

# The subject-of-a-life criterion

The future of animal rights advocacy?

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## Preface

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An important first disclaimer I wish to make before presenting my arguments is the following: this thesis is limited in its ability to provide a full image of the animal ethics debate. If it were to attempt such an endeavour there would simply be too much to discuss. The core of this thesis concerns arguments presented by Tom Regan and the philosophical debate that his ideas have sparked, as well as the academical work that has laid the foundations of his views on animal ethics. Conclusions drawn will almost exclusively concern Regan being convincing or not in his argumentation and the academic response to his arguments. These conclusions will only be relevant to the subject-of-a-life criterion and its future use in the debate.

Where Regan has used the criterion to assess the treatment of animals, this thesis will not contain an elaborate discussion on the consequences of its applicability, but rather a critical review of what has been written up to this day. The objective is therefore to clarify arguments by Regan and other authors, as well as provide suggestions for further discussion and new insights regarding animal rights. I apologize in advance for the seemingly similar arguments that keep coming back throughout this thesis, but this serves the purpose of my mission, to elucidate how often arguments are presented without proper examination of their relevance.

## Animal ethics: a historical background

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Throughout history, non-human animals have generally been denied rights that are similar to those of humans. The idea prevailed that even though non-human animals had traits that were very much like those of humans, like producing, reproducing, having social lives and shaping their environments, we believed to have little ethical obligations to them (Wissenburg & Schlosberg, 2014). Aristotle (384-322 B.C.) argued that non-human animals lack rationality which is part of the human soul. According to him, they serve a functional purpose to humans (Francione, 1995). Interestingly, Aristotle did attribute a certain level of perception to non-human animals which they use to achieve their goals, which according to Aristotle are survival and welfare (Rabinoff, 2015). Over the course of the roughly two thousand years that followed, the position of non-human animals in society didn't improve much. Romans used them for entertainment in fighting pits, while Thomas Aquinas argued that man's dominion over non-human animals was a natural order (Francione, 1995). The apparent ease with which humans have inflicted harm on non-human animals could be seen as an example of how society puts humans in a different category than the rest of the animals.

Illustrative of the position non-human animals have long held in society are René Descartes' (1596-1650) views on the differences that justify such a distinction. He argued that non-human animals are to be seen as machines or 'brutes' that lack any sort of consciousness or thought. Descartes did acknowledge that non-human animals are better at certain things than humans are, but that this can be compared to the workings of a clock.

Animals are, he observes at one point, like clocks: they are able to do some things better than we can, just as a clock can keep better time; but, like the clock, animals are not conscious (Regan, 1983: p3).

John Locke (1632-1704) was convinced that animals are in fact capable of perception that is at least similar to that of some humans. This is what separates them from the 'inferior' parts of nature that are 'all bare mechanism', like trees. Voltaire (1694-1778) refuted the mechanistic approach to animals, based upon the empirical observations which made clear that there are anatomical similarities between non-human animals and humans. By accepting that non-human animals could perceive the world similar to humans at least in some respect, arguments arose on the relevance of them having subjective experiences. The next in line of well-known philosophers that contributed to the development of the animal rights debate was David Hume (1711-1776), who countered Voltaire in some aspects, since he argued that non-human animals do in fact possess degrees of perception but that it would not be possible to ascribe 'reason' to them (Leahy, 1991). Any argument regarding the position of animals in society that turns to aspects of their capabilities applies a perfectionist theory of justice. This means that in order for a certain situation to be just, individuals are given what they should get, based on the set of 'virtues and excellences' that they possess (Regan: 1983). This in turn causes us to ascribe to humans and non-human animals a different set of rights, based on what they are capable of.

A different approach to the question of non-human animals and how we ought to treat them, is utilitarianism. Jeremy Bentham (1748-1832) proposed that to act in accordance with the principle of utility would be to assess every action respective of the pleasure and/or pain it would cause to those affected by it. The aim should be to maximize the amount of pleasure and minimize the amount of pain for 'the person or group who's interest is in question'. This theory did however fail to incorporate the different degrees of pleasure and pain, which John Stuart Mill (1806-1873) argued to be the case.

It is therefore another argument in favour of treating non-human animals differently based on them not having an equivalent ability to feel pleasure and pain compared to humans (Garner, 2005). Even without Mill's reformulation of the utilitarian theory, maximizing happiness doesn't disapprove maltreatment of non-human animals as a rule. In the end, if the amount of total pleasure or happiness would increase, it's justified.

On the other end of the debate we find Immanuel Kant (1724-1804). The moral justness of acts according to Kantian principles is not based on utility or the sum of the consequences of one's actions. A Kantian approach to the debate, which can be shared among the deontological philosophical theories, would involve an assessment of which beings are of moral concern. If a being is of moral concern, it can't be used simply as a means to an end, but it has to be seen and treated as an end in itself. Non-human animals according to Kant fall into a different category, which can in fact be seen as means to an end. Consequently, there are some moral restrictions to our treatment of animals, but it does mean that non-human animals lack the reason that is present in humans (Broadie & Pybus, 1974). The historical development of animal ethics is important to understand contemporary debates on the subject. Where humans have been endowed a position of moral relevance, there has been reluctance to do the same regarding non-human animals. However, the utilitarian theories rooted in Bentham's approach and the deontological position that Kant proposed, have been used and reformulated in more recent debates on animal ethics. The remainder of this thesis will go into further detail about the contemporary arguments that have attempted to improve our understanding of how humans ought to relate to non-human animals.

## Contemporary Animal Ethics

An important development that's relevant to the debate, is the progress in scientific knowledge about non-human animals. Attempts have been made to better understand the cognitive and physical abilities that non-human animals have. Newfound knowledge has an impact on our understanding of many aspects surrounding the debate, like consciousness, sentience and perception. This has led to arguments being proposed on non-human animals being endowed similar rights to humans, or at least more than they are currently granted. In 1970, Richard Ryder who was then a hospital scientist at Oxford University, spread a leaflet on campus introducing the term 'speciesism' (Ryder, 2010). He noticed that throughout society, there was ample space for debate around racism, sexism and classism, but moral judgement based on species was left out of the equation. Roughly forty years later Gary Francione concluded the following:

Forty-two years after Dr. King was murdered, we are still a nation of inequality. People of color, women, gays, lesbians, and others are still treated as second-class citizens. Yes, things have changed but we have still not achieved equality among all humans. And non-human animals continue to be chattel property without any inherent value (Francione, 2010).

Tom Regan illustrates this by referring to the whale hunt, where a non-human animal is killed for the purpose of producing soap, candles or fertilizer (Regan, 1980). Another case Regan mentions is that of lab-rabbits, who are used in experiments for consumers to make sure that newly produced cosmetics are safe to use. What this means in practice, is the slow burning destruction of one of its eyes. This situation is criticized by Peter Singer as well, who concludes that the 'official morality' is that all humans are considered equal, but that it can be debated to what extent the distinction that is made between humans and non-human animals can be justified (Singer, 2009). What he calls the official morality hence points at the apparent attribution of more value to human life than that of non-human animals.

Their criticism extends to John Rawls' (1921-2002) Theory of Justice as well. Where Rawls attempted to construct a universal theory of justice, he left out non-human animals based on his understanding of their ability to live a moral life. Until evidence proves otherwise, he assumes that non-human animals do not possess the joint ability to conceptualize 'the good' and have a sense of justice (Garner, 2003). This assumption makes it hard to understand Rawls' theory of justice as one that is in favour of animal rights. His 'original position' theorizes that if all rational individuals were to find themselves behind a 'veil of ignorance', society would be organized as just as possible. This would happen because the rational individuals would have no information about their position in society, which in turn leads to them organizing society in such a way that those who are in the least favourable position still have their particular interests met. Regan argues that Rawls' concept of a rational individual would exclude non-human animals from consideration. In that respect, the principles of justice that follow from Rawls' original position are flawed, and should include non-human animals in order to be just (Regan, 1983). Where Rawls' original position can be interpreted in such a way that animals are included, the main criticism by Regan is that Rawls only argues in favour of indirect duties to animals. Regan himself was convinced that animals are owed more than that and should be seen as morally relevant equals (De Jesus, 2018). To achieve a just position for non-human animals in society, Regan deemed it necessary to better understand what animals are capable of, but more importantly, what the necessary attributes of non-human animals are for us to consider them morally relevant. The subject-of-a-life criterion, which is the main point of discussion in this thesis, was his way of providing a tool to help us tackle this very problem.

## The puzzle to solve

Regan defends the animal rights position, arguing that more animals ought to be considered 'subjects-of-a-life'. The criterion he presents is only part of his more elaborate arguments on the treatment of animals, but this thesis will focus on the criterion since it captures an important point of discussion in the animal rights debate: which animals can be considered subject to moral discussion?

From the first part of this thesis, in which the current state of the debate is evaluated, it will become clear that the criterion hasn't succeeded in providing absolute clarity about the moral position of animals. In addition to that, Regan's criterion was introduced in 1983, but since then the debate has stagnated and new insights regarding animal ethics are scarce. Throughout this thesis, the following question is therefore asked:

*Does the subject-of-a-life criterion provide a clear tool to decide whether non-human animals should be given rights, and if not, what could help us better understand the problems faced by animal rights advocates?*

The aim is not to construct a complete theory on animal justice, but rather evaluate the debate and identify problems as well as propose answers to help the debate further develop.

## Introducing the subject-of-a-life criterion

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The concept of subject-of-a-life was introduced by Tom Regan in his book 'The Case for Animal Rights' in 1983. Before articulating his arguments the reader is presented with an image by German painter Stephan Lochner (1400-1451), which Regan uses to introduce his book and the relevance of his position in the animal rights debate. Lochner's illustration features a fourth-century saint who, according to legend, had removed a thorn from the paw of the lion that is also depicted in the illustration. The lion in question doesn't look like an actual lion, resembling a dog in terms of size, with features of other animals that are not part of the lion as we have come to know it. This hints at the fact that Lochner had never seen a lion and made the illustration based on assumptions that he heard but hadn't been able to verify. Regan compares this to the way humans have not been able to understand animal consciousness as well as we may one day succeed to do. Where mankind has tried to discard the many similarities between us and other animals, we have been hesitant to call ourselves 'animals'. On the other hand we deem it common sense to argue that for instance cats enjoy being stroked and dogs can experience hunger (Regan, 1983). The content of animal consciousness carries with it implications regarding other aspects of their mental lives. Regan thus proposes further elaboration of our comprehension of their mental lives to better understand how we can relate to (other) animals.



*Study by Stephan Lochner, 1440, retrieved from <https://www.mutualart.com/Artwork/St--Jerome-in-His-Study/EC075C201CCDDBA>*

The subject-of-a-life criterion 'involves more than merely being alive and more than merely being conscious'. It was an attempt clarify distinctions that are made between humans and animals and to what extent they can be justified. Regan attached certain specific attributes to his conception of subjecthood, being:

They have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with the feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals, a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests. Those who satisfy the subject-of-a-life criterion themselves have a distinctive kind of value- inherent value- and are not to be viewed or treated as mere receptacles' (Regan, 1983: p243).

In other words, their being a subject-of-a-life revolves around the question whether their lives can be better or worse. If this is the case, Regan considers them to be either moral subjects or patients and hence, morally relevant. What this means with respect to the value of a non-human animal life compared to that of a human, is that the criterion makes the case for more species having inherent value. No physical characteristics, nor being part of a category or species of animal can be used to attach less inherent value to life. Regan recognizes that it would be problematic to argue that all life has inherent value and that we owe duties to that life:

Nor is it clear why we have, or how we reasonably could be said to have, direct duties to collections of such individuals- to lawns, potato fields, or cancerous tumors. If, in reply to these difficulties, we are told that we have direct duties only to some, but not to all, living things, and that it is this subclass of living things whose members have inherent value, then not only will we stand in need of a way to distinguish those living things that have this value from those that do not but more importantly for present purposes, the view that being-alive is a sufficient condition of having such value will have to be abandoned. (Regan, 1983: p242-243).

The criterion is therefore a tool that set out to identify the animals that we can consider to have an inherent value that is equal to that of humans. Concluding that they possess this inherent value follows from the summation of attributes that indicate whether the life of an animal can be better or worse for them, as Regan argues is the case for human life.

Beliefs and desires	Pereception, memory and a sense of the future	Emotional life (including pleasure and pain)	Preference and welfare interests	Ability to initiate action	A psychophysical identity over time	Individual welfare

Figure 1: The criterion and its

attributes

The list of attributes that the subject-of-a-life criterion asks, is quite extensive. Since the publication of ‘The Case for Animal Rights’, there have been a number of critiques on these attributes. A situation in which for instance the attribute ‘to initiate action in pursuit of their desires and goals’ could be lacking when a human being suffers from cognitive disability. Many would find it unacceptable to compare the moral status of a disabled human being to that of a non-human animal. But looking at the subject-of-a-life criterion, this comparison is almost unavoidable. Peter Singer touched upon this issue when he argued that if we look at the cognitive disabilities of humans compared to (certain) animals, we find that certain chimpanzees have more cognitive abilities than young children or humans with cognitive disabilities, in which case we can ask ourselves what this means to their respective moral status (Singer, 2009)? Regan includes in his defence of the subject-of-a-life criterion that when a living thing doesn’t meet the requirements, it can be seen as a ‘patient’. These patients can according to Regan be considered to be of inherent value, which means the subject-of-a-life criterion isn’t a necessary condition for a subject to be of inherent value (Regan, 1983). The idea of a moral patient is applied by Regan first and foremost to certain humans, where the most important difference between them and moral subjects is the ability to do right or wrong. Regan argues that there are, like Singer argued, humans who suffer from disabilities or are simply too young to be considered moral agents that can be held accountable for their actions. In his efforts to reconcile endowing these non-moral humans rights without them being able to for instance deliberate and weigh impartial moral principles, Regan formulated the moral patient:

Those who have desires and beliefs, who perceive, remember, and can act intentionally, who have a sense of the future (i.e., are self-aware or self-conscious), who have an emotional life,



who have a psychophysical identity over time, who have a kind of autonomy (namely, preference-autonomy), and who have an experiential welfare of the kind clarified in chapter 3. Some *human* moral patients satisfy these criteria- for example, young children and those humans who, though they suffer from a variety of mental handicaps and thus fail to qualify as moral agents, possess the abilities just enumerated. Where one draws the line between those humans who have these abilities and those who do not is a difficult question certainly, and it may be that no exact line can be drawn (Regan, 1983: p153).

By stating that there are both subjects and patients to be taken into consideration when we speak of inherent value, Regan applies the Kantian injunction whereby he rejects the use of these beings (merely) as mean (Cochrane, 2010).

The notion of inherent value plays a central role in Regan's justification of the subject-of-a-life criterion. When we make distinctions between the inherent value of moral agents, this might lead to a situation in which it is justified for a certain moral agent to use another, based on its 'higher' degree of inherent value. To argue that differentiating inherent value would pose problems for the just treatment of moral agents, implies that there must be some sort of common source that this inherent value is based upon. Regan argues that a possible approach to this problem could be to adopt an Aristotelian view of virtues or excellences that could unite moral agents in their equal inherent value. This wouldn't help us any further, since the virtues and excellences might prove to be an argument to actually justify unequal treatment based on the degree to which individual moral agents possess them. In order to construct a clear notion of subjecthood, it thus seems necessary to construct the argument around specific attributes of beings. The attributes as used by Regan to construct his argument around the subject-of-a-life criterion do however face criticism, since their formulation isn't always clear and their application might be problematic.

# Part 1: The subject-of-a-life criterion

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To make more sense of the ambiguities that surround the subject-of-a-life criterion, this chapter will give an overview of the debates concerning the specific attributes of the criterion. After having discussed what Regan's argument entails and whether Regan's description of the criterion is accepted, criticized or unclear, we can determine to what degree subject-of-a-life provides a sufficiently adequate tool for the debate on animal advocacy.

The seven attributes that make up the subject-of-a-life criterion overlap in many ways, which will be further discussed throughout this thesis. Making sense of the various attributes is made difficult by Regan's explanation of the criterion, since some of the attributes are extensively discussed while others are not addressed to the same extent. Repetitive descriptions are an inescapable consequence of the criterion and how the attributes are connected, but nonetheless valuable if a better comprehension of the criterion and its implications is to be reached.

After having discussed the attributes, the second part of this thesis will attempt to answer questions about the animal ethics debate and what seem to be the underlying assumptions that have to be scrutinized. It will also assess the state of the debate surrounding animal advocacy and whether we can use the arguments that have been made so far, addressing what elements of the discussion need further clarification and in which aspects the debate has evolved over the years.

## Regan and his critics

### Beliefs and desires

In his chapter on animal awareness, Regan discusses the way animals behave and argues that their acting can be explained through beliefs and desires. It is the belief that something will happen or the desire for something to happen that motivates humans to act, but non-human animals as well. Regan anticipates the possible criticism that his position could face. He identifies two possible critiques: one can argue that beliefs and desires are something that's exclusive to humans, or one could argue that animals do in fact have beliefs and desires as well, but we can't understand animals and are therefore unable to properly identify them. The former is an argument made by Frey in 'The Case Against Animals'. Regarding the beliefs and desires of animals, Frey's argument is that in order to have desires, an animal would have to have beliefs. This is contrary to Regan's position which revolves around observed behaviour in animals that indicates that they do in fact have beliefs and therefore desires. Regan's response to Frey's claim is that he falsely argues that animals have 'unconscious desire', which would mean animals have some sort of desires but don't act consciously (Regan, 1982: p278). Accepting Frey's argument that animals have no beliefs or desires, leaves little room for moral relevance. Frey's conception of non-human animal desire would result in not seeing non-human animals as subjects-of-a-life according to Regan's criterion. The opposing view would argue that non-human animals do in fact have beliefs or desires. The question that follows from this position would be: are humans and non-human animals equal or at least comparable in their beliefs and desires?

One way to look at beliefs and desires in different types of animals opposed to those that are held by humans is through 'intentional systems'. This conceptualization which was proposed by Daniel Dennett (1971) offers a way to look at animal behaviour and deduce from it beliefs and desires. In this approach to animal beliefs and desires, they are translated into the degree to which animals possess information (beliefs) and are able to act in line with what would rationally help them achieve their goals (desires). Though there might still be criticism on this translation of information to beliefs, the simplification of beliefs into information holds up in trying to establish whether acts are 'intentional' (p89-90). One of the problems that is not dealt with by introducing these 'intentional systems', is the difficulty that remains prevalent in the animal ethics debate regarding the terms beliefs and desires.

Throughout the literature on animal ethics, many terms are associated with the beliefs and desires that animals have. DeGrazia (1996) concludes that there is not one concept that perfectly captures what we mean when speaking of beliefs and desires. He argues that it can be seen as a tight circle of 'conative concepts', which DeGrazia explains as actions that you can 'go for'. The term conation adds to the concept of desire that there is an affective aspect, you have to care about what you go for. These conative concepts include desires, wants, preferences, caring, concerns, mattering, liking and disliking, and perhaps others. If we were to reject all these concepts as being exclusive to humans, the beliefs and desires aspect of the Regan's subject-of-a-life would make little sense. To argue that these conative concepts are only possessed by humans would according to Searle however seem 'breathtakingly irresponsible'. To him, the argument of intentionality is difficult to use in order to separate humans from other mammals like primates and dogs, given our knowledge about their sensory abilities and the way stimuli are processed by their brains (Searle, 1994). Adding to the critique of distinguishing between animals, Marian Stamp Dawkins argues that consciousness is overstated as being relevant to the experience of for instance pain. She illustrates that human experience often comes from responses that can hardly be argued to be conscious, like blinking the eyes when an object comes close, or having an immediate reaction to touching a hot stove. As part of the endeavour to find out more about consciousness in other animals, experiments have led to conclusions that argue in favour of complexity in animals that indicates at least some consciousness. An example of this complexity is an experiment on the behaviour of sparrows. This experiment indicated that they not only make different choices in similar situations, but seem to weigh their choices based on beliefs and desires (Dawkins, 2003).

A recurring problem in the debate is this question whether the acts of animals can be seen as the product of beliefs and desires or not. Some argue that they do have concepts very much like beliefs and desires, but the content of these concepts is likely to be nothing like those of humans. Others argue that these concepts can in fact be similar to those of humans, a view which Regan admits is rather unlikely (Regan, 1983). What follows from this assessment is not a rejection of the presence of beliefs and desires in animals. To Regan it doesn't matter that we can't be sure of the content of animal beliefs and desires, but rather that they have some sort of beliefs and desires to begin with. This would already be enough to argue in favour of this attribute of the subject-of-a-life criterion. The evidence of this assumption would be mostly intuitive. We see non-human animal behaviour and since it resembles our own responses, we attribute beliefs and desires to those animals. Even though this is merely intuitive evidence, it provides enough reason to include those animals in the moral arena, since we judge human beliefs and desires by the very same standards (Stich, 1979). Until we find a way to know for sure what beliefs and desires are actually held by animals, if at all, we are bound to this intuitive approach of the matter. For some, this is not sufficient evidence to conclude that animals do have beliefs and desires.

To others, the very lack of language is sufficient to argue that an animal does not have the ability to think, let alone have beliefs and desires. Davidson (1982) argues that it's reasonable to make assumptions about the ability to use language by animals through observation. Even though we might not understand outings of language that are used by animals, we simply have no other method available, which justifies using it. The lack of a different method than observing animals and concluding that they do, don't, or to some degree have beliefs and desires makes that a consensus hasn't been reached yet. Others, like Narveson, argue that language is what constitutes a mental life. He isn't convinced by the attributes that Regan discusses as part of the subject-of-a-life criterion since all those combined without language still make for a very 'thin' mental life (Narveson, 1986). Beliefs and desires, if present in animals as well as in humans, would hardly be communicated by the animals due to their lack of language.

What remains of the problem regarding our understanding of animal beliefs and desires, is the question whether experiences have an objective character (Nagel, 1974). Humans experience the world in a way that is comparable to a number of animals, which we use to formulate certain beliefs and desires those animals may have. This process relies heavily on our ability to imagine what it would be like to be one of those animals. To get an idea of the point of view of one of these animals is problematic because we quickly run into problems of understanding what their experiences could be like. A point of view is unique to one individual, when we want to take on another human's point of view this poses little problems since our points of reference are to some extent similar. Moving to other animals we encounter problems, for instance when attempting to imagine what a bat's life would be like. A bat uses echolocation to make sense of its surroundings. Can we humans truly claim to understand what its experiences are and what beliefs and desires it deduces from them? It seems that this problem as stated by Nagel in 1974, still restricts our assessment of animal beliefs and desires. If we establish animals to have beliefs and desires, we still have little information to build on when we attempt to make a case for specific rights that should be endowed.

There appears to be some consensus about animals being capable of having beliefs and desires, though the content of them is disputed. Where some speak of 'intentional systems', others argue that animals possess conative concepts, but a general consensus of what these beliefs and desires constitute and which animals can and which can't be argued to possess them hasn't been reached. It may be restricted by our knowledge of the animals and whether behaviour can be explained as acting in line with one's beliefs and desires or merely as a reaction to impulses. This poses a problem when we attempt to formulate animal beliefs and desires as part of our treatment of them. Regardless, for the discussion of the criterion, the relevant question is only whether animals have beliefs and desires to begin with. According to Regan having beliefs and desires is a *necessary condition* to be a subject-of-a-life. Though he isn't explicit about this, he might even support the idea that it's sufficient, but the interests that follow from desires would have to be present as well. The necessity of beliefs and desires is generally agreed upon throughout the debate, but there is plenty of doubt about the sufficiency of beliefs and desires. The content of beliefs and desires and our not being able to fully understand them makes it difficult to argue that it would be enough to constitute a subject-of-a-life. In conclusion, the debate seems to fall short in coming up with answers regarding the beliefs and desires of animals and what this means to their moral status.

## Emotional life

The second attribute that Regan lists as part of the subject-of-a-life is one's capacity to live an emotional life. If we want to understand what it takes to lead an emotional life, Regan points at the ability to experience pleasure and pain. He describes the harms that can befall animals as either inflictions or deprivations. He draws upon arguments first laid out by Jeremy Bentham, who argued that one day we might live in a society where the rights of a being are not decided based upon their ability to reason or talk, but whether they can suffer (Regan, 1983). This distinction is prominently used by critics of speciesist treatment of animals. Richard Ryder was the first to put a name on the phenomenon of speciesism, he argued in his leaflet that 'quite apart from the right to live, one clear moral criterion is suffering, the suffering of imprisonment, fear and boredom as well as physical pain' (Ryder, 2010). Singer agreed with Ryder, stating in his book 'Animal Liberation' that 'all the arguments to prove man's superiority cannot shatter this hard fact: in suffering the animals are our equals' (Singer, 1975). In the animal rights debate, the lack of acknowledgement for animal suffering is at the base of arguments that propose a move towards more rights for animals.

Regan (1980) illustrates the apparent ease with which humanity inflicts harm on non-human animals in his paper 'animal rights, human wrongs'. His examples include that of the whale-hunt, where a creature is being killed for the purpose of producing soap, candles or fertilizer. Regan continues by naming a number of non-human animals that are close to extinction or have already been extinct at the hands of humans. He adds to this that humans have no problem inflicting harm on a great number of non-human animals, but towards pets we seem to apply entirely different standards: 'Aside from economic considerations, and excluding the privileged status which pet animals may have as honorary members of the family, few things are regarded as cheaply as an animal's life' (Regan, 1980: p103). Regan argues that there are clear conditions that count for both humans and animals as being constitutive of pleasant life: 'adequate nourishment, shelter, water and rest, for example, are such conditions' (Regan, 1984: p88). Their emotional capacities include feeling pleasure or pain, which are probably the most recognizable emotions for humans to detect.

The maltreatment of animals and their apparent sentience is something we humans can intuitively judge to be wrong. If harm is about to be inflicted on an animal, for instance a rabbit about to be blowtorched, we tend to take action to stop this from happening. It is not because it hurts other humans, or because the animal belongs to some other human. If no other human is harmed by it and it is a stray animal, we will still have our intuitive discomfort with an animal being harmed this way (Garner, 2005). We are still left with the problem of looking at animals from our perspective. How can we know what kind of emotions animals feel? It seems that we must clarify this before we can speak of the relevance of their emotional life to moral discussions on rights.

Consciousness is often seen as an important indicator of an animal being able to lead an emotional life. Where there seems to be no strict criteria of what it takes to be conscious, we can turn to Nagel for a conceptualization of consciousness that will be used from here on in this thesis:

The fact that an organism has conscious experience *at all* means, basically, that there is something it is like to *be* that organism (Nagel, 1974: p436).

An animal being conscious hence means that it can have certain experiences, regardless of their content. Regan himself derives his ideas on consciousness from evolutionary theory. In doing so he assumes consciousness in humans to be a given, and to be crucial to our survival:

If consciousness had no survival value- if, in other words, it was of no or little assistance in the struggle of species to adapt to and survive in an ever changing environment- then conscious beings would not have evolved and survived in the first place (Regan, 1983: p19).

In addition to this, he argues that humans can and have to be assumed to have a mental life. If we had no mental life, there would be no possibility of ethical theory to be relevant. The evolutionary argument which Regan uses allows him to distance himself from Cartesian thought and reject the dualism as argued by Descartes based on the inconsistencies of physical (material) experiences leading to immaterial sensations. Concluding from this he states that the mental life that animals may have entails that they could have 'animal minds', but not 'immortal, material souls'. The attribute 'emotional life' seems to be based upon Regan's concept of this mental life that humans and some animals possess.

The contents of a mental life and how this differs between humans and other animals makes it difficult to assess them in the same way. If a human brain is considered to have a mental life, how can we decide which animals have similar levels of mentation? Where humans and other vertebrates have a spinal cord and brain, cephalopods (like octopi, squid and cuttlefish) lack a spinal cord but do have a nerve system throughout their body with a higher density of nerve cells than vertebrates (DeGrazia, 1996). The mental life and to what degree animals other than human are capable of feeling is subject to their respective physiological constitution. Regan's conception of an emotional life follows from Darwin's argument that in order to experience for instance fear, the animal has to be afraid *that something in particular will occur*, to feel anger means it has to feel anger *toward someone or something* (Regan, 1983). The ability to feel fear, pain or other emotions according to Regan is certainly present in mammalian animals. To ascribe similar abilities to other animals is still too controversial to him. There might be evidence of animals that are able to feel some of these sensations without simultaneously possessing some of the other attributes discussed as part of the subject-of-a-life criterion, which would make it difficult for Regan to include them. He doesn't dive deep into the content of emotions, but argues that they might be present in more than just mammalian animals.

What could be argued to separate the mammalian animals from those who do not possess other aspects of the subject-of-a-life, is the *affective* aspect of sensations. The degree to which it is desirable to for instance avoid suffering, seems heavily linked to how much we mind it. There can still be debate about the nature of pain, but the assumption can be made that it becomes relevant as soon as it is considered unpleasant (DeGrazia, 1996: p106). If we establish that a certain animal can in fact experience unpleasant sensations and can also be considered a subject-of-a-life, the harm principle applies to it, meaning we should always attempt to avoid it being harmed (Regan, 1983). For animals to have an emotional life, consisting of sensations either pleasant or unpleasant like pleasure, pain, frustration and satisfaction, they must be conscious and sentient (Donaldson & Kymlicka, 2011). The attribute that Regan describes as 'emotional life' might be best described as such: conscious and sentient. This comes back to the beforementioned 'affective' aspect of sensations which DeGrazia argued to be a necessary condition for our assessing them as important.

Having concluded that Regan's inclusion of 'emotional life' in the subject-of-a-life criterion seems to rest on consciousness and sentience, we can further our assessment of how this attribute relates to the others. In order for animals to have beliefs or desires, the ability to lead an emotional life and experiencing a range of these emotions is *necessary* (Regan, 1983). This does not mean that Regan would argue that having an emotional life is sufficient for an animal to be included in the subject-of-a-life, as other attributes need to be present as well. Whether animals can be considered conscious and sentient is not always certain, but if we come to the conclusion that a certain animal does in fact have



sentient consciousness, it's reasonable to accept that this is accompanied by many of the other attributes like beliefs and desires, memory and a sense of the future. From the attribute of emotional life it can at least be concluded that to some extent there is academic consensus about what it entails, but it depends largely on knowledge of animals' mental capacities. This results in a debate that may be largely constructed around assumptions, which may be overly skeptic in some cases and a product of wishful thinking in others.

## Perception, memory and sense of the future

The contents of an animal's perception compared to those of humans is another attribute that Regan argues to be relevant to his subject-of-a-life. Its relevance to the discussion is made difficult by our lack of understanding about the actual experiences of life-forms that differ from us. The difficulties surrounding animals' memory and sense of the future are slightly different, but they are connected to such a degree that they will be discussed in one chapter, rather than separately.

Many of the attributes discussed in this thesis are influenced by the discussion on perception. Whether animals perceive pain or pleasure can be used to argue either in favour or against it. The same goes for the attribute of an emotional life, its relevance is connected to the degree of consciousness of the animals. If we were to reason from the theory of evolution, there is no reason to assume that humans are the only animals that perceive the world consciously (Regan, 1983). The argument Regan makes in the Case for Animal Rights seems to revolve mainly around this question of 'conscious' perception.

The content of animal perception as opposed to human perception was already discussed by Aristotle, who came to the conclusion that consciousness entails more than just perception. According to him, humans are conscious instead of merely perceiving their surroundings because humans combine this perception with 'intellect' (Rabinoff, 2015). The real-life manifestations of this intellect can for instance be the attribution of identity to subjects or the use of language, but for Regan this isn't necessary for his concept of perception and its relevance to the position of animals. He argues that the possibility of non-human animal consciousness is enough to argue that they possess value:

What attributing conscious awareness does, is provide us with a theoretical basis for making this attribution to animals *independently of their ability to use a language* (Regan, 1983: p19).

This means that the subject-of-a-life criterion encompasses more than Descartes' 'I think therefore I am', even though it remains difficult to decide which animals are and which aren't conscious. Regan does assume that on the basis of perception there would be animals that are not human who can be considered conscious. His objection to the dualist distinction that Descartes makes between the body and the mind concerns the lack of explanatory power it can produce. If the dualist proposition is accepted, we still don't know how a 'mental event', being something that occurs in the mind, leads to a physical act. The answer to this problem from a dualist perspective is God, who could bridge the gap between the body and the mind. Regan argues that the existence of this third component of consciousness is a big assumption, which adds very little to explaining why body and mind would be separate (Regan, 1983).

Throughout history, a number of notable philosophers have held a position that is similar to Regan's, arguing that it is very likely if not certain that animals have 'conscious' minds. John Locke called this 'animal mentation', David Hume 'animal reason' while John Stuart Mill and Bentham argued that animals would at least be able to feel pain, indicating a certain degree of consciousness (Rollin, 2007). Regan assumes this to be true and hence argues that animal perception can be conscious.

Instead of arguing that non-human animals are conscious, Marian Dawkins provides evidence that non-human animals are capable having subjective experiences of for instance pain. Combined with the growing public interest in caring for these possibly negative subjective experiences of non-human animals, she therefore suggests that we reconsider our attitudes towards them (M. Dawkins, 2008). She adds to this argument that whether or not non-human animals are conscious in the same way we human beings are, they have intrinsic value and treating them well would not only have positive consequences for the non-human animals, but would also improve the quality of the food and well-being of human animals. This would support Regan's argument that the conscious perception of animals adds to making it reasonable to assume that animals have a mental life (Regan, 1983). What Regan does acknowledge, is the difficulty we will inevitably encounter when we talk about animal perception. We can't claim to know what the animal's perspective is like, which makes it difficult to attribute preference-belief to for instance a dog. The argument used to support this view, is the language-argument. This would however lead to absurdity, since any being that doesn't use language would no longer be subject to any relevant consideration by humans.

The argument of imagination often leads to the conclusion that we simply can't imagine what it would be like to experience food like a dog, where we could for instance imagine what Fidel Castro's desire to have a cigar would be like. However, we do accept that for instance canine and feline sexual desires and experiences of pain are similar to ours, though their mental states might be completely different. Regan therefore suggests that we assume that dogs and cats do in fact experience these sensations like we do. We are limited in our understanding of them by our own imagination, but if we were to imagine what it would be like to taste one of Fidel Castro's cigars, we would run into the same problem as in the case of imagining what it is like to be a dog. We simply can't. One could argue that experiments could be devised that bring us close to the actual content of animal perception. Referring to Nagel's 'What's it Like to Be a Bat?', Dennett argues that we know that a bat has echolocation that works up until a few metres. This means that we could at least say with reasonable certainty that it could identify for instance prey when they are within that distance, if they are further away a bat's perception doesn't allow their detection (Dennet, 1991). Nagel argues that this might be possible, but that we can still say very little about the way animals experience their perceptive abilities that we discover through observation (Nagel, 1974). Through the studying of animal behaviour we might not be able to fully imagine what it would be like to be that animal, but we can collect evidence about the likeliness of memory and a sense of the future being present.

Experiments that have been conducted with chimpanzees, rats and pigeons, have led to conclusions that inferred memory and 'thinking' is present in those animals (Dawkins, 2008). For the analysis made in this thesis, what matters is that the research that is being conducted on the ability of particular animals to memorize and have a sense of the future is still very much ongoing. Where Regan considers having a sense of the future as a contributing factor to that animal being a subject-of-a-life, Rollin argues that the very absence of a sense of the future is morally relevant as well, if not more. If animals do not possess this sense of the future that humans are considered to have, their discomfort or pain could be considered worse. Where humans would in this case have the prospect of relief their pain being relieved, the lack of a sense of the future would mean that the animal experience the pain without any comfort about their future state (Rollin, 2011).

Regan himself is not particularly elaborate in his description of memory and sense of the future, briefly touching upon it when discussing animal awareness. He argues that even though we can observe animals like dogs that show excitement upon the arrival of its master, this may prove memory rather than consciousness (Regan, 1983). It seems that memory and a sense of the future can be seen as part of perception, which may or may not be conscious. From Regan's 'The Case for Animal



Rights' however, it can hardly be seen as a sufficient attribute, for its relevance to the subject-of-a-life remains remarkably left out of the discussion. It might be best placed alongside having a sense of the future under the umbrella of perception, making it more likely for an animal to have conscious perception if present. Perhaps crucial to the understanding of perception in the context of animal ethics, is Nagel's contribution on perception by bats. Regan found support in his conception of conscious perception, as perception alone isn't sufficient attribute to the subject-of-a-life criterion. The consensus is that there has to be a subjective element to this perception, which would make conscious perception a *necessary condition*. There is however still a lot left to discuss, since the definition of what constitutes consciousness isn't agreed upon.

## Interests

The mental capacities discussed in the previous chapter on perception, memory and sense of the future are essential to Regan and the way he uses interests as part of the subject-of-a-life. For an animal to have interests, it needs not only a physical identity over time, but a mental life as well (Regan, 1983). This adds to Singer's argument that before there can be any talk of interests, a being has to be able to feel enjoyment or suffering. He refers to Bentham by arguing that a lack of being able to feel pleasure or pain would mean that there is no discussion on interests to be held. A stone is an inanimate object that is not better or worse off if it's kicked around or not (Singer, 1990). The definition of interests that Regan applies is one that is a slightly altered version of Ralph Barton Perry's:

A certain class of acts or states which have the common characteristic of being for or against (Perry, 1954: p7)

To Regan, this definition isn't sufficiently clear, since it could cause confusion regarding the type of interest concerned:

What he evidently has in mind is what we might term *episodic interests*- such as, my *presently* being in a mental state which, if asked to describe it, I might characterize as wanting a banana. However, individuals might have a preference-interest in something without it being true that they *now* are in a mental state of being for or against it and without it being true that they *now* are performing a comparable mental act (Regan, 1983: p87)

As an addition to Perry's characterization, Regan argues that these preference interests can have a dispositional character. If someone doesn't currently take an interest in something, it might still be something that this person can generally be regarded to take an interest in. For more animals to be considered autonomous, we should therefore consider Regan's preference autonomy. This entails that animals can initiate action based on their desires and goals, without having to be able to think impartially or weigh the merits of alternative courses of action.

Regan adds that a being can only have interests if we can conclude that it has the ability to act autonomously. To use autonomy in the Kantian sense would be too strict according to Regan. It is very doubtful that there are animals other than humans that have the ability to 'think through and reflectively evaluate the merits of acting one way or another' (Regan, 1983: p84). This concept of autonomy is used by Regan to formulate his attribute on interests.

Specifying the contents of interests, a distinction can be made which is based on the aforementioned Kantian autonomy and the preference based autonomy. Simply put, a being A can have an interest in X, simply because it desires X, which Regan would call preference-interests. On the other hand, A can have an interest in X because it would make a contribution to A's well-being which would be based on

welfare-interests. Regan argues that both these types of interest are applicable to animals besides humans, after having concluded that it is reasonable to assume that there are a number of animals that have beliefs and desires, as well as the possibility to live a life that is better or worse.

The use of interests as part of the criterion must always be seen in the context of benefits and harm, since these decide whether A's interests are either met or not. When we speak of animals' interests, the question to be asked in the first place is whether an animal has an experiential life, which can either be better or worse for them. If we conclude that an animal has such an experiential life, Regan would argue that it has interests and should therefore be considered morally significant (Rowlands, 2009). He is supported in his views by Donaldson and Kymlicka, who in their book 'Zoopolis: A Political Theory of Animal Rights' argue that before there can be any talk of interests, there has to be 'someone home'. What they believe to be relevant to decide which animals can have interests, is selfhood. This implies not the most sophisticated cognitive abilities that might be associated with Regan's 'experiential life', though they do require an animal to have subjective experiences (Donaldson & Kymlicka, 2011). Their slightly more lenient requirements regarding the ability to have interests imply that more animals can be seen as having interests, regardless of what those might be.

An experiment that could at least conclude that Regan's concept of preference-interest is present in animals was conducted with rats and humans. Both humans and rats were given sugary drinks and both groups drank them in different situations. The idea was that before or after a meal the attitude towards drinking the sugary beverage would differ. The humans had to indicate on a score sheet to what extent they enjoyed the drink, while the rats' appetite was judged by measuring the amount they drank. The results were nearly identical, indicating that humans and rats have similar conscious experiences in this case (Dawkins, 1993). From this experiment it can also be taken that animals and humans have similar interests in comparable situations, which in turn is a justification for accepting that these animals have morally significant interests. To conclude that particular interests of animals are morally relevant doesn't necessarily mean that they are subjects-of-a-life. To Regan, it would however mean that it is more likely that they are subjects-of-a-life or at least possess inherent value.

Accepting the moral significance of those animal interests is used to render many ways in which we currently treat animals illegitimate (Garner, 2005). This 'equal consideration of interests' means species are not used to decide what degree of moral significance an animal has, but rather the individual capacity to have interests.

To speak of equal consideration of interests doesn't imply a complete equality of interests, or that we ought to endow animals with rights that are equal to humans. Not even all humans are given equal rights based upon equal interests, an adult can refuse medical care where a child can't (DeGrazia, 1996). What can be taken from DeGrazia's position, is that the equal consideration of interests implies that there may still be morally relevant differences between humans and different kinds of animals, but it doesn't entail a moral requirement to treat humans and animals equally. There are relevant differences between the interest of humans and animals that support this. If we were to consider the interest of for instance children in America we would work towards giving them a proper education, whilst the interests of pigs would require us to do no more than give them food and proper living space among other pigs (Singer, 1975). Even if we accept that human and animal interests are both morally relevant but not equal, we have the problem of deciding what the respective interests are of humans and animals. If an animal is perceptually aware, she has an interest in staying alive according to Francione. Sentience, which lays the basis for this perceptual awareness is an instrument in service of continued existence, which means we can conclude that a sentient animal has at least an interest in staying alive (Francione, 2010). There may however be reason to assume that there are more interests that are relevant not only to humans but to other animals as well.

We can argue that certain beliefs and desires of humans can be agreed upon since we are able to communicate these beliefs and desires to one another through language, but to what degree can we articulate animal interests? Singer would argue that even though both humans and animals have an interest in not suffering, humans might have a bigger interest in being alive and have a bigger scope of ways in which they can suffer. This could lead to a situation in which animals are being used to relieve some of this human suffering because it would result in less overall suffering (Garner, 2005). To approach the question like such would be a utilitarian line of reasoning, but deontological arguments would still have to deal with the problem of what constitutes interests for both humans and animals. As previously discussed in the chapter on perception, memory and sense of the future, we encounter problems in our being able to imagine what it is like to be a different animal. Nagel would hence ask of us whether it is possible to agree upon the content of animal interests at all? The interests of non-human animals is also argued to be heavily influenced by human domination. This is where the notion of power enters the discussion on interests. If there is a certain dominant group in society, they have the power to dominate others by limiting their capabilities. The capabilities that are accepted as being relevant to certain beings are used to determine whether that being is 'the best it could be' (Lukes, 2005). Where this argument was initially used by Lukes to illustrate the dimension of power which shapes other people's interests, it can also be applied to dominion of humans over non-human animals. Their lack of being able to communicate to us what their interests are, leaves room for us to create our own ideas of what those might be.

Our understanding of animal interests, be it human or non-human, is therefore complicated by what it essentially is: *our* understanding of interests. If we look at the way we treat pets compared to animals kept as cattle, we can hardly argue that their interests differ. Our attitude towards killing cows, pigs and chickens for consumption as opposed to our objection to the maltreatment of pet animals seems to rest solely on humans giving pet animals character traits of a person. We talk to our pets as if they are persons and treat them differently than farm animals, while arguments concerning the ability to feel pleasure or pain, beliefs and desires are left out of our judgement (Diamond, 1978). The term 'speciesism', as discussed earlier in this thesis comes to mind when arguments like that of Diamond are made. This is the very problem that the subject-of-a-life criterion could potentially address, since Regan's attributes could shed light on the similarities between animals and their ability to feel pain, experience pleasure, have interests, and so on. A problem that remains is that the reason why we treat pets and farm animals differently is not based on empirical observations. It is the product of our contemplating who we are and what pets mean to us, giving them a name and treating them differently. Finding out what the mental capacities of dolphins are through experiments may not end the contradictory behaviour of humans towards animals. This may be the strongest objection to Regan's criterion, since it relies heavily on us being able to distinguish a set of attributes and drawing conclusions upon them regarding our behaviour. If the nature of our attitude towards animals isn't founded in a set of attributes but rather in a contemplative construct that has little to do with the ability for animals to feel pleasure or pain, the criterion would be rather weak in its application.

Where other attributes have been assessed as being either sufficient or necessary, interests seems be a consequence of having some of the other attributes. If there is an emotional life present, or when an animal has beliefs and desires, there can be talk of interests. This attribute is therefore *neither necessary nor sufficient*.

### Ability to actively pursue their desires and goals

In order to understand many of the previously discussed attributes, the ability that animals have to actively pursue their desires and goals can offer answers. If we conclude that for instance dogs have a sense of the future, beliefs and desires, memory and a sense of the future, these attributes would contribute to the dogs' ability to act accordingly. The other way around, the ability to actively pursue desires and goals is based on prerequisites like having beliefs and goals in the first place. According to Regan, the conclusion that animals have the ability to actively pursue desires and goals would result in us understanding them as conscious agents (Regan, 1983). This attribute is therefore an important indicator to establish whether animals are conscious and thus relevant to moral discussion. An example that Regan gives which illustrates that dogs have this ability, is that of Fido. When Fido the dog is given the choice between staying inside and eating or going outside, he chooses to stay inside based on his preference to not be hungry. Regan admits that most animals probably don't have a level of autonomy that is found in humans, but from their preference-autonomy we can still deduce desires, goals, and so on. The choices that can be deduced from animal behaviour have led to the same conclusion in other cases as well.

In an experiment conducted with rats and hamsters, it was attempted to study the reaction of these animals to being exposed to tobacco. Put in a glass container, the animals were exposed to tobacco smoke which was simultaneously their air supply. The rats and hamsters soon started to clog the supply tube with their faeces. Some animals actually asphyxiated themselves in the process of doing so, since they managed to completely shut off the air supply. Conclusions drawn from this experiment included that these animals apparently went to great length to avoid inhaling the tobacco smoke, with the risk of killing themselves in the process (Dawkins, 1993). If this is to be seen as convincing proof of animals being able to actively pursue their desires and goals, we are to ascribe quite complicated desires and goals to the rodents in this experiment. It is one way to reason that they apparently had the desire not to inhale tobacco smoke and managed to initiate action to prevent this from happening. Another line of argumentation would be that the animals had the desire to commit suicide.

For now, a satisfying answer to the question of what the contents of animal beliefs and desires truly are remains to be given. The attribute of their ability to actively pursue their desires and goals is very much a product of the way we conclude that animals may have beliefs and desires in the first place. It is from animal behaviour that we deduce preferences and motivations for taking action, the question whether they have the ability to pursue beliefs and desires is hence no more than reasoning the other way around. Stephen P. Stich adjourns the problem that underlies this discussion, which applies to the beliefs and desires attribute just as much: because we have no way of knowing what animal minds are like, 'we cannot attribute content to their beliefs' (Stich, 1979: p25). Regarding Regan's position it's important to understand that he defends the belief-desire theory as an explanation for animal behaviour, which includes humans. He acknowledges that it is possible to argue from a stimulus-response theory, but that the burden of proof lies with those who attempt to disregard the belief-desire theory (Regan: 1983). This attribute and its ambiguities hence revolve around the question: how do we explain behaviour? The choice that Regan makes in his assessment of non-human animal behaviour is to compare them to human behaviour. In part 2 of this thesis the consequences of doing so will be discussed in further detail. For now, the verdict on the ability to actively pursue desires and goals is that it is *sufficient* to be considered a subject-of-a-life. It can be considered necessary as well, but to Regan this isn't relevant, since subjects with desires and goals (and possibly all other attributes) would still be of inherent value.

## Psychophysical identity over time

As discussed in the introduction of the subject-of-a-life criterion, its aim is to illustrate that animals' lives can be better or worse. If this is the case, we can speak of them having a degree of welfare. Since the criterion talks about subjects, welfare concerns the individual rather than a group of animals. The content of the individual welfare of animals will be discussed in the next chapter 'individual welfare', but questions about their identity that underlie this discussion on welfare deserve some clarification. Regan conceptualizes this identity as being psychophysically present over time. What this means is that not only the physical presence of an animal can be considered present over time (if we give a dog a treat today as well as tomorrow, it is the same dog). In addition to that, the dog has the same psychological identity. This argument is accepted in all moral theories concerning humans and to include animals would be no more than to accept Darwin's argument that animal's mental lives differ from that of humans in degree and not in kind (Regan, 1983). To Regan, the question whether there might be animals other than humans that possess this identity over time can hence be answered with a simple 'yes'.

To have a psychophysical identity over time does not mean we can't recognize the differences between the animal and the human mind. As mentioned in the discussion of other attributes of the subject-of-a-life-criterion, the psychological element that matters is whether these animals are aware of the world around them and that it matters what happens to them (Regan, 2005). After having read the previous chapters on Regan's attributes of the subject-of-a-life and the contributions by other authors, it becomes clear that the psychophysical identity of a subject can't be seen as a separate condition. One way to look at the identity of subjects is to equate it with concepts like personhood and selfhood. Regan's conceptualization of identity doesn't require an extensive set of beliefs, desires, interests, and so on. He would rather agree with Donaldson and Kymlicka in claiming that when there is 'someone home' we can speak of a self with an identity, regardless of the contents of its mental life (Donaldson & Kymlicka, 2011; Regan, 1983). Given the broad definition Regan uses of a psychophysical identity over time, it is hard to find academical criticism regarding this aspect of the subject-of-a-life. The broadness of the definition simultaneously renders this attribute rather weak in explaining why an animal is a subject-of-a-life. The arguments made by Regan are based on our treatment of animals, we assume a dog to retain its psychophysical identity over time, but he provides little more than this assumption to prove the existence of this identity. The lack of elaborate argumentation on Regan's side might be due to its classification as a separate attribute. The presence of a psychophysical identity over time is best seen as a prerequisite for having an emotional life which Regan did discuss to a larger extent.

This brief discussion of the attribute on identity concludes that even though it is a *necessary condition*, it is part of the attribute 'emotional life' and requires no more than the limited explanation by Regan to make more sense of the subject-of-a-life criterion. Whether the attribute is sufficient to regard an animal as a subject-of-a-life isn't explicitly mentioned by Regan and will not be assumed to be the case in this thesis. It will however be connected to the concept of welfare in the next chapter on the attribute of individual welfare.



## Individual welfare

To assess the welfare of an individual animal, Regan proposes that we take a look at its interests, benefits and harms. He adds to this that the ability to act autonomously is part of the degree to which we can speak of the individual experiencing welfare. His biggest concern regarding this individual welfare of animals, is the utilitarian approach that causes individual welfare to be disregarded for the sake of others (Regan, 2003). The alternative rights view that Regan proposes does however run into problems when choices are to be made concerning the harm that will befall either one individual or the other. According to Regan we ought to draw conclusions from two principles if we are to find ourselves in this situation. First, the miniride principle states that when we are to override the rights of either a few individuals or a larger group, we ought to override the rights of the smaller group. This would, according to Regan, be the only possible choice if we assume all individuals concerned to be morally relevant and thus ought not to be harmed (Jamieson, 1990). This principle alone would not satisfy Regan's objective to protect the basic rights of moral individuals, since those can still be violated on the basis of utilitarian calculations.

Where the subject-of-a-life criterion is a tool to argue in favour of more animals being included into the moral arena, Regan proposes a second principle alongside the miniride principle. The worse-off principle as used by the rights view distinguishes itself from the miniride principle in allowing harms that are incomparable to be taken into consideration. This would allow for a different assessment of harm, where it is not the number of individuals that matters, but the degree of harm being done (Regan, 1983). The worse-off principle and what it adds to the miniride principle passes some resemblance to John Stuart Mill's reformulation of Bentham's utilitarian calculus, as previously discussed in this thesis' historical background of animal ethics. Critics of Regan point out that his use of the worse-off principle implies that even though he argues in favour of regarding more non-human animal as subjects-of-a-life, they still hold an inferior position to humans regarding the value of their lives (Varner, 1994). If benefits and harms are the measure for an individual's welfare, Regan's application of the worse-off principle does less than he aims to do regarding the defence of animal rights. This is a consequence of his conception of harm and which harms are worse than others. Even though he grants both humans and non-human animals the basic right not to be harmed, he argues that harms do differ in severity, which can be articulated in terms of deprivation and infliction.

Debilitating suffering is the paradigm of a harm that is an infliction; harms that are deprivations include limitations on one's autonomy (Regan, 1983: p303).

What follows the above, is that Regan argues that the death of a woman in the prime of her life is worse than the death of her senile mother. This touches upon an important aspect of individual welfare and how cases can be assessed, being the question of what has value. Even though Regan gave no explicit description of a value theory he supports, his arguments suggest that life has value, which depends on the degree of autonomy and the potential duration of it (DeGrazia, 1996). The example of the woman in the prime of her life and her senile mother could be turned around, which would probably prove to be a difficult case for Regan. What if the young woman was senile and her mother still had a considerable time of autonomous living ahead of her? Regardless of what his answer would have been to this question, his ascription of value to life translates to difficulties in his defence of animal rights. When four humans and a dog are in a lifeboat and one has to leave the boat to sustain the others, the dog is first to go, since application of the worse-off principle would force us to conclude that a human's death would be the bigger harm (Varner, 1994).

Speaking of the attribute individual welfare in terms of sufficiency or necessity makes little sense, since Regan uses it as an indicator of the degree to which harms can befall an individual. What does follow from his arguments on individual welfare, is that it poses problems to his defence of the basic rights that animals possess when human and nonhuman animal lives are at stake.

## Part 2: Where to go next?

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Following the discussion on the subject-of-a-life and the current state of the debate on animal rights, the remainder of this thesis will attempt to illustrate where further elaboration of the arguments made so far is necessary. This second part will discuss the underlying assumptions of the subject-of-a-life criterion and whether they can be upheld. Regan argues in favour of the application of Occam's Razor, or making as little assumptions as possible. His arguments, as well as those of other contributors, are still subject to a number of assumptions whose vivisection can help clarify the stalemate of the animal rights debate.

To shed more light on the different aspects of the subject-of-a-life criterion, this chapter will also assess the attributes in terms of them being necessary and/or sufficient for an animal to be included. Lastly, suggestions will be made as to the current state of the debate and what the focus should be put on if the debate on animal advocacy is to provide society with a useful application of the subject-of-a-life criterion in the future.

### Regan's assumptions & crucial issues

#### Assumption 1: Humans are conscious

To better understand the subject-of-a-life criterion and what Regan's attributes of this criterion are based on, it helps to discuss the assumptions he makes about not only animal but also human life. A first and very important assumption Regan makes, is that regardless of what we conclude to be the content of animal minds, humans are conscious. He acknowledges that there have been scholars like La Mettrie who argued that where Descartes sees animals as mere 'machines', we might consider that humans work in a similar way without consciousness (Regan, 1983). He refuses to accept the case made by La Mettrie:

Though a theoretical possibility that warrants extended examination in some contexts, the present work is not one of them. Any recognizable moral theory assumes that human beings have a mental life (for example, that we have desires or goals, are satisfied or feel frustrated, feel emotions, and experience pleasure and pain). Without this assumption, there is nothing for a moral theory to be a theory of, so that to make this assumption here, without addressing skeptical challenges others might raise, is not peculiar to a work that aspires to make the case for animal rights (Regan, 1983: p32).

It is not controversial to make the assumption that *humans are conscious*, but we can ask whether it is truly necessary for it to be made if we want to have a discussion on animal rights. If we were to find out that La Mettrie was right about humans and animals being 'machines', there would no doubt be far-reaching consequences in any debate on morality and its relevance. Nevertheless, the application of Regan's subject-of-a-life in some cases doesn't seem to require consciousness.

#### The crucial issue

##### *Consciousness*



It's easy to get lost in the many different terms that are being used throughout the debate to define or make sense of consciousness: mentation, subjective experience, animal reason, animal awareness, and so on. For Regan the most important argument seems to be that however we specify consciousness, there is no reason to assume that there are no other animals besides humans who possess it. Assuming we wouldn't dismiss human rights if we were to discover that humans and animals do in fact lack consciousness, the discussion on animal rights and arguing in favour of extending a number of human rights to animals as well is not ruled out. This in turn means that *consciousness can't be seen as a necessary condition* for animals to be considered morally relevant, but it does provide a sufficient condition for them to be considered subjects-of-a-life.

Even though it could be interpreted as a sufficient condition, consciousness proves to be a difficult attribute to use. A consequence of the lack of understanding we currently have on consciousness is that Regan might run into the trap of speciesism himself. According to Regan, some animals behave without any awareness of it. He bases this on the physiological similarity between them and animals of which we already 'know' that they are conscious or aware. These 'conscious' animals are 'normal, developed human beings' (Regan, 1983: p76). This illustrates that Regan is himself unable to accept the reality of our not being able to understand animals that are physiologically too different from humans. Not knowing the contents of a certain animal's mentation is thus used to justify the denial of its existence. This limits the amount of animals that can be considered conscious considerably, including more animals as subjects might still happen if we find out through the ongoing scientific discoveries on nervous systems that they do have (some sort of) consciousness.

The central problem to any argument on consciousness is that it can either be dismissed on the grounds of wishful thinking, or it impedes moral argument by reducing even the human brain to a stimulus-response 'machine'. The problem of wishful thinking is crucial for both advocates and critics of animal consciousness. If we see a man and his wife build a shed in their garden we generally conclude this to be a conscious act. Similar activity by birds who build a nest in a tree is often played down and seen as 'instinctive'. The term instinctive is hugely contested, but without going in to this too deep, we can argue the opposite to be true as well. Why wouldn't the man and his wife act out of instinct and the birds consciously? (Leahy, 1991). The problem with consciousness thus lies not only in philosophical arguments being able to convince, but about the concept of consciousness we use and to what extent there is neuroscientific evidence that supports it. Even for Regan it will become difficult to argue that an animal has consciousness as we move to animals that are less 'like humans'. More problematic to Regan would be the conclusion that neither humans or non-human animals possess consciousness, for he would conclude that there is nothing morally relevant if humans wouldn't possess a mental life (Regan, 1983). The assumption that humans are conscious is therefore necessary for Regan's theory, but it's far from undisputed. Scientific progress on the matter can disprove not only the assumption that humans are conscious, but the entire foundation of Regan's subject-of-a-life criterion.

## Assumption 2: Humans are subjects-of-a-life

A second assumption that Regan makes, is one that at doesn't raise any eyebrows at first glance. In his description of the subject-of-a-life, one of the underlying assumed facts is that all humans possess all attributes that make up the criterion. An intuitive response would be that it's clear that humans are subjects who possess for instance an emotional life and beliefs and desires. The arguments presented by Regan regarding the subject-of-a-life, all aim to convince us that there are other animals that can be

considered subjects as well. To understand his attempt to include non-human animals in this group of 'subjects', we can turn to his concept of inherent value and why it would help non-human animals if we assume they have inherent value as well.

The application of the subject-of-a-life criterion is to be understood in the context of inherent value. Regan argues that justice would mean 'equality of individuals', where those individuals could be viewed as having 'value in themselves' (Regan, 1983: p235). The criterion can be seen as a tool to help us understand that there are non-human animals that have this inherent value. This doesn't mean Regan attaches value to animals based on the sum of their experiences, or the pleasantness of their lives. In order to make clear that his arguments can't be seen as a utilitarian approach, Regan uses the 'analogy of the cup'. Where the utilitarian understanding of inherent value can be understood as a moral agent being a cup, everything that goes into the cup, being for instance pleasure or pain, is what has value. Regan's understanding of inherent value differs in attaching inherent value to the moral agent itself, irrespective of the content that 'goes in'. In doing so, Regan avoids the problem that a utilitarian might face when applying animal rights in practice, where when push comes to shove, human rights surmount animal rights because the content that metaphorically goes into the cup has more value. This follows from utilitarian principles like those of Singer that are guided by consequentialist thought, it is not the rights that matter, but the consequences of acts. This means animals may be granted rights, but when the positive consequences of violating those animals' rights outweigh the negatives, there is no objection from Singer to do so (Francione, 1997). A being that has inherent value should according to Regan be protected from having its rights violated. It therefore makes sense that he assumes humans to possess inherent value.

Throughout his line of argumentation, he attempts to illustrate that animals possess these attributes in some cases, but his starting point is one where all attributes have already been ascribed to human life. One could argue that this would distract from the case being made in 'The Case for Animal Rights', but if the assumption is flawed, there are consequences regarding the criterion and to what extent it makes a case for more animal rights. The attribute to which this may pose the biggest problem is 'the ability to actively pursue their desires and goals'. As Singer argued, we regard for instance children and the disabled as having some sort of dignity that animals don't possess, when they are unable to actively pursue their desires and goals (Singer, 1990). We object to the using humans for instance in experiments when they lack this attribute of the criterion, but for animals which appear to possess it, we are less inclined to object. The Great Ape project, a collected work of among others Tom Regan, Peter Singer and Jane Goodall, illustrates the amount of evidence available that suggests that chimpanzees, gorilla's and orang-utans can be considered moral equals to humans (Cavalieri & Singer, 1993). If we compare profoundly disabled humans to great apes, we find that those humans sometimes lack communication skills that great apes do possess. In addition to that, there is nothing that these humans are able to do or feel that the apes can't (Anstötz, 1993). To conclude that humans are not able to pursue their desires and goals may seem premature given the beforementioned comparison between profoundly disabled humans and great apes, but we may be able to argue the very same about humans who aren't disabled.

### The crucial issues

#### *Interests*

To support this argument, we can turn to Regan's conceptualization of interests. His distinction between preference- and welfare interests helps us understand that if an animal has an interest, it may not have a conscious interest in the very thing that is in his interest. The concept of interests can be seen both as having an interest in, and taking an interest in something. The former means that it may

for instance be in my interest to take in enough of a certain vitamin on a daily basis, even though I do not actively take an interest in doing so (Varner, 1998). These are described by Regan as being welfare-interests, since the degree to which they are satisfied matters to our well-being. The latter describes the interests that we show an interest in, described by Regan as preference-interests. These are things that moral agents want, or like (Regan, 1983). Even if a being is unable to express its preference- or welfare-interests, it is not ruled out that it possesses them. Narveson argued that an animal that is incapable of using language to express itself can't possess interests. Regan counters this by concluding that a position like that would entail that we would have to refute any animal suffering being possible, since it is in an animal's interest not to suffer (Regan, 1977). Varner argues that if we take Regan's position to be true, all desires translate to interests, but not all interests are based on desires (Varner, 1998). In order to criticize Regan and his assumption that humans are capable of actively pursuing their desires and goals, some assumptions will have to be made. Granted, it may seem hypocritical to pose assumptions while criticizing Regan for the assumptions he makes, but the following is based on assumption merely for argument's sake and are inspired by Regan's conception of interest.

#### *Ability to actively pursue their desires and goals*

If we apply Regan's concept of welfare-interests to humans, we find that these are not always successfully or actively pursued by us. Assuming that we desire for instance health, we seem at times sadly incapable of achieving this. Regan's description leaves room for interpretation of what it means to actively pursue one's desires and goals, what he does acknowledge is that we currently believe humans to act according to our beliefs and desires. Animal behaviour on the other hand is often explained in terms of stimulus and response (Regan: 1983). By addressing the situation in which we find ourselves, being that human behaviour is seen as conscious and based on a set of beliefs and desires they developed while animals simply react to stimuli, Regan attempts to include more animals into the belief-desire theory. He wonders why we assume that animals would have to behave based on stimuli while we humans develop a more complicated decision-making process. This argument could be taken even further than Regan takes it. Why do we assume that humans act according to the beliefs and desires they develop? This thesis can't possibly incorporate a full account of human decision-making and the neurological processes that underly it, but the assumption that humans actively pursue their desires and goals is nevertheless important to understand some of the ambiguities found in Regan's argumentation.

#### *Psychophysical identity over time*

Even though the psychophysical identity over time isn't discussed at length by Regan, it perhaps does explain his position on which animals can and which animals can't be considered subjects-of-a-life. The conscious minds that are possess this identity over time are identified by Regan as those who are most like us:

We cannot say exactly how old or tall someone must be, to be old or tall, respectively, but it does not follow that we cannot recognize that some people are old or tall. Our ignorance about the shadowy borders of attributions of consciousness is no reason to withhold its attribution to humans and those animals most like us in the relevant respects (Regan, 1983: p30).

These relevant respects are the attributes of the subject-of-a-life criterion, the degree to which we find these in other animals is therefore Regan's way of establishing whether they are conscious. He admits that we simply don't know whether for instance a snail has a psychophysical identity over time or any degree of consciousness, which means it may still possess something of the sort. If the objective is to discover a conscious psychophysical identity over time, the argument that mammalian minds are the

most similar to human minds probably isn't as strong as Regan believes it to be. His conclusion is, rather unsurprising, that mammalian minds definitely do possess this kind of identity and that other animals may possess it as well. In conclusion, Regan mirrors most of his attributes that make up the subject-of-a-life to humans. This inadvertently leads to his case being more in favour of mammalian rights than other types of animal, but can still be considered a projection of human behaviour on animals.

### Assumption 3: Humans are capable of understanding animals

A third assumption made by Regan revolves around the question of animal awareness and to what degree it can be understood by humans. He uses the 'Cumulative Argument' to support his claim that there are animals other than humans that can be considered to have beliefs and desires. This means that we humans have to reasonably assume that through common sense, ordinary language and evolutionary theory we can establish that animals have beliefs and desires (Regan, 1983). This means Regan's belief-desire theory regarding the behaviour of animals rests on the premise that humans are at least to some extent able to recognize aspects of the subject-of-a-life criterion in animals with different physiological properties.

#### The crucial issue

##### *Animal minds*

This assumption is hardly radical in the field, most probably because there is simply not much other than our observations regarding animal behaviour to build on. DeGrazia proposes that in order to study the animal mind, we can resort to four methods which altogether result in 'reflective equilibrium'. Through human phenomenology, studying animal behaviour, functional-evolutionary arguments and physiological evidence we can understand the animal mind. Using human phenomenology to study animal minds leaves us with the assumption that human minds have content, but more importantly, it defines what we look for in animal mentation (DeGrazia, 1996). Whether or not this method helps the animals in them being ascribed a mental state that is similar to that of humans, it presupposes that the animal minds can only be understood if we equate their subjective experiences to those of humans. If the content of these experiences and the content of animal mentation becomes too different from ours, we simply can't apply our own concepts to them and it becomes impossible for us to use it to explain their behaviour (Stich, 1979). Studying this behaviour would have to happen in their natural habitat according to Regan:

The acquisition of knowledge is a good thing, but the value of knowledge does not by itself justify harming others, the less so when this knowledge is obtainable by other means' (Regan, 1983: p365).

To perform studies in the natural habitat of animals however would pose other problems to our desire for knowledge about their behaviour, since animal responses to situations that are not controlled as they would be in a lab would result in anecdotal evidence (Stich, 1979). Regan's objection to lab experiments on animals is consistent with his views on animal rights and their ability to suffer, but adhering to it would impede our ability to learn about animal minds.

From a functional evolutionary method we can conclude that consciousness of the human mind and possibly of other animal's minds may have contributed to our survival (Regan, 1983). This does assume that survival is a goal that is served by consciousness, it says little about the moral relevance

of consciousness. However, if we are to make any claim at all about conscious behaviour and animal minds, there must be a goal that explains their behaviour. Steven Pinker illustrates this by giving the example of an animal banging an axe against a rock. If this would be all it does, human minds would probably assess this behaviour as not being conscious or based on beliefs and desires. But if it were the case that this animal intended to do so and had reasoned that this was its goal in life, we could conclude no other than that it is consciously succeeding to fulfil its desires (Pinker, 1997). The physiological evidence that we can use according to DeGrazia, is that which we obtain from neurophysiological studies. Whatever philosophy of mind we may adhere to, there is always a strong link between the existence of a nervous system and the presence of a mental life. DeGrazia does admit that it may not be necessary for animal to possess brain part B in order to reach mental state M, because we happen to have found that to be the case in our brain. There may be other instances in which a certain animal is able to reach mental state M, without the presence of B (DeGrazia, 1996). The evidence we can collect about animal minds according to Regan would be much in accordance with the above, though he would add some criteria to assess whether we can assume consciousness in a certain animal.

Accepting all of DeGrazia's methods to decide whether we may or may not ascribe a certain animal a conscious mind, Regan adds that it isn't necessary for an animal to possess a 'an immaterial mind(soul)'. In addition to that, we can accept the assumption that they are conscious when their observed behaviour is in line with that claim (Regan, 1983). Regardless of the exact content of animal minds, which we might never fully understand, Regan's position in the debate seems to ask not just for accepting that some animals might be conscious in their experiences, but that we should not be restrained by common sense views on animal minds. The opposite of Regan's view doesn't even oppose his arguments per se. Where most of the advocates of animal minds have based their arguments on behaviour displayed by animals and how this could be mirrored to the content human minds, the idea that human minds are a mere cultural construct of the behaviour we display doesn't break down Regan's ideas (Hilbert, 1994). The rights position looks for similarities between human and non-human animals to advocate rights for animals that are currently left out.

What we can conclude from the discussion on animal minds is that even though there are limitations to our being able to understand what it is like to be another animal, there are reasons to assume that the minds of certain animals contain similarities to those of humans that are relevant to moral discussions. To the subject-of-a-life the animal mind and our understanding of it can be seen as a *contributing factor*. This means we can attempt to understand aspects of the animal mind, but whether we succeed in doing so is not sufficient or strictly necessary for Regan. This does however only count for the higher animals of which Regan himself is able to make comparisons with human minds in terms of subjective experiences. The Great Ape Project attempted to illustrate that the minds and ability to feel stress and pain of gorilla's, chimpanzees and Orang Utan are similar enough to our to include them in our moral community (Hayry & Hayry, 1993). Where Regan makes the case for the inclusion of a much larger group than only humans and great apes in this 'community of equals', his criterion doesn't accomplish the inclusion of many more animals, since the list of attributes that make up the criterion is extensive.

#### Assumption 4: All animals are equal

Up until this point, this thesis has not mentioned 'Animal Farm' by George Orwell. But Regan's chapter titled 'all animals are equal' directs the mind unwillingly to the story that is illustrative of some of the biggest issues of the animal ethics debate. In particular the following:

All animals are equal but some animals are more equal than others (Orwell, 1996: p126).

This phrase seems to have been on Regan's mind as he was writing his case for animal rights. When discussing his notion of inherent value, he proposes that there are two interpretations of inherent value. The first ascribes a certain amount of inherent value based on one's capabilities. This view is rejected by Regan, since it passes resemblance to Aristotle's virtue ethics which allow for discrimination to take place based on race, sex and in line with the rest of the arguments: what group of animals an individual belongs to. A second approach would be to assume inherent value to be present in all animals. According to Regan this approach is preferable because it inhibits us from drawing up differences in inherent value that could lead to use of those of 'less' inherent value (Regan, 1983). A consequence of Regan's position is that non-human animals are given a position with rights that is equivalent to that of humans. He does this because he understands that this is probably the only way to counter utilitarian arguments that would allow for animals' rights to be infringed (Frey, 1977). By arguing in favour of inherent value for all animals, he is able to ascribe rights to a group of animals that surpasses the primates that have been studied as part of the Great Ape Project, but where does it end?

In his attempt to create a substantial criterion for the defence of animal rights, Regan is forced to include certain animals and exclude others. This thesis has illustrated that the various contributions to the debate on Regan's criterion have not led to a clear categorization of animals that can and can't be considered subjects. Regan himself had the following concept of moral agents:

Normal mammalian animals, aged one or more, and those human moral patients that like these animals in the relevant respects (Regan: 1984: p239).

Granted, Regan does allow for moral patients to be endowed inherent value, but there is a far more substantial problem that has to be addressed. How is Regan's subject-of-a-life criterion useful to argue in favour of 'all animals are equal'? First off, it doesn't actually mean all animals are equal. Where Regan wants to make the case for all animals to be understood to have inherent value, he really means: the animals of which we think we understand their capacity to practice morality. Not being able to communicate with, or imagine what it's like to be a non-mammalian animal, is enough for them not to be considered subjects-of-a-life.

### The crucial issue

#### *Sentience*

An underlying question that Regan doesn't address as a separate attribute, but might have helped the criterion gain applicability, is whether an animal is sentient. He did write about the importance of a life being better or worse for the animal in question, but leaves the concept of sentience as good as undiscussed. Being capable of feeling, as well as using the senses and responding to stimuli constitutes sentience in its most basic form. More elaborate conceptions of sentience include that of DeGrazia's mental life, where an animal would have to have positive or negative sensations (Broom, 2004). The question of sentience is particularly important to Regan's criterion, because it touches upon the crucial question of whether an animal's life can be better or worse. What his concept of equality among all animals actually entails, is that all animals that can be considered to have a life that is either better or worse, have inherent value which ought to be respected. Following from the attributes that make up the subject-of-a-life, animals can be considered to possess different degrees of for instance being able to pursue their desires and goals. Even though Regan claims all animals have equal inherent value, the degree to which an animal is able to lead an emotional life, have beliefs and desires hence interests, makes a difference in his assessment of what they are owed. Our limited knowledge of animal



sentience is therefore a problem to Regan, since any of the attributes requires an understanding of sentience. Without sentience, an animal can't be assumed to be able to experience what happens to it, let alone in a conscious way.

If we then turn back to the subject-of-a-life criterion, we ought to ask whether an animal without sentience can be considered to live a life that is better or worse. More elaborate research regarding the content of sentience in different animals or possibly other living things could help the animal rights debate in its understanding of subjecthood. It wouldn't give us answers regarding the specific rights of animals that are sentient, but it would help us establish which animals are at least potentially able to live a life that is better or worse. A seemingly simple question underlies the discussion of a life being better or worse: can the animal suffer? Speaking of rights for animals other than humans is not in the least an effort to avoid suffering, which is something that can happen to humans and non-human animals alike. The different degrees of suffering and which types of suffering are acceptable for either humans or non-human animals is open for discussion. As discussed earlier in this thesis in the chapter 'emotional life', Rollin argues that animal suffering can be considered worse than human suffering. Humans have the ability to foresee a future situation in which their pain is relieved. To argue that animals lack this ability is not detrimental to advocating in favour of animal rights, if we consider the psychological duress that this may cause. Regan's subject-of-a-life criterion sets out to do just that: protecting every animal that is sentient by advocating that they possess equal inherent value. The subsequent attributes that shape the criterion allow for this equal inherent value to be rendered meaningless, as they allow for animals to be harmed in different degrees by the same act. Regan defends the rights view in its justification of overriding this inherent value:

Indeed, to insist, as the rights view does, that considerations about *how much each* of those directly involved will be harmed are relevant considerations in prevention cases is precisely what one would expect and should require of a view that advocates *the equal rights of the individuals involved*. How else are we to show equal respect toward each of these individuals except by considering how well their *individual* prima facie right not to be harmed stacks up against the equal prima facie right of the other individuals involved? And how are we to determine this without considering which of those individuals will be harmed, how much each will be harmed, and so forth? To insist on the relevance of these considerations is simply to insist on the necessity of treating all those directly involved with the equal respect they are due (Regan, 1983: p311).

The assumption that all animals are equal only applies to their inherent value. Even though Regan makes no concessions about this value between different animals, it says little or nothing about the rights they might have. Claiming that all animals are equal is hence not a declaration of their equality, but rather a suggestion that we might have to extend the scope of rights to animals that can be considered sentient. When push comes to shove, the criterion doesn't defend the rights of the animals that Regan sets out to protect, since the differences in their ability to suffer allow us to override the equal respect that they are due. Where Regan's argument that an animal's life can be better or worse implies that sentience is a *sufficient condition* to be of inherent value, the rights view that he supports actually only sees it as a *necessary condition* that leaves a lot of room for endowing animals with a limited set of rights that Regan himself would find difficult to defend.

## What is left of the criterion?

After having assessed the state of the debate in part 1 of this thesis, part 2 has given an overview of the underlying assumptions and their implications regarding the subject-of-a-life criterion. A first assumption which is generally accepted throughout the discussion on animal rights is that humans can be considered conscious. Regan argued that there is nothing to be a moral theory of when we can't accept this as a given and hence refutes La Mettrie's objections. For the subject-of-a-life criterion, consciousness is a sufficient condition for an animal to be considered of inherent value. Unanswered questions about the true nature of consciousness and whether humans or non-human animals possess it, cause the foundations of Regan's criterion to be debatable. Similar problems arise regarding the second assumption discussed in this thesis, that humans can *prima facie* be considered subjects-of-a-life. In the assessment of this assumption it becomes clear that the earlier assumption that humans are conscious causes Regan to see humans as subjects-of-a-life as well. To advocate for animal rights is in Regan's case the attempt to prove that many animals are similar to humans regarding the attributes that he discusses. His assumption that humans are (to some extent) able to understand animal minds is not generally accepted throughout the debate. Conclusions drawn from research on animal behaviour is therefore prone to wishful thinking or the premature refutation of the existence of sophisticated animal minds, based on the degree to which we understand them. The last of four assumptions discussed in this thesis, 'all animals are equal', is perhaps one of the most difficult issues Regan dealt with. On one hand his work sets out to make a case for all animals to be given rights, but he hasn't managed to escape the conclusion that animals differ and that he himself values some animal lives more than others.

After having discussed the body of literature surrounding the subject-of-a-life criterion, as well as the underlying assumptions, we can conclude what is left of the criterion and its applicability in future debate. In Regan's terms, none of the attributes can be seen as sufficient, the criterion is a 'package deal'. This is where the complicated nature of the criterion renders it unable to move the debate forwards. The question whether an animal is a subject-a-life according to Regan can help it gain status as 'of inherent value'. To speak in terms of necessity and sufficiency, the ability to live an *emotional life* establishes that an animal has *beliefs and desires*. The emotional life and beliefs and desires are *necessary* for a life to be either better or worse, but they can't be seen as sufficient without the presence of *conscious perception*. The ability to actively pursue these beliefs and desires, having a psychophysical identity over time and individual welfare are products of our assessing animals as possessing the necessary conditions.

What the subject-of-life criterion fails to do, is provide grounds for the endowment of rights to animals who Regan would consider to live a life that is either better or worse. If an animal is sentient and conscious, the other attributes that Regan formulated can be assumed present to a certain degree, but his objections to our treatment of animal require no more than the beforementioned *conscious sentience* to advocate for their right to what Regan calls 'due respect'. Regardless of the rights that any advocate of animal rights attempts to defend, the conscious sentience that implicitly shapes the backbone of the subject-of-a-life criterion is a building ground for this defence. Future debate can therefore build on the question of conscious sentience as a minimum requirement for animals to be considered morally relevant. Despite the criticism and confusion surrounding the criterion, this comes back to the initial idea that led Regan to vouch for animal rights, animals are morally relevant when their life can be either better or worse.



## Conclusion

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This thesis has critically assessed the subject-of-a-life criterion as formulated by Tom Regan in his book ‘The Case for Animal Rights’ (1983) as well as the academic contributions of others to the debate. The objective was to find consensus, opposing views and possible problems in the debate surrounding this concept of subjecthood. After having introduced the animal ethics debate in a broader historical-philosophical perspective, the debate was assessed through a discussion of the subject-of-a-life criterion. In doing so, it became apparent that some of the attributes that Tom Regan formulated receive little attention in the body of animal ethics’ literature. An additional problem when attempting to clarify the different positions in the debate is the large overlap between attributes. Part of the attempt to clarify was to find out whether conclusions can be drawn about the necessity of sufficiency of attributes to an animal being seen as a subject-of-a-life. This proved easier for some categories than others.

Beliefs, desires, perceptions, memory, actions, they are all connected. For some of the attributes this connectedness means it’s difficult to decide whether it is a necessary or sufficient condition and academic consensus is often absent. A valid question to ask at this point is whether we are to interpret the criterion in a strict or lenient sense. If we are to apply this criterion strictly, we might have to consider a number of humans not-subjects-of-a-life. The lenient application of the criterion could end up granting such an extensive group of animals inherent value, that we end up paralyzing society because of our moral objections to nearly everything we currently do. In addition to that, the criterion could provide a case for other living objects that aren’t animals if applied leniently. As discussed in the chapter on Regan’s assumption of human consciousness, we have no definitive answer to a number of questions on this matter. Regan assumes consciousness in humans, translates this to certain animals, but why stop there? If the basis for ascribing a being or a thing consciousness is having beliefs or desires, we can easily do the same to trees. Where we can’t communicate with certain animals, we can’t communicate with trees. This lack of communication doesn’t stop Regan to make assumptions about their beliefs and desires, based on their actions. There is nothing that logically stops us from doing the same to trees, if they grow their roots in a certain direction, they might believe that the nutrients found in that direction are beneficial to their health. Where Regan circumvents this problem by stating that mammalian animals of at least one year old can be considered to possess all attributes of the subject-of-a-life criterion, his emphasis on *individual* rights contradict this ascription of attributes to a defined group.

Regarding its future use, the criterion is limited in doing what Regan hoped it would. The criterion is only part of his case for animal rights, but where the subject-of-a-life criterion is supposed to establish the inherent value of an animal, it fails to do so convincingly. Inherent value is no more than assessing a certain life as having value regardless of its content, but the attributes as formulated by Regan require the content of this life to be defined as rather sophisticated. To make a case for animal rights,

the conscious sentience of animals concerned makes for a better building ground. The next step for the animal rights advocates to take is hence to develop more convincing arguments that establish when this conscious sentience is present. Mere philosophical reflections on what animals are to us won't suffice, there will have to be more engagement with other academic fields that shed light on animal minds. To do so would pave the way for animal rights to be taken seriously, based on more than a list of attributes that require a number of assumptions about our understanding of animals and our own consciousness.

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