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Studies in Honor and in Memory of Tom Regan*

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Respect, Inherent Value, Subjects-of-a-Life

Some Reflections on the Key Concepts of Tom Regan's Animal Ethics

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ABSTRACT

This article reconstructs the theoretical premises of Tom Regan's animal ethics, the American philosopher recently disappeared who has given a fundamental contribution to this area of practical ethics, by developing a theory of rights based on the extension to all subjects-of-a-life of Kantian notions such as inherent value and respect. Regan's theory still remains the most rigorous foundation of an animal ethics alternative to the utilitarian approach of Peter Singer, but it is not without unresolved problems or not entirely satisfactory solutions. To remedy some of them, in the final part the author tries to insert into the Reganian theoretical framework elements of gradualism.

Keywords: animal rights; animals; gradualist view; inherent value; moral status; Peter Singer; respect; subjects-of-a-life; Tom Regan; utilitarianism.

1. INTRODUCTION

The seventies of the twentieth century have been a decisive turning point in the attribution of moral relevance to non-human animals. If until then the prevailing philosophical thought had prescribed only indirect obligations towards sentient beings not belonging to our species (with several exceptions in the history of philosophy, but isolated), in the middle of the decade, with the publication of Peter Singer's *Animal Liberation*, animals enter fully into the moral community, as patients to whom we have direct moral obligations, and not only that of not making them suffer unjustifiably, but also that of not kill-

ing them (Singer 1975). The arguments that lead the Australian philosopher to assign animals moral status are utilitarian and are based on Bentham's principle of equal consideration of interests, which Singer mainly elaborates in terms of preferences. In the same year in which Singer's book is published, the *Canadian Journal of Philosophy* publishes an article, entitled "The Moral Basis of Vegetarianism", which is perhaps the first contribution on the ethics of the human-animal relationship to appear in an academic peer-reviewed journal. Its author, Tom Regan, an American philosopher from North Carolina State University, while reaching practical conclusions not dissimilar to those of Singer, justifies them on the basis of a different theoretical approach, deontological and of Kantian inspiration, which gives rise to a theory of moral rights (Regan 1975). Further elaborated in many texts over a period of more than thirty years¹, Regan's proposal finds its most rigorous formulation in *The Case for Animal Rights*, where he fully develops an alternative perspective to utilitarianism, in the belief that the latter, besides being a normative theory in itself unsustainable, is not able to adequately support the battle (common with Singer) for the improvement of animal conditions and the elimination of their exploitation (Regan 1983).

In the following pages, which want to pay homage to this important figure of contemporary moral philosophy, I intend to reconstruct the theoretical premises of Tom Regan's animal ethics, focusing my attention on the three key concepts of his view (used by the American philosopher to extend rights to non-human animals): respect, inherent value, subjects-of-a-life. My conclusion will be that, although Regan's theory still remains the most rigorous foundation of an animal ethics alternative to Peter Singer's utilitarian approach, it is not without unresolved problems or not entirely satisfactory solutions. In the final part of the article I will indicate some of them and I will try to overcome them by inserting elements of gradualism into the Reganian theoretical framework.

2. THE CRITICISM OF SINGER AND UTILITARIANISM

For Regan, first of all utilitarianism – both in its classical hedonistic version and in the version of preference outlined by Singer – has implications that contrast with widely diffused intuitions. This aspect is already problematic, because according to Regan one of the requirements that a

¹ Some of which – including the first paper published in the *Canadian Journal* – are collected in Regan 1982.

moral theory must satisfy is its conformity to our moral intuitions. However, they should not be conceived as mere convictions that we happen to have (fruit of the family environment and the social context in which we lived), but as weighted beliefs to which we arrive by subjecting our initial ideas to the overcoming of certain conditions, such as conceptual clarity (the complete knowledge of the meaning of the terms connected to a given deliberation), full information on the facts at stake in the situation to be assessed, absence of logical errors (i.e. wrong reasoning, or the violation of the principle of non-contradiction), impartiality (to be in accordance with the formal principle of justice, for which we must evaluate equally equal individuals or situations), coolness (“not being in an emotionally excited state, being in an emotionally calm state of mind”, Regan 1983, 129). Can we legitimately consider the beliefs that we retain, once all five of these clauses have been fulfilled, unreliable prejudices for testing the plausibility of a moral theory? Regan thinks not. Once these constraints have been overcome, our intuitions, now reflective, constitute a fact that a philosopher should not overlook in the elaboration of a moral theory. On the contrary, utilitarianism, even in the Singer’s version, violates this requirement. The case of murder is emblematic in this regard. Hedonistic utilitarianism is not able to account for secret killings, about which “fails on two counts, failing to account *both* for the wrong done by secret killings *and* for the wrong attaching to the unknown criminal’s escaping punishment” (Regan 1983, 204). The reason behind these counterintuitive responses lies in the fact that classical utilitarianism conceives individuals as mere *receptacles*. They are simply containers of value (pleasure) and disvalue (pain) without having an autonomous value in themselves.

According to Regan, the utilitarianism of preference supported by Singer, unlike the claims of the Australian philosopher, fails to avoid the counterintuitive outcomes of classic utilitarianism regarding murder, and in some ways makes them worse. In fact, by basing the prohibition of killing on the preference to continue living, Singer is unable to account for the prohibition to take the life of all those beings who, not possessing an idea of death, cannot have the desire to continue living, i.e. the totality of animals and atypical humans (the subjects suffering from serious mental handicaps). Moreover, if it is true that the “preference” factor allows some step forward on secret murders, however, even assuming that a person prefers to live, an equally strong preference to kill her by another person is enough to even the score. In other words, the utilitarianism of preference cannot avoid the main defect of hedonistic utilitarianism: the conception of individuals as receptacles. Although

Singer denies that self-aware beings are mere containers of value, Regan believes that Hart's criticism of the Australian philosopher that he has simply turned receptacles of pleasure into receptacles of preference is fully compelling (Regan 1983, 209-210)².

But since Singer does not attribute a decisive importance to the response of intuitions, Regan also attacks him on another requirement, to which all philosophers are sensitive: logical coherence or consistency. Unlike the prevailing versions, Singer formulates utilitarianism not in terms of maximizing general utility, but in terms of *equal consideration of interests*. In doing so however, Regan argues, he actually presents a principle whose status and relationship with the ordinary principle of utility are problematic. In fact, since utilitarianism is a monistic theory of obligation, the principle of equal consideration of interests – that Singer always presents in normative terms (equality should not be understood as a fact, but as an ideal) – cannot also be a basic or fundamental principle on a logical level (under penalty of the pluralistic nature of the resulting theory of obligation); on the other hand, it cannot even be the only fundamental principle, from which the principle of utility derives logically, otherwise the theory would no longer be utilitarian. In both cases the outcome is inconsistent (Regan 1983, 211-213).

3. THE SHORTCOMINGS OF UTILITARIAN ANIMAL ETHICS

But, according to Regan, there are also more specific and animal-related reasons for rejecting Singer's utilitarian view. In addition to the already highlighted difficulty of prohibiting, on the basis of the mere preference to continue living, the killing of beings who do not have an idea of death, by applying the utilitarian theoretical ethics to the animal question it is very difficult to justify, as instead Singer would pretend to do, the duty to contrast the practice of intensive farming. Because, utilitarianism being a consequential theory, in order to make a kind of action obligatory, its effects must be better than the available alternatives. But is it really true that the overall effects of refraining from eating food products from industrial farms are better than the continuation of current practice? Regan has doubts about that. The fact is that the animal industry is a big business involving millions of people. It is not only the interests of consumers of animal products that are at stake. It is also the

² Here Regan's reference is to Hart 1980.

interests of those who breed and sell the animals, those who transport, slaughter and canning the animals, and so on (i.e. the whole food chain) and – not to be forgotten – their dependents. For all these categories, the continuation of intensive livestock farming means keeping their jobs and being able to support their loved ones (Regan 1983, 221-222).

Furthermore, seen from a utilitarian perspective, the obligation to be vegetarian is rather weak. In fact, the single utilitarian subject who makes the choice not to eat meat, with his gesture does not affect in any way the treatment reserved to animals in intensive farms (*ibid.*, 224-225). As Singer admits, it is only a collective effort of great relevance that, by dropping the demand for animal food below a certain threshold, can damage the food industry (by decreasing the number of animals raised and farmed)³. So what reason do I have to become a vegetarian if my individual gesture has no impact on animal suffering? None, since in such a perspective the moral evaluation of actions depends on the consequences, and in this case my act has no better effect than its omission⁴.

4. THE DEONTOLOGICAL VIEW OF TOM REGAN: THE PRINCIPLE OF RESPECT FOR THE INHERENT VALUE OF ALL SUBJECTS-OF-A-LIFE AND THE EXTENSION OF RIGHTS BEYOND THE HUMAN WORLD

For Regan, utilitarianism is therefore an inadequate ethical conception and should be abandoned, replacing it with a theory based on a principle other than the principle of utility. The fundamental principle of morality in the new Regan's view is *the principle of respect for the equal inherent value of all subjects-of-a-life*.

The starting point to arrive at this new theory is the formal principle of justice, for which equal individuals must be treated in the same way (Regan 1983, 232). It has a formal nature, as it does not in itself specify what is the *measure* of equal treatment, i.e. the *equal way* in which subjects are to be treated. It only asserts that if we treat two individuals differently, without indicating a morally significant difference between them, our behavior is not in accordance with justice as it appears inconsistent (if they are completely equal, from a moral point of view, why treat them differently?). A *normative* interpretation of justice is required to fill in the empty box. Regan puts forward a normative interpretation of

³ Here Regan's reference is to Singer 1980, 335.

⁴ For an overall assessment of Peter Singer's animal ethics, allow me to refer to Allegri 2017.

justice alternative to both utilitarianism and perfectionism, the latter view he exemplifies with Aristotle and Nietzsche. In this approach – which Regan also calls “moral elitism” (Cohen and Regan 2001, 194-195) – the element of similarity that gives the right to equal treatment consists of a set of intellectual and/or artistic qualities. Those who possess more and/or to a higher degree have greater value than those who possess them to a lesser extent or do not possess them; and deserve better treatment. Regan rejects this option because

What natural talents individuals are, to hearken back to a helpful phrase of Rawls’s, is the result of “the natural lottery”. Those who are born with intellectual or artistic gifts have not themselves done anything to deserve preferred treatment, anymore than those who are born lacking these gifts have done anything to deserve being denied those benefits essential to their welfare. No theory of justice can be adequate that builds justice on so fortuitous a foundation, one that could sanction forwarding the “higher” interests of some over the vital interests of others. (Regan 1983, 234)

On the other hand, utilitarianism, although based on an egalitarian proposal, encounters problems of discrepancy with respect to the methodology of reflective intuitions.

In order to avoid the defects of perfectionism and utilitarianism, the normative interpretation of formal justice developed by Regan starts from the thesis that a certain type of individual has value in herself, a value that Regan calls *inherent* to radically differentiate it from the value in itself of states of consciousness, for which the expression “intrinsic value” is more widespread. The inherent value is not only conceptually distinct from the intrinsic value, but is irreducible and immeasurable with respect to the latter. We cannot determine the inherent value of an individual by making the algebraic sum of the intrinsic values of her experiences or the experiences of others. The inherent value is incomparable with the intrinsic value of states of consciousness, such as pleasure or the satisfaction of preferences. The Kantian nature of this idea is undoubted and the immediate reference can only be to the second formula of the categorical imperative, to which Regan, however, gives a more extensive articulation than Kant, for whom the value in themselves of individuals appears to be confined to the human sphere.

According to Regan the limit of utilitarianism – which explains the reasons for its inadequacy – is not to grasp the distinction between these two types of value and to remain anchored only to the intrinsic value of states of consciousness, which leads us to treat individuals as mere *containers* of experiences of value, without having as such any relevance, with all the counterintuitive results to which this gives rise. Instead, con-

formity to our reflective beliefs is saved if, in addition to the intrinsic value of experiences, we consider the value in themselves of the *bearers* of those experiences.

The inherent value of a individual, not depending on states of consciousness, is invariant with respect to the value of the experiences that the subject carries out:

Those who have a more pleasant or happier life do not therefore have greater inherent value than those whose lives are less pleasant or happy. Nor do those who have more “cultivated” preferences (say, for arts and letters) therefore have greater inherent value. (Regan 1983, 235-236)

But, beyond that, inherent value is not something individuals can “earn by dint of their efforts or as something they can lose by what they do or fail to do. A criminal is not less inherently valuable than a saint” (*ibid.*, 237). Finally, it does not depend on whether individuals are

the object of anyone else’s interests. When it comes to inherent value, it matters not whether one is liked, admired, respected, or in other ways valued by others. The lonely, forsaken, unwanted, and unloved are no more nor less inherently valuable than those who enjoy a more hospitable relationship with others. (*ibidem*)

In other words, the inherent value is *equally* owned. It doesn’t know different degrees. These characteristics deeply distinguish Regan’s conception from those of his two competitors. If independence from states of consciousness distances the inherent value of Regan from utilitarianism, its egalitarian nature differentiates it from perfectionist conceptions.

Unlike in perfectionism, the conditions (the elements of similarity) that confer access to the inherent value are not given by intellectual or artistic qualities, but by the possession of some minimal requirements. What are they? Certainly, according to Regan, it is sufficient to have a mental life that contemplates, in addition to sensitivity, some sense of the past and the future. Those who possess these abilities are called by Regan with the neologism “subjects-of-a-life”. To be a subject-of-a-life in Regan’s perspective it is therefore not enough to be alive or simply sentient⁵. Something more is needed:

Individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an

⁵ From this point of view Cochrane’s way of expressing himself for which “Regan claims that sentient animals possess this right to respectful treatment” (Cochrane 2012, 6) is imprecise. The status of subject-of-a-life is not recognized by Regan to *all* sentient beings, i.e. to a being for the mere fact that it is sentient.

emotional life together with feelings of pleasure and pain; preference and welfare interests⁶; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests. (Regan 1983, 243)

But by introducing the concept of inherent value and identifying in the subjects-of-a-life its undoubted holders, although we have laid the foundations for a normative interpretation of formal justice, we have not yet reached a moral principle that tells us how to treat such beings. The normative principle that completes Regan's theory is the principle of respect (or equal respect), for which "We are to treat those individuals who have inherent value in ways that respect their inherent value" (*ibid.*, 248). Respecting this value of subjects-of-a-life essentially means that we should not treat them as mere receptacles of intrinsic value. Updating Kant, Regan asserts that "individuals who have inherent value must never be treated *merely as means* to securing the best aggregate consequences" (*ibid.*, 249).

The principle of respect for the equal inherent value of all subjects-of-a-life according to Regan satisfies much better than competing models plausible criteria of suitability of moral theories and interprets more adequately than utilitarianism Bentham's thesis that each has to count for one and none for more than one.

From the general theory of duties developed it is perfectly plausible, for the American philosopher, to derive that the possessors of inherent value are holders of rights. It is possible to achieve this result, which is the objective of Regan's theorization, aimed at extending moral rights to animals, conceiving rights as *valid claims*, a thesis that Regan takes up from J.S. Mill and J. Feinberg. Obviously, a mere claim to the recognition of something is not enough to have the moral right to it. Such a claim must be justified (and therefore validation criteria are required). Regan follows Mill not only in conceiving rights as valid claims, but also in the thesis that the validation procedure consists in referring to principles of moral obligation, the justification of which has been independently established (i.e. in the thesis that rights are ultimately based on duties). However, he differs from the English philosopher on the specific basis

⁶ By "preference-interests" Regan means what we have an interest in (what we are interested in). By "welfare-interests" he means what is in our interest. The two concepts must be kept distinct because not everything that interests us is in our interest and vice versa (Regan 1983, 87-88).

of validation, which for Mill is the principle of utility, while for Regan it can only be the principle of respect, since in his opinion it satisfies the criteria for evaluating moral theories better than competing proposals, and notably better than utilitarianism. Since the obligation to respect the inherent value of the subjects-of-a-life, and to respect it equally, is well founded, the subjects-of-a-life enjoy the *right* to equal respect for their equal inherent value, i.e. not to be treated as things or mere containers of value, which in themselves have no dignity (Regan 1983, 276-279).

Regan then develops his theory with operating rules that articulate the abstract idea of equal respect. First of all, from the principle of respect it is possible to logically derive a *harm principle*, which prohibits harming the subjects-of-a-life, and enjoins the promotion of their well-being, because to harm someone or not to intervene in her help means to disrespect her (not respecting her as an individual with inherent value) (*ibid.*, 262-263, 286-287). However, such a principle, which merges together non-maleficence and beneficence, needs additional elements to be adequate. In fact, if non-maleficence is conceived as absolute (“one should never harm a subject-of-a-life”), the harm principle is hardly convincing in the multiform situations of human action; on the contrary, it risks producing even more counterintuitive results than the principle of utility. With a very effective slogan Regan argues that “The totem of the utilitarian theory (summing the consequences for all those affected by the outcome) is the taboo of the rights view” (*ibid.*, 337). But to be a plausible proposal, even his theory must take into account the effects of the actions. In fact, the right not to be harmed does not appear to be exempt from exceptions, fully in line with our intuitions. For instance, it is legitimate to harm an individual in self-defense (does a person not have the right to hit an aggressor to defend himself?) and it is equally legitimate to punish and therefore harm the guilty person, i.e. the one who has committed a crime. Of course, in both cases, innocent individuals are not involved. Therefore, the absoluteness of the harm principle could be repropounded in a more restricted version, i.e. as a *principle of protection of the innocent*: it is never justified to harm an innocent subject-of-a-life (i.e., the right of the innocent not to be harmed is never violable) (*ibid.*, 287, 291). But in reality not even the right of the innocent not to be harmed appears unconditional, because “Situations arise [...] in which, no matter what we decide to do – and even if we decide to do nothing – an innocent subject-of-a-life will be harmed” (Regan 2004b, XXVIII). Consider the following hypothetical scenario: suppose that, due to a landslide, fifty miners are prisoners in a cave and the only way to get them out is to open a tunnel with an explosive charge. There is a

drawback though. The landslide has also blocked a fifty-first miner in an adjoining cave and the explosion would inevitably kill him. On the other hand, to save the latter it is necessary to blow up the cave that imprisons the other fifty. The alternative then, unless you let all fifty-one people die (even in this case, however, innocent beings will suffer damage, and numerically greater), is between blowing up the first cave thus saving the miner trapped in the second but killing the other fifty prisoners in the first, or, vice versa, blow up the second cave killing the fifty-first miner and saving the other fifty. In such circumstances one is not only forced to harm an innocent, but also to make comparisons between the amounts of damage. The rights view – Regan acknowledges – must be able to provide us with practicable guidelines for those cases where “we are required to choose between harming the few or harming the many who are innocent” (Regan 1983, 303). These are the situations in which we would be tempted to apply the principle of utility.

In order to master such contexts, but without accepting utilitarian aggregations, Regan introduces some moral principles, derived from the principle of respect, which can justify the violation of the right of the innocent not to be harmed; i.e. they come into play in those circumstances where all available courses of action (including omissions) involve harm to innocents. These are specifications of the principle of the protection of the innocent, which allow us, on the one hand, to deal with real or hypothetical tangled situations of practical ethics, avoiding absolute prohibitions that cannot be proposed, and on the other hand, to avoid utilitarian repercussions (thus maintaining compliance with the principle of respect). These principles, if they do not allow us to aggregate states of consciousness in the utilitarian way, at least allow us to attribute importance to the number of individuals involved in an action, that is to say, to make the number of damaged individuals count. The first is the *minimize overriding principle*, for which

Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many. (Regan 1983, 305; see also 328)

This principle allows us – in accordance with our intuitions – to opt for the salvation of the fifty miners in the example just proposed, that is to say, to harm only one innocent in order to prevent a greater number of innocents from being harmed. The second is the *worse-off principle*, for which

Special considerations aside, when we are faced with choosing to harm the many or the few who are innocents, and when the harm faced by the few would make them worse-off than any of the many, then we ought to override the rights of the many rather than the few. (Regan 1983, 328; see also 308)

With the clarification that it also applies to cases involving only two individuals, i.e. situations in which we are forced to choose between harming one innocent subject-of-a-life or harming another (*ibid.*, 308, 328). In such contexts the principle enjoins us to spare the one who would suffer a more serious level of damage. The worse-off principle allows the theory of rights to avoid one of the most counterintuitive outcomes of utilitarianism, exemplified as follows. Suppose we are faced with the following *aut-aut*: to strongly damage a single individual *P*, or to damage a thousand others, each in an extremely slight way. Let's imagine that, quantifying the damage caused by performing the two actions, the first action produces – 999 (a very strong damage inflicted on a single person), while the second one produces – 1,000 (a damage of only one unit for each of the thousand people involved). In utilitarian logic, the first action, which minimizes the overall damage (it has a less low algebraic score), would be morally obligatory, while the second would be prohibited. But such a response seems hardly acceptable. *P* suffers an evil of enormous entity, when the alternative action would not result seriously harmful to anyone. The worse-off principle, in accordance with the intuitive data, allows us to choose the second option and to declare the first one wrong or impermissible (in this case the damage that the first individual would suffer confronted with the damage suffered by the other thousand are not comparable).

5. THE APPLICATION OF THE RIGHTS VIEW TO THE ANIMAL QUESTION

Applied to the animal question, Regan's theory produces responses that challenge many of the uses of animals commonly made by humans. Since the inherent value entitling the right to respect belongs to all subjects-of-a-life, Regan's preliminary work is to identify whether there are animals that meet the criterion for being subjects-of-a-life and, if so, what they are.

He attributes the ability to have states of consciousness to animals primarily "from what we know about the relationship between human consciousness and the structure and function of the human nervous

system” (Regan 1983, 29) and on the basis of the theory of evolution. Regarding the first point, “there is good reason to believe that our consciousness is intimately related to our physiology and anatomy. Damage to the spinal cord, for example, can make it impossible for us to receive sensations from affected parts of our bodies” (*ibidem*). But if this is the case, it is reasonable to assume that at least the animals most anatomically and physiologically similar to us, such as mammals, are sentient. Hypothesis fully confirmed by the theory of evolution – and so we come to the second point – which, in addition to highlight a line of continuity between animal species and a line of phylogenetic contiguity between us and the other mammals, points out the adaptive value of consciousness for survival:

If consciousness had no survival value – if, in other words, it was of no or little assistance in the struggle of species to adapt to and survive in an ever changing environment – then conscious beings would not have evolved and survived. (*ibid.*, 19)

Since it is therefore reasonable to attribute a complex mental life to non-human species, we can ask ourselves *which* animals are subjects-of-a-life. In *The Case* Regan, following the same criteria of anatomical-physiological affinity that led him to identify the species to be considered sentient, believes that the required conditions are certainly possessed by all typical mammals, human and not, from at least one year of age (*ibid.*, 77-78, 246-247). Without this precluding animals with features less similar to ours from accessing this status. So much so that the range indicated in his main work was later extended by Regan, who has ascribed the necessary characteristics for the inclusion among the subjects-of-a-life also to birds, in which, in his opinion, it is possible to ascertain a “unified psychological presence” (Regan 1998, 42-43; but see also Cohen and Regan 2001, 162, 208-209; Regan 2004a, 60-61; Regan 2004b, XVI). And more recently he has further extended this status to fish, albeit with some doubt (Regan 2004a, 60-61; Regan 2004b, XVI).

As these categories fall fully within the list of those who, possessing inherent value, deserve respect, it is questionable their use in so many human activities that instead unreasonably violate their rights. Among them one of the most relevant, if not the main, is the practice of feeding on animals. From the theoretical premises carried out derives the moral obligation not to eat subjects-of-a-life and the rejection of institutions such as farms for food purposes, both on an industrial and family scale.

Another controversial issue of animal ethics that Regan’s theory of rights deals with is experimentation. On this theme from *The Case*

onwards Regan reaches a level of radicality to which he had not previously reached (see Jamieson and Regan 1982), nor advocated in the beginning (Regan 2004b, XII). While until then Regan invited researchers to identify alternative ways with respect to a harmful use of animal welfare, but allowing a return to the usual procedures in the event that different methods were found to be unsuccessful, the latter clause now disappears. Regan now asserts that using subjects-of-a-life in scientific practices of any kind and for any purpose, which harm them, means unjustifiably infringing their rights as bearers of inherent value. And treating them even less than as mere receptacles of intrinsic value: as simple renewable resources, of which one is not even interested in suffering. His position from reformist as it was thus becomes abolitionist (Regan 1983, 363-394; Regan 2004a, 159-177).

Regan's position is also abolitionist with regard to all other areas in which animals are damaged for instrumental use in relation to human needs. He expresses his opposition to practices such as zoos, circuses (obviously the one with animals), aquatic shows with marine mammals, etc. For example, how can animals such as elephants or dolphins be caged or kept in confined spaces? The life offered to them by the world of circus and water shows is very far from what they would enjoy in their natural *habitat*. Circuses constantly move from one country to another, covering many miles. During the journeys the animals are crammed into trucks, without the possibility of moving for hours and sometimes days, when in the wild they have at their disposal areas of tens, if not hundreds, of square kilometers, which they travel daily (Regan 2004a, 125-157).

6. SOME CRITICAL REFLECTIONS

The theoretical framework outlined by Regan for animal ethics undoubtedly presents many aspects that can be shared.

In the first place, a deontological theory of moral obligation based on the principle of respect seems more convincing than a theory of obligation based on the principle of utility. Regan's view has the undoubted merit of developing a more adequate conception of beneficence than utilitarianism. By focusing exclusively on the intrinsic value of states of consciousness, utilitarianism neglects the value of the *bearers* of those states, the individuals, who tend to become mere receptacles of valuable experiences, having no autonomous value in themselves. Instead, it is not so much a question of impersonally increasing the good of the world by

adding states of consciousness, but rather of improving people's lives. From this point of view, as Darwall has written, Kant's conception of beneficence appears more balanced. In Kantian perspective "It is only because individuals have value that their welfare does also" (Darwall 1998, 288-289). We must not do the good of individuals to increase the intrinsic value of states of consciousness, but we must increase the intrinsic value of states of consciousness to do the good of individuals.

Furthermore, the flexibility guaranteed to its theory of rights by intermediate principles such as the *minimize overriding principle* and the *worse-off principle*, allows it to be effective in practical disputes (and thus to be able to compete with utilitarianism)⁷. In addition, the concept of respect allows it to unify many if not all the demands of moral obligation (another factor that can put it on the same level as utilitarianism, which, as we know, is based on a principle unifying particular duties). Veracity, fidelity, justice, gratitude, etc. are all forms of respect for the other (if I do not keep a promise made I lack respect to the one to whom I have made it, etc.), and therefore they can be derived from this more general principle⁸.

Of course, it could be argued that the notion of inherent value is not necessary, and indeed there have been those who have tried to develop a conception that assigns rights to non-human animals without it. This is the case of Rachels, Rollin, and more recently Cochrane, just to name a few, who have considered it sufficient to refer to the notion of interest (Rachels 1990, 207; Rollin 2006, 115; Cochrane 2012)⁹. For example, Cochrane defends the claim that nonhuman animals possess *prima facie* rights not to be killed and not to be made to suffer, asserting that "A much more plausible and straightforward means of establishing a theory of animal rights is not through an appeal to dignity or inherent value, but through interests" (Cochrane 2012, 9). However, for what I have said before, I am not sure that without this notion they can get the results

⁷ Having in mind Regan's model elaborated in *The Case*, Singer's words are excessive, when he emphasizes the great difficulties "faced by *all* adherents of rights-based ethical theories, because such theories are too inflexible to respond to the various real and imaginary circumstances in which we want to make moral judgments" (Singer 1987, 13; italics added). It must be admitted, however, that Singer's evaluation is appropriate if referred to the vast majority of theories of rights.

⁸ Nevertheless, I do not believe that a principle of respect is capable of resolving *a priori* all conflicts between the various components of moral obligation and for this reason I believe that a form of normative pluralism is preferable. I explored this theme, precisely in relation to Regan's theory, in Allegri 2005 to which I refer.

⁹ On the other hand, Feinberg had already moved in this direction (see Feinberg 1974).

achieved by Regan using it. Although Regan admits that, for example, the principle of equal consideration of interests does not necessarily lead us to support a form of utilitarianism (Regan 1983, 223).

But also accepting the cogency of the notion of inherent value, something needs to be revised in Regan's general approach. Beyond its undeniable merits, Regan's view is not without unresolved problems or solutions that are not entirely satisfactory. I shall limit myself here in conclusion to considering a couple of them (and both are just related to inherent value; therefore this notion, even if useful, is not said that it should not be modified): (1) the moral status of beings who are not subjects-of-a-life and of which we do not know whether they possess inherent value or not; (2) the categorical nature of the inherent value.

(1) As it is constructed, Regan's inherent value, does not seem to be able to belong to beings who are not subject-of-a-life. Since for Regan only mammals, birds and fish fall within the range of subjects-of-a-life, animals that are not part of this set do not appear to enjoy rights. Can we do with them what we want? Indeed, Regan's position on the place to be assigned to the latter in the moral community has never been very clear. Sometimes Regan seems to be in favour of conceiving sentient beings who are not subjects-of-a-life in aggregative terms in the manner of Singer (i.e. as mere receptacles of intrinsic value; see Regan 1983, 246), and sometimes he even seems to deny them moral status, while acknowledging indirect reasons not to harm them¹⁰. I believe that the first solution can be accepted, the second not. In fact, if Regan agrees with Singer's aggregative model, then he recognizes that we have towards merely sentient beings not only the obligation not to make them suffer, but also the obligation not to kill them, if their future life contains more happiness than suffering, unless their killing is compensated for by births that maintain unchanged the level of happiness (despite some ambiguities, this interpretation is confirmed by Regan's criticism of those who deny beings with no sense of the long-term future to suffer harm through prematurely induced death; see Regan 1983, 100-102)¹¹. Animals that are not subject-of-a-life, even if they had no inher-

¹⁰ See, for example, Regan 1983, 245, where the American philosopher talks about "the differences concerning our confidence about having direct duties to some (those who are subjects[-of-a-life]) and our not having direct duties to others (those who are not subjects[-of-a-life])".

¹¹ The ambiguities are due to the fact that sometimes Regan, in accordance with his approach based on the subjects-of-a-life, seems to link the possibility of suffering harm from an anticipated death to the possession of a sense of the future *at least in the short*

ent value, if their states of consciousness have intrinsic value, then they possess moral status and in a meaningful sense (it is *prima facie* wrong to make them suffer or kill).

However, elsewhere Regan seems to be saying that only the subjects-of-a-life receive harm from an early death. And it is only by giving certain animals the benefit of the doubt about being subjects-of-life that we can and should be compelled not to kill them (Regan 1983, 367) ¹².

(2) Regan's notion of inherent value appears too rigid. All subjects-of-a-life possess it and in an equal way; those who are not subjects-of-a-life, i.e. sentient beings without mental complexity, only living beings etc., we do not know whether they possess it or not, but for how Regan has defined this value, it is more likely no than yes. Even limiting the discussion on inherent value to the subjects-of-a-life, it should be noted that the characteristics that connote this typology of entities in reality do not appear in a categorical way, but at different levels. Self-consciousness, rationality, sense of the future, sense of the past, etc., are features that can be possessed to a greater or lesser extent, in more or less elevated percentages. And perhaps this should play a role in assessing the inherent value of a being and consequently her moral status.

A way to solve the issue just posed could be to support a *gradualist* conception of the value in themselves of individuals, for which the inherent value, grows on the basis of their cognitive, emotional and social complexity ¹³. Also because such a rigid (categorical) notion of inherent

term and to the concept of psychophysical identity over time (which would exclude animals as mere containers of sensations). But it is not clear why the notion of welfare-interests, which he adequately distinguished from the notion of preference-interests, does not apply also to sentient entities without a sense of the future *tout court*. If a being with a sense of the short-term future is harmed by premature death, why shouldn't a being with no sense of the future (if it ever exists) receive it? This appears to be confirmed by one of Regan's examples of human subjects suffering harm from premature death: individuals with senile dementia (Regan 1983, 102).

¹² There is, in any case, a simple way to dissolve the problem, and it is suggested by two considerations of DeGrazia. According to this philosopher, (a) the range of sentient animals is limited to all vertebrates plus cephalopods (DeGrazia 1996, 111); (b) all vertebrates and cephalopods are endowed, in addition to the ability to experience pleasure and pain, with some form of self-consciousness (*ibid.*, 170, 171, 175). If DeGrazia is right, and it is far from implausible to think so, then all sentient beings are subjects-of-a-life, in Regan's language. And therefore all sentient beings possess inherent value, thereby ensuring their moral status.

¹³ I tried to develop this gradualist perspective in Allegri 2018 and, more extensively, in Allegri 2015. A similar approach can be found in Rachels 1990 and in David DeGrazia's texts (see for all DeGrazia 1996 and 2008).

value, risks creating problems of inconsistency in Regan's deliberations on practical ethics. This is a criticism that has been made to the American philosopher from several sides and that has focused on the outcome of a famous thought-experiment presented by Regan himself, the lifeboat case:

Imagine five survivals are on a lifeboat. Because of limits of size, the boat can only support four. All weigh approximately the same and would take up approximately the same amount of space. Four of the five are normal adult human beings. The fifth is a dog. One must be thrown overboard or else all will perish. Whom should it be? (Regan 1983, 285; see also 324-325 and 351)

Regan's answer, perfectly in accordance with the dictates of common sense, is that we should throw the dog overboard (*ibid.*, 324, 351). But is such a response consistent with his theory? Apparently not. Because his view expressly asserts that the intrinsic dignity of the dog is the same as that of humans, both being subjects-of-a-life on an equal footing. And so the option of drawing lots would seem more coherent. How does Regan justify this outcome, which seems to clearly conflict with his theoretical approach? In *The Case*, he argues that the harm represented by death "is a function of the number and variety of opportunities for satisfaction it forecloses for a given individual" (*ibid.*, 351; see also 314 and 324; moreover Regan 2004b, XXIX). For this reason, the dilemma of the lifeboat can only be solved with the choice to throw in water the dog, the subject-of-a-life who has the least to lose. It is the *worse-off principle* that imposes such a solution, because "the death of any of the four humans would be a greater prima facie loss, and thus a greater prima facie harm, than would be true in the case of the dog" (Regan 1983, 324).

In the new preface to *The Case*, published twenty years after the book's release and containing the critics' replies, Regan expands his argument, distinguishing the value of *individuals* from the value of *lives* (Regan 2004b, XXXIV). The fact that all subjects-of-a-life possess the same inherent value – Regan explains – does not mean that the value of their lives is the same. There is no correspondence between the value of an individual and the value of his or her life: "given my theory of value, the quality of an individual's life is one thing; the value of the one whose life it is, another" (*ibid.*, XXIII). The value of a life depends on the quality and quantity of states of consciousness. The value of an individual on having states of consciousness of a certain level, independently of the use he makes of them. With regard to an early death, the equal inherent value does not therefore imply an equalization of the damage.

Regan's move appears interesting and in fact he is not the only philosopher to make it¹⁴. Indeed, when we talk about the value of life, the factors that matter may be different from the factors that matter when we evaluate an individual. However, even accepting such a move, the impression is that a gradualist approach remains equally plausible.

It can be argued that the value of life, if understood in a non-moral sense, depends on the richness of the experiences that a subject makes; if understood in a moral sense, it depends on the merit of the individual, on her intentions, motivations and virtues. In both cases we are dealing with values that are not equal, but change with changing attitudes and mental states. Regarding the value of individuals these factors do not count. It is independent of the quality, moral and non-moral, of life. It does not follow such differences. Nevertheless, it is not necessarily the case that this value is invariable the same for all individuals. Without bringing into play merits, quality of life, special talents etc., there may be other factors that can make it unequal. For example, the complexity of a being on a cognitive, emotional, social level. We can argue that the value of an individual varies – is greater or lesser – with the variation of these factors. And we can maintain an element of egalitarianism by asserting that, once a certain threshold of complexity has been exceeded, this value does not change¹⁵. A threshold, however, that cannot be the minimal one outlined by the criterion of the subject-of-a-life. I would say that to ascribe the maximum value it is necessary to possess greater capacities.

Therefore, if Regan is right in arguing that the moral status of individuals does not change with the change of their states of consciousness, nor can it grow or diminish for merit or demerits, one may equally think that it is not the same for all subjects-of-a-life. A conception that does not make the value in themselves of individuals depend on states of consciousness or on merits or demerits or on the quality of life, does not imply that the value in themselves of individuals is equal. It may be different for reasons not related to the quality, moral or not, of life, but related to the availability of mental requirements which not all individuals possess. It is not at all necessary that he who denies this egalitarian thesis is a perfectionist and attributes greater value on the basis of talent.

¹⁴ A distinction of this kind can also be found, for instance, in McMahan 2002, 241 f.

¹⁵ To support this thesis one could refer, as for example McMahan proposes (see McMahan 2002, 249 f.), to the Rawlsian concept of “range property”, exemplified by Rawls himself with the internal points of a circle. Some of them are closer to the center, others closer to the circumference, but they all enjoy in equal measure the property of being inside the circle (Rawls 1971, 508).

There may be a minimum beyond which the moral status should be the same. But it is doubtful that such a minimum is the one that marks the passage from mere containers of sensations to subjects-of-a-life. I think it takes something more.

Regan himself, on the other hand, in his theorization before *The Case*, for instance in *An Examination and Defense of One Argument Concerning Animal Rights*, acknowledged the possibility that the inherent value knew different degrees, by distinguishing, among the subjects-of-a-life, “(i) those beings that can *lead* a life that is better or worse for them and (ii) those beings that can *have but not lead* such life” (Regan 1982, 137). The former, by Regan’s own admission, may have a higher inherent value than the latter¹⁶.

In summary, the gist of my two critical considerations is the following: regardless of whether or not to attribute inherent value to a sentient being, it is necessary to assign her moral status. And this status is directly proportional to her mental complexity.

Of course, these observations do not in any way diminish the contribution – I would say decisive – made by Regan to animal ethics, which with the disappearance of the American philosopher loses one of its most relevant protagonists (if not the most important) and the main ambassador of animal rights in the world.

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¹⁶ And he exemplified precisely with the case of the lifeboat, although referring it only to the human world (Regan 1982, 137).

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