Animal Independence: A New Theory for Animal Rights

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Animal Independence: A New Theory for Animal Rights

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Abstract

In this thesis, I intend on solving a puzzle. How can animals be wronged, but rights are not attributed to them, even though wrongs presuppose rights? I will first lay out a paradigm case of animal wrongdoing. Next, I will examine two potential solutions in the Will Theory and Interest Theory, but, as I will draw out, each have attributes—that have been noted in the literature on rights before—that make animals unable to have rights or question whether the right is truly valuable for them. Although it seems animals might be stuck from the first two possibilities, either they can be wronged with no rights or, even worse, they cannot be wronged at all, from the presupposition, we can free animals from these concerns as a result of another theory. I will argue that that theory is the Independence Theory of Rights, crafted by Ariel Zylberman. Once the discovery about the Will and Interest Theories has been made, I will describe the features of the Independence Theory. Then, I will argue how it can be applied to animal rights in general, defending that against potential objections. Finally, I will compare the Independence Theory with the Will Theory and Interest Theory, arguing how it is able to retain many of these theories’ respective positive attributes, and how it is able to rid itself of many of those theories’ objections that have been raised before.

Keywords: Environmental ethics, Animal rights, Independence theory
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Table of Contents

Abstract ........................................................................................................................................... ii
Acknowledgements ....................................................................................................................... iii

Introduction ...................................................................................................................................... 1
The Problem ..................................................................................................................................... 2
  A. A Case of Wrongs .................................................................................................................. 2
  B. The Will Theory and The Interest Theory: How They Fail at Animal Rights .................. 3
The Solution ..................................................................................................................................... 11
  A. What is the Independence Theory? .................................................................................... 11
  B. The Independence Theory Applied to Animals ................................................................. 13
The Uniqueness of the Independence Theory ................................................................................ 19
Conclusion ...................................................................................................................................... 24

Bibliography .................................................................................................................................. 26
Introduction

We know intuitively that animals can be wronged. When ASPCA commercials of animals being kept in confined cages while in the blazing heat or freezing cold come on the screen, for example, most likely all of us have some sort of contempt for the person who locks them away, believing that those animals are being wronged. When commercials from the Humane Society of the United States air, depicting emaciated horses, dogs and cats looking towards us, wanting to escape their suffering, we most likely feel the same. How could someone do such a thing? But when attempting to establish rights, there seems to be a standstill. Even though wrongs have been presupposed to be a violation of a right before by numerous philosophers, the two cannot seem to relate when it comes to animal rights. How could animals not have rights, when it is believed that animals can be wronged, and wrongs presuppose a violation of a right?

That is the question I hope to answer in this thesis. To reach an answer, I will first lay out a case of seemingly prima facie wrongdoing to animals. In the subsequent section, I will lay out two potential solutions in the commonplace Will Theory and the Interest Theory of rights. I will discover issues with them both. After seeming to come up empty, I will turn to another theory of rights called the Independence Theory, that I will argue (in a not-so-strict proof) can solve the problem. Finally, I will compare how the Independence Theory stacks up versus the before-mentioned Will Theory and Interest Theory.
The Problem

A. A Case of Wrongs

We can certainly wrong animals. Imagine a case in animal agriculture, specifically one of hogs being used for pork production.¹ A hog is supposed to be taken on a conveyor belt, stunned by a “stunner” to be rendered unconscious. Afterwards, the unconscious hog is chained up by their rear legs, sent down the conveyor dangling, and stabbed in the throat to bleed to death. Finally, the hog is “submerged in…boiling water, and then [disemboweled].”²

But now imagine all that pain and suffering for the hog with the addition of people who want to mess with her. “‘When the chain [on the conveyor] stops for a little while and [two workers there at the factory] have time to bother…the hog, [they half stun her]. [She will] start freaking out, going crazy. [She will] be sitting there yelping.’”³ Or imagine even the same hog being beaten in their confined temporary quarters⁴ without a way out. Then, imagine this happening with many hogs en masse.

It is intuitively possible that animals can be wronged. But it is not clear how animals can be wronged for sure. Suppose as many philosophers have, that a wrong presupposes a violation of a right. Do non-human animals have rights? What would be the significance of non-human animals having rights? Hohfeld notably made the concept of a right less ambiguous by dividing the concept into four types of entitlements. These are claim-rights—imposing duties on another, liberties (or privileges)—having no duties; powers—the ability to change one of the other

² Ibid.
³ Ibid.
⁴ Regan, 178-179 (cf. Regan, 136-137). Although Regan is describing the experiences of calves, it is a similar picture for other animals raised to become meat for modern human consumption.
entitlements (that includes claim-rights, liberties, and another entitlement called an immunity—one’s freedom from an entitlement change, or power); and immunities.⁵

The rights violated by wrongs are claim-rights, which entail obligations. By shirking on our obligations, we then violate the rights of those who hold them. This is assuming that rights and wrongs hold a relationship to one another. Without rights, there cannot be wrongs.⁶ This begins to bring into focus the puzzle that I would like to discuss. While it is clear that animals can be wronged, it is not clear how it is possible for us to wrong them, because it is not clear whether non-human animals have rights or even what those rights would look like if they did.

B. The Will Theory & The Interest Theory: How They Fail at Animal Rights

To develop the puzzle further, consider the two standard theories of rights—the Will Theory and the Interest Theory. Though well established, these theories face well-known difficulties. Plus, when applied to non-human animal rights, these difficulties become more obvious.

First, the Will Theory’s use of rights is to protect an agent’s freedom to choose.⁷ The agent has control over their domain of freedom via the use of claim-rights in conjunction with powers, those of waiver and demand. There are six powers, three for waiver, three for demand. There is the ability to waive the duty of another or demand duty performance, waive a “proceeding for the enforcement of [another’s] duty,” or demand it, and waive the enforcement derived from the proceeding or demand it.⁸ To be a right-holder under the Will Theory, the right

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⁵ Wesley Newcomb Hohfeld, “Some Fundamental Legal Concepts as Applied in Judicial Reasoning,” *Yale Law Journal* 23, no. 1 (1913): 31-32, 39, 44-45, & 55. For this paper, my focus will be on claim-rights and duties, though powers will come up as well, with its emphasis in the Will Theory.

⁶ This is one assumption I plan one making. Although this seems to be an intuitive one, it is susceptible to falsification. To see what I mean, refer to Nicolas Cornell, “Wrongs, Rights, and Third Parties,” *Philosophy and Public Affairs* 43, no. 2 (2015): 109-143.


⁸ Steiner, 245.
holder must be able to make choices, or else she cannot have rights,⁹ in an effort to maintain control of their domain. This means, given that humans are the only creatures who can make choices, only they can have rights.

Since it is a necessary condition to make a choice to waive or demand another person’s duty performance in order to have a right, one major objection that has been attributed to the Will Theory is its under-inclusiveness. The theory says that anyone who does not have the ability to choose cannot have rights. Those kinds of agents who intuitively seem to have rights are excluded from having rights on this view. Specifically, those excluded agents are children, those with psychological problems, those in a comatose state.¹⁰ From their not having rights, they cannot be wronged, given that wrongs presuppose the violation of a claim-right, correlated with a directed duty.

A less noticed implication of the waiving-demanding necessary condition for rights on the Will Theory is its effect on the question of animal wrongs. Go back to the case of the hogs being beaten in their confined living spaces and on the conveyor. According to the Will Theory, those hogs cannot have any rights, due to their inability to make choices. Holding the assumption that wrongs presuppose rights, if the hogs cannot have rights, given their lack of Will Theory power, then the hogs cannot be wronged by those workers mistreating them.

Why does it matter if hogs (or any other animal) can be wronged, though? To answer this, I will now discuss indirect rights. For those agents who are not allowed to have rights on the Will Theory, a potential solution the Will Theory provides is that those without the power to waive and demand can have rights indirectly through another person who would be the right-

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¹⁰ Kramer, 69-70; Steiner, 255 and 259-262.
holder.\textsuperscript{11} To be clear, as a result of indirect rights, the agents themselves would not have rights, but their surrogate, for her being able to waive and demand another person’s duty performance, would have those rights instead. Because of the surrogate having those rights, the one who would be wronged in the case of someone not fulfilling their duty (given that wrongs presuppose rights) would not be the one for whom the surrogate is acting as the middleperson, but rather the surrogate herself would be the one who is wronged. An analogy with the criminal law might clarify this picture, showing why this is problematic.

In the criminal law, on the Will Theory view, victims of crimes are not the ones wronged when harms are inflicted on them, but rather, it is the state.\textsuperscript{12} The reason for this is that the state decides how duties are imposed under the criminal law on behalf of the state’s people. That then gives them the Will Theory right against wronging that harms other people within the state. Given the assumption that wrongs presuppose rights, those wrongdoers committed duty violations against the state when another person is harmed. This, then, makes the victims who were actually harmed subjects of an indirect duty.

Wait a second! So, if a person is assaulted by another, for instance, then that individual is not subject to demand a proceeding and duty enforcement for the claim-right of non-assault being violated? According to the Will Theory, the state, in this example, would take the reins of demanding a proceeding and executing the proceeding-derived enforcement for the duty of non-assault against the person who assaulted the victim. The victim is being the subject of an indirect duty vicariously through the state’s enforcing and demanding of duties on her behalf. Similarly, because animals are unempowered, they could be the subject of indirect duties that could be waived or demanded by a surrogate. Regarding the hogs in the paradigm case, if they had any

\textsuperscript{11} Regan, 157-158.
rights at all, their right against mistreatment is in the hands of their owner (i.e., the meatpacking plant’s executive, or the board of directors of the meatpacking plant company). They are the ones who could demand for the hogs to not be stunned or beaten, but that could still go on if the plant owners, or whoever can waive or demand the duties of the workers, decide to waive the duty of their workers to not stun nor beat them, given that the hogs are not being wronged.\textsuperscript{13} Indirect duties, while they provide some sort of obligation \textit{regarding} the animal, they are not \textit{towards} the animal, but to someone who has powers to waive and demand. So, when wrongdoing happens, the one who has the power to waive and demand is wronged, given that wrongs presuppose rights, whereas the animal is not the one who is wronged because of their not being empowered with Will Theory rights, predicated on the power of waiver and demand.

Basically, because of the issues of animals being ineligible to have rights altogether and the related one of being the subjects of an indirect duty, the Will Theory is unable to solve the puzzle regarding animal rights, because, strictly speaking, animals cannot be wronged.

The difficulties of the Will Theory of rights have led to many philosophers to opt for the Interest Theory of rights. On this theory, the purpose of a Hohfeldian entitlement is the preservation of interests.\textsuperscript{14} To be a right-bearer, all that is needed is the ability to have interests and a corresponding welfare which those interests protect. Because animals, as well as those humans who were deemed unempowered (and hence had no rights on the Will Theory), have interests that protect their welfare, they can have rights on this view. If the hogs in the paradigm case have the right to not be cruelly treated as a result of being stunned or beaten, a right that protects their welfare, those who stunned or beat them have done a wrong unto them.

\textsuperscript{13} See Steiner, 249-255.
\textsuperscript{14} Kramer, 61-62.
While the Interest Theory does have its merits, it too is vulnerable to challenges that have been discussed in the literature on rights. A first objection is that interests are not sufficient for rights. While something may be beneficial to someone’s welfare (and satisfy their interests), that does not mean someone has a right to it. An example of this outside of animal rights would be a mother who needs child support payments from her divorced husband. It would be in that person’s interests (and right under the Interest Theory) to receive those support payments, for she is struggling with debt and needs to take care of her children. But the payments are for the interests of the children, not of the mother. So, the interests of the mother are insufficient for her divorced husband to disburse the child support payments to her, as is his duty.\textsuperscript{15}

In the meatpacking plant, while the workers are stunning and beating the hogs, perhaps one of the workers decides to quit their job as a stunner, finding the job to be too gruesome for him. This leads to a couple of others deciding the work is too gruesome as well for them. Simultaneously, the hogs being stunned by them have an interest in not suffering as a result of the stunners’ activities causing pain and trauma. Here, it seems that the welfare of the workers—perhaps in not subjecting themselves to the sight of the pigs in pain—was sufficient for the workers to stop their activities. Because the hogs’ interest in not suffering was not sufficient on its own to cease their subjection to being stunned, but it took the workers’ preference in not seeing the trauma to trigger the hog’s claim-right to non-maltreatment, then it seems some interests that protect the hogs’ welfare was not sufficient to trigger a duty, although the violation thereof should have been enough, according to the Interest Theory.\textsuperscript{16}

\textsuperscript{15} Wenar, 204. My take on Wenar’s case involving a parent receiving “child benefit payments from the state.”

\textsuperscript{16} Kramer, 61.
An additional Interest Theory objection that has been noted in the rights literature is that rights would become the means for some further end. As indicated by Kramer, according to the Interest Theory, “every right protects some aspect of [someone’s] welfare.”17 The trouble about this is that it devalues having rights. In other words, if the purpose of a right is protecting someone’s welfare, then it is not clear that rights are necessary. This could be the case since there could be other means to achieve welfare. Back to the example of the child support payments from the divorced spouse, perhaps in the society where the divorcees live, there is a policy18 that mandates for a divorced spouse to pay child support. There is also a right to the child support money, that satisfies the interest of the children (and of the parent as well). And suppose that the policy is doing its job effectively, achieving the goal of promoting welfare.

Although welfare is being promoted with the right and the policy together, given the Interest Theory’s definition of a right, that “[it] protects some aspect of someone’s welfare,”19 what would happen if the society took away the right to the child support, but kept the policy. Well, if the policy is working as it has done before the right was extinguished, then it seems the right was “extra cushion” for the policy, sort of speak, but not necessary to achieve the goal of promoting welfare.

Yet, if there is no right to the child support, since it is not necessary to achieve the goal of the Interest Theory, there seems to be a problem. This is because what would be the case if the woman were not given the child support from her spouse and there was no right to it (from there

17 Kramer, 61.
18 The definition of a policy is: “a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.” (See Merriam-Webster.com Dictionary, s.v. “policy,” accessed April 24, 2021, https://www.merriam-webster.com/dictionary/policy.)
19 Ibid.
being only a *policy* to the child support)? Well, if the woman was not given child support, and there was no right to that money, then there cannot be a wrong by not receiving that money from the spouse. This is because wrongs presuppose rights, and rights entail obligations.\(^\text{20}\) If an obligation is not fulfilled, then no wrong is done, if there is no correlative claim-right to have that obligation performed in the first place. Yes, the mother’s welfare and that of the children would not be promoted, but where would the wrong be? It would be difficult to locate without a right-bearer. And this would be problematic because, given the correlativity between rights and duties, and that rights allow for obligations, if someone then shirks an obligation, but there is no right, then who is wronged? It seems that no one would be wronged if there were no rights.

How would this impact animals being wronged and their having rights? If rights are not necessary for the achievement of welfare, then no wrongs can be done unto animals, though their welfare would not be promoted. Let us say, for the sake of argument, the Interest Theory was used as the solution to the puzzle. Suppose there is a policy and a right that prohibits for animals being beaten and stunned. Plus, suppose that the policy and right are doing their jobs. The hogs do not seem to be beaten and stunned at the meatpacking plant discussed in the case and their welfare is being promoted thereby. But what if the right was taken away and the policy remained in effect? What if, despite the right being taken away, the policy still did its job? Well, it seems the policy was the driving force behind the promotion of welfare for the hogs involved—the goal of the Interest Theory right was fulfilled by the policy.

What would happen if the hogs were beaten and stunned contra the policy but there is no right? If that happens with no right, then who is wronged? The hogs do not have rights, for a

policy only being a “plan [with] goals and procedures,”\textsuperscript{21} and given that wrongs presuppose rights, and that wrongs are violations of rights, no right means there is no wrong.

Finally, a last objection to the Interest Theory is that the ground of interests for rights is lessened in light of other aspects of the right-holder’s moral nature. In other words, there are other aspects of a subject’s moral nature that could ground their rights rather than interests. For example, suppose a person may have the right to be treated as an equal to everyone else. As F.M. Kamm wrote, “‘Even if it turned out…to be in [that person’s] interest to have [the] nature [of being a Kantian person], the right derives from their nature [as such] and not from their interest in having it…The right [may be solely justified by being] fitting to treat [that] person no differently from anyone else.’”\textsuperscript{22} This now segues into another line of objection for the Interest Theory, that interests are unnecessary for rights. Even if there was an interest to equal treatment to others, that interest to the equitable treatment to others was not needed, since the nature of being a Kantian person was enough to justify the right.

This is a similar situation with animals as well. For instance, the reason why the hogs should not be inflicted with pain by the stunners in the hog case is not that their interests of not being inflicted with pain are being dissatisfied, but the hog could be a “subject-of-a-life,” \textit{per se}, who should be treated as an end, not as a mere means, who is deserving of respect,\textsuperscript{23} which is not being given when tortured by the stunner. Because of that, without the need for an interest, there seems to be a right for the hog to not be treated cruelly.

\textsuperscript{23} May, 530; Regan, 202, 209-212.
At this point, we are stuck. It seems the Will Theory cannot adequately solve the problem of animal rights though we know they can be wronged, for animals not being allowed to have rights and its solution of indirect duties, though somewhat of a step forward, not being adequate to show how animals can be wronged. Though it does not have these problems, the Interest Theory’s sufficiency of interests for rights, the instrumentalism of rights for welfare, and the depreciation of the duty subject’s moral nature are also problematic for animal rights. However, there may be a solution in the Independence Theory.

The Solution

A. What is the Independence Theory?

The Independence Theory is a rights theory that emphasizes independence. Independence, on this account, is defined in terms of republican liberty—freedom from domination. This means that someone should not have their choices limited or decided for by the will of other individuals. Regardirng rights in particular, B’s enforceable duty to not violate the correlative claim-right of A is an incident of the right to independence, and A’s enforceable duty to not violate the correlative claim-right of B is also an incident of the same right to independence. Independence connects to people having rights since every single one of the right-bearers enjoys an equal, reciprocal relationship status. It allows for one agent (A) to make moral or legal claims on another (B) as long as (1) she does not arbitrarily interfere with B’s choices and actions, nor (2) make B completely duty bound to her without making herself duty bound to B in return. It relates to claims and duties since someone being dominant in the

26 Zylberman, 160; Pettit, 712.
relationship is committing a wrong against someone, presupposing a relationship of one being “bound” to another who has a correlative claim-right against another.

The relationship between independence and rights is how an agent stands in relation to others. For example, a person in a situation of independence is in an equal non dominant relation to others. C is a person, has dignity, should be treated as an end and not as a mere means, by D for example. Similarly, for rights, they provide for a person to be in a specific relation to others. Person C has some sort of claim unto Person D that he has to perform, but she is also bound to fulfill the claims of Person D in duty. Because both Person C and Person D have claims against one another to fulfill their duties, they both have duties to perform in correlation to the other’s claim-rights, and neither can use the other as a mere means by not fulfilling their duties, given that they are both Kantian persons, then no one person is more dominant to another. But one will be more dominant to another if C or D uses the other as a mere means to an end.

The relationship between rights and independence is non-instrumental as a result of the reciprocal, second-personal relationship being grounded in no other further value. Here, the reciprocal relationship is not instrumental consequent to no other virtue being sought after by having rights. The Independence Theory prioritizes the second-personal relationship. This means that the relationship between one right-bearer and another is the most basic for justificatory purposes. Independence is not a value to be sought after as a result of having rights, but the result of having rights is maintaining a particular relationship with another person, one of equal non-domination with one another, to which one has a right to originally. Every single one of

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27 Zylberman, 160.
those right-bearers, according to the Independence Theory, use independence as a ground for all of their other claim-rights to rest upon,\textsuperscript{28} whether necessarily or contingently.

The “necessarily” refers to rights that are required in order to maintain one’s independence\textsuperscript{29}; for example, I need the right to life because I could not be independent without being alive. Whereas the “contingent” refers to rights that are dependent on the social role one is in\textsuperscript{30}; for example, I am able to make contracts with another person as a result of being in an equal, nondominant relationship with the other person I am contracting with. I must fulfill my duties claimed against me in a contract by that other person, or else I would be dominating the contractor. However, on the ground of independence as well, she cannot make terms of an agreement that bind me that I did not agree to in the contract, or else she would be dominating me in the contractual relationship.

\textbf{B. The Independence Theory Applied to Animals}

Well, how could the Independence Theory solve the problem of wronging non-human animals?

First, it can forego the requirement of normative agency to be a right-bearer, that problematized the Will Theory’s solution for the puzzle. Under the Independence Theory, there is no need for the power to waive and demand for the hogs in the meatpacking plant to have rights.\textsuperscript{31} The hogs can have rights to not be cruelly treated (let alone to not be kept in confined, unsanitary conditions) by being stunned by the two workers or beaten by others. That makes their stunning and beating of them wrong, with the wrong’s infringement on their independence.

\begin{footnotesize}
\begin{itemize}
\item[28] Ibid., 160.
\item[29] Zylberman, 161.
\item[30] Zylberman, 161-162.
\item[31] Zylberman, 163.
\end{itemize}
\end{footnotesize}
On the other hand, the hogs would not have been wronged on the Will Theory consequent to the hogs not having the requisite normative agency to waive and demand duties that would have allowed them to have a right to non-maltreatment, and the resulting wrong if that right were violated.

However, it may be objected that independence is only available for creatures who are rational since the ability to choose would allow for a right-bearer to waive or demand actions that can coincide with the actions of others. In the door metaphor of republican liberty, someone is able to walk through any of the open doors (call them door one and door two) that are in front of her. There is no doorkeeper who can open or close any of the doors at will nor a doorkeeper who makes that person dependent on his will. In this case, it is up to the person to decide whether to walk through door one or door two. In order to make that decision, one must have the rational capability to make a choice. If one must have a rational capability to make a choice to decide which door to go through, door one or door two, which animals do not have, then how could animals have independence, the bedrock of rights on the Independence Theory?

Yes, I concede that animals do not have a rational nature, but that does not mean they cannot have independence. All independence is, is an equal relationship of non-domination with one another. Although animals do not have a rational nature like the majority of human beings, we are commonly, as Tom Regan puts it, “subjects-of-a-life.” This means we all are, “creatures who are conscious [, each] having an individual welfare that has importance to us whatever our usefulness to others. We want and prefer things,

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32 Pettit, 708-709.
believe, and feel things, recall, and expect things... Pleasure and pain... enjoyment and suffering... satisfaction and frustration [, etc.] make a difference to the quality of... life lived," [33] [which can be affected "by... relationships with others]. [34]

Also, regarding being subjects-of-a-life, humans and animals together lead more psychologically complex lives than plants and inanimate objects, [35] which could be positively or negatively affected by interactions with other agents. All those agents who are subjects-of-a-life are entitled to respect, for their unique lives having inherent value. [36] As a result of animals and humans each having this commonality, no one agent can dominate another in terms of rights and wrongs, or else then they will not be treated with respect, thereby tampering with their inherent value. This means the relationship in which humans and animals exist is one of independence, within which animals and humans are all equal and nondominant, by having rights and duties to one another.

There is another objection to the Independence account of rights. Given that the agents involved are in an equal nondominant, reciprocal relationship of independence, [37] from the reciprocity condition, how could animals be involved in that completely? Because morals (as well as legal rules) apply externally to them, [38] animals cannot be placed under human obligations from our claim-rights. From that, animals cannot fulfill duties to us, even though we humans must fulfill our duties from their own claim-rights. Now, animals have claim-rights against

35 Regan, 161-163, 200-202 (cf. Christine Marion Korsgaard, Fellow Creatures: Our Obligations to the Other Animals (New York: Oxford University Press, 2018), 38-44 (Here Korsgaard discusses a difference between intelligence and rationality)).
36 Ibid., 202.
37 Zylberman, 167.
38 Korsgaard, 57-59; Cohen, 35-36.
humans but no duties to fulfill, whereas humans have duties to fulfill for them and no claim-rights against them. It seems, thereby, the “reciprocity” in the reciprocal relationship becomes one-sided. With its one-sidedness showing, the Independence Theory’s feature of non-dominance has not been accomplished.\footnote{Pettit, 707.}

Although I have to concede that animals cannot fulfill any obligations that humans put forth to them with claim-rights, that does not mean, I argue, that we do not have duties towards them generated by their claim-rights. Let us think, for a moment, of what other agents may not have the ability to fulfill duties generated by other agents’ claim-rights. Those would be agents such as very young children, infants, those in a comatose state. Nonetheless, does that mean we can void ourselves of our obligations to them? We cannot, for their still having claim-rights against us to fulfill our duties to them, from their being subjects of a life, who deserve respect. If we do not fulfill our duties, we would then wrong them.\footnote{Regan, “The Case for Animal Rights,” 214. Regan here handles a similar objection to his Rights View of environmental ethics. (\textit{cf.} Cohen, 37.)} On the Independence account, we would violate their original right to independence as a result, given the assumption that wrongs presuppose rights.

Since animals are in a similar boat as children, those in a comatose state—that they are unable to fulfill obligations brought unto them by claim-rights, though they can still bring claim-rights against other agents—then obligations brought by their claim-rights, should still be fulfilled, supporting their original right to independence. If not, then their original right to independence would be infringed upon. If we look to the hog example, the hogs getting stunned or the hogs getting beaten could both have claim-rights to non-maltreatment. If they have claim-rights to non-maltreatment, then the workers who are doing so should cease the practice. But if
they do not cease the practice, then they are committing wrongs upon them, for wrongs are the violation of a right (which wrongs presuppose). Those wrongs violate the hogs’ right to independence.

Here is the argument I just put forward. If a creature is a subject-of-a-life, then they can have independence—which means being in an equal, reciprocal, nondominant relationship with others. Animals are subjects-of-a-life. Therefore, those animals can have independence—which means being in an equal, reciprocal, nondominant relationship with others.

Further, there is another objection to the Independence Theory account. If subjects-of-a-life have a right (and correlative duty) to respect at the base of moral concern, and independence is also supposed to be an original right (and correlative duty) at the base of rights for the Independence Theory, then does it seem that there is some sort of instrumentalism going on here? On Regan’s view, the “fundamental moral wrong is…[being] treated with a lack of respect.” So, with wrongs presupposing rights, then there must be a “basic…right to respect.”

For the Independence Theory, the justificatory bedrock bottoms out at the original right to independence. In other words, is one original right going to be used as a means to another right that is intrinsic, or are there going to be two bases of rights? If this is so, then how is the Independence Theory avoiding instrumentalism?

On the Independence Theory account, there is an original right to independence. The critic is correct on this point. But respect is part of the original right to independence. Here is why. Non-human animals are subjects-of-a-life, which means that they are entitled to be

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43 Zylberman, 162-163.
treated as ends and not as mere means to an end, for their lives having inherent value. So, given their inherent value as subjects-of-a-life, the hogs should not be treated cruelly through the stunning and beatings at the meatpacking plant. But because they are being treated cruelly, then the hogs’ inherent value as a subject-of-a-life is not being respected. This means, equivalently, their original right to independence is being violated.

As a result of the Independence Theory, animals’ moral nature (particularly as a subject-of-a-life) can be appreciated better in the justification of duties. The Independence Theory better promotes the moral nature of an animal over the interests of humans for the justification of duties. As May mentioned, “directed duties are justified by the object’s moral nature directly.” Any animal or human who is a subject-of-a-life—who has a complex psychology, capable of experiencing life—is considered worthy of respect on Regan’s view. As previously established, due to having that moral standing—as a subject-of-a-life, to whom respect is owed—that creature has the claim-right to be treated as an equal against another in a relationship of nondomination. This places a correlative burden onto another to fulfill their duty. If that duty is not fulfilled, then their claim-right to independence, their original right, is violated.

How does the justification of duties owed to them via their moral nature affect the hogs in the meatpacking plant? This affects the hogs because duties owed to them are justified by something that is much more morally compelling than just interests, because interests are subjective whereas claim-rights are objective. Interests, on the one hand, are subjective; they are something that allows someone to achieve welfare. On the other hand, what remains the same

45 Zylberman, 159-160.
46 May, 530.
48 Cohen, 18.
is being a subject-of-a-life. Because being the subject of a life does not change based off whatever might advantage one group at one time or another, and the animal or human’s equal relationship of nondomination remaining the same, their rights are stronger, more valid claims against another. Regarding the hogs in the example, they can be explained to have such claims and making the interests of those who stun them insufficient for holding a claim. Although the workers may be interested in inflicting pain unto the hogs (i.e., for it is their job), that does not mean they have a right to do so. The hogs could have the claim-right to life, given that they are subjects-of-a-life, that makes them the holders of a claim-right to not be mistreated against humans, which makes the stunners and those who beat the hogs obligated to cease and desist from their mistreatment of them through stunning and beating. To do otherwise would be wronging the hogs, since the infliction of pain is an instance of domination, with the right to life and non-maltreatment being necessary for the creatures to maintain their independence.

**The Uniqueness of the Independence Theory**

Now that the Independence Theory has been shown to solve the problem, how does it rank as a theory for animal rights versus the Will Theory and the Interest Theory? Essentially, I am going to argue that because the Independence Theory retains the upsides of the Will Theory and the Interest Theory, respectively, while avoiding the drawbacks of both theories, the Independence Theory is best for animal rights.

A major upside of the Independence Theory, like the Will Theory, is that it avoids the use of interests. Because the Will Theory does not make interests necessary nor sufficient for rights,\(^49\) for all that matters for holding rights on the Will Theory is having the capacity to

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\(^49\) Kramer, 62.
wield the power of waiving and demanding, then it avoids the problem of rights being used to a further end—avoiding the objection of instrumentalism. The Independence Theory avoids that similar issue. As has been argued, the Independence Theory makes independence an original right, as the grounding for other rights, not a value, so some further value is not being achieved by rights.\textsuperscript{50} An additional upside that the Independence Theory shares with the Will Theory, relating to their avoidance of including interests in their respective rights theories, are interests being neither necessary nor sufficient for rights. Because all that matters for the Will Theory is the use of normative agency that yields right-holders,\textsuperscript{51} whatever is not conducive to an animal (and a person’s) welfare does not mean there is no right. Similarly, all that matters for the Independence Theory for holding rights is being in a relationship of equal nondomination to another right holder, and to respect the other’s independence, correlative. Interests are located nowhere in the Independence Theory. Any right on the Independence Theory is either necessary for (or contingent on) that original right to independence,\textsuperscript{52} with independence being the original ground for justification for any other right. A right necessitated on independence for animals would include the right to life, since one cannot have independence if they are not alive to experience it.

However, the Independence Theory also has differences to the Will Theory. One such difference is the inclusion of animals’ consequent to there being no requirement of normative agency, with the power to waive and demand duties. Animals have been excluded from the Will Theory consequent to its emphasis on powers, which requires the inclusion of normative agency in order to control one’s domain.\textsuperscript{53} Nonetheless, the Independence Theory does not

\textsuperscript{50} Zylberman, 167-168.
\textsuperscript{51} Kramer, 62.
\textsuperscript{52} Zylberman, 161-162.
\textsuperscript{53} Ibid., Steiner, 238.
require agency in order to have rights. Rather, what is required is just being in a state of non-domination over another. This means animals can be included as right holders.

Another difference for the Independence Theory versus the Will Theory regarding animal rights is the direction of duties. On the Will Theory, the direction of duties was always towards the one who had normative agency. If there was an agent who did not have that normative agency, such as an animal, the duty to her would go to someone else who did have that normative agency.\(^5^4\) This would then provide for indirect duties. Conversely, the Independence Theory, as a result of its independence from the notion of normative agency being a requisite for being a right-holder, the duty would go directly to the agent who initiated the claim-right against another. In the case of an animal, then, their claim-right against another human would correlatively generate a duty that goes directly to them.

Now that the similarities and differences of the Independence and Will theories were discussed, I will discuss how the Independence Theory is similar to the Interest Theory.

The upside of the Independence Theory that is shared by the Interest Theory is that animals are included as right-holders, for there being no normative agency requirement. On the Interest Theory, there is no normative agency requirement that is necessary nor sufficient for an agent to have a right (and of course be wronged in the case of violation).\(^5^5\) Because of that, agents who do not have those capabilities, such as children, those in a comatose state, especially animals, were able to be admitted as rights-holders. Likewise, the Independence Theory, as has been argued, does not have a requirement for agency that could limit rights-holders. What matters is that each of the agents are on an equal non-domination status with one another, who cannot exercise arbitrary power against one another. Just to raise an example, a person who breaks a dog’s leg

\(^5^4\) Regan, “The Case for Animal Rights,” 157-158; May, 525.
\(^5^5\) Kramer, 62.
intentionally would wrong the dog herself because the dog not being inflicted pain by another is necessary for her right to independence. Intentionally inflicting pain is an exercise of the person’s dominance in what is supposed to be an equal, nondominant bilateral relationship, leaving the dog vulnerable to more attacks by that person, making her not able to live as an independent being, with her being subject to the person’s arbitrary power.

While the Independence Theory is similar to the Interest Theory, it has not just one, but multiple assets that the Interest Theory does not have. One of those assets is that interests are not sufficient for rights. On the Interest Theory, with interests being sufficient for rights,\(^{56}\) it tends to lead to issues, such as whatever is beneficial may not be worthy of being a right. On the other hand, the Independence Theory does not have this problem, for interests not being sufficient for rights.

Another dissimilarity between the Independence Theory and the Interest Theory is that there is no instrumentalism. For the interest theory, instrumentalism occurs consequent to rights being there to protect interests. However, there are other ways to protect interests, which leads to the concern about the value of rights being instruments for interest satisfaction. Perhaps there is a new policy in a certain society that prohibits hunting ducks for sport, for example. This would then allow the ducks to live out their lives, and thereby satisfying their interest in living, which is beneficial for them. The problem here is what if someone decided to hunt one of the ducks, in violation of the policy. There is certainly a policy violation, but what about the duck? If they have no claim-right against being killed, then (a) how is the duck wronged; (b) how is there an obligation to not hunt the duck? Given that wrongs presuppose rights, if there is no right against

\(^{56}\) Kramer, 61; Wenar, 204.
being hunted for sport, then there can be no wrong done unto her. Plus, if there is no claim-right from the duck against being hunted for sport, then where does the obligation come from?

These problems in this example are solved better on the Independence Theory. The Independence Theory eschews instrumentalism, which means that rights are not just a way to advance some other value. Rather, the right of independence—being in an equal, nondomination status—is the ground for other rights.\textsuperscript{57} Because the right of independence is the ground for other rights, and of the wrongs presuppose rights assumption, by someone hunting down the duck they are not just violating a policy, they are violating the right of the duck to live, which is necessary for her independence. The duck’s independence is impacted by the wrong consequent to the human exercising their power arbitrarily over her, making the human dominant over the duck (making that duck’s life dependent on the will of the human being), and hence unequal to the human.

A further dissimilarity between the Interest Theory and the Independence Theory is whether the moral nature of an animal is being depreciated when duties are being justified. On the Interest Theory of rights, because rights are there to satisfy interests, then the moral nature of the agent who possesses those rights is less valuable as a justificatory basis for the duties towards them. As May mentioned, quoting F.M. Kamm, regarding objections to the Interest Theory justification for directed duties, regarding a

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“right to treatment as equals…Even if it turned out to be in [that person’s] interest to have this nature, the right derives from their nature [as a rational agent] and not from their interest in having it…It [may be justified by being] fitting to treat [that] person no differently from anyone else.”\textsuperscript{58}
\end{quote}

\textsuperscript{57} Zylberman, 160.
\textsuperscript{58} See footnote 22.
On the other hand, the Independence Theory is better able to handle the objection of the duty subject’s moral nature depreciating since it recognizes animals, as well as persons, (as I had argued for the link between Regan’s subject-of-a-life criteria with the theory) as individuals who are subject to respect in an equal nondominant relationship. Unlike the Interest Theory, that only values the agents as cups that hold the prized interests they contain, the Independence Theory values the cups (the animals and humans), no matter the interests they contain. In other words, the agents whose independence is respected by another having the duty of non-dominance are valued for who they are, those subject to respect, their interests notwithstanding. This means the agents are valued for who they are, rather than what they have.

Conclusion

I started with the case of hogs being beaten and stunned in a meatpacking plant and a question: although we intuitively acknowledge that the hogs were being wronged, why were they wronged, and why do the hogs not have rights against such treatment? Assuming that rights are presupposed by wrongs, I scoured the commonplace Will Theory and the Interest Theory for answers. But they came up empty. Animals were not given rights, or were given rights in name only, but they only applied indirectly to them, in the case of the former. For the latter, interests were alone sufficient for rights, rights were instrumentalized for the sake of interests, and the moral nature of creatures was devalued as a justification for having rights. However, I argued there was another way to look at animal rights, through the Independence Theory.

The Independence Theory was explained. I took that theory and applied it to the puzzle. It came up with hogs who have an equal status of non-domination with human beings, not to be subjected to arbitrary acts of power. It went through a few objections. And, finally, I showed

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59 The cup-to-contents value analogy was used by Tom Regan in “The Case for Animal Rights,” 182, and in “The Radical Egalitarian Case for Animal Rights,” 110, while discussing the drawbacks of Utilitarianism.
how the Independence Theory can apply to animal rights generally, contra the Will Theory and
the Interest Theory, avoiding those theories’ drawbacks and reaping in the benefits from both.
Bibliography


