

## THE SIGNIFICANCE OF AGENCY AND MARGINAL CASES

*R.G. Frey*

In Western societies, autonomy is widely regarded as a value of central importance. It figures prominently in the various types of normative ethical theories presently at issue among us, and emphasis upon it, whether in a Kantianism, contractualism, rights-theory, or utilitarianism, appears to place beings judged to lack autonomy, such as infants, the very severely mentally-enfeebled, the seriously brain-damaged, the irreversibly comatose, and animals at a certain risk.

For example, the most prominent rights-theories now on display, all of which feature a right to life, make a good deal of autonomy or agency, and it is easy to see how infants, defective humans, and animals can lose out on such theories. If agency is regarded as the ground for the possession of moral rights, then these beings will lack such rights unless they can plausibly be made out to be agents; and if the usual demands of agency, such as rationality and action upon reasons, self-consciousness, self-critical control of one's desires, the application of norms to one's conduct, and deliberative choice, are not relaxed, it seems unlikely that they can be so regarded. Thus, non-autonomous beings seem to fall outside the central terms of reference of these theories, with the result that they lack a right to life or, at the very least, that the threshold for killing them is lower than that for killing autonomous beings or normal adult humans.

I do not share the contemporary enchantment with moral rights; <sup>1</sup> but non-autonomous beings come out at risk on other theories as well. (I have elsewhere discussed this matter.<sup>2</sup>) I shall not bother with other theories here, since nothing in what follows turns upon the particularities of the theory within which emphasis upon autonomy is embedded.

I have taken autonomy to be or to imply agency, and for two reasons. First, this is one of the most prominent uses of 'autonomy' in contemporary moral and political philosophy. Second, I

believe most of the other prominent uses - autonomy as personhood and acting as a person, as making one's own decisions, at least in the important affairs of life, and directing one's life, as constructing or building a life of value for oneself, as adopting and living out a life plan - rely upon or involve agency.

To what does autonomy or agency matter? Why do we give it so much emphasis? I think that those who make autonomy a necessary condition for admission to the moral community are mistaken, since the pains of non-autonomous beings do not cease to be of moral concern. Suffering is suffering and so an evil, whether the being undergoing the suffering is autonomous or not. Rather, autonomy matters to the value of a life, and the central risk that non-autonomous beings face is that their lives will be judged less valuable than the lives of autonomous beings, with the result that the threshold for killing them will be lower than for killing autonomous beings (or normal adult humans).

In my view, the value of a life is a function of its quality and its quality a function of its richness. Part of the richness of our lives consists in activities we have in common with animals; for both humans and animals eat, sleep, drink, and have sex. But we also fall in love, marry, and share our lives with others; we have children and bring them up and educate them; we have occupations and experience satisfaction in our work; we listen to music, look at pictures, read books, and so become acquainted with our culture; we speculate on our origins, on our future, and on the explanations of what happens around us; we experience humor, delight, and fantasy, and often in the most intellectual ways. Our lives, the lives of normal adult humans, are incomparably richer than the lives of infants, defective humans, and animals. And there is more to be said; for by exercising our autonomy or agency, we can mould and shape our lives to fit a conception of the good life of our own choosing, and living out this conception can itself supply us with a strong sense of achievement and of self-fulfillment, and, through these, with considerable satisfaction. Thus, we seek through years of training and hard work excellence in some athletic, artistic, or academic endeavor; and we take immense satisfaction in the sense of accomplishment and self-fulfillment that success, and even partial success, in this endeavor brings. We can turn ourselves into athletes, artists, or academics and live the lives appropriate to each; we can live out our conception of the good life and so confer upon and experience a further dimension of value to our lives. Nothing comparable exists among the non-autonomous. We have here, then, a further reason for thinking that the lives of normal adult humans are much richer than those of infants, defective humans, and animals; and

lives of greater richness have more value.

Accordingly, since the lives of non-autonomous beings have less value than the lives of normal adult humans, the threshold for killing them is lower than that for killing normal adult humans. Thus, infanticide, some cases of euthanasia, and the killing of animals become, as it were, distinct possibilities. To the extent that non-autonomous beings can suffer they are part of the moral community; but not all beings who are part of the moral community have lives of equal value. Lives of radically different quality are of radically different value, and the threshold for taking life is correlated with its value. Here is to be found the source of the central risk that animals face as a result of the emphasis upon autonomy or agency in our moral theories.

Given that theorists will almost certainly not expunge this emphasis upon autonomy from their theories, since they think that autonomy is important to morality and to the value of the lives of normal adult humans, how exactly are they to squeeze animals and these others into their theories? Since animals are my primary focus in this paper, I want first to show that several quite specific ploys that might be thought by some to include defective humans and/or infants within the autonomous class do not similarly include animals, before turning to a more general ploy designed to include virtually all of these beings in the autonomous class.

To begin with, then, one might simply maintain that those beings judged to have impaired autonomy, such as the less severely mentally-enfeebled, are part of the autonomous class from the outset. The problem here is that chickens - I deliberately select an important food animal for us - do not have impaired autonomy, as if, were we to consider, not *these* chickens, but those judged the very best of their kind, we should find them to be possessed of full autonomy. The notion of impaired autonomy does what work it does by means of a contrast with full autonomy; but, unlike our case, where we contrast the less severely mentally-enfeebled with normal adult humans, no such contrast is possible in the case of chickens.

One might try to wield an argument from potentiality on behalf of healthy (as opposed to severely handicapped) infants and so try to create a place in the class of the autonomous for living beings who are potentially autonomous. The problem now is that chickens are not potentially autonomous. The contrast here is with actual autonomy; and though we can contrast the potential autonomy of infants with our own actual autonomy, no such contrast can be drawn in the case of chickens. The very best chicken of its kind does not enjoy actual autonomy.

Merely because a distinction between potential and actual auto-

mony can be drawn between (most) infants and ourselves, however, it must not be assumed that, e.g., rights-theorists will cede infants rights. In fact, for many, if not most, rights-theorists, it is actual autonomy that counts, and infants are not actually autonomous.

One might appeal to the fact that, though the very severely mentally-enfeebled may never have become autonomous, some of them have been allowed to reach an advanced, physical age; and this, it might be urged, even if it does not show that they are autonomous, should influence us on how they may be treated. Chickens are bred by us for food and, once in existence, should be treated humanely. Let us accept this: the problem remains that this line of argument is perfectly compatible with it being something about us - say, squeamishness - and nothing specifically about chickens that dictates such treatment. What we cannot say is that autonomous beings may not be treated like *that*, since the present appeal does not purport to show that chickens, or the very severely mentally-enfeebled, are autonomous. They have not been made part of the autonomous class; accordingly, whatever external protections they may enjoy (i.e., protections that, for instance, turn upon what we can bring ourselves to do), they continue to lack the internal protection that being autonomous, with enhanced value to their lives, would bring.

One might try to loosen the requirements for possessing one or more of the components of agency. The component most discussed in this connection is that of a concept of self. In *Interests and Rights*, I have strongly denied that animals are self-conscious or have a concept of self,<sup>3</sup> and I have in general, both there and elsewhere, been critical of attempts, in the light of such a denial, to water down the requirements for possessing a concept of self. I do not have space to enlarge upon these matters here. Instead, I want to notice a factor in the present regard that Peter Singer tries to exploit in his *Practical Ethics*.<sup>4</sup>

Suppose we set aside all the doubts over self-consciousness in animals that I expressed in *Interests and Rights*: if we consider only the question of whether animals can have a concept of self, Singer suggests that animals with 'well-developed mental faculties' may be possible candidates; and he instances apes, whales, and dolphins, and, with greater caution, monkeys, dogs, cats, pigs, seals, and bears.<sup>5</sup> Singer's suggestion is not that these creatures do have a concept of self, only that they may. Yet, obviously, Singer's list includes only pigs among major food animals; all other food animals remain available to the meat-eater. Even if my position on this issue of a concept of self is wrong, then, Singer's speculation on the matter fails to encompass the

very animals that, at least from the point of view of Western societies, have prodded much of the worry about the use we make of and the treatment we mete out to animals. It is hardly surprising, therefore, that other writers on behalf of 'animal rights', such as Tom Regan<sup>6</sup> and Stephen Clark<sup>7</sup>, shy away from Singer's view.

Finally, one might try to squeeze animals into the autonomous class by appeal to the notion of proxy agency<sup>8</sup> or to that of a trustee, who chooses and acts for the being in question. I doubt that this line of argument is going to fare any better than earlier ones, and for a specific reason.

A person who is now slowly passing through the stages of Alzheimer's disease or senile dementia has a past life we can draw upon in order to see the sorts of things he chose in the past and the sort of life he made for himself. A proxy who now acts for that person has something to go on, something which, however tenuously, we can see as setting guidelines for the proxy to follow so as to enable us to see the choices of the proxy as the choices of the person in question. But where a very severely mentally-enfeebled human or animal has never become autonomous, where there are no choices expressive of ends and patterns of life to examine and to set guidelines, it seems mere pretence to regard the choices of the proxy as the choices of the enfeebled human or animal, as if that is how they would have chosen, had they only been autonomous. To be sure, the proxy can make choices *for* the enfeebled person or animal, which can be to their advantage or disadvantage; but he is not choosing in the ways that or what they would have chosen. Rather, he is choosing, *according to his own lights*, what he thinks will advantage them most and disadvantage them least. If their lives over time come to exhibit certain ends and patterns, these ends and patterns are not of their choosing or ones that they would have chosen but ones *chosen for them* and, in that sense, *imposed upon them*. These ends and patterns can be to their advantage, but in the appropriate sense they are not theirs.

If one wishes to speak of the proxy as looking after the best interests of the enfeebled human and animal, assuming that both have interests to be looked after<sup>9</sup>, then it is the proxy's view of what is in their interests, which may or may not be in their best interests, that matters. And it would be as well not to be overly sanguine about what the proxy's view of their best interests will be; after all, does not every zoo director affirm that confinement in *his* zoo is in the best interests of *his* animals?

I am not denying, of course, that we can designate proxies to make choices for enfeebled humans and animals; what I am querying is whether, where the beings have never been autonomous, those choices can in any wise be seen as choices of the enfeebled human

and animal. I suggest that there is an element of pretence in so seeing them and so grounds for thinking that the appeal to a proxy or trustee choosing for animals does not really suffice to squeeze them into the autonomous class.

Apart from these specific ploys to, as it were, make animals autonomous, there is the more general ploy referred to earlier. Its nature is easily guessed: it is to specify a weaker or different sense of autonomy that does not amount, to or involve agency and that straightforwardly encompasses animals. Then, if one is, e.g., a rights theorist, one can go on to set out a theory of rights that does not require agency in order to possess the rights in question. In this way, animals become autonomous and possessed of rights, even though it is conceded that they are not agents. This is the course followed by Tom Regan in *The Case for Animal Rights*<sup>9</sup>, and I have tried in my paper 'Autonomy and the Value of Animal Life'<sup>10</sup> to indicate what is wrong with it. The central difficulty is that Regan's sense of autonomy, just as any sense whatever that severs the concept from agency, has been drained of virtually all the significance for the value of a life that we take autonomy to have.

I want now to take this point in a fresh direction, in order to expose a general misconception that besets many discussions of autonomy in animals. To make animals autonomous in a sense that does not endow them with agency is not obviously to increase, let alone to increase appreciably, the value of their lives; and it is this, to recall, that is crucial to the discussion of killing. On any sense of autonomy that is divorced from agency (I have already shown how agency can increase the value of a life), what must be shown is that being autonomous in that sense makes not merely a considerable difference to the value of a life but also a difference so considerable that we are not able, at least with any degree of ease, to point to clear differences in the value of human and animal life that agency confers upon humans. For if we can point to such clear differences as the result of agency in the human case, will not animal life, even if now autonomous, remain at risk? There will be clear differences in the value of human and animal life, and this means that the threshold for taking animal life will again be lower than that for taking human life. Plainly, if such differences are not to remain, the sense of autonomy that encompasses animals is going to have to transform the value of their lives to something roughly approaching the value of the lives of normal adult humans. It is this point that so many discussions of autonomy in animals overlook.

Much effort has been expended on trying to show that animals, though not agents, nevertheless are members of the moral community

or have moral standing. Yet, it is apparent that this is not enough to deal with our present concern. From the fact that animals are members of the moral community, it by no means follows that the lives of animals are of roughly equal value to the lives of normal adult humans; yet, anything less than this will leave animals with less (in fact, markedly less) valuable lives and so at risk. Merely admitting animals into the moral community does not *per se* so alter the value of their lives as to reduce this risk. Thus, I began by conceding that suffering sufficed for admission to the moral community; but that plainly does not show - indeed, I have shown the opposite to be true - that human and animal life are of roughly equal value.

Emphasis upon agency in our moral theories will always leave animals at risk, then, unless it can be shown that some sense of autonomy is available in the case of animals that transforms the value of their lives to something roughly approximating the value of the lives of normal adult humans. I cannot imagine what this sense could be, nor have I ever been able to find it in the writings of those who support 'animal rights'. Whereas it is perfectly clear how agency can appreciably affect the value of the lives of normal adult humans.

Of course, one might simply maintain as a kind of truth that all members of the moral community have lives of equal value. Far from being a truth, however, this claim is false, and for a reason already discussed. There are plenty of humans who are members of the moral community but whose lives are of a much lower quality, and, therefore, value, than the lives of normal adult humans. Indeed, if we think of certain kinds of cases, such as patients in the grip of Alzheimer's disease or senile dementia, whose lives have so drastically declined in quality, then we may come to think that a life of such very low quality is not worth living. Its value we rate quite lowly, with the result that the threshold for taking this life has been lowered. Yet, there is no suggestion that such patients have ceased to be a part of the moral community or that we do not have to trouble ourselves, morally, about what happens to them. My point, then, is that one cannot use some presumed equality in the value of lives between defective humans and normal adult humans in order to underwrite an equality in value between animal and human life; for there is no such presumed equality in the defective/normal human case.

Agency matters, then, to the value of a life, and animals are not agents. If the threshold for taking their lives is not always to remain (significantly) below that for taking normal human life, we require some argument to show that, their lack of agency notwithstanding, animals have lives of roughly equal value to the

lives of normal adult humans. Neither the concession that they are part of the moral community nor the appeal to the value of the lives of defective humans supplies this argument. Certain religious claims might supply it, but I and others are not religious. A demand that we respect or revere life will not supply it, since such a demand is compatible with the acknowledgment that not all life has the same value. The requisite equality of value remains to be shown.

University of Liverpool

#### NOTES

1. This is apparent in all my books. See my *Interests and Rights: The Case Against Animals*. Oxford: Clarendon Press, 1980 ; *Rights, Killing, and Suffering: Moral Vegetarianism and Applied Ethics*, Oxford, Basil Blackwell, 1983, and my essays in R.G. Frey, ed. *Utility and Rights*, Oxford: Basil Blackwell, 1985.
2. See my "Autonomy and the Value of Animal Life", *The Monist*, forthcoming.
3. *Interests and Rights*, Chapters 5-8.
4. Peter Singer, *Practical Ethics*, Cambridge: Cambridge University Press, 1980.
5. *Ibid.*, p. 103.
6. Tom Regan. *The Case for Animal Rights*, Berkeley: University of California Press; 1983.
7. Stephen R.L. Clark. *The Moral Status of Animals*. Oxford: Clarendon Press, 1977; and *The Nature of the Beast*, Oxford : Oxford University Press, 1982.
8. I am indebted to Louis I. Katzner's unpublished paper "Rights and the Severely Mentally Disabled" for a discussion of proxy agency, which I draw upon in what follows.
9. See note 6.
10. See note 2.
11. I am grateful to Timothy Sprigge, Henry West, and especially James Griffin for discussing some of the issues of this paper with me.