

REVIEW ARTICLE

Oderberg on Animal Rights

Keith Burgess-Jackson

Arlington, Texas, USA.

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Corresponding Author: Keith Burgess-Jackson, Arlington, Texas, USA.

Abstract

In recent years, several prominent philosophers, including David Oderberg, have denied that animals have rights. Unfortunately for Oderberg, his argument for this conclusion is defective. He argues that moral agency is a necessary condition for rights possession. Since no animals are moral agents, no animals possess rights. The problem with this argument is that there are two main theories of rights, not just one. The most Oderberg has shown is that moral agency is a necessary condition for possession of *autonomy-rights*. He has not shown that moral agency is a necessary condition for possession of *welfare-rights*. Since proponents of animal rights have welfare-rights rather than autonomy-rights in mind, Oderberg has not so much as engaged them, much less refuted them. I conclude by commenting on several mistakes made by Oderberg.

Keywords: Rights, Animal Rights, Welfare Rights, Autonomy Rights, Utilitarianism, Moral Agency.

Do animals¹ have rights? David Oderberg, a philosopher who has written on both theoretical (Oderberg 2000a) and practical (Oderberg 2000b) ethics, says no. Let us examine his argument:

Having put the main alternative views to one side, I can now say that what matters in the having of rights is twofold: (a) knowledge; (b) freedom. More precisely, a right holder must, first, *know* that he is pursuing a good, and secondly, he must be *free* to do so. No one can be under a duty to respect another's right if he cannot *know* what it is he is supposed to respect. Similarly, no one can call another to account over respecting his right if the former cannot know what it is the latter is supposed to respect. By "call to account" I mean making a conscious demand on them, even without speaking a word. How can the right holder make a conscious demand on another if he cannot know what he is demanding?

Again, no one is under a duty to respect another's rights if he is not free to respect or not to respect, if he is not able to choose between right and wrong.

¹Throughout the article, I use the word "animals" as a shorthand for "non-human animals."

Similarly, no one can possess a right if he is not free to pursue the good it protects, if he is not capable of planning his life, ordering his priorities, choosing to live in a dignified and human way or a squalid and less-than-human way.

Now it becomes clear why animals—nonhuman ones—cannot possess rights. It is because they do not possess the two features which are necessary for being a right-holder. No animal *knows* why it lives the way it does; no animal is *free* to live in one way or another. Animals, from the smallest single-celled organism to the most human-like ape, are governed purely by *instinct*. That is why, for instance, even the most hard-line animal rightist does not advocate prison (or worse) for chimpanzees that go on random killing sprees, as they are known to do. Nor do they advocate forcible prevention of lions from eating gazelles—"They can't help it," it is said. And that is precisely the point: they *can't*. Such is the paradox at the heart of animal rightism (Oderberg 2000c, 42-43 [italics in original]).²

²Oderberg says (2000c, 37) that Oderberg 2000c "draws on material from chapter 3" of Oderberg 2000b. My concern in this article is Oderberg 2000c.

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Oderberg's first paragraph (of the three I quoted) conflates three things: (1) having a right; (2) having a duty; and (3) making demands on others. It is often said (though not by Oderberg) that rights and duties are correlative, but what this means is that for A to have a right, some *other* individual, B, must have a duty. My right to free speech, for example, entails that someone (perhaps *everyone*) has a duty not to prevent me from speaking. If my right is positive rather than negative in nature, then others have a duty not merely to leave me alone, but to facilitate or enable my speech. The claim that A has a right only if A has a duty, however, is not a tautology. Indeed, it is false. Oderberg himself claims that babies have rights, but surely he doesn't think that babies have duties!

Nor is there a necessary connection between having a right and making a demand on another individual to respect it (or being capable of making such a demand). Once again, babies serve as a counterexample. But let us ignore these mistakes, egregious as they are. Oderberg seems to be saying that in order to have a right, one must be a *moral agent*. This explains his second and third paragraphs, especially the part about "choos[ing] between right and wrong." Since animals are not moral agents (as evidenced by our not holding them responsible for their behavior), they do not have rights.³

The obvious reply to this argument is that babies are not moral agents. Hence, by Oderberg's logic, they lack rights. Oderberg resists this conclusion by claiming that babies are of a *kind*—namely, human being—most of whose members are moral agents. Babies and other humans, such as the mentally handicapped, the senile, and the comatose, "are still *qualitatively* different from other animals because of the *kind* of creatures they are; and so have human rights just as much as the sleeping, the drunk and the drugged" (Oderberg 2000c, 43 [*italics in original*]).

The first thing to notice about this argument is that it's a different argument. Oderberg began by saying (on my construal) that *moral agency* is a necessary condition for being a right holder. Now he is saying that *being a member of a class, most of whose members are moral agents*, is a necessary condition for being a right holder. But why should this be? The only reason I can think of for pretending that every

³For a discussion of the difference between being a moral agent and being a moral patient, see Burgess-Jackson 2021, 20-21. Some beings (most humans, no animals) are both moral agents and moral patients; some beings (some humans, most animals) are moral patients but not moral agents; some beings (some humans ["human vegetables"], some animals, all plants) are neither moral agents nor moral patients; no beings are moral agents but not moral patients.

member of a given class has a certain characteristic, simply because other members of the class have that characteristic, is the practical one of saving time. If I know that 75% of Fs are Gs and don't have time to find out whether a particular F is G, I assume that it is, since the probability is 75% that it is. But we're not in doubt about whether a particular baby is a moral agent; we know that it is *not*. So why should the baby get to be treated as a member of the class? Oderberg gives no reason.

I could say more about this particular defect in Oderberg's reasoning (and others have), but I want to focus on another, more serious problem. Oderberg's argument, so far as I can make it out, goes as follows:

1. Only moral agents are right holders.
2. No animals are moral agents.

Therefore,

3. No animals are right holders.

In making this deductive argument, Oderberg is claiming that the truth of 1 and 2 is incompatible with the falsity of 3. Therefore, he is claiming that the following three propositions are logically *inconsistent*:

- a. Only moral agents are right holders.
- b. No animals are moral agents.
- c. Some animals are right holders.

The truth of any two of these propositions entails the falsity of the third. (Take a moment to satisfy yourself that this is so.) Since at least one of the three propositions is false, every rational person must reject at least one of them. Oderberg rejects c. He rejects c because he accepts a and b. But there is no reason why *everyone* must reject c. There are three ways, not just one, to avoid inconsistency. Oderberg avoids it by rejecting c. Someone else can avoid it by rejecting a or b.

Suppose I reject a. Suppose, in other words, that I reject Oderberg's criterion for rights-possession (i.e., being a right holder). If he wishes to persuade *me* to accept a, he must argue for it. This new argument will, of course, have premises. I am free to reject one of *those* premises as well. To persuade *me*, Oderberg must use premises that *I* accept. It will do no good for him to say that I'm being unreasonable or irrational, for I can say the same about him. In fact, it's worse than that as far as Oderberg is concerned. *He* is the person making the argument. *He* is the person who is denying that

animals have rights. The burden, therefore, is on *him* to persuade *me*, and the only way for him to do this is to show *me* that *I* am committed to accepting his conclusion by other things that *I* believe.

You're probably wondering how I can, or why I do, reject a. The answer is simple. Moral agency is *not* a necessary condition for rights-possession. At most, it is a necessary condition for a certain *type* of rights-possession, which leaves open the possibility that animals have rights of *another* type. Let me explain.

There are two main theories of rights. One theory links rights to autonomy (i.e., the capacity for self-rule, self-determination, or self-governance). The function of rights, in this view, is to protect autonomy. My right to property, for example, allows me to exclude others from it. I can allow others onto my premises if I like, but I don't have to. It's up to me. Another theory links rights to interests (i.e., welfare or well-being). The function of rights, in this view, is to protect interests. Leif Wenar has recently exploded the idea that there is only one type of right, or only one function of rights:

[R]ights play a number of different roles in our lives. Some rights give the rightholder discretion over others' duties, some rights protect the rightholder from harm, some rights do neither of these things but something else altogether. All rights perform some function, but there is no one function that all rights have. There is no one function that all rights have, as there is no one function that all furniture has, and no one feature that all games have (Wenar 2005, 248).⁴

Since (most) animals have at least one interest—the interest in not suffering—most animals can, and do, have rights. Animals (the sentient ones) share this interest with humans. Other interests, such as being educated, having a good reputation, and participating in the political process, are not shared by humans with animals.

⁴See also Sumner 1989 [1987], 47 (“[W]hatever else rights may consist of, they must include claims. From this common starting-point the two conceptions [interest and choice] diverge by offering rival interpretations of the point or function of rights. The interest conception treats rights as devices for promoting individual welfare . . . [whereas] the choice conception treats rights as devices for promoting freedom or autonomy”); Simmons 1992, 93 (“Choice [or “will”] theories claim that the point of rights is to protect the control or autonomy of the individual within an area of life; rightholders are those who may choose how they and others are to act. By contrast, the “benefit theory” of rights (or “interest theory”) claims that the purpose of rights is to confer on individuals certain benefits (or to promote their interests); rightholders are the beneficiaries (or direct, intended beneficiaries; or justifiable beneficiaries) of others’ duties” [footnote omitted]).

There is no indication in Oderberg's essay that there are two (or more) theories of the nature of rights. He simply assumes that there is only one type—that which protects autonomy—and concludes from this that animals lack what is necessary for rights possession. Notice what I am doing. I am conceding, *for the sake of argument*, that rights are autonomy rights and that animals lack rights in this sense. But then I am pointing out that *that's not the only type of right*. Animals can, and arguably do, have rights of the other type.⁵ What Oderberg has shown, at most, is that there is an illusion (recall his title [2000c]) of animal *autonomy-rights*. He has done nothing, at least in this essay, to show that there is an illusion of animal *rights*. To make *that* case, he would have to show that animals lack welfare-rights as well as autonomy-rights.

Before concluding this critique of Oderberg's essay, I want to comment on various of its features, for Oderberg makes a number of mistakes, some of them, I am afraid, quite elementary.

1. Oderberg devotes two early paragraphs of his essay to the “strong passions” stoked by the “animal rights issue.” He points out that these passions have led certain people to engage in violent acts, such as pelting trucks with rocks and breaking into laboratories. What is the point of this litany of horrors? Surely Oderberg realizes that every social movement has a fringe element for whom—to put it bluntly—the end justifies the means. There have been acts of violence, including murder, perpetrated by anti-abortionists. Does this undermine the moral case against abortion? Is a movement to be judged by its fanatics? Nor does Oderberg point out, for the sake of the many readers who may not know it, that Peter Singer repudiates—in the second edition of his important book *Animal Liberation*⁶—the use of violent tactics. A philosophical essay such as Oderberg's should focus on *arguments*, not on tactics, motives, or emotions. It's bad enough that these paragraphs were included at all in Oderberg's essay. That they appeared *early* in the essay suggests that Oderberg is trying to poison the well against proponents of animal rights. A

⁵According to Joel Feinberg (1974, 51), “the sorts of beings who *can* have rights are precisely those who have (or can have) interests” (italics in original). Since many animals (the “higher” ones) undeniably have interests, they are “among the sorts of beings of whom rights can meaningfully be predicated” (Feinberg 1974, 50).

⁶Singer 1990 [1975]. As Singer puts it (1990 [1975], xiii), “The strength of the case for Animal Liberation is its ethical commitment; we occupy the high moral ground and to abandon it is to play into the hands of those who oppose us.”

neutral reader is already inclined, by the end of the first page of Oderberg's essay, to oppose the idea of animal rights, without having seen Oderberg's arguments or criticisms!

2. Oderberg argues as follows: If animals have rights, then so do plants; but surely plants don't have rights; therefore, animals don't have rights. Why does Oderberg think that the first premise of this argument is true? He is certainly correct that things "can go well or badly" for any living organism, including plants, but there is a morally relevant difference between animals and plants that falsifies the first premise. The difference is sentience, or the capacity to suffer. Many animals—including cows, pigs, sheep, dogs, cats, chickens, and rats—are, without question, sentient; no plants are sentient. Since pain and suffering are intrinsically bad (as I'm sure Oderberg agrees), sentient beings have an interest in (a) not experiencing pain and (b) not suffering. If *humans* have an interest in not suffering, why don't sentient animals? Singer has discussed these matters at length. Oderberg, inexplicably, ignores them.
3. Oderberg contradicts himself when he says both (a) "we have no duties toward animals" and (b) "We are not free to be cruel to them [animals] or cause them unnecessary suffering" (Oderberg 2000c, 43). Why would we not be free to be cruel to animals (or to cause them unnecessary suffering) if they had no moral status? But if they *have* moral status, even minimally so, then we have duties toward them—if only the duty to take their moral status into account in our practical deliberations. Oderberg faces a dilemma: Either animals lack moral status, in which case there is no reason to refrain from being cruel to them (other than to avoid cultivating cruelty in ourselves), or they have moral status, in which case we have duties to them. What could it mean for a being to have moral status if it did not limit in any way what may be done to the being by moral agents?

Look at it this way. If animals matter, morally, then actions that harm them (i.e., set back their interests) must be justified. Death is a harm. Since eating the flesh of an animal requires its death, eating the flesh of an animal must be justified. Oderberg has done nothing whatsoever (at least in this essay) to justify meat-eating, or even to suggest that he thinks it *must* be justified. He does imply that killing animals in order to use their coats as "fashion accessories" is morally questionable, so

why is meat-eating any different? No important human interest is served by eating animal flesh. Indeed, there are plenty of scientific studies that show that eating animal flesh is *detrimental* to human health and welfare. It would have been nice if Oderberg had addressed these questions.

4. Oderberg says that "utilitarians do not believe in rights, for animals or humans" (Oderberg 2000c, 44). This is false. John Stuart Mill, who literally wrote the book on utilitarianism, argued more than a century and a half ago that rights and utility are compatible (Mill 1957 [1861], chap. 5),⁷ so obviously there is no logical bar to utilitarians "believing in" rights. More recently, in his book *The Moral Foundation of Rights*, philosopher L. W. Sumner (1989 [1987]) made a case for the consequentialist *basis* of rights. (Utilitarianism is a species of consequentialism.) Peter Singer may not use the *language* of rights, but, as a utilitarian, he has every right to do so (no pun intended). Oderberg makes it seem as though Singer is being disingenuous when he (Singer) says that rights-talk is "convenient." If anything, Singer shies away from rights-talk so as not to be accused of "cynical manipulation of ethical debate for [his] own advantage" (Oderberg 2000c, 44).⁸
5. Oderberg points out that Singer is not categorically opposed to meat-eating, experimentation, or other uses of animals. This is true, but I am not sure what it is supposed to show. That Singer is not an *absolutist* does not mean that he does not believe in rights. Some rights are defeasible (overridable); others are not. Does Oderberg believe that all rights are *indefeasible*? Is the right to free speech indefeasible? Is the right to privacy indefeasible? Is the right to life indefeasible? Are property rights indefeasible? Defeasibility (overridability) does not render rights worthless; it means that other things besides the right in question (including other rights) are morally important. Your right to speak, for example, is limited by other people's rights to life and bodily integrity, which is why you have no right to yell "Fire!" in a crowded theater (even

⁷Mill wrote: "To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility" (Mill 1957 [1861], 66).

⁸Oderberg omits the second part of Singer's sentence. Singer wrote: "I am not convinced that the notion of a moral right is a helpful or meaningful one, *except when it is used as a shorthand way of referring to more fundamental moral considerations*" (Singer 1979, 81 [emphasis added]). As this shows, Singer's decision to eschew rights-talk is purely tactical.

if there is in fact a fire). If all rights were absolute (i.e., *indefeasible*), there could be no such thing as justified killing in self-defense, killing in a just war, or capital punishment for murder. The point is this: Utilitarians such as Singer can both “believe in” and talk the language of animal rights. What they *can’t* do is think that those rights are absolute.

6. Oderberg perpetuates the false belief that Singer is trying to “downgrade” human beings. Singer is trying to *elevate* the moral status of *animals*. As we saw, human beings have many interests that are not shared by animals, such as being educated, voting, traveling, and speaking. Singer is not trying to abolish rights to these things. He is trying to persuade people that animals, qua sentient beings, have an important interest, namely, the interest in not suffering. Why Oderberg thinks that this downgrades human beings is puzzling. Does he conceive of rights-possession as a zero-sum game, such that, by adding a right to animals, one must subtract a right from humans? That is absurd. Singer is a tireless defender of *all* rights, including those possessed by human beings. What Singer has *said*, ad nauseam, is that species membership is morally irrelevant—in the same way that race and sex are morally irrelevant. He has neither said nor implied that humans and animals have identical interests or rights. Recognizing an animal’s right not to be made to suffer no more downgrades humans than recognizing a black person’s right not to be enslaved downgrades whites.
7. The final paragraph of Oderberg’s essay is, with all due respect, bizarre. He describes factory farming, bullfights, and “horrendous scientific experiments on animals” as “moral degeneracy” (Oderberg 2000c, 45). I am sure Singer would agree. Oderberg goes on to rue the amount of animal suffering in the world. Once again, Singer would agree. But it’s individual animals, not animals as a class, who suffer. If inflicting this suffering reflects badly on us as moral agents, it can only be because the animals *themselves*, qua sentient beings, matter, morally. What is this except to say that we—moral agents—have a *prima facie* duty to refrain from making animals suffer? And what is *this* except to say that animals have a defeasible *right* not to be made to suffer? Whatever else it is, animal rights is no illusion.

Acknowledgments

This article is dedicated to the memory of my mother, Laura Belle Burgess Jackson Rowbotham (1934-2024).

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