

ANIMAL TORTURE



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Abstract

Most, nay, virtually all articles deserving of publication in a refereed journal such as this have a clear thesis, a conclusion, something that at least the authors think reaches a clearly defensible position on a given issue. The present article is an exception. We maintain that according to the non aggression principle (NAP) of libertarianism, it would be unjustified to criminalize animal torture. And yet, we feel highly uncomfortable with that state of affairs. We have not “nailed” this challenge in the sense of being able to demonstrate that the libertarian philosophy either must, or is precluded from, criminalizing mistreatment of inferior species. Rather, in what follows can best be described as our “musings” on this situation. As an excuse for our failings we offer only the following: that this is one of the most challenging issues confronting libertarianism; and that one of the benefits of publication in scholarly journals is not only to answer issues, but to raise them as well. We publish this paper in the fervent hope that it may focus attention on this challenge, and that others, maybe ourselves in future, may be able to better wrestle this one to the ground than we are able to do so at present.

Keywords: Animal; torture; libertarianism

JEL Codes: A12, A13

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I. INTRODUCTION

One of the greatest weaknesses of libertarian theory, our gut feeling tells us, is that there is no provision in it for the outlawry, not of killing animals, but of torturing them. Based on our own person code of ethics, apart from murdering or torturing human beings, this is just about the most heinous act it is possible to do. And yet, the libertarian legal code quite properly and consistently refuses to legally prohibit such acts.

In section II we discuss three reasons for this lacunae. The burden of section III is to reject the hypothesis that torturing animals is akin to abandonment. Our aim in section IV is to probe what rights if any are conferred on beings based on their ability to experience pain, or sensation. The issue of thin versus thick libertarianism is brought to bear on this issue in section V.

II. WHY NO BAN?

There are three sets of good reasons why libertarianism forebears to ban torture of animals. First, there is the continuum issue. What precisely *is* animal abuse anyway? To be sure at one end of this spectrum is pouring gas on cats and burning them to death, or hacking off parts of animals, and allowing them to roam free in dire pain after that. Call this the paradigm or core cases of animal torture. But what of racing horses?³ Do not they tire? And when they do, does not whipping them constitute a kind of cruelty? Surely, if a human

³ Dick Francis (1982) claims that horse racing does not constitute mistreatment of these animals on the ground that on those occasions when riders fall off their mounts in a race, the rider-less horses still continue to race all on their own, without any human guidance. This is a reasonable retort to the objection; equines evidently do like to run. However, still, there is that little matter of whipping. No human needs such a spur, and members of our species, too, exult in foot racing.

marathoner were beaten in the last few miles of the race to spur him on, that is exactly how we would characterize such an act. It would appear that if we interpret this objection to libertarianism too incautiously, we might well be over inclusive, and capture horse racing in our net. This would be highly improper. Certainly, it is the rare person who objects to animal torture who would include this as an example of it, and yet it is difficult to see why not.

Second, there is some good that may be had from animal abuse,⁴ and it is not clear, at least in these cases, that all men of good will would unanimously wish to prohibit such practices by law. For example, there are entire societies which feature activities as a mainstay of their cultures such as bull running in Spain and South America, and cock fighting in the southern U.S. and elsewhere. The present authors reporting on our own values, do not count under this rubric the “benefits” obtained by humans who exult in the core types of torture mentioned above; these, we regard as sick negatives.⁵ The more “enjoyment” of them, the worse, not the better, as far as we are concerned. But, we find it difficult in the extreme to characterize the entire societies mentioned above in such a manner.

Then, too, there is the torture of monkeys not to enjoy their pain, but rather to find cures for diseases such as AIDS. It cannot be denied that our animal cousins suffer grievously from these experiments. Maybe as much as core torture; certainly, as much or more⁶ as from bullfights or rooster battles. Yet their agony is for a good purpose, a good human purpose, that is. When libertarians admit that this area of their philosophy is amongst the most problematic, this is not at all the sort of thing they have in mind.⁷

⁴ Not just their mere killing, which we do not discuss in this paper.

⁵ With due apologies to Szasz. See on this Szasz (1961, 1963, 1979)

⁶ Insofar as humans are capable of empathizing with animals.

⁷ What of the maiming of animals not to cure diseases, but to experiment on better shades of makeup, and goals of lesser importance? If we are not to

Third, libertarianism is a legal philosophy for *humans*.⁸ It allows us to know how we may act with regard to each other. Animals are simply not capable of functioning in human society. Where do we draw the line between humans and our brothers of field and stream? Suppose there were an entirely new creature discovered, much smarter than the vaunted porpoises and chimpanzees, but way below the intellectual level occupied by mankind. What role would it play in our legal system? According to Rothbard (1982, chapter 21; 2007) the criterion would be for us to allow them to petition for their rights, and credibly promise, and actually act so as not to violate our own rights. If they could do this, they would be allowed into the human family, at least for legal reasons, no matter how matter arms, legs, heads, tentacles, etc., they boasted. If they could not, they would be treated as animals.⁹

The point is, animals treat *each other* with extreme cruelty. For example, the cat plays with the half dead mouse, instead of finishing him off quickly and cleanly. When the lion achieves a similar relationship with a human being, parallel behavior occurs. Why do we owe them something they do not grant to each other, nor to us? One reply is, "Well, we're better than that; we're better than they are. Yes, they treat each other like *animals*, but we are higher creatures than that." But, on this basis, our *humane* treatment of them (e.g., non torture) would be supererogatory, not something we *owe* them.¹⁰

incarcerate people for torturing animals for their own nefarious utilitarian purposes, we can hardly do so in this case. And, one man's superficial goal is another man's highest ranked purpose. We the present authors do not use makeup. But there are others for whom this industry is very important indeed.

⁸ For strongly worded defenses of this proposition see Rothbard (1982, 2007); Mercer (2004)

⁹ Of course there will always be, at least potentially, continuum (Block and Barnett, 2008) problems: creatures that sort of pass this test, but sort of do not. There is nothing in political philosophy that can be done with these insoluble challenges.

¹⁰ What of those television "nature" shows, where predators tear prey to bits, for the edification and enjoyment of, you guessed it, human beings? Here, of course, it is not we who are guilty of the torture. Still, we are taking advantage of it.

It may well be that torturing animals is immoral. Certainly the Jewish requirement that animals be killed painlessly if their meat is to qualify for Kosher status is an argument in this direction. However, we are concerned not with the morality of this behavior, but rather with what should be its legal status: legalized, or prohibited. Given that the purpose of the law is to solve *intra human* problems (Hoppe, 2001), it is difficult to see how the issue of animal rights not to be tortured can even come under its cognizance, since this is an inter species matter.

III. TORTURING ANIMALS AKIN TO ABANDONMENT

If Jones were to leave his couch on the side of the road that would be a signal to the world that he is abandoning this furniture and either someone can come along and claim it as their own, or the trash collector can bring it to the dump. So while people have the right to deface or destroy their couches as they see fit, if someone abandons one, and another person were to claim it as his own, Jones could no longer deface or destroy it. Now, an immediate objection to the view that torturing animals constitutes abandonment would be that if Jones has the right to deface or destroy his couch because it is his property, then he should also have the right to do the same to his dog because it is his property too.

This leads to the second point, that parents cannot torture their children. If a father tortures his son, this would be aggression, and the father would lose his right to raise his son. His

Might we owe the victimized animals an obligation to protect them from these aggressors? This seems silly, but, also, a (weak) implication of the claim that animals have a right not to be tortured. Maybe we should content ourselves with shooting the prey, so that only their lives will be lost, but they will not be tortured? (A scene in the movie "Sand Pebbles" has Steve McQueen shooting a Chinese man for this purpose). This, too, appears to be a rather unsettling implication of the anti animal torture argument.

act of torture would be a signal that he is abandoning his right of guardianship. He might then try to claim that he has a right to raise his child, but this would blatantly contradict his actions. Consider the following scenario: The detectives go to the house of a suspect, Smith. After a fruitless discussion with him, the detectives go to the curb and go through the suspect's trash. Smith protests, claiming that it is his private property. The police respond by saying that it is abandoned property and they have the right to inspect it. The suspect cannot simultaneously claim to own the property and also abandon it.¹¹

In the case of a father beating his son, he is abandoning his right of guardianship but then going on to claim that he has a right to be the guardian. In other words, his actions demonstrate that he is actively violating the rights of a person he has sworn to protect. He tries to have his cake and eat it too. The obvious objection to considering animal cruelty as analogous to this scenario would be that children have rights whereas animals do not. So when a father viciously¹² beats his son, he abandons his right as guardian because he is violating the child's rights. But if Jones were to beat or torture his dog, this would not constitute abandonment because his dog does not have rights.

In order for this solution to work, we would have to show how torturing animals is more like child abuse than shredding a couch. How can this be done? We can say that social norms might lead to such a situation. In other words, if Smith kills his chicken in order to eat, or uses his horse to ride and play polo, that would be fine. But if he were to beat his dog, the social norms might be such

¹¹ In Kinsellian (1992, 1996) terms, Smith is "estopped" from objecting to their search.

¹² We are not talking about a light spanking. For a debate on that between Walter Block and Stefan Molyneux, see <http://youtu.be/EgCmoVbdYtE>; http://cdn.media.freedomainradio.com/feed/FDR_2552_Walter_Block_Debate.mp3

that this would constitute abandonment, and someone else would be free to claim the dog. One objection to this claim might be that it is not compatible with the libertarian homesteading theory of property.¹³ But homesteading does not make much sense divorced from social norms. For example, if you lay the foundation for your house down and someone jumps in, you haven't necessarily "used" the area within the foundation, but it's pretty clear that you have used it to such an extent that it would be considered your property. But if you were to take "first use" literally, then you haven't really used it, so you could not evict this other person. This is solved through tempering first use with social norms - you lay the foundation for your house, and it is understood by society that you have also claimed the area within the foundation and other people are expected to respect that. This is the closest similarity to animal cruelty being equivalent to abandonment.

Here is another example in which social norms are crucial to a correct interpretation of homesteading: extensivity. How intensive must be the corn planting in order to qualify for successful homesteading? Must the seeds be placed every square foot, every square yard, every acre, every square mile? The answer to this lies, crucially, with social norms (Rothbard, 1973); for example, farming must be more intensive east of the Mississippi than west of it, based on common practices, which are predicated in turn on arability of the land.

On the other hand, one cannot take social norms too far, at least not in a libertarian analysis, since suttee, the practice of throwing unwilling widows onto funeral pyres was for many years a common occurrence in India, and, yet, certainly, incompatible with the free society.

¹³ See on this Block, 1990; Block and Edelstein, 2012; Block and Yeatts, 1999-2000; Block vs Epstein, 2005; Bylund, 2012; Hoppe, 1993, 2011; Kinsella, 2003, 2006; Locke, 1948; Paul, 1987; Rothbard, 1973, 32; Rozeff, 2005; Watner, 1982

IV. EXPERIENCING SENSATION

Libertarianism faces a problem with the notion that animals have no rights whatsoever; that they are considered as no different than an inanimate object, such as the aforementioned couch. Yes, animals cannot possess the right of self-ownership because they cannot exercise control over their actions like humans, and so they may properly be considered as our property. But if, in a libertarian society, a person is allowed to torture animals to death that he owns this is a problem with the very framework of libertarianism. The overly sharp division between humans and everything else, in the libertarian philosophy, moreover, seems quite anachronistic given our scientific understanding of the animal kingdom; although humans are, by far, more intelligent than other animals, we know that other species have the ability to feel pleasure or pain (both physical and mental). Thus, assigning full rights to humans and no rights whatsoever to any other creature seems rather arbitrary.

A more valid method of assigning rights would be based on the creature's ability to experience sensation - humans have the greatest ability in this respect and therefore would be afforded full rights of self-ownership and, by extension, the right to own property via homesteading. All other animals, while not having the right to self-ownership, would have a negative right to not be subjected to unnecessary suffering (torture, for example), with the exact interpretation of 'unnecessary' being made with reference to their ability to experience pain. For example, mammals would have a greater right not to be tortured than reptiles, and reptiles more than insects, etc.

Here is an argument in behalf of this hypothesis. We assume full rights for infants, and severely mentally disabled people, without in the slightest holding them responsible for respecting the

same rights for others, and so why can this sort of one-sided right not be extended to other animals? Libertarianism would be a far more encompassing moral framework if it had some mechanism for condemning, on moral grounds, the burning of animals to death for fun, for example. Libertarianism seems to 'tick all the boxes' when it comes to human to human interactions, but falls short when it comes to human to other animal interaction.

The problem with this more “humane” system is that if adopted, we humans would be granting to mammals, for example, more rights than they, in turn, accord to the creatures upon which they prey. To take but one example, the cat tortures the mouse, playing with it, not putting it to an immediate and relatively painless death. To prohibit by law abusing cats would be to grant to them more rights than they offer mice. Another difficulty is that even vegetables “shriek” when pulled up by their roots.¹⁴ True, no one abuses species of this sort, but if we are to predicate human action based on experiencing sensation, not only might we not be able to torture other species, we might not even be able to “kill” them. Human beings would then perish, and we, too, experience pain. And how can we measure the degree to which a living being experiences pain?¹⁵ Posit that some animal felt sensation to a greater degree than human beings. The implication here would be not only that we have no right to torture such a being, nor, even, that we could own them; the implication would be that members of this species would have a right to own, but only perhaps not torture, us!

¹⁴ <http://www.strangescience.net/stplt.htm>; <http://www.henriettes-herb.com/eclectic/hill/mandrake.html>

¹⁵ For the importance of subjectivism in economics, see Hayek (1979, 52) who states: “And it is probably no exaggeration to say that every important advance in economic theory during the last hundred years was a further step in the consistent application of subjectivism.”

V. A WAY OUT

Is there then no way out of this morass for the libertarian? Our every instinct cries out to the heavens against the abuse of our fellow creatures. Yet, our beloved libertarianism, seemingly, offers no solution to the problem.

Yes, there is a way out, although, as in the case of the theories mentioned above, it will not please everyone. The way out might sound like a cop out, and, to an extent it is, but, before we can offer it, we must introduce two new concepts: thin and thick libertarianism.

The former, or “pure” libertarianism, is predicated upon the non aggression principle (NAP) and private property rights based on homesteading. The essence of libertarian law is that it shall be illicit for *human beings* to engage in attacks on other *human beings*, their persons or their property. The latter accepts these two principles, but adds on a whole host of other requirements. For example, for left wing thick libertarians, there are also strictures against hierarchies, discrimination, and in favor of feminism, labor unionism, homosexuality, toleration, inter-racial marriage. For right wing thick libertarians, just about the opposite holds true.¹⁶ For libertarian “thin-ists” all of these things have about as much to do with libertarianism as the question of which is more libertarian: checkers or chess. Namely, they are entirely irrelevant to it. As long as they occur peacefully, without violating

¹⁶ For advocates of thick libertarianism, see Gillespie and Welch, 2011; Johnson, 2008; Long, 2007, 2008A, 2008B; Richman, 2014; Tucker, 2014; Vallier, 2013, 2014; Zwolinski, 2011. For supporters of thin libertarianism, see Albright, 2014; Cantwell, 2014; Gordon, 2011; Hornberger, 2014; McCaskey, 2014; Mosquito, 2014A, 2014B; Rockwell, 2014; Sanchez, 2014; Smith, 2014; Vance, 2014; Wenzel, 2014A, 2014B.

the NAP, the libertarian declares them legal. But neither favors nor disfavors any of them. Strict neutrality is the thin libertarian position on all of these activities.

What, pray tell, does this all have to do with animal abuse? Simply this. Libertarianism, that is, pure or thin libertarianism, can take no view on this matter whatsoever (Montgomery, and Block). It does not condemn it, it certainly does not support such torture. For libertarianism, properly understood, is a very *limited* philosophy. It pertains, only, to *intra* human interactions, and our treatment of animals falls outside of this purview.

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