by the intrusions (and worse) of being held to account and blamed or punished. They incorporate as a normative background of interference in a being's life, that this interference needs to be justified as a response to apparently intolerable behavior, that the being's leading a life of its own is prima facie inviolate.

## Who Is In and Who Is Not?

In giving this characterization, I have avoided limiting the behavior in question to that of ethical agents, of course. One of the aims in this circumspection is to avoid begging the question. Going a bit farther afield, however, we can notice that questions facing the theory of responsibility, in the case of even human agents, range beyond issues of how to regard and deal with what is the intolerable behavior of one who is or has the capacity to be an ethical agent.

The ethical agent is standardly viewed as one who is capable of recognizing what is legally, morally, or otherwise expected of him/her and is open to the influence of that expectation on his/her behavior, through an appeal to his/her reason. With this in mind, there are many examples of individuals standardly included within the purview of the theory of responsibility who are not ethical agents and who even lack the capacity to be.

As we saw, for example, when we hold someone to account, we might learn that this agent acted in an intolerable way but did not do so while open to the rational influence of ethical guidance, did not do so, then, while functioning as an ethical agent.[11] Instead, the agent acted while drugged, in a rage, in a state of immaturity and ignorance of the rules, or in some other incapacitating condition. Such agents might well be excused from blame and punishment, though they are still considered within the purview of the theory of responsibility. They might still be considered accountable, justifiably called upon to defend themselves against blame or punishment. Thus, here we have responsible agents who are not and need not even be capable of being ethical agents.

The same is true with respect to laws of strict liability, according to which an agent might be legally subject to fine, or worse, for consequences of his/her actions, even



though the act leading to those results was not performed intentionally and in fact every precaution was taken to avert undesirable consequences and to follow relevant ethical guidelines. Such a one did not act as an ethical agent in doing what he/she is considered responsible for. And so, here again, the point of the theory of responsibility is to provide guidance in dealing with allegedly intolerable acts or the consequences of them, regardless even of whether or not the agent had the capacity to be an ethical agent in performing those acts.

Clearly, some individuals, so-called "moral monsters," for example, also are not open to recognizing ethical injunctions, in any way involving an appreciation of the full weight of the ethical expectation. Or, if they can appreciate an ethical injunction, they are not open to being influenced by it through an appeal to their reason. They are monsters, simply because they are unable to grasp any ethical calling or only one that generally would be considered horribly distorted, such as the injunctions of Hare's Nazi zealot. Or, if they are able to grasp the idea that there are, for example, universal ethical restrictions intended for them, this fact has no significance for them. They could not care less, as the saying goes; they are utterly unmoved by such considerations and what is more, are not open to such influences.

Unfortunately, the limitations on the capacities of moral monsters do not always come with a limit on the impact that these beings may have on the lives of others. As we know, moral and other ethical monsters can do great harm to others. They lead lives of their own in that they engage in behavior that is best explained as free, at least to the extent that it is purposive and involves them in selectively employing some but not all of the elements of their repertoire of behavior in order to bring about certain consequences. Since these are intolerable to someone or other, what these agents have done, then, would be most simply explained as selecting patterns of behavior whose execution is in fact, though not as a matter of intent, more or less harmful to others. They have undertaken something in a purposive way such that the intolerable consequences would not have ensued, if they had not acted for that purpose. Still, in doing so, they need not have recognized or even been able to recognize and advert to the fact that their

act was wrong.

Understood that way, what they have done is engage in behavior that is de facto intolerable. They have done what is wrong, indeed are responsible for what is wrong, though they have not acted as ethical agents or in a way such that their failure to advert to ethical considerations was up to them. Still, this is enough for them to be responsible for doing what is wrong. Indeed, we take as the ground of our being justified in acting against them that they are responsible, as agents, though not as ethical agents, for some doing of wrong. We do this, in this way, continuing to grant ethical significance to their living a life of their own. It is not that they are worthless beings to whom we may (prima facie) do what we wish. It is just that their behavior as a non-ethical agent is intolerable and something we must protect ourselves against. This need for protection overrides the significance properly attached to the agent pursuing his/her purposes (and so living) unhampered (a life of his/her own). It overrides the normative background condition of theories of responsibility, the prima facie inviolateness of a being's living a life of its own.

Thus, in dealing with humans, three sorts of cases arise in which theories of responsibility would need to guide us with respect to beings which are not and, perhaps, even lack the capacity to be ethical agents. If a theory of responsibility is to be able to fully serve its point, and so be acceptable, then it should be stated in such a way that those who can be responsible for intolerable acts need not be capable of appreciating and being rationally moved by normative considerations.[12] Adopting a theory of responsibility that will handle such cases and the others mentioned earlier will allow for a wide range of conditions of diminished responsibility. Let me now turn to a review of some of these and to the question of whether non-human animals might enjoy any of these types of diminished responsibility.

## Diminished Responsibility and Non-human Animals

Responsibility, then, might be diminished in many ways below being an ethical agent fully accountable and liable for wrongdoing. Conditions of offenders might leave

them accountable but, because justified or excused, not liable, that is, not blameworthy or punishable. They might be accountable but not liable, and indeed, so sensitive to being singled out in an accusation that their accountability is restricted to only certain, minimally threatening occasions. They might be liable to blame or punishment of a slight degree, for a slight offense, a fate not as bad as being singled out by accusation and held to account. Thus, they might be liable but not accountable.[13] With or without accountability, they might be more or less fully excused for an offense having an exculpating defense or one that gets them off the hook only partially; what I have called elsewhere, a meliorating defense. They might be accountable for one offense but, because of having a mitigating defense, they might be subject to only a reduced amount of blame or punishment for another and lesser offense.[14] In addition, if they are ethical agents, they might be more or less justified in having done what they did and, for that reason, less or more liable, whether or not they are accountable to some degree.[15]

As with moral monsters, agents might be accountable but not liable, and this might be for reasons that render them not ethical agents or even potential ethical agents. Here, though responsible to a lesser degree because of not being liable, they are subject to treatment calculated to control them for our protection. And, indeed, this control might have to take the form of killing them. Thus, while we have here a lesser degree of responsibility, measured in terms of a lesser degree of participation in the system of interchanges we mark as elements of responsible agency, this is hardly a lesser degree of responsibility measured in terms of the consequences of one's behavior. Further, this very same thing can be found in cases where, because we know the being is not an ethical agent, we could not justifiably hold it to account, call upon it for a defense for not advertent to some norm in its behavior. Thus, we might have a being that is not accountable nor even liable but is subject to protective interferences in its life, on our part, even to the point of our killing it to eliminate a threat that is not otherwise predictably controllable. Such liability to controlling interference, with or without accountability, is what we shall find in cases of dealing with moral monsters, unless we presume to utterly discount their worth or, that is, the prima facie inviolateness of

their living their own lives.

And, it is here, at last, that we seem to find a way for nonhuman animals to have some degree of responsibility or innocence. They are precluded from failing to conform to a standard imposed on them as ethical agents (and so from being liable, strictly or not), and thus they could not give a defense for failing to conform. No difference would be made, then, by allowing them to be held to account or to be liable.[16] Jamieson and Regan were right about that (even if, for the wrong reasons). But it does not follow that non-humans have no place in a theory of responsibility. Jamieson and Regan were wrong about that.

As much as moral monsters, nonhuman animals are sometimes responsible agents bringing about what is de facto intolerable. Let us express this by saying that they are "performance" versus intentional agents of wrongdoing or by speaking of their "doing what is wrong" as opposed to doing wrong. And, to coin a use, let us speak of their being "controllable" (as opposed to liable to punishment) when they are guilty of doing what is wrong (as opposed to being guilty of wrongdoing).

With these conventions in place, we may say that some nonhuman animals, as well as some humans, may be accorded the status, however diminished, of being responsible performance agents which are controllable in the face of their doing what is wrong. Other nonhuman animals who do no wrong could fail to be responsible as performance agents in their various pursuits and on that count could be said to be innocent. This innocence goes with their not being responsible as controllable.

This is not just something we can design conventions to express, however. Brief reflection should make clear that this is the appropriate thing to say. Consider one nonhuman equivalent of a moral monster. In particular, I am thinking of those grizzlies of Yellowstone that, for whatever reason, seem to have gone crazy. These mad bears now take to raiding garbage and, in the face of repeated displacements, return time and again to taste those forbidden fruits, vegetables, and other bits of human food waste. These same bears also have included in their ways attacks upon humans. Some of them are killing some of us!

## Animal Innocence and the Ethics of Animal Experimentation

Here we have animals with a life of their own. They engage in behavior that is best, i.e., most simply, modestly and powerfully explained as free to the extent that it is purposive and involves them in selectively employing some but not all of the elements of their repertoire of behavior in order to bring about certain consequences. Further, they are performance agents of what is wrong. On both these counts, and even in lacking the status of ethical agents accountable for their acts, they are just like some of the moral monsters spoken of earlier. To adjust our theory of responsibility to exclude mad bears, then, would render it without impact in important cases of our dealings with humans. This, of course, would limit the point of that theory beyond our needs.

On the other hand, providing ourselves with the means to deal with mad bears also will allow us the way to talk of innocent hares, that is, of all those nonhuman animals that have a life of their own but are not performance agents doing things that are wrong. It allows us to recognize the innocence and the attendant freedom from a judgment of controllability of all those non-humans that are, as we say, just going about their own business. To adjust our theory of responsibility in such a way as to disallow the innocence versus guilt of such beings, however, would lead us at the same time to withhold the status of performance innocence (as opposed to performance guilt) from those humans we might call "moral benigns:" innocent children, the Boo Radleys, or others of the world who are not ethical agents in their actions and, perhaps, are incapable of being such, yet who in leading a life of their own in fact do nothing which is wrong.

There seems, then, to be a place of responsibility, innocence, and guilt for some non-human animals in ethics that are equipped to fully serve the point of theories of responsibility. If such a theory is strong enough to have point with respect even to moral monsters and benigns, then the path is paved for including as well certain non-human animals, those mad bears and innocent hares of our world. This place in the domain of responsible agency is diminished in having no part of accountability or liability. Still, it is an area in the domain of responsibility large enough to allow for a form of innocence, guilt, and responsibility for doing what is wrong.

Having opened the way for talk of animal innocence within the context of questions of responsibility, I wish to close with a few remarks on the ethical implications of what I have wrought. My answer to what Jamieson and Regan call "the moral agent argument" (only moral agents can be innocent; non-human animals cannot be moral agents; therefore, they cannot be innocent) attacks the argument's restriction of innocence to ethical agency. Jamieson and Regan were right to balk here. They were just wrong in why and how they balked. But, so what?

Does it follow from the fact that non-human animals can be innocent, guilty, and responsible for doing wrong that we ought, other things being equal, or all things considered, to cease experimenting on them? It is not at all clear why this should be thought to follow.

In the first place, the world is properly horrified by beliefs that even liability to punishment justifies use as an experimental subject. Who would think that performance guilt ensures normative suitability as a subject or, then, that performance innocence ethically precludes it?

Further, humans can volunteer for experimentation, even if innocent or guilty. And in the absence of ignorance or coercion, that does make them ethically fit subjects, at the very least overriding any prima facie prohibitions against using them in research. But, perhaps that is the rub? Non-humans cannot volunteer, and without that clearance, we have no right to interfere with their lives? Well, if this sort of line is availing, it works only for those non-humans that can lead a life of their own. It is only these that were accorded diminished responsibility in my remarks.

But what of these? Having a life of their own does bring them within the protection of what I called earlier a "normative background condition" of theories of responsibility, namely, that, prima facie, a responsible agent's living a life of its own is ethically inviolate. If the lives of non-human animals enjoy this status, can that not guide us in decisions as to whether or not to use the animals in research? If, prima fa-



cie, we are not to interfere with an animal's living its own life--a point we grant in giving them even diminished responsibility--does it not follow that, prima facie, we ought not to interfere with an animal's living its own life just to experiment on it?

The answer is just not so clear. It depends greatly on why it is that their living their own life is inviolate. Perhaps it is because they themselves enjoy ethical standing and so their leading their own lives is ethically significant in itself, regardless of anything else. If that were so, then, yes, the prima facie inviolateness of animals' living their own lives would be some reason against their being used as experimental subjects. Recognition of the (performance) innocence of non-humans, the fact that they have done nothing wrong, would itself raise serious questions about their suitability as experimental subjects.[17]

But what if this were not so? What if their living were prima facie inviolate because they have a kind of contingent importance, an importance dependent upon the fulfilling of some other condition, such as the fact that some human(s) championed their cause, urging that they be left alone to live their own lives? We could have no way of knowing without checking whether or not certain animals had a champion, so that the condition of their lives' importance was met. Without such a derivative importance, they might be, prima facie, a fit subject of experimentation, while with it they would not be. We just would not know until we checked. In those circumstances, we still might grant that it is prima facie wrong to experiment upon the animals, at least until we had looked into the matter of their derivative importance and determined whether or not they enjoy the protection of a champion whose wishes, prima facie, should be respected. Perhaps, to avoid a tragic and presumptuous misuse, as a matter of precaution, a non-human animal's living its own life should be treated as prima facie inviolate? What if, that is, their inviolateness were derivative and first, if not also last, an epistemic matter?

In that case, whether or not animals (prima facie) ought to be used in experiments would not follow from their being able to lead a life of their own. Instead, only the ethical need for a certain caution in selecting our experimental subjects would follow:

"look first and experiment later" would be the rule.

And which of these is it in the end? I must say that it is the second story that seems most acceptable to me. I have argued elsewhere that non-humans lack ethical standing, enjoying for their own lives only importance derivative upon that of the lives of their human champions.[18] In the face of that argument, I can only say that non-human animals might or might not be fit subjects of experimentation, with no reservations. It all depends upon whether they do not or do have human champions. Still, if I am right, it is incumbent upon the would-be experimenter to check first and experiment only later, if at all, to weigh the costs against the possible gains for all concerned before deciding whether and how to proceed. That much deference to non-humans with lives of their own is called for by the normative background of animal innocence.[19]

#### Notes

1. Dale Jamieson and Tom Regan, "On the Ethics of the Use of Animals in Science," in Tom Regan and Donald VanDeVeer, eds., And Justice for All: New Introductory Essays in Ethics and Public Policy (Totowa, New Jersey: Rowman and Allenheld, 1982), pp. 169-96.

2. Ibid., p. 181.

(continued on p. 15)



should (morally) be treated as ends in themselves, but he (nor anyone else, to my knowledge) has not demonstrated that only moral agents should (morally) be treated as ends in themselves. Furthermore, since what, from the Kantian perspective, is supposed to be unique about moral agents is our ability to act disinterestedly, impartially, fairly, etc., it hardly seems credible that possessing this capacity can morally justify our pursuing our self-interest and exploiting animals. Citing our ability to act out of a sense of justice as the justification for saying that we need not worry about justice when it comes to our dealings with animals would seem to be a paradigm of a practical contradiction. Hence, even if animals are incapable of being moral agents, it is at least doubtful that this entitles us to exploit them.

Thus, animals' innocence, i.e., their inability to be fully moral agents, can contribute to answering the "But animals eat other animals!" objection to animal rights and can do so without leaving animal rights vulnerable to the Kantian side of the Dilemma of Innocence. That seems to me how it enters seriously into the animal rights debate.

#### Notes

1. We may also note that the suggestion in P2 that it is morally acceptable to treat criminals as mere means to society's satisfactions would likely not be accepted by morally concerned people today.

2. "Are Animals Moral Beings?," American Philosophical Quarterly 17 (1981).

3. I discuss these "But animals eat other animals!" complexities to animal rights at greater length in Chapter 6 of my forthcoming Morals, Reason, and Animals.



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# MOONSPAN

Wolves

Children of the moon  
 Sired by the night wind  
 (She tolerates him kindly  
 as goddesses will  
 who long for children)

Wolves'

Voices rising  
 Echo their sire  
 In rivalry of him  
 They race across  
 The rippling snows  
 In speed and silence  
 With Her silver  
 Still staining their fur  
 Lunar gold  
 Glows through their eyes

Luna weeps for her children  
 The night wind wails in grief

Humankind: take heed  
 For She

Controls the tides  
 And he commands the seas

And their children are dying

Paulette Callen

(continued from p. 11)

3. Ibid., and see my "Accountability and Answerability," Journal for the Theory of Social Behaviour, 2/2 (1972).

4. Jamieson and Regan, op. cit.

5. Ibid.

6. Cf. William K. Frankena, Ethics (Englewood Cliffs, New Jersey: Prentice-Hall, 1973), p. 101.

7. "Why (Most) Humans Are More Impor-

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tant than Other Animals, Reflections on the Foundations of Ethics," Between the Species 1/4 (1985), p. 10.

8. At this other time, it will be important to extend the above point to, for example, Rawls' approach to justification through reflective equilibrium.

9. See Blatz, "Accountability and Answerability," cited above.

10. See, e.g., C. Gordon Post, An Introduction to the Law (Englewood Cliffs, New Jersey: Prentice-Hall, 1963).

11. Blatz, op. cit.

12. Contrary to what Jamieson and Regan say, op. cit.

13. Blatz, op. cit.

14. See my "Mitigating and Meliorating Defenses," in Nicholas Rescher, ed., Studies in Ethics, no. 7, American Philosophical Quarterly Monograph Series (Oxford: Basil Blackwell, 1973).

15. A suggestion of J. L. Austin, "A Plea for Excuses," in Philosophical Papers (Oxford: Oxford University Press, 1961), p. 125.

16. A similar argument is to be found in H. L. A. Hart, "Legal Responsibility and Excuses," in Sidney Hood, ed., Determinism and Freedom in the Age of Modern Science (New York: Collier Books, 1961).

17. And, as Susan Isen has pointed out in comments, the fact that some could not hurt us would make the question even more serious, the presumption of their not being fit subjects, even stronger.

18. See my "Why (Most) Humans Are More Important than Other Animals," cited above.

19. I am indebted to comments from Dale Jamieson, Steve Sapontzis, and Susan Isen for interesting comments on the occasion of the presentation of an earlier version of this paper at the meeting of the Society for the Study of Ethics and Animals in March, 1986.



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