

## Regan 與動物權

田錦宏\*

### 摘要

動物權的概念已經廣泛地被認可為善待動物的一個道德理論。Tom Regan 所主張的動物權立場被認為是動物權倡導者中最強的一派，但也遭受到極大的批判。所以，我們提出兩個問題：「動物有權利嗎？」及「Regan 動物權的權力基礎是什麼？」透過評論 Regan 的動物權，我們認為那些批判與爭辯的原因出於 Regan 對權利概念的誤用。首先，我們對權利的概念及權利與責任的相關性進行探討，接下來，我們釐清誰可以擁有權利。我們進一步提供一個更可行的權利立場來解釋 Regan 的動物權。最後，我們回答前述兩個問題：(1) 動物具有部分道德權利；(2) 特別權利可做為 Regan 動物權之更好的權利基礎。

**關鍵詞：**權利、動物權、道德責任、動物對待

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\* 國立中央大學哲學研究所博士生。  
E-mail: jonahtyan@gmail.com

## Regan and Animal Rights

Jonah Tyan \*

### Abstract

The concept of animal rights has received significant acceptance as a moral theory for ethical treatment of animals. Tom Regan's animal rights view is considered as the strongest position among animal rightists, but encountered enormous critiques. Therefore, we pose two questions: "do animals have right?" and "what is the ground of Regan's animal rights view?". Through the commentary of Regan's animal rights view, we argue those critiques and debates are originated from the misuse of the concept of rights. We first investigate the concept of rights and the correlativity between right and duty, then, examine who can possess rights. Further, we offer a more plausible right position to interpret Regan's animal rights view. In conclusion, we answer two questions: (1) animals have certain moral rights, and (2) the more plausible ground of Regan's animal rights is *special rights*.

**Keywords:** right, animal rights, moral duty, treatment of animals

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\* PhD Student, Graduate Institute of Philosophy, National Central University.

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## Regan and Animal Rights

Jonah Tyan

According to Tom Regan, animals are attributed as moral patients having similar moral rights as human. However, his rights view encounters major challenges from both animal welfarists and animal rightists. Therefore, I offer a commentary on Regan's rights view and propose a more plausible "rights ground" for his animal rights, which can explain two confronted questions in this paper: (1) Do animals have rights? and if the answer to (1) is "yes," then (2) what is the ground for Regan's animal rights?

### I.

It is now almost universally agreed that human beings should treat animals well in terms of direct duty view instead of indirect duty view to animals. Animal advocates in defending treatments of animals take two primary routes: humans have direct duty to protect the welfare of animals (i.e. animal welfarist) and animals have equal moral value similar to humans (i.e. animal rightist). Two distinct theories are held between animal welfarist (i.e. utilitarianism view) and animal rightist

(i.e. rights view). Animal rights refer to a generic term of indiscriminate treatment of the interests of animals. The animal rightists take the philosophical belief that animals should have rights, including the right to oppose to the use of animals by humans and to live their lives free of human intervention. Tom Regan's "rights view" represents the strongest stance that is entirely opposed to human uses of animals and is aimed for ultimate abolitionism or abolitionist veganism.

Regan's animal rights claim parts company with Kant's morale principle, but extends the moral patients (i.e. implications of nonhuman animals) have the same equal right of respectful treatment as moral agents. He denies that human and animal welfare differ in kind, therefore his position is anti-utilitarian and argues animals exist as ends-in-themselves as human. The aim of Regan's animal rights movement is best declared as "empty cage instead of larger cages". Regan asserts that the goals he committed are: the total abolition of the use of animals in science, the total dissolution of commercial animal agriculture, and the total elimination of commercial and sport hunting and trapping.<sup>1</sup> If his "empty cage assertion" is correct and push it to the extreme case, the consequences of our living world will become, if not totally absurd, surely unacceptable. As taking the case for rights in such strongest form, Regan encounters critiques from both animal welfarists and among others.

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<sup>1</sup> Tom Regan, "The Case for Animal Rights," in *In Defense of Animals*, ed. Peter Singer (New York: Basil Blackwell, 1985).

First, consider the critics of utilitarianism. Peter Singer merely rejects animal rights claim and states the approach to human rights is not relevant to the aims of the animal advocate movement. Singer, then, poses two difficult problems that Regan has in applying his animal rights view: the experimental use of animals, and his own hypothetical case of the dog in the overcrowded lifeboat.<sup>2</sup> R. G. Frey argues against ascribing rights to nonhuman animal, hence denies animal rights claim.<sup>3</sup> Moreover, Carl Cohen asserts only human have human rights and can be bearer of rights, and rejects Regan's unjustified assumption that moral patients have the equal moral right as moral agents. Specifically, he emphasizes that rights entail obligations, and animals are not able to conceive of and respond to their obligations.<sup>4</sup> Regan has made his efforts to defend his views, but his counter defenses never seem to be satisfactory and persuasive to those critics.<sup>5</sup>

Other writers take similar stance to reject ascribing human rights to nonhuman animals. Ruth Macklin argues that nature of human rights are matters of moral decision, not of *a priori* discovery. If we attribute nonhuman animals to have rights, then questions of conflicts of rights immediately arise.<sup>6</sup> H. McCloskey refers rights as entitlements to do,

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<sup>2</sup> Peter Singer, "Animal Liberation or Animal Rights?," *The Monist* 70, no. 1 (1987).

<sup>3</sup> Raymond G Frey, "Autonomy and the Value of Animal Life," *ibid.*

<sup>4</sup> Carl Cohen, "Do Animals Have Rights?," *Ethics Behavior* 7, no. 2 (1997).

<sup>5</sup> Tom Regan, "The Case for Animal Rights," in *Advances in Animal Welfare Science 1986/87* (Berkeley: University of California Press, 2004), pp.xxi-xxvi.

<sup>6</sup> Ruth Macklin, "Moral Concerns and Appeals to Rights and Duties," *Hastings Center Report* 6, no. 5 (1976).

have, or enjoy, and the possibility of rights is limited in possessors of rights. Animals cannot possess rights, so animals don't have rights.<sup>7</sup> In other words, the ability to make claims is essential to the possession of rights. Joel Feinberg asserts that animals cannot have rights since animals are incapable of claiming rights on their own.<sup>8</sup> Furthermore, it is generally held the correlativity of rights and duties, in such a way that legal claim-rights are defined in terms of other people's duties.<sup>9</sup> Regardless of facing tremendous challenges and critiques, Regan makes persistent rejoinders, but he barely makes successful attempts to end the debates.

Now, we like to delve into the problem behind these critiques against Regan's animal rights claim. It is clear that Regan's strategy is to argue for the rights of animals that references to such rights can serve to justify our obligations to animals, since the notion of rights is conceived as trumps.<sup>10</sup> Unfortunately, considering prior cited critiques, Regan's animal rights claim is defective and not justified assertively. I argue the essential problem of Regan's animal rights claim is attributed to his interpretation of rights ambiguously. Next, we investigate the concept of rights.

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<sup>7</sup> H. J. McCloskey, "Rights," *The Philosophical Quarterly* 15, no. 59 (1965).

<sup>8</sup> Joel Feinberg, "The Rights of Animals and Unborn Generations," in *Philosophy & Environmental Crisis*, ed. William T. Blackstone (Athens, GA: The University of Georgia Press, 1974).

<sup>9</sup> *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), p.62.

<sup>10</sup> Ronald Dworkin, *Taking Rights Seriously, New Impression* (London: Duckworth, 1977), pp.90-94.

## II.

The label of “rights” is widely used by animal rightists to explain our obligations to animals. However, the animal rights argument has its potential drawbacks since rights correlate with duties, and how can animals be responsible particularly in a legal sense? Further, these rights are based on plausible hypotheses about human nature (i.e., about the interests or needs of human beings that are central to people, and whose infringement or thwarting matters most to people), the justifications of no moral differences between humans and animals, if not assertive, are not convincing. Therefore, it is necessary to clarify the notion of “rights” as a postulate for animal rights.

In the moral sense, Ryan and Boland define rights as an “inviolable moral claim to some personal good. When this claim is created as it sometimes is, by civil authority, it is a positive or legal right; when it is derived from man’s rational nature it is a natural right”.<sup>11</sup> Alan Gewirth argues there are some absolute rights in that they cannot be overridden in any circumstances.<sup>12</sup> Gewirth uses appealing cases to illustrate the concept of rights, but he offers limited insights on the nature of rights. H. L. A. Hart advances the thesis of rights and argues, if there are any moral rights at all, there is at least one natural right: “the equal right of all men

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<sup>11</sup> See John Augustine Ryan and Francis Joseph Boland, *Catholic Principles of Politics: Rev. Ed. Of “the State and the Church”* (New York: Macmillan, 1940).

<sup>12</sup> “An absolute right entails a correlative strict duty, and such a duty requires a certain kind of action or inaction where alternatives are available for reflective consideration.” See Alan Gewirth, “There Are Absolute Rights,” *The Philosophical Quarterly* 32, no. 129 (1982).

to be free.”<sup>13</sup> By saying human has a right, he refers to two senses for any adult human being: (1) has a right to against others from the use of coercion or restrain and (2) has a right to do any action without restraining others’ freedom. This interpretation of rights unveils two important concepts of rights: *rights against* and *rights to*. Furthermore, it describes the correlation between rights and duties, which will be discussed later.

The notion of *rights against* captures the fact that rights are held against others, such as legal right and right to life. For example, the right of speech, which as the principally preventing governmental interference of expression of opinions and ideas, is a right against the state. Similarly, the right to life is a right against any harm from others. The best way to illustrate the *rights against* concept is the metaphor of “rights as trump”, which emphasizes that rights powerfully protect individual interests being traded off or overridden simply in others’ interest.<sup>14</sup>

In contract to *rights against* as negative rights, *rights to* is positive rights, which are justified claims to be recognized. T. H. Green argues: “A right is a power of acting for his own ends, for what he conceives to

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<sup>13</sup> “The equal right of all men to be free” here can be understood as human right. See Herbert Lionel Adolphus Hart, “Are There Any Natural Rights?,” *The Philosophical Review* 64, no. 2 (1955).

<sup>14</sup> Ronald Dworkin puts “Rights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole.” See Ronald Dworkin, “Rights as Tumps,” in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), p. 13.

be his good”<sup>15</sup>, which includes two: *rights to* elements of possessions and a power to act. H. J. McCloskey makes a distinction between possession and power, and argues the *rights to* is essentially an entitlement to act as people please.<sup>16</sup> For instance, my right to vote in the presidential election is my privilege to participate in the election. If I choose not to vote, and I still possess the power. It is clear, if not rare, that philosophers hold diverse views on human rights. Fortunately, philosophical theories and international legal systems are generally converged more on negative rights than on positive rights.<sup>17</sup>

The third concept of rights is a more positive right, which is called *welfare rights* such that “a right is not merely a moral entitlement to do or to have, but also an entitlement to the efforts of others or to make demands on others to aid and promote our seeking after or enjoyment of some good.”<sup>18</sup> For example, the right to healthy life demand the establishment of public health policy and health care resources to promote the well-being. The forth concept of rights calls *special rights*, in contrast to general rights (i.e. *rights against*, *rights to*, and *welfare rights*), which allege moral duties to particular individuals. Special rights are sometimes created by promises, contracts or customs but these differ

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<sup>15</sup> Thomas Hill Green, *Lectures on the Principles of Political Obligation* (Ann Arbor: University of Michigan Press, 1967), p. 207.

<sup>16</sup> McCloskey, “Rights.”

<sup>17</sup> Tom L. Beauchamp, “Rights Theory and Animal Rights,” in *The Oxford Handbook of Animal Ethics*, ed. Tom L. Beauchamp and Raymond G. Frey (New York: Oxford University Press, 2011).

<sup>18</sup> McCloskey, “Rights.”

from general rights where the rights are grounded on human morality.

The preceding elucidation of concept of rights unveils four essential components of rights: *rights against* (R1), *rights to* (R2), *welfare rights* (R3), and *special rights* (R4). The moral claims of rights normally involve indebted objects to acknowledge and validate the rights, which are essentially the correlation between rights and duties. To explore the relationship, I take the angle from the four rights components to argue.

### III.

In defending the argument of absolute right, Gewirth states that “An absolute right entails a correlative strict duty, and such a duty requires a certain kind of action or inaction where alternatives are available for reflective consideration.”<sup>19</sup> In other words, to say that one individual has a right is to allege no more than that someone else has a duty, so the best account of rights is just a mirror image of an accurate account of duties. Joel Feinberg asserts the same view that legal claim rights are defined in terms of other persons’ duties (i.e., the existence of the rights depends on the corresponding duties).<sup>20</sup> In this context, the meaning of rights refers to R1, or *rights against* are necessarily the grounds of other people’s duties toward the right-holder.

Where the R2, the right-holder may or may not create actual and potential duties for other people. Taking the same example of the right to

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<sup>19</sup> Gewirth, “There Are Absolute Rights.”

<sup>20</sup> Feinberg, *Social Philosophy*, p.58.

vote, my “right to vote” creates a duty for people around me not to interfere of my voting behavior, but not creates a duty for foreign citizens. For R3, according to its nature as combination of R2 and R1, it obviously creates duties or potential duties. Where the right is R4, it derives a duty against whom is indebted. It is worth noting that rights create duties but not vice the versa. For example, humans have duties to treat animals well, but it does not imply that animals have *rights to* or *rights against*. This leads to the discussion of who can possess right.

“Who or what can be possessors of rights?” is an important but difficult problem. As point of departure, I embrace T. H. Green’s argument that we have rights only as “members of a community, that rights involve mutual recognition, and that they can therefore only be possessed by moral persons.”<sup>21</sup> This view is consistent with the perspectives of R1 to R3, since rational agents are capable of recognizing the claims (i.e. implied duties) and complying with the obligations. By setting strict criteria of moral persons (also moral agents or free agents), Green excludes animals and infants (i.e. moral patients) as possessors of rights.

From moral perspectives, it makes no difference between infants and elephants since they don’t have rational capacities of recognizing rights and duties. However, if time moves forward 20 years within their life span, then infants (i.e. potential moral agents) become moral agents and elephants remain as moral patients. McCloskey captures the

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<sup>21</sup> Green’s view, appears in McCloskey, “Rights.”

essential difference between human and non-human moral patients, and argues both moral agents and potential moral agents have rights.<sup>22</sup> To address the gap between moral agents and potential moral agents, it is argued that proxies can demand the rights to and claim the rights against on behalf of the holder of the rights (e.g. parents on behalf of their infants).

#### IV.

Clearly, the previous elucidations attempt to build a better ground to investigate Regan's rights view. In short, my positions on the rights ground can be summarized as the following principles:<sup>23</sup>

- (P1) Rights are moral claims originated from rationality in human community, and validated claims create equal power on rights holders.
- (P2) The meaning of rights, whether it be a legal, moral, social, or special right, can be understood from the essential component (or its combination) of rights (i.e. R1, R2, R3, and R4).
- (P3) The relationship between rights and duties can be best clarified from the perspectives of four different rights.
- (P4) Both moral agents and potential moral agents are possessors of general rights (e.g. R1, R2, and R3).

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<sup>22</sup> Ibid.

<sup>23</sup> Some animal rightists take different positions, relative rights position, are found in various writers in animal rights debates. Specifically, the notion of "rights continuum" is from Tom L. Beauchamp, see Beauchamp, "Rights Theory and Animal Rights."

In order to argue animal rights view, Tom Regan rejects three common cited accounts: the Kantian account, the cruelty account, and the utilitarian account. The development of Regan's animal right arguments can be summarized as follows:<sup>24</sup>

- (1) Human beings have inherent value, which is independently of whether he/she is valued by anyone else.
- (2) Individuals who have inherent value have moral rights.
- (3) Thus, human beings who have inherent value have the right not to be harmed.
- (4) Animals, like human beings, have inherent value.
- (5) Given (4), animals have the right not to be harmed.

However, Regan's animal rights account is defective with the following unanswered questions:<sup>25</sup> Why Regan's premise (1) is true? (i.e. why humans have inherent value?) Why do human beings, who have inherent value, have moral rights? Even if we accept his claim that humans have inherent value, there still arises a second question: "why do humans, who have inherent value, have the right not to be harmed?" Without providing answers to above questions, Jack Li argues that "Regan merely assumes that humans have inherent value, and thus, have the right not to be harmed. Without offering any justification for this

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<sup>24</sup> Tom Regan, "Animal Rights, Humans Wrongs," in *Environmental Philosophy: From Animal Rights to Radical Ecology*, ed. M. E. Zimmerman, et al. (New Jersey: Prentice-Hall, 2001).

<sup>25</sup> This view is initially taken from Jack Lee, and he offers an "interests account" to replace Regan's rights view. See Jack Lee, "How Should Animals Be Treated?," *Ethics, Place and Environment* 11, no. 2 (2008).

assumption, he begs the question.”<sup>26</sup>

It is obvious that Regan intentionally land on a “right ground” (i.e. premise 1 and 2) which can support his rights view. Unfortunately, his assertions are not very successful, not only encounters strong challenges from “animal welfarist” but also major detachment from mainstream “animal rightists”. Why? First, according to P1, rights originate from rationality in human community, and animals are not rational beings. Second, from P2, rights have distinct meaning through the essential components of rights, but Regan does not recognize it. Clearly, Regan assumes R1 (i.e. *rights against*) as the ground to defend his rights view, but fails to recognize that animals are not possessors of rights (i.e. P4). Finally, Regan cleverly ignores the correlation between rights and duties (i.e. P3), and the existence of the rights depends on others’ corresponding duties. This is exactly what Clark’s rejection of animal rights to a duty of general protection from human beings.<sup>27</sup>

Even if we accept Regan’s claim (4) that animals, like human beings, have inherent value, then (5) animals have the right not to be harmed. In this rights view, humans and animals have same moral standing, and both have the same level of power to claim their rights. If we consider the extreme case of the last individuals found in a barren island, let’s say Regan’s infant child and his dog, Fido, who alone

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<sup>26</sup> Ibid., p.184.

<sup>27</sup> “Perhaps non-human animals have rights not to be treated in certain ways, but no right to our assistance against their enemies.” In Stephen R. L. Clark, “The Rights of Wild Things,” *Inquiry* 22, no. 1-4 (1979).

survives after a huge stormy disaster. Imagine the rescue team can only reach the island after 10 days, but the foods left only enough for 5 days consumption for the child or 10 days for Fido. If the infant child has no foods for over 5 days, he is very likely to starve to death. Now, who should have the rights to have the foods? From animal warfarist view, it is clearly that the foods should be given to the infant child. Suppose Regan follows his strict rights view argument, both infant child and Fido are moral patients, therefore they have equal rights. However, if we force Regan to make a choice between the two, it is expected that he will select his infant child. Thus, Regan is against his own “rights view” logic, regardless of what strong counter defending arguments can be offered to justify his moral decision.

Clearly, Regan does not land in a solid rights ground to argue his animal rights view. However, he has made significant advancement in the advocate of animal rights movement among other animal rightists. Now, the question is how can Regent land in a better rights ground to justify human’s obligation to animals, and also resolve the problems encountered. From prior elucidation on concept of rights, possession of rights, and examination of Regan’s rights view, therefore, I suggest a better rights ground that Regan should rest on is R4 (i.e. *special rights*).

According to the above discussion, we have reached conclusions for two confronted questions: (1) do animals have rights? (2) what is the ground of Regan’s animal rights? And the answers are:

- (1) Animals have certain moral rights, where humans have direct duty on animals and treat the interests of animals as an end in

itself.

- (2) The most plausible ground of Regan's animal rights is R4 (i.e. *special rights*).

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