The Animal Question

Why Nonhuman Animals Deserve Human Rights

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Chapter 6 A Minimal Normative Proposal

In a variegated world, inhabited by diverse vulnerable and competing beings, in a reality where to unavoidable conflicts are added conflicts caused by the idea that might is right, what could be the minimal cohabitation rules, and to whom should they apply?

To this question, as far as the members of our species are concerned, we have endeavored to give an answer. It is the idea of human rights. In this last chapter I will examine the premises and implications of the doctrine of human rights as it has gradually been elaborated and publicly established. In so doing, I will consider the way this doctrine has tried to overcome at least the most serious among the difficulties highlighted by the analysis thus far developed, and I will examine the possibility that its theoretical foundations offer a suitable solution for the problems of a community broader than the human one. In other words, I will try to ascertain whether human rights theory can be a plausible preliminary answer also for cohabitation with the members of other species.

Human Rights: Sphere of Reference

Human rights do not cover the whole of morality. It can be plausibly claimed, in fact, that they have to do with that more limited theory

of conduct which, when dealing with the question of moral status, we defined as "morality in the narrow sense." The notion, traditionally ascribed to G. J. Warnock, was taken up among others by J. L. Mackie, who explained it in terms of a particular sort of constraints whose central task is to set limits to the individuals' pursuit of their own selfish goals. In this sense, one may say that it finds a parallel in the Strawsonian notion of "social morality"—of a morality, that is, which is not about diversity of kinds of life but about uniformity of practices. The content of narrow morality hence pertains to the realm of the *right,* not to that of the *good;* to the domain of the obligatory, not of the supererogatory. More precisely, it refers to a limited subset of the principles that make up the sphere of the right.[1]

As I have suggested, one might be tempted to identify narrow morality with deontological constraints as opposed to consequentialist prescriptions. Some authors have done something of the kind. But, on the one hand, there are deontological prescriptions that are not included in narrow morality—for example, the rule against lying. On the other, there are consequentialist defenses of the limits that narrow morality imposes. The well known "harm principle," whose first formulation is Bentham's but whose most detailed defense is Mill's, states for example that the only purpose for which power can be rightfully exercised over any member of a community against her will is to prevent harm to others.[2] Even if this principle, in not focusing only on basic harms, does not exactly coincide with the scope of narrow morality, its rationale is exactly that of erecting a sort of barrier around the individual.

That said, one must acknowledge that the prescriptions of narrow morality seem better secured in a deontological context, which can produce (nearly) absolute constraints. In everyday morality, this criterion of near-absoluteness, which implies an argumentative threshold and an almost unconditional exclusion of trade-offs between values, has naturally been translated into the language of rights. The same thing tends to occur at a more theoretical level. As Joseph Raz argues, rights generally do exactly what narrow morality is supposed to do and thus,

> on the plausible assumption that the only valid grounds on which the free pursuit by people of their own lives can be restricted are the needs, interests, and preferences of other people it becomes plausible to regard (narrow) morality as right-based.[3]

In this light, human rights doctrine seems to have the function of, and to be particularly suited to, meeting a special class of moral concerns: those which, having to do with the basic protection of individuals, appear to be not only the most important, but also the most sharable and the most independent of specific spatial and temporal contexts.

It might be objected that such an interpretation, laying stress essentially on *noninterference,* points toward an unjustifiedly minimalist account of human rights. After all, the modern conception has gradually added a new side to the doctrine, in particular in the form of welfare rights or social and economic rights. Yet it is plausible to maintain that the core of the theory remains protective, and that between the two main sorts of rights—*negative* rights, or rights not to be treated in a certain way, and *positive* rights, or rights to be treated in a certain way[4]—the ones that prevail are always negative rights, and, in particular, the so-called civil liberties, secured by the generalized prohibition against taking life, depriving of freedom, and violating bodily integrity. Apart from the widely accepted ethical priority of nonmaleficence over beneficence, it is clear that there are serious pragmatic reasons for this emphasis. Negative rights, being less affected by conditions of scarcity, are less likely to be subject to exceptions and thus offer the significant advantage of being more easily implementable.

However, negative rights too imply a positive aspect. Onora O'Neill, working within a Kantian framework and using the language of duties, has stressed that principles that prescribe rejection of fundamental harm do not establish the basic obligation not to cause harm, but rather the basic obligation to prevent the harms in question—that is to say, the obligation not to make harm a constitutive principle of lives and institutions. Effective limitation of harm can thus demand selective harm in self-defense and for the defense of others, as well as the creation of political and legal institutions that coerce in order to secure such limitation.[5] This aspect becomes even more relevant once translated into the language of rights, because if focusing on duties and on their possible infringement gives center stage to the moral agent, rights adopt instead the perspective of the moral patient, and hence of the possible victim of harm. Thus, to uphold fundamental negative rights does not mean to accept not to infringe such rights, but rather to uphold the construction of a social order

that embodies them and takes charge of their implementation and protection.

In this sense, human rights, while being claimed as moral rights, are also proposed as legal rights.[6] And although the status within international law of the declarations and conventions approved by the United Nations General Assembly is a complex question, the rights that are there asserted have strong legal overtones. This implies that the use of force can be justified in securing them.

Human Rights: Essential Characteristics

> We hold these truths to be self-evident: That all men [*sic*] are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted . . .

This is what the Declaration of Independence of the United States proclaims. And, thirteen years later, the Declaration of the Rights of Man [*sic*] and of the Citizen thus echoes it:

> Men are born and remain free and equal in rights. . . . The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

Much has been written on the difficulties raised by the foundation of the so-called "rights of man." The American Declaration epistemologically has recourse to self-evidence, and on the foundational level appeals to God. What about the French Declaration? The boldness with which it forgoes all justification was already underlined by Bentham, who, after describing natural rights as "nonsense," dismissed natural and imprescriptible rights as "nonsense upon stilts."[7] Concerning the notion of right, however, Bentham was far from being an impartial judge. Actually, behind the two declarations one can detect, more or less distinctly, the powerful tradition of natural rights, in which self-evidence is warranted by a reason assumed to be common to all human beings, God's law is at the same time the law of nature, and rights are inalienable "moral qualities" of individuals. Contractarian approaches add to this the idea that civil society originates in an agreement whose aim is to better preserve these natural rights.

In the transition from the doctrine of natural rights to the doctrine of human rights, the main attending changes concern just such foundational aspects, which are therefore deserving of a separate discussion. What is worth stressing in this context is instead the fact that each Declaration establishes a close connection between rights and governments or political associations. Natural rights underlie civil rights, and existing or in-the-making societies are bound first to acknowledge them and then to safeguard them. The call for an implementation of narrow morality thus takes the form of a request for the acknowledgment of preexisting moral properties directed *at institutions*.

From the beginning, therefore, the so-called "rights of man" have an eminently political character. As Margaret MacDonald observes in a pioneering article on the subject, they were not conceived in order to be enjoyed on a desert island but in order to become "clauses in Constitutions, the inspiration of social and governmental reforms."[8] This element is only apparently in contrast to the definition of "natural" rights, which suggests an existence independent of organized society. For apart from the obvious role played by the specific philosophical framework I have just mentioned, the attribute "natural" emphasizes in a right its *basic* character. And this in two senses. On the one hand, to say of a right that it is "natural" somehow implies the idea that it is unacquired—that it does not arise from special circumstances, like particular transactions between individuals or particular positions within the community—and that it cannot therefore be lost as a consequence of changes in one's individual condition or in the general context.[9] On the other hand, although the injunction to keep promises or the exhortation to be beneficent are not very likely to be inserted among the watchwords of reformers or demonstrators, issues like the protection of life, of freedom, and of security are fundamental moral values that must be realized in any acceptable society.

Such an eminently political aspect persists, and is even heightened, in human rights doctrine. In this context, too, the basic idea is that responsibility for implementation lies primarily with institutions. And the first requirement for this is obviously that infringements of rights not be sanctioned by the society's legal system. It was through a concern of this sort that the drafters of the United Nations Declaration of 1948 felt the need, for example, to insert an article that explicitly forbids any form of slavery, servitude, and slave trade.[10] *Codified* killing, confinement, mutilation and torture are just the opposite of

the protection of the life, freedom, and bodily integrity of the community's members. As has been noticed, in this sense the internal sovereignty of states is limited, and one of the functions of human rights is exactly that of defining the limits of such sovereignty.[11]

It is worth dwelling upon this point. I have already observed that the return to the Enlightenment tradition of natural rights that led to the formulation of human rights doctrine was prompted by the need to check those forms of institutionalized violence and discrimination that had marked the first half of the twentieth century. It was to that idea of the inalienable value of the individual which in the age of the great revolutions had undertaken the function of limiting organized power that it was natural to turn after the horrors of the Third Reich. As Catharine MacKinnon puts it:

> This organized genocide by government policy indelibly marked and fundamentally shaped the content, priorities, sensitivities, and deep structure of the received law of human rights in our time. In a reading of this reality, more than any other, contemporary human rights finds its principled ground.[12]

In this perspective, it is plausible to assert that the model of violation of human rights is based on the organization and action of the state.

Recently, such institutional reading has been the object of an interesting reelaboration by the American philosopher Thomas Pogge.[13] By postulating an individual P's right to X as a human right, Pogge claims, what we are asserting is "that P's society ought to be (re)organized in such a way that P has secure access to X and, in particular, so that P is secure against being denied X or deprived of X officially."[14] On the basis of an analysis of the structural characteristics of human rights as they have historically evolved starting from the earlier doctrine of natural rights, Pogge argues, like MacKinnon, that disrespect for human rights is paradigmatically exemplified by government violations—violations that may take the form of the creation or maintenance of unjust laws, or even of a perverse construction of neutral laws. Inversely, therefore, the flourishing of human rights depends in the first instance on a society's institutions—on its constitution and its laws.

On the whole, thus, it seems that violations of human rights, to count as such, must be in a sense official, and that, accordingly, human rights protect individuals only against violations from particular sources. These sources can be legal systems, governments and their

representatives, armed forces, and in general any institutional body—but not individual members of the community. Following Pogge again, such an idea can be concisely captured by conceiving it to be implicit in the notion of human rights that the prescriptions that such rights imply are addressed, at least primarily, to those who hold positions of authority within a state or another comparable social system.

Human Rights: Justification

The impossibility of making reference to the intentions of a divine creator, and the wish to avoid the metaphysical connotations of the idea of natural law, are among the main reasons why, gradually, the language of natural rights was replaced by the new language of human rights. Thus, while natural rights theory, as we have seen, claims not only that human beings ("men") have certain rights but also that these rights have distinct epistemic properties and a specific ontological status, human rights theory is neutral as far as epistemology and ontology are concerned.[15] Human rights simply are a particular, and particularly important, subset of moral rights in a broad sense. While not emerging in the Universal Declaration of 1948—which, after stating that all human beings "are born free and equal in dignity and rights," confines itself to adding that "they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"[16]—this aspect is made clear by the theoretical elaboration carried out in the years following its promulgation.

Owing to the neutrality of human rights doctrine, there is the possibility of alternative approaches to the problem of justification. Since, unlike the public at large and the drafters of political manifestoes, philosophers must offer reasons for the views they put forward, in the case in question they must explain the *why* of human rights—that is to say, they must explain what it is that, in human beings, justifies the equal attribution of the particular sort of moral claims grouped together under the label of "human rights."

We know that it cannot be the mere fact of being human in the sense of being a member of *Homo sapiens,* because species membership in itself has no moral relevance. Most of the philosophers who confront the question seem to be somehow aware of this problem. When it is bestowed a role, in fact, reference to species is introduced in a hurried and oblique way. For example, Hugo Adam Bedau writes:

> Are human rights to be thought of as possessed by all and only persons, human beings, or human persons? On the first alternative, some animals . . . might turn out to have human rights. On the last alternative, human fetuses and severely retarded adults might lack human rights. On the middle alternative neither of these results is likely to occur, and so it is the least controversial way to resolve the problem. The concept of human rights was not designed to embrace non-human persons, and it was clearly intended to exclude infra-human beings, such as animals.[17]

It is even possible that the justificatory aspect is simply evaded. This is the case with, among others, A. I. Melden:

> Instead of looking for a basis for human rights, we need to see more clearly and in its rich and complex detail just what it is for persons to have the rights they have as human beings. It is here that all explanations come to an end.[18]

If one thinks that what is at stake is the maximum level of moral status, positions of this sort do appear philosophically hasty.

There are, however, perspectives in which the appeal to species membership clearly performs a subsidiary and, so to speak, rhetorical function. It is in such instances that the search for a justification for human rights moves in a theoretically fertile direction. It is in particular the American philosopher Gregory Vlastos who is to be credited with pointing out this direction from the dawn of contemporary debate.[19] While still expressing himself in terms of persons or human beings (notions he uses interchangeably), Vlastos—who discusses justice and equality—does not hesitate to set aside the biological element in favor of a direct appeal to psychological characteristics. One might think that what will come to the fore is what we have defined as the philosophical sense of "human being," that is, the reference to capacities like rationality and self-consciousness, usually connected with the concept of person. But this is not how things stand. Vlastos begins by arguing that only valuers do not need to be valued by others in order to have value. For they attribute value to themselves and, in particular, (a) to the fact of having positive conscious experiences and (b) to the fact of making one's own choices—bringing under this term not only deliberate decisions but also "those subtler modulations and more spontaneous expressions of individual preference which could scarcely be called 'choices' or 'decisions.' "[20] The next step is that of translating the idea of equal human value ("worth"),

which in a more or less explicit way underlies human rights doctrine, into the idea of the equal value of human well-being and freedom.[21] And this is because, Vlastos argues, in all cases where human beings are capable of enjoying the same goods—the example offered is relief from acute physical pain—the intrinsic value of their enjoyment is the same; and because choosing for oneself has the same intrinsic value for all individuals, independently of what they happen to choose. The conclusion is that the attribution of equal value to individual welfare and freedom is the ground for the attribution of equal (prima facie) rights to welfare and freedom.

If one examines Vlastos's account ignoring the humanist bias, what one confronts is a subjective-quantitative approach based on an internal perspective. On the one hand, in fact, the use of the term "intrinsic," far from pointing at questionable metaphysical claims, refers here merely to the contrast between *prudential* value and the value *for others* of the experiences of welfare and freedom. If X were a statesman, Vlastos explains, and giving him relief from pain enabled him to benefit millions of individuals, and if Y, in contrast, were an unskilled laborer, who would be the sole beneficiary of the like relief, we would of course agree that the extrinsic value of the two experiences would be greatly different—but not their intrinsic value.[22] On the other hand, only an approach that excludes alleged objective frameworks and qualitative evaluations, and that adopts an internal outlook can yield the egalitarian outcomes that Vlastos reaches—outcomes that are avowedly at odds with the perfectionist principle that the greater the psychological complexity of a being, the greater the moral weight to be afforded to its interests:

> [N]o matter how A and B might differ in taste and style of life, they would both crave relief from acute physical pain. In that case, we would put the same value on giving this to either of them, regardless of the fact that A might be a talented, brilliantly successful person, B "a mere nobody."[23]

As I have pointed out, there are several views that, as regards the interests in freedom and welfare, defend equal consideration. What differentiates Vlastos's account is, however, that it roots *the equal value of individuals* precisely in the equal value of the two prudential elements considered as basic—in the experience, that is, of freedom and welfare. This has fundamental implications for the problem of the value of life. For it is a necessary, though not declared, implication of

this account that the right to life ensues from the fact that continued existence is a prerequisite for enjoying the rights to welfare and freedom. But if being alive is the necessary requirement for benefiting by welfare and freedom, the right to life is rooted in the instrumental value of existence. On the one hand, this rules out the appeal to the possession of the desire to go on living, or of the ability to value life, as prerequisites for such right, in clear contrast with the positions that draw a line between beings that are able, and beings that are not able, to conceive of themselves as entities endowed with a past and a future. And on the other, a value that is instrumental with respect to goods that have equal intrinsic value cannot but be equal, with the consequence that the right to life cannot vary in strength according to the structural capacities of the being. Even concerning the question of the value of life, therefore, the doctrine of human rights as it is outlined by Vlastos proves to be radically egalitarian.

Vlastos's reference to the capacity to enjoy welfare and the fact of making one's own choices generates a line of defense of human rights that will be found again in Alan Gewirth, after going through intermediate historical/theoretical stages. Among these, the most important one is perhaps the already cited essay on racial discrimination by Richard Wasserstrom.[24] After reconsidering Vlastos's argument, which he explicitly draws on, Wasserstrom introduces at least two novel elements. The first concerns the grounds for the centrality of freedom and welfare. After stressing that the presence of rights enhances the moral landscape just in that it makes it possible to focus on the being which is adversely affected by the action, that is, on the being which suffers the injury, Wasserstrom argues that freedom and welfare must be protected by fundamental rights because the denial of the opportunity to enjoy these rights prevents any possibility of developing one's capabilities and of living a satisfying life:

> Hence, to take one thing that is a precondition of well-being, the relief from acute physical pain, this is the kind of enjoyment that ought to be protected as a right of some kind just because without such relief there is precious little that one can effectively do or become.[25]

This reference to the active side of the subject, to what it can do or become, points at a path that will turn out to be fruitful.

The second element relates instead to Vlastos's egalitarian conclusion. Wasserstrom holds that the claim that the enjoyment drawn from the same fundamental goods is the same for every subject is inadequately

defended. Thus, he aks himself afresh the question why the intrinsic value of the fruition of welfare and freedom should be considered equal for all individuals, and, after considering other hypotheses, ends up by resorting to a dual argument. Basically, his answer is that either individuals are in fact equally capable of enjoying these goods, and thus the values in question are actually equal for all, or, if there are differences, they are not in principle discoverable or measurable, and therefore we should opt anyway for equality, insofar as the opposite choice can result in precluding the possibility of living a satisfying life.[26]

In this way, although taking a more convoluted route that involves the introduction of the benefit of the doubt, Wasserstrom not only does not abandon the appeal to the capacity to attribute value to welfare and freedom introduced by Vlastos, but he comes to practically equivalent conclusions about the *equality* of the rights meant to protect such fundamental goods. References to the alleged exclusive humanness of these rights sound thus all the more superfluous and arbitrary—actually reaching explicit paradox with the assertion that the enjoyment of goods like relief from acute physical pain "in a real sense . . . differentiates human from nonhuman entities."[27]

As we have already noticed, similar elements of inadequacy with respect to the question of species are present in Alan Gewirth—recall his statement that "for human rights to be had, one must only be human." And yet, in his instance even more than in the previous ones, this is merely a matter of superstructure. In its most abstract form, Gewirth's argument is in fact an elaboration on the theme of the golden rule, and points therefore in the direction of the formal core of ethics.[28]

Starting from the idea that all moral codes are guides for action, Gewirth develops an argument that revolves around the concept of agent, construed as an intentional (that is, a conscious and purposive) being that wants to achieve its goals. To determine which moral code to follow, Gewirth argues, we need in the first instance to ask ourselves what is necessary for action itself. As reflective agents, we understand that the preconditions for agency are the capacity to have goals and the possibility of pursuing them. The capacity to have goals, which lies at what we have called the structural level, is conditional on the presence of minimal mental and physical abilities. The possibility of pursuing such goals, which lies instead at the accidental level, requires on the one hand absence of coercion, or freedom,

and on the other a quality of life that affords a certain degree of security and opportunities and that can be recapitulated as welfare. But, Gewirth observes, if freedom and welfare are needed by agents to pursue their goals, all reflective agents advance, at least implicitly, a claim to such goods. In other words, every agent is logically compelled by the mere fact of engaging in action to accept evaluative judgments about the positivity of her possession of freedom and welfare, and deontic judgments about her rights to freedom and welfare. It is clear that, in this phase, such rights—which Gewirth calls "generic"—are not yet characterized as moral rights but appear only in the form of normative claims justified in prudential terms.[29]

The next step in the argument is the transition from being a mere reflective agent, who considers only her own interests, to being an agent who takes into account the interests of others as well. In the first place, Gewirth states, the reflective agent realizes that the reason which justifies her claim to the generic rights lies *only in being an agent,* since the appeal to any other characteristic, including that of being a reflective agent, would lead her to contradict herself through implying that, were she devoid of that characteristic, she would not possess the rights in question. In the second place, once she has identified in agency the relevant similarity between herself and her possible recipients, the reflective agent understands that the application of the principle of universalizability to this judgment logically entails the generalization that the rights she claims for herself belong to all agents.[30] This determines the transition from the prudential to the moral, and the rights in question turn into moral rights. This is, put most simply, the argument for what Gewirth defines as the Principle of Generic Consistency: "Act in accord with the generic rights of your recipients as well as of yourself."[31] It is evident that such a principle is nothing but a version of the formal principle of consistency, according to which like cases should be treated alike. With a difference, however. For if the traditional principle leaves unspecified both the moral prescriptions and the definition of the relevant similarity, in the case of Gewirth's principle the theoretical centrality of action determines both the prescriptive content—the rights to the preconditions of action—and the criterion of similarity—the fact of being an agent.

Owing also to its avowed aim of developing an overall theory of morality capable of regulating, in addition to relationships between individuals and organized power, individual transactions as well,

Gewirth's account is the most structured version of the line of argument connecting human rights with the protection of interests in freedom and welfare. The focus on the abstract notion of agent not only does away with any—even purely denominative—reference to species membership but retains the stress on the subject's evaluative side present in Vlastos, while at the same time elaborating on the appeal to the subject's active side that appears in Wasserstrom. The criterion of the capacity to enjoy freedom and welfare remains central, though no longer directly but rather instrumentally with respect to action. And, since these constituents come into play at the formal level, as prerequisites needed by the agents in order to be able to enjoy the categorical good that the pursuit of their own goals is, their comparative value should not even be measured, but is equal *ex hypothesi*. The same can be said with respect to life, whose role of a precondition for freedom and welfare is finally made explicit.[32] The result is a view that grants equal rights to freedom, welfare, and life to whoever is an agent, once again barring the way to those forms of perfectionism that award moral advantages on the basis of mental complexity.

For an Expanded Theory of Human Rights

We may briefly summarize the discussion thus far as follows. Human rights tend to cover the domain of morality in the narrow sense and are therefore essentially negative rights, or rights to noninterference. They are, moreover, institutional in character, in the sense that the model of both their implementation and their violation is based on the organization and the action of the state.

Within the moral community, human rights define the sphere of beings endowed with full moral status and, on the basis of their most convincing line of defense, the comparative criterion for access to such sphere is simply the fact of being an agent, that is, the fact of being an intentional being that has goals and wants to achieve them. This means that neither rationality nor any other among the cognitive qualities traditionally considered as "superior" is required. This plausible theoretical aspect, which meets among other things the felt need to eliminate any possible form of discrimination connected with what Richard Hare has defined as "ideals,"[33] that is, with specific hierarchical worldviews, is paralleled by the social fact that human rights,

and the protection stemming from them, are seen as a prerogative of all intentional members of our species, whatever the psychological differences between them. Given that the beings that fulfill the requisite of intentionality are characterized by the capacity to enjoy freedom and welfare, as well as life which is a precondition for them, both directly and as prerequisites for action, the specific rights claimed concern freedom, welfare, and life. Such rights are equal for all their holders, because the value of the goods they protect is equal, and, as a consequence of this, the sphere characterized by full moral status is homogenous rather than stratified.

Is the comparative criterion of the possession of intentionality—undoubtedly general, connected with empirical properties, and morally relevant—able to stand the test of contextual relevance? The answer to this question depends on the kind of difference in treatment it can mark with respect to beings debarred from full moral status. At present, for the doctrine of human rights, the treatment of beings that seem to meet only the inclusive criterion of consciousness is, as shown by the issue of abortion, an open question that fluctuates between the mere prohibition of cruelty and some forms of graduated protection for life. It is clear that, where there is no capacity for choice, the problem of the right to freedom logically does not arise. If, as seems to be the case, the prohibition of cruelty can somehow be recast in terms of the negative right to welfare, what is left is the problem of the right to life. Apropos of this, it has been claimed that, in the instance of beings so simple as not to be able to have intentions and goals, consciousness is not a unified stream in any real sense.[34] Were it so, the existence of the beings in question would only be a succession of momentary states whose interruption could fail to be a harm for anyone, since there would be no individual "experiencer" whom the experiences could be said to belong to; and, obviously, in the case of such entities, it wouldn't be arbitrary not to take into consideration the right to life. This view has been vigorously challenged, however, and the matter remains controversial. Whatever the settlement of this problem, at any rate, it is important to stress here that, since what we developed is an *ad hominem* argument, the defense of the overall plausibility of the comparative criterion finally lies with the advocates of human rights doctrine.

Having thus reached the end of our argument, we can endeavor to advance an answer to the question we started from—to the question,

that is, of whether human rights theory can be considered as a plausible preliminary solution also for the problems of a community broader than the human one.

The answer is affirmative. For it is clear that, on the basis of the very doctrine that establishes them, human rights are not *human*. On the one hand, the more or less avowed acceptance of the idea that species membership is not morally relevant has de facto eliminated from the best foundation of the theory any structural reference to the possession of a genotype *Homo sapiens*. And, on the other, the will to secure equal fundamental rights to all human beings, including the nonparadigmatic ones, has implied that the characteristics appealed to in order to justify the ascription of such rights could no longer be those (seen as) typically human but should instead lie at a cognitive-emotive level accessible to a large number of nonhuman animals. In this sense, not only is there nothing in the doctrine of human rights to motivate the reference to our species present in the phrase but it is the same justificatory argument underlying it that drives us toward the attribution of human rights to members of species other than our own.

Which, exactly, among nonhuman animals meet the requisites for inclusion in the privileged area of full moral status is a problem that cannot yet be settled in detail. However, among the beings that an *expanded theory of human rights* should cover there undoubtedly are mammals and birds, and probably vertebrates in general. I do not deem it necessary to restate here the cumulative case for this claim, which is supported by common sense as well.[35] Rather, it is worth stressing that, in defining grey areas or borderline cases, it is important to keep oneself open to the complexity of reality, avoiding recourse to what in the scientific domain has been called "the discontinuous mind."[36]

What, then, is the relationship between the expanded theory of human rights and the accounts of welfare and of the value of life examined above? Which solutions does it advance for the problems we left unresolved? From now on, we will set aside the moral community as a whole and will focus instead on the characteristics of the more limited area that includes the holders of full moral status.

The first thing to notice is that, in fact, the theory does not offer an answer to all the questions. What has been identified as the minimal basis for organized cohabitation—the doctrine that embraces the fundamental moral values to be realized in any acceptable society—gives

center stage only to the question of the basic treatment of holders of full moral status. In other words, the dilemmas created by the search for criteria to resolve possible conflicts between right-holders are not confronted. And yet, contrary to what might appear, this does not represent a limitation.

The reason for this lies in the already mentioned peculiarities of the expanded theory. In the first place, since it is a doctrine centered on noninterference, it does not involve distributive problems that might imply the necessity of attributing differential value to the beings involved. Second, as the resort to the language of rights makes clear, the perspective within which the theory roots is deontological rather than consequentialist. Given that rights are side constraints on possible forms of utilitarian aggregation, it is evident that any form of maximizing sacrifice is excluded a priori. Since, therefore, nobody can be permissibly sacrificed for the benefit of others, the problem of a possible attribution of differential value does not arise in this respect either. Finally, the fact that the doctrine refers to the institutional level—that it deals, that is, with codified or official violations—implies that the problem of possible interindividual conflicts is set aside in order to focus only on the relationship between social power and the individuals who make up the collectivity.

Within the limits of the area it actually covers, on the other hand—that is, where it is only a matter of determining the seriousness of possible institutional violations of the negative rights involved—the expanded theory, as we have seen, excludes perfectionism not only in the case of the interests in welfare and freedom but also when it comes to the interest in continued existence.[37] This means among other things that, as far as the value of life is concerned, it rejects both the view that attributes a direct role to self-consciousness and the qualitative approach that grants special weight to characteristics other than the inclusive one; and that, among subjective-quantitative accounts, it dismisses both the external and the internal-proportional approaches. In other words, what we are confronting is just that egalitarian thesis not only about welfare but also about lives that many regard as utterly counterintuitive and that we described as paralyzing.

Is this a paradoxical result? No, if once again one takes into account the fact that human rights come into being as institutional restrictions. In view of such a framework, in fact, it is plausible to claim that the egalitarian thesis turns out to be the most intuitive. For none

of us holds that slavery could be prohibited in the case of individuals with a high IQ but be permissible in the case of individuals with a lower IQ; or that a massacre of intellectuals is a more serious violation of human rights than a massacre of intellectually disabled children. When it comes to official violations of basic rights, we deem any hierarchical scale morally repugnant. It is partly in this light that, I believe, one should look at the differences between the egalitarianism of the expanded theory of rights and the perfectionist inclinations of the quality-of-life doctrine such as it is taking shape and becoming prominent in the bioethical field.

This point is worth developing. Bioethics endeavors to issue precepts for two practical spheres: that of the individual treatment of the patient and that of the definition of general criteria, often legal or institutional in character. The former sphere obviously cannot conflict with the expanded theory of rights, for it does not relate to official policies. The latter—that of institutional criteria—divides in turn, roughly speaking, into two branches. Of these, one, having to do with the policies of allocation of medical resources, concerns again an area that the expanded theory does not cover, as referring to welfare rights or positive rights—in particular the right to assistance. The other, however, directly affects the sphere of concern of the theory of rights, insofar as it relates to an attribution of differential status to specific classes of individuals aiming at being legally ratified.

To decide whether certain beings (for example, some or all nonhumans) can be experimented upon without side constraints, or whether certain beings (for example, newborn babies with severe physical and mental disabilities) can be deprived of the right to life means intervening on institutional questions of moral and legal status. When they propound, or sanction, such (re)structuring of official policies, therefore, the accounts based on the quality-of-life doctrine can come into conflict with the egalitarianism that underlies the (expanded) theory of human rights. As the heated controversy on nonvoluntary euthanasia shows, as far as human beings are concerned, the existence of a contradiction has already been clearly grasped by some.[38] In the case of nonhumans, on the other hand, the problem arises at a higher level: the presently suggested classifications based on quality-of-life criteria have in fact the effect of blurring the force of the case for the extension of human rights to members of other species endowed with intentionality.

The Fundamental Step

In a recent volume, the American legal scholar Gary Francione claimed that the characterization of nonhumans—from now on, I shall use this term to refer only to nonhumans endowed with intentionality—as property is the main impediment placed in the way of any attempt to extend basic rights beyond the boundaries of the species *Homo s apiens*.[39] In the light of this, he has argued that the first right to be afforded in such a context is the right not to be treated as mere means to others' ends.

The application of the line of reasoning so far developed to the current situation of our societies leads to a like conclusion. With an important difference, however: that the removal of nonhumans from the category of things or items of property is not seen as the implementation of a particular right but rather as the essential condition for a translation at the social level of the implications of the expanded theory. Within the framework of the feminist debate on equality, it has been emphasized that in case of serious disparity in access to rights, the fundamental step to be made regards what could be defined as juridical equality as a legal principle in itself.[40] If, so far as women are concerned, this takes the form of a law on equality that may play an active role in fostering social transformation, in the case of nonhumans what is in question is instead a legal change aimed at removing in the status of property the basic obstacle to the enjoyment of the denied rights. In this sense, the shift from the condition of objects to that of subjects of legal rights does not appear as a point of arrival but rather as the initial access to the circle of possible beneficiaries of that "egalitarian plateau" from which contemporary political philosophy starts in order to determine any more specific individual right.[41]

In order to better understand this point, consider the current situation. Billions of nonhuman animals are tortured, confined, and killed for our benefit. In a real sense, the actual parallel for the condition of these beings is slavery, that is, the practice by which human beings are reduced to assets in the strict meaning of that term ("live articles of property" was the telling Aristotelian definition of slaves.)[42] In nineteenth century United States, for example, slaves were institutionally dispossessed of their own goals, and their welfare, their freedom, and their lives were under the control of others. Only with the abolition of slavery through the Thirteenth Amendment to the Constitution

was the fundamental inequality precluding access to nearly any other moral and legal protections removed. A reorganization of society along the lines of the expanded theory likewise requires the constitutional abolition of the status of mere assets of nonhuman animals, and the prohibition of all the practices that are today made possible by such status, from raising for food to scientific experimentation to the most varied forms of commercial use and systematic extermination.[43]

These are the conclusions to which we are led by an argument that is neither contingent nor eccentric but is the necessary dialectical derivation of the most universally accepted among contemporary ethical doctrines—human rights theory. In this sense, the normative force of the demands of the expanded theory entails a commitment not only to avoid participating in, but also to oppose, present discrimination.[44] And this because the institutional denial of fundamental rights to beings that are entitled to them does not simply deprive the victims of the objects of their rights, but is a direct attack on those very rights themselves. In other words, such a denial subverts not merely what is right, but the very idea of justice.