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Version: Published Version

Article:
Milburn, J. (2018) Nozick's libertarian critique of Regan. Between the Species : a Journal for the Study of Philosophy and Animals, 21 (1). 3. pp. 68-93. ISSN: 1945-8487

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Between the Species

Nozick's Libertarian Critique of Regan

ABSTRACT

Robert Nozick's oft-quoted review of Tom Regan's *The Case for Animal Rights* levels a range of challenges to Regan's philosophy. Many commentators have focused on Nozick's putative defense of speciesism, but this has led to them overlooking other aspects of the critique. In this paper, I draw attention to two. First is Nozick's criticism of Regan's political theory, which is best understood relative to Nozick's libertarianism. Nozick's challenge invites the possibility of a libertarian account of animal rights – which is not as oxymoronic as it may first sound. Second is Nozick's criticism of Regan's axiological theory, which is best understood relative to Nozick's own axiological inegalitarianism. While Nozick's axiology has distasteful consequences, it should not be dismissed out-of-hand. Nozick's challenges to Regan – and Nozick's wider animal ethics – are rich and original, warranting attention from contemporary theorists for reasons beyond mere historical interest.

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Volume 21, Issue 1

Spring 2018

http://digitalcommons.calpoly.edu/bts/

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Tom Regan published *The Case for Animal Rights* (hereafter, *The Case*) in 1983, spawning a literature of responses, critiques, developments and applications. It continues to have considerable influence on philosophical literature in animal ethics to this day – as this special issue demonstrates. Regan belongs on a short list of the most influential and significant normative philosophers of the 21st century. Another philosopher who undoubtedly belongs on this list is Robert Nozick, most famous as the author of the 1974 *Anarchy, State, and Utopia* (hereafter, *ASU*), in which he offers a right libertarian theory of justice. In this paper, I draw attention to Nozick's comments on Regan, interrogating the relationship between the two thinkers.

Right libertarianism is rarely thought of as a natural friend to animal ethics, with spirited critiques of animal rights – including Regan's philosophy in particular – and veganism coming from a range of libertarian theorists (e.g., Englehardt 2001; Lomasky 2013; Machan 2004; Narveson 1977; Narveson 1987). In the words of Jeremy R. Garrett,

> not only have there been no libertarian defenses of animal rights … [but] most libertarians follow the lead of Tibor Machan, Jan Narveson, and H. Tristram Englhardt in explicitly rejecting animal rights. Moreover, many libertarians seem to view their rejection of animal rights as directly entailed by their libertarianism. (Garrett 2016, 15)

It thus may not be surprising that Nozick offered a critique of *The Case*. His review was published in the *New York Times Book Review* as "About Mammals and People" (1983), and Nozick later anthologized it – demonstrating that he thought the comments worthy of note – in his *Socratic Puzzles* as

"Do Animals Have Rights?" (1997, chap. 18). Regan (n.d., 19) speaks of the significance of both the review and a meeting with Nozick, and approvingly cites Nozick's comments in defense of animals (e.g., Regan 2001, 130-1) and on rights theory (e.g., Regan 2004b, 15-6). Despite this, to my knowledge, he never engaged with Nozick's review directly.

It is my contention that Nozick's comments warrant attention for several reasons. Most trivially, there is something historically interesting about the review. The fact that these comments indicate what *Nozick* thought about *The Case* make them worth reading. More importantly, these comments offer a critique of Regan's project worth taking seriously. To be clear, I am not talking about Nozick's arguments putatively in defense of speciesism (Nozick 1997, 307-9), upon which others have commented. Instead, I am talking about Nozick's (underdeveloped, in the review) challenge to Regan's position of species equality, and his challenge to Regan's politics (Nozick 1997, 309-10). In challenging Regan's politics, Nozick is ahead of his time. Today, in the midst of the "political turn" in animal ethics, we are in a good position to explore the politics of *The Case* (see Cochrane, Garner and O'Sullivan, 2018), and we could do worse than start with Nozick's comments.

There is a third reason that Nozick's comments are worth exploring. Nozick is explicitly not condemning Regan for looking to the question of what is owed to animals, and specifically does not deny that we might owe animals a great deal (though he does claim that Regan takes his argument too far). This points towards the chance to develop a Nozickian or otherwise libertarian perspective on animals, potentially valuable for expanding an overlapping consensus in favor of animal rights, and in its own right – it could be that adding a Nozickian spin

to *The Case* will serve to strengthen it. At the very least, this is a possibility we should be willing to explore.

This paper will advance as follows. First, I will briefly set out the elements of Nozick's challenge to Regan on which I will not be focusing. I will then expand upon Nozick's political challenge to Regan, arguing that his critique should be seen in context as recognizably libertarian. I will then argue that *The Case* could be given a libertarian edge, and that a libertarian animal rights can avoid the political criticisms that Nozick levels. Subsequently, I will move on to the criticism offered to Regan's egalitarianism. Rather than draw upon Nozick's arguments putatively in favor of speciesism, however, I will show that wider Nozickian philosophy offers the resources for an inegalitarian but non-speciesist axiology. Nozick can and does offer sophisticated and worthwhile thoughts on the value of animals, and these are views that may be of benefit to contemporary animal ethicists.

Nozick's first critiques

"Animal rights," Nozick tells us, "seems a topic for cranks," with "crankiness" characterized relative to its "disproportionateness" (1997, 205). Perhaps there is an irony here; Nozick, it has been suggested, disproportionately agonizes over apparently minor issues in his *ASU* – indeed, multiple critics (see Singer 1976, 192) have criticized him for spending too much time exploring ethico-political questions about animals. Nonetheless, Regan does not, "to [Nozick's] knowledge, fit the mold of a crank" (1997, 206; cf. McMahan 2016), and Nozick claims that *The Case* is "lucid, closely reasoned and dispassionate" (1997, 206), before exploring a number of challenges to Regan's project.

Nozick's first attack is on Regan's attribution of the mental characteristics associated with being a subject-of-a-life – beings, for Regan, who possess "inherent value" and are thus owed respect – to animals (cf. Regan 2004a, 243). The behaviors of animals, Nozick suggests, "might be explained without such heavy cognitive apparatus" (1997, 306). Such a critique is not compelling (Garrett 2016, 28-9). However, Nozick also argues that even if year-old mammals – Regan's favored example of subjects-of-a-life – are as psychologically complex as Regan argues, "their beliefs, desires, intentions, future orientations, etc., surely are far more rudimentary than those of most humans, and this may make much moral difference" (1997, 306-7). I will return to this claim below.

Nozick then moves on to the argument from species overlap. I note that there are good reasons to favor this name over the more common "argument from marginal cases" (see Horta 2014), a name that was, incidentally, coined by a libertarian critic of animal rights in a review of Regan's work (Narveson 1977). It is this discussion that has led to Nozick's review being commented upon by animal ethicists; for example, Daniel Dombrowski offers a chapter of his *Babies and Beasts* to "The Nozick-Rachels Debate" (Dombrowski 1997, chap. 6; cf. Rachels 1990). Nozick tries out several arguments for speciesism, but, by his own admission, they are weak. It is regrettable that he chose to focus much of his review on Regan's moral individualism, but this should not lead us to neglect his more interesting arguments. Given that the former arguments have been explored elsewhere, I will offer only a brief recapitulation here.

Nozick is concerned that any argument for animal rights relying on the equation of animals and non-paradigmatic humans is more likely to result in the disvaluing of humans than the

lionization of animals (1997, 307). He is skeptical of the claim that the burden of proof lies with the speciesist, suggesting that as "no one has spent much time trying to formulate" a "theory of the moral importance of species membership," little should be inferred from our lack of one (1997, 308). This argument takes on the opposite significance today: "the fact that no one has come up with a really convincing reason […] strongly suggests that there is no such reason" (Lazari-Radek and Singer 2014, 343). Nozick, however, does attempt to formulate a theory, speculating that there is perhaps a "general principle that the members of any species may legitimately give their fellows … more weight than a neutral view would grant them" (1997, 308). The argument upon which he rests is that "we see humans, even defective [sic] ones, as part of the multifarious texture of human history and civilizations, human achievements, and human family relations," while animals are seen as part of "a different background texture" (1997, 308). It is "the total differences between two rich tapestries" that makes the moral difference (1997, 309). Nozick has "worries in presenting this type of position, for scoundrels too may seek refuge from criticism in the reply that some differences are too great and complicated to state" (1997, 309). His curiously non-normative conclusion is that until philosophers "can morally assess the differences between such total contexts […] their conclusions, especially when startling, will not be taken seriously" (1997, 309).

Nozick's political critique

I will say no more about Nozick and species membership, and will instead look to the closing paragraphs of Nozick's review. Implicitly drawing upon his own conception of rights as valid claims warranting protection from the state, Nozick observes that Regan's account entails that "the force of law should be brought to bear" on those who would violate the

rights of animals (1997, 209). *The Case*, for Nozick, is thus a work of political philosophy. This should not be surprising. "Political philosophy," Nozick elsewhere explains, "is mainly the theory of what behavior legitimately may be enforced, and of the nature of the institutional structure that stays within and supports these enforceable rights" (1981, 503). Rights are thus central in political philosophy, even if not in moral philosophy, because "the state is demarcated as the organ monopolizing the (legitimate) use of force" (1981, 503). For Nozick, rights are enforceable, and this separates them from other kinds of ethical demand; this is an important, distinctive feature of Nozick's libertarianism (Garrett 2016, 16; Nozick 1981, 499, 503; Vallentyne 2011, 147; Wolff 2003, 22).

Nozick is not enamored of Regan's politics. Regan's position that animals have rights "goes too far" (Nozick 1997, 309), but Nozick is more interested in speculating where thinkers will go after Regan:

> If once it is granted [that subjects-of-a-life] possess rights and have a welfare they can experience, we can imagine more extreme proponents calling for welfare payments for [subjects-of-a-life], nonvoting citizenship for them, and interspecies marriage rights. I think Mr. Regan himself would regard these proposals as going too far, indeed as cranky. (1997, 309)

It is telling that the possibility of welfare support for animals and nonvoting citizenship rights have been key talking points in the political turn (see Donaldson and Kymlicka 2011; Garner and O'Sullivan 2016). Sue Donaldson (2017) even explores the possibility of voting citizenship for animals, meaning that she has taken the political inclusion of animals further than Nozick

imagined anyone would. Interspecies marriage rights have been less of a part of the political turn, but Peter Singer, among others, defends certain instances of bestiality as non-harmful sexual contact (Singer 2001; Singer 2016); calls for interspecies marriage rights may not be far behind.

The critique is thus that 1) political protection of animals forces the state to overstep its bounds and that 2) opening the door to political protection of animals risks the institution of strong positive rights for animals. It is useful to recognize that these critiques are coming from a libertarian. While it was once common to claim that Nozick abandoned libertarianism after the publication of *ASU*, he defends libertarianism in later work (Nozick 2001), and declares himself libertarian in his last interview (Sanchez 2001). This is not to say that his politics did not *develop* (see Nozick 1993, chaps. I-III; Nozick 2006, chap. 25) – merely that it remained broadly libertarian.

When considered thus, Nozick's worries about Reganite politics take on a new character. It is hardly surprising that a libertarian will be worried about the state overstepping its bounds, and especially about the extension of positive rights and state interference in private relationships. Indeed, even the concept of "citizenship" is one about which minarchists will be suspicious. Unsurprisingly, Nozick is not the only libertarian who expresses concerns about animal rights and large states: Machan, for instance, argues that "[t]hose who genuinely care for animals should consider the possibility that to the extent arguments for animal rights succeed, they may only confer additional power on government and bureaucrats to run our lives for us" (2004, 23).

Nozicking Regan

We can overcome this aspect of Nozick's critique of Regan by explicitly limiting the kinds of rights possessed by animals. The content of Regan's rights is hazy; while it is sometimes assumed that Regan is talking about negative rights possessed by animals – rights against being killed, imprisoned, tortured – we can also see that he is, in certain circumstances, concerned with positive rights, including rights to assistance. It is thus far from clear that Nozick is right to say that Regan would oppose the developments he envisages; to draw upon Reganite language, it could be that "respecting" the "inherent value" of subjects-of-a-life requires offering them state support. Regan's reluctance to explore the positive/negative rights divide – and Nozick's assumption that Regan is talking only about negative rights – is reflective of the traditional assumption that animals' rights are wholly negative, something challenged in the political turn (see Milligan 2015).

We could sidestep this aspect of Nozick's critique by giving animal rights an explicitly libertarian edge. This should be of interest to anyone who finds Nozick's critique of *The Case* compelling, and anyone who is worried about the discussions about positive rights in the political turn – not just libertarians. "Nozicking" Regan would entail affirming that the rights of animals are negative, and denying that animals have rights to the kind of positive entitlements about which Nozick – and other libertarians – are worried (cf. Ebert and Machan 2012; Graham 2004). This may not be all that a libertarian animal ethics would say; there are opportunities to sympathetically explore the application of libertarian principles to animals (e.g., Hadley 2015b, chap. 3; Hadley 2017; Milburn 2016; Milburn 2017a), but this is to jump ahead. There is first the more fundamental question concerning the compatibility of libertarianism

with animal rights, as defended in recent work (Garrett 2016; Milburn 2017b). The exploration of this question is crucial not just for making sense of an animal rights account affirming negative-but-not-positive rights but for answering the other part of Nozick's political critique – the worry that defense of animal rights overextends the state.

Garrett (2016) establishes the premise of deontological libertarianism – the moral theory undergirding Nozick's political theory – as the existence of rights that

> 1) function as independently valid and morally enforceable "side-constraints" that limit the initiation of non-consensual force against others; 2) reflect the "separateness" and "inviolability" of individuals; and 3) entail, as their most fundamental and incomparable implication, very strong protections against actions that threaten the life, liberty, and bodily integrity of the rights bearers. (Garrett 2016, 19, quoting Nozick 1974, passim)

This might also serve as an incomplete description of Regan's account of rights (Garrett 2016, 19). If the Nozickian wishes to challenge the claim that animals are right bearers, she needs to challenge either Regan's normative premise that subjects-of-a-life possess inherent value (in Regan's sense: beings with inherent value are owed respect, and, thus, rights), or his empirical premise that animals are subjects-of-a-life. Garrett spends much of his paper responding to what he reads as Nozick's attempts to do this – namely, the already-mentioned challenge to Regan's claims about animal cognition and appeal to the richness of context – concluding that Nozick's arguments fail (Garrett 2016, 20-32). Thus, not only are there good reasons

for libertarians to accept animal rights, and no good reasons for libertarians to reject animal rights, but libertarians should take a cautious approach, and extend rights to animals even if uncertainty about their moral status remains. If they seek an existing theory of animal rights for this purpose, Regan's account fits their commitments well (Garrett 2016, 32-3). Ultimately,

> even if they are initially uncomfortable with Regan's claim that animals have equal inherent value with humans, libertarians should not be at all comfortable with defending, let alone celebrating, the kind of nonconsensual aggression they abhor when it is directed toward animals. Rather, given their overriding commitment to core negative rights and the fact that adult mammals may well have the kinds of mental and emotional lives that make these rights applicable, libertarians should be extremely hesitant to endorse violations of their lives, liberty, and bodily integrity (i.e., the rights central both to libertarians and to Regan's theory). (Garrett 2016, 33)

Independently of Garrett, I have argued (2017b) that Nozick is a latent animal rightist. Nozick was a vegetarian (Nozick 1981, 523), arguing at length in *ASU* that all Americans should be, too (1974, 35-9). It is in this discussion that Nozick introduces his oft-quoted but "too minimal" suggestion of "utilitarianism for animals, Kantianism for people" (1974, 39), but this is not his all-things-considered view (Milburn 2017b). Nozick's comments on animals are often explicitly overlooked by his interpreters (e.g., Bader 2010, 13; Lacey 2001, 28; Wolff 2003, 2-3), and puzzle those who do look to them (e.g., Vallentyne 2011; cf. Garrett 2016, note 17).

I argue that there are a range of ways to incorporate animals firmly into Nozickian normative philosophy (2017b). One area to explore concerns the place of animals in Nozick's moral philosophy. This includes the place that animals (explicitly and implicitly) have in Nozick's four levels of ethics (Nozick 2001, 260-2; Nozick 2006, 212-4), the value of animals in Nozick's axiology – discussed below – and the place that animals should have in a meaningful life: indeed, Nozick seems to be committed (whether he realizes it or not) to the claim that the life of a vegan is, all else equal, more meaningful than the life of a non-vegan (Milburn 2017b, 115).

However, the relegation of animals from the realm of politics to the realm of the "merely" moral is insufficient, and I have offered two ways that Nozick could ground animal rights in his libertarianism (Milburn 2017b). One takes as given Nozick's grounding of rights in the meaning of life. Garrett acknowledges this as a strategy Nozick uses to exclude animals from the domain of rights bearers (2016, 21-2), but engages only with *ASU*, and neither Nozick's *Philosophical Explanations* (1981) nor his *The Examined Life* (2006), where meaningfulness is discussed at length. It could be the case, I argue (2017b, 103-6), that rights are grounded in the meaning of life, but that animals too have potentially meaningful lives, and thus that they too are entitled to rights protection. For Nozick, one's life is made meaningful by the voluntary creation of appropriate connections to valuable entities beyond oneself (Nozick 1981, 594-5; Nozick 2006, 166). This means that Nozick sees meaning and value as close, and that a meaningful life is one that voluntarily and appropriately exercises the kinds of traits that Regan lauds in subjects-of-a-life: the initiation of action; memory; emotion; and so forth. Thus, Nozickian animal rights may not be far from Reganite animal rights.

An alternative route would ground animals' rights in their interests, offering Nozick a way to offer protection to those animals (human and otherwise) who do not meet the high bar the meaning-of-life account is generally assumed to set (Milburn 2017b, 106-11). This would move away from a Reganite picture in which rights are grounded in value, and towards accounts of interest-based animal rights, which are prominent in the political turn (Milligan 2015). Nozick, though his rights are will rights (for reasons justified in his grounding of rights in the meaning of life; compare Milburn 2017b, 104), never offers an argument against the existence of interest rights (Vallentyne 2011, 149). Their existence is something he has good reasons to embrace. Such an embrace would allow him to protect those beings who are not granted will rights, which he clearly wants to do (Milburn 2017b, 110).

Thus, we can see that there are a range of ways to talk about the possibility of libertarian animal rights grounded in Nozickian philosophy. This is important for several reasons: historical/theoretical interest; convincing libertarians of animal rights; and especially to overcome Nozick's political critiques of Regan. A libertarian conception of animal rights can both demonstrate that the state is not stepping beyond its proper role by protecting animals, and can offer a guard against animal rights accounts going further than (Nozick assumes) Regan wishes to take them. Insofar as one is worried about the prospect of "welfare payments for year-old mammals, nonvoting citizenship for them, and interspecies marriage rights" (Nozick 1997, 309), one has a good reason to seriously consider a more libertarian animal rights. This is not to say that one *should* be worried about these things. My point is that many (even committed animal rightists) who are not libertarians may be, and thus could fruitfully explore Nozicking Regan.

Nozick's axiological critique

A second overlooked strand of Nozick's challenge concerns axiology. Nozick praises Regan's "illuminating discussion of the nature of inherent value" (1997, 310), and this is unsurprising; when it comes to the exploration of value, Regan and Nozick are engaging in a similar enterprise. One crucial distinction between the two is the relationship posited between inherent value and rights possession. Nozick's axiology is relatively independent of his account of moral status (here understood to mean "account of beings possessing rights"), while Regan rests his account of moral status upon axiology: subjects-of-a-life possess inherent value, and are therefore owed respect, and are therefore entitled to rights. Regan's accounts of inherent value and moral status are (presented as) categorical. Animal ethicists could side with Nozick in this divide by severing the close link between inherent value and moral status (indeed, this is what many in the political turn do), but this is not what Nozick pushes towards in his review, and so it shall be considered no further here.

Nozick calls upon us to consider the possibility that "animals have some inherent value and hence may not be treated any way anyone might please, but [that] their inherent value is not equal to that of people" (1997, 310). (Nozick's use of *people* is frustrating, as it is unclear whether he is gesturing towards a non-speciesist account of differential value between persons and non-persons, or towards a speciesist account of differential value between humans and non-humans. While the latter might be assumed in the context of the review, the former aligns better with his wider axiology.) The possibility is raised, then, of accepting the close relationship between inherent value and moral status posited by Regan, but meanwhile exploring the inegalitarian and non-categorical account of inherent value de-

fended by Nozick. To do this, we must first grasp what this account is.

In *ASU*, Nozick makes axiological appeals, but these are ultimately intuitionistic, and no *account* of value is offered. Thus, for example, animals "count for something" (1974, 35). When Nozick approaches axiology elsewhere, he conceptualizes value as "organic unity". Entities are valuable insofar as they unify disparate elements; all else being equal, x is more valuable 1) if it brings elements into a tighter unity, and 2) if the elements unified were originally more disparate. An exception is made for entities with a destructive telos, in which tighter unity/more disparate elements make the entity less valuable. What all of this means in practice will depend on the "realm" of the entity. Judging the unity/value of artwork requires different tools to judging the unity/value of an ecosystem (Nozick 1981, 415-9, 440-4; Nozick 2006, 162-6). Indeed, whether a concept of telos is appropriate in a given realm may vary: the concentration camp has a destructive telos and is thus a highly disvaluable unity. The volcano is destructive, but lacks a destructive telos, so should be recognized as a valuable unity (Hailwood 1996, 154; cf. Nozick 1981, 419).

Regan's axiology thus lacks the breadth of Nozick's, hence Nozick's concern that "the preservation of endangered species has no special claim" for Regan (1997, 309). Species are, for Nozick, valuable unities, and so worth some level of positive evaluation. It is not, however, Nozick's criticism of the narrowness of Regan's axiology upon which I wish to focus; Regan could simply be offering an axiology for the "realm" of animals. Nozick would still challenge Regan's axiology were this the case. When judging the unity of animals – including humans – Nozick exalts the same features as Regan, but identi-

fies a unity (and thus, value) hierarchy, in contrast to Regan's egalitarianism. This hierarchy is based upon the psychological features of the beings in question: "Sentience and then consciousness add new possibilities of unification over time and at a time, and self-consciousness, being an 'I', is an especially tight mode of unification" (1981, 416-7; cf. 2006, 163). Thus, all else being equal, the sentient are more valuable than the non-sentient, the "conscious" are more valuable than the merely sentient, and the self-conscious are more valuable than the merely "conscious". This is explicit in Nozick's critique of Regan: the "beliefs, desires, intentions, future orientations, etc., [of animals] surely are far more rudimentary than those of most humans, *and this may make much moral difference*" (1997, 306-7, emphasis mine).

When Nozick applies his axiology, he concludes that "the ranking of organisms in accordance with degree of organic unity matches our value ranking of them, with people above other animals above plants above rocks" (1981, 417). Again, Nozick's use of *people* is questionable. If mental sophistication is the primary means of judging unity in the realm of "animals," then he presumably means *persons*. This would place some humans above others on this value hierarchy, and even some animals above some humans. In fact, Nozick does not shy away from this possibility, noting that there are "distinctions in value within" the "categories" of "people," "animals" and "plants," in addition to "some overlap" between them (1981, 415). Nozick thus denies the equality of humans (and persons), though, in his example of "overlap," he sidesteps this tricky issue (1981, 415). Nozick declares a redwood more unified than a mouse (1981, 415; cf. Hailwood 1996, 150; Milburn 2017, note 12); if he is right that the redwood has greater unity, the redwood's size, longevity and physical complexity will serve to

outweigh the mouse's relative mental sophistication. (Something similar could, for Nozick, be true of humans in certain cases. The biological complexity, longevity, and physical size of particular humans could mean that they are more valuable than animals with greater psychological complexity; though humans will always be relying on their relatively sophisticated mental capacities when compared to, say, cetaceans. Thus, while some humans are more valuable than most/all cetaceans, some humans will be less valuable than some/most/all cetaceans.)

The unpalatability of Nozick's axiology should now be clear. Nozick is able to offer a robust, individualist, non-speciesist and non-Reganite axiology through being willing to jettison the equality of humans. Some humans, for Nozick, are more unified, and are thus more valuable. Indeed, Nozick is not only offering a kind of human-person-versus-human-non-person dichotomy; presumably, n humans will display n levels of unity, and thus each will have a different value. In being willing to make this claim, Nozick can offer an alternative axiology to Regan, in which most humans are more valuable than any given animal.

Inegalitarian animal ethics?

It may seem that elucidating upon Nozick's challenge has simply served to defend Regan. If we were to combine Nozick's inegalitarian axiology with Regan's close positioning of inherent value and moral status, we would develop an account in which individuals have radically differing levels of moral status; indeed, even among humans, levels of moral status would vary. This is a bullet that few of us will be willing to bite. But perhaps simply dismissing Nozick here is a mistake. Not only is Nozickian axiology able to avoid the putatively problematic

"all animals are equal" conclusion of Reganite axiology, but it is able to overcome a more fundamental problem faced by animal rights approaches.

John Hadley (2015a) claims that animal ethics is faced with an inconsistent triad when it comes to questions of value. Animal ethicists are committed to: 1) the psychology principle, the claim that direct moral status is dependent upon psychological capacities (e.g., sentience, being subject-of-a-life) rather than species membership; 2) the same kind principle, the premise – drawing from post-Darwinian metaphysics – that all animals (including humans) ought to be considered the same kind; and 3) the evolutionary principle, which is that genomic plasticity/adaptive variation is the best explanation for evolutionary change.

There are, Hadley claims, several problems with the coexistence of these three principles. One of them is that advocates of animal rights seem to want to retain the idea of moral status as categorical (allowing us to retain our commitment to the moral equality of all humans) while also allowing degrees of moral status for beings lacking in certain capacities. Indeed, even those who putatively maintain a commitment to cross-species equality, in practice, "draw sharp lines through the class of psychologically complex animals" (Hadley 2015a, 19). Regan is no exception (Hadley 2015a, note 10; cf. Russow 1988); recall his (in)famous lifeboat cases. With the introduction of these distinctions, the psychology principle is shown to be incompatible with the same kind principle. Meanwhile, the evolutionary principle shows that those capacities upon which Regan's moral status rests "admit of degree above the threshold" at which Regan claims inherent value (and thus moral status) is categori-

cal (Hadley 2015a, 23). There are thus fundamental tensions in Regan's egalitarian and categorical account of moral status.

If Hadley is correct, then it seems that even Reganite philosophy slips into hierarchical thinking about moral status. Perhaps, then, animal ethicists could entertain the following possibility: Truly egalitarian axiology closely tied to moral status is a pipe-dream, meaning that if we wish to retain close links between inherent value and moral status, we need to develop an axiology that embraces – however reluctantly – inegalitarianism. Where better to start than Nozick, given that he is appealing to the same features as Regan?

Perhaps this possibility goes too far – to be clear, I present it for discussion, not to endorse it. At the very least, we should be ready to recognize that radical inegalitarianism offers a solution to Hadley's metalevel problem. Interestingly, it is one that Hadley dismisses out of hand: "it is fair to say that dropping the equality of persons would be too high a price to pay for bringing animal rights theory strictly into line with nature" (2015a, 25). If Nozick's axiology is minimally defensible, then perhaps Hadley's dismissal is too quick.

Concluding remarks: Rega(i)ning Nozick's animal ethics

Nozick's choice to anthologize his review of *The Case* some 14 years after its original publication indicates that he saw much of value in his critique of Regan. Commentators have previously drawn attention to the less compelling arguments that Nozick deploys – concerning the mental capacities of animals and the putative significance of species membership. In this paper, however, I have sought to draw attention to two

separate lines of critique, both of which are best understood relative to Nozick's wider work.

First, Nozick criticizes Regan for the political nature of his framework, and expresses worries about the kind of welfare state that post-Regan thinkers would endorse – and now have endorsed. This opens the door to considering the possibility of a libertarianized animal rights, and a "Nozicked" Regan. Not only is such a possibility less bizarre than it may first sound, but it should be of interest to anyone concerned about the prospect of "welfare payments for year-old mammals, non-voting citizenship for them, and interspecies marriage rights" (Nozick 1997, 309). Second, Nozick criticizes Regan for his radical egalitarianism. This critique is best understood relative to Nozick's wider axiology – one that draws upon similar resources to Regan's, but one that reaches very different conclusions. A door is opened for a wholly inegalitarian axiology, and thus – if Regan's foundations of rights are retained – an inegalitarian account of moral status. While near-unpalatable, there may be reasons for us to entertain this possibility.

It has been my intention neither to endorse Nozick's criticism of Regan wholeheartedly, nor to defend Regan from these challenges. My purpose in this paper has been, instead, to show that there is much more to Nozick's critiques than meets the eye, and that – if we are willing to explore them, especially in conjunction with his wider work – they may have much to offer animal ethics, Reganite or otherwise. Nozick is one of the most provocative and influential philosophers of the 20th century, and devoted several pages in his first and most important book to arguing that vegetarianism is morally mandatory. It is my belief that Nozick deserves to be thought of as an original

and intriguing – if reluctant – animal ethicist, and that his arguments, whether ultimately successful or not, warrant attention.

Acknowledgements

This paper was written while I was the Postdoctoral Fellow in Animal Studies at Queen's University in Canada, partially funded by The Canadian Institute for Advanced Research. It builds on research I completed while a doctoral candidate at Queen's University Belfast, funded by Northern Ireland's Department for Employment and Learning. I thank my institutions, funders and supervisors. Sincere thanks are offered to all who have engaged with me on Nozick and animals, including peer reviewers at *Between the Species*, my doctoral supervisors (David Archard and Jeremy Watkins), and especially Will Kymlicka, who offered comments on an early draft of this paper. On a personal note, I am saddened that I will never have the chance to meet Regan, whose work has influenced me greatly, and it is a privilege to contribute to an issue of *Between the Species* in his honor.

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