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ANIMAL LIBERATION OR ANIMAL RIGHTS?

In replying to my review of The Case for Animal Rights in The New York Review of Books, Tom Regan notes that whereas I use the term 'the animal liberation movement' to refer to the many people and organizations around the world advocating a complete change in the moral status of animals, he prefers the label 'animal rights movement'. There is, he says, 'more than a verbal difference here'.¹ For immediate practical purposes the difference may not matter very much-Regan and I are plainly at one in our attempts to eliminate the atrocities now inflicted on animals in factory farms, laboratories and in the wild. I am even prepared to speak of 'animal rights'-just as I am prepared to speak of 'human rights'-as a shorthand reference to the way in which the needs and desires of animals give rise to moral obligations on our part. But the philosophical difference between those who, like Regan, ground their case for animals on claims about rights, and those who, like me, do not, is fundamental. In the long run it may also have practical implications. This essay explains why I do not, philosophically, accept the animal rights approach.

I

In Animals' Rights, first published in 1892, Henry Salt asked: 'Have the lower animals ''rights''?' He answered his own question: 'Undoubtedly—if men have.'² I agree entirely. If there are any rights possessed by all human beings, those rights are also possessed by non-human animals. For any rights possessed by all human beings cannot be possessed in virtue of such special human characteristics as rationality, autonomy, selfconsciousness, the ability to enter into contracts, or to reciprocate, or anything of this sort. Such a basis for rights would leave out those humans who, through infancy or congenital disability, never have had—and in some cases never will have—these special characteristics.

Some philosophers have suggested that even though infant and braindamaged humans may not be strictly entitled to the same moral status as more mature normal humans, they should be granted 'courtesy status' as humans. Otherwise, it may be argued, the borderline between those who have moral rights and those who do not will become blurred; and there is the possibility of a dangerous slide which could threaten the rights of those

who *are* fully entitled to moral rights.³ This looks suspiciously like an *ad hoc* proposal designed to protect our conventional attitudes from change; but if it is to be taken seriously, some evidence for the likelihood of such a dangerous slide would need to be provided. Such evidence as is available seems to count against such a slide. Many human societies have denied the right to life to newborn infants, especially those born handicapped. They appear to be no more prone than our own society to violate the rights of adult humans—indeed, if anything, less prone to do so.⁴ Moreover if the decision to grant such courtesy status is to be decided by weighing up the consequences of granting or denying it, we must include in the calculation the way in which this enables us to put a fictitious gulf between ourselves and other animals, to the great detriment of the latter.

Nor can we say that all human beings have rights just because they are members of the species *homo sapiens*—that is speciesism, a form of favouritism for our own that is as unjustifiable as racism. Thus if *all* humans have rights, it would have to be because of some much more minimal characteristics, such as being living creatures. Any such minimal characteristics would, of course, be possessed by nonhuman as well as by human animals.

I shall not here consider the view that some more restricted class of human beings has rights not possessed by other humans or by nonhuman animals. This is, for obvious reasons, much easier to defend. If we see rights as arising from tacit acceptance of a social contract, or from an ability to understand a concept of justice and act in accordance with it, then we may limit rights to those beings who satisfy this requirement. Such a limitation cannot explain why—to give just one example—we see fit to poison animals to death in order to test food additivies, when we would not contemplate using human infants for the same purpose (not even orphaned or abandoned infants who have been born with severe brain damage). Hence this approach to human rights is not relevant to the aims of the animal liberation/animal rights movement, which seeks to raise the moral status of animals so that they too are not subjected to such treatment.

Thus my rejection of animal rights has nothing to do with the fact that they are the rights of *animals*: it has everything to do with the fact that they are *rights*. The problem is not with the extension to animals of rights possessed by human beings, including those humans who have no relevant characteristics not also possessed by some animals. It is, rather, with the kind of right that could be possessed both by those human beings and by other animals. Attributing rights to animals is not, of course, the only way of changing their moral status. One can also ground the case for change on the fact that animals have interests. Interests are central to many moral theories. Utilitarian theories, in particular, tend to be based on interests or something closely related to interests, such as preferences, or the experience of pleasure and pain. Not all interest-based theories, however, are utilitarian. It is possible to combine a concern with interests and a non-utilitarian principle of distribution, for instance Rawls's maximin principle. Thus one does not have to be a utilitarian to take interests as the basis upon which moral judgments are to be made.

Given a moral theory based on interests, it is easy enough to argue that we are not justified in ignoring or discounting the interests of any human being on the grounds that he or she is not a member of the race or sex to which we belong. This principle of equal consideration of interests is widely accepted in so far as it applies to human beings. Once so accepted, however, it is very difficult to find any logical basis for resisting its extension to *all* beings with interests. This means that nonhuman animals, or at least all nonhuman animals capable of conscious experiences such as pain or pleasure, enter the sphere of moral concern. Moreover they enter it with a fundamentally equal moral status: their interests are to be given the same consideration as the like interests of any other being.⁵

Once nonhuman animals are recognized as coming within the sphere of equal consideration of interests, it is immediately clear that we must stop treating hens as machines for turning grain into eggs, rats as living toxicology testing kits, and whales as floating reservoirs of oil and blubber. All these practices—and the list could be continued for a long time—are based on treating animals as things to be used for our advantage, without any thought being given to the interests of the animals themselves. The inclusion of animals within the sphere of equal consideration could not leave such practices intact.

Other aspects of our treatment of animals require more detailed discussion. Since the interests of nonhuman animals are not always the same as those of normal non-infant human beings, it does not follow from the principle of equal consideration of interests that we must treat nonhuman animals in the same way as we treat humans. Would it, for instance, be morally acceptable to rear animals in conditions which satisfied all their needs, and then kill them painlessly for food? Are *any* experiments on animals justified? These are not easy questions and they do not have simple

answers. I shall not attempt to answer them here, beyond saying that one obviously relevant issue is whether nonhuman animals have the same interest in continued life as normal humans do.⁶ The point is that we must try in each case to work out what will be best for all those involved. In this way a view based on interests includes nonhuman animals within the moral sphere, on the basis of full equality of consideration. It also remains sensitive to the particular circumstances of the question at issue.

III

So what reason can there be for asserting that animals are entitled, not merely to equal consideration of their interests, but to moral *rights*? For an answer we can look at Regan's *The Case for Animal Rights*. Since this is easily the most careful and thorough defence of the claim that animals have rights, we can be sure that in considering its arguments, we are taking the case for rights in its strongest form.

Regan begins by assembling evidence for the belief that some nonhuman animals—in particular, mammals beyond the stage of infancy—are what he calls 'subjects-of-a-life'. By this expression Regan means that these animals are individuals with beliefs, desires, perception, memory, a sense of the future, an emotional life, preferences, the ability to initiate action in pursuit of goals, psychophysical identity over time, and an individual welfare in the sense that things can go well or badly for them. Regan then asserts that all subjects-of-a-life have inherent value.

To this point there is nothing with which a utilitarian need disagree. Whether nonhuman animals do in fact have beliefs, desires, preferences and so on is, of course, a factual question, not a moral one. Without pursuing the complex philosophical issues it raises, or going into the finer details of the kind of beliefs which creatures without language may have, I shall simply say that I think Regan is, on the whole, right about this factual question.

Moreover the utilitarian can also accept the substantive moral claim that subjects-of-a-life have inherent value. The meaning a utilitarian would give to this claim is as follows. Subjects-of-a-life are not *things*. They are not like lumps of coal, which have instrumental value because they keep us warm, but have no intrinsic value of their own. On the contrary, subjectsof-a-life have inherent value in precisely the same way as we do. They have preferences, and they have a welfare. Their welfare matters, and no defensible moral judgments can ignore or discount their interests.

Utilitarianism, therefore, does recognize the inherent value of those beings which Regan calls subjects-of-a-life. But Regan does not think that this recognition goes far enough. Let us look at what he says proper recognition would require:

... we may say that we fail to treat individuals who have inherent value with the respect they are due, as a matter of strict justice, whenever we treat them *as if they lacked* inherent value, and we treat them in this way whenever we treat them *as if they were mere receptacles* of valuable experiences (e.g., pleasure or preference satisfaction) or *as if their value depended upon their utility* relative to the interests of others. In particular, therefore, we fail to display proper respect for those who have inherent value whenever we harm them so that we may bring about the best aggregate consequences for everyone affected by the outcome of such treatment.⁷

This passage needs to be dissected with some care, for it lumps together, under the heading of 'treating individuals as if they lacked inherent value', three quite separate forms of treatment. These three forms of treatment are:

- i. Treating individuals as if they were mere receptacles of valuable experiences;
- ii. Treating individuals as if their value depended upon their utility relative to the interests of others; and
- iii. Harming individuals so that we may bring about the best aggregate consequences for everyone affected by the outcome of such treatment.

It is obvious that the first two are not equivalent. Nor is it apparent how, as Regan's words suggest, the third can in some way be a particular application of the first two. We must therefore ask separately in each case whether the form of treatment described is genuinely a case of treating individuals as if they lacked inherent value.

Let us begin with (ii), since this is the least controversial. It is, in fact, a description of treating individuals as if they possessed only instrumental value. To use my earlier example, it is the way we treat lumps of coal, and Regan is clearly right to say that it is incompatible with a recognition of the inherent value of the individuals so treated. As we have already seen, no utilitarian would accept such treatment of subjects-of-a-life.

What about (i)? This is more difficult. It may seem that to treat individuals as 'mere receptacles' must fail to recognize their inherent value. After all, when we think of receptacles such as boxes or bottles—considering them *qua* receptacle, and not as objects of artistic or commercial value in their own right—we think of their instrumental value in holding something else, and it is the contents which really matter. So, if utilitarians think of pigs, for instance, as valuable only because of the capacity of pigs

to experience pleasure or preference satisfaction, aren't they necessarily denying inherent value to pigs?

The analogy is misleading. Sentient creatures are not receptacles for valuable experiences in the way that bottles, for instance, are receptacles for wine. If I have a bottle of wine in my hand, I can pour the wine out of the bottle; but there is no way in which I can separate the valuable experiences of pigs from the pigs themselves. We cannot even make sense of the idea of an experience—whether of pleasure, or preference satisfaction, or anything else—floating around detached from all sentient creatures. Hence the distinction between treating individuals as if they possessed inherent value, and treating them as if their experiences possessed inherent value, is much more problematic than we might at first glance suspect.

I can think of only two ways in which such a distinction might make sense. First, one might distinguish between those who hold that individuals possess inherent value only as long as they are capable of having certain experiences, and those who hold that individuals possess inherent value as long as they are alive. On the first view, an individual who falls into a total and irreversible coma ceases to have inherent value; on the second view such an individual continues to have inherent value. Utilitarians would take the first view. It might be said that this shows that they treat individuals as if they were mere receptacles of valuable experiences, for as soon as individuals cease to be capable of having these experiences, utilitarians cease to value them. But I do not think this could be what Regan means when he refers to treating individuals as if they were mere receptacles of valuable experiences. After all, individuals in total and irreversible comas have ceased to be subjects-of-a-life, and so presumably Regan would agree with the utilitarian that they have lost the inherent value they once possessed.

The key to the second way in which one might distinguish between recognizing the inherent value of individuals, and recognizing the inherent value of their experiences, lies in our attitude to the continued existence of particular individuals over time. Suppose that we have a group of individuals enjoying pleasurable experiences, and we are faced with two options: the same group of individuals will continue to enjoy pleasurable experiences; or, they will all be painlessly killed, and replaced with another group of individuals enjoying equally pleasurable experiences. Utilitarians appear to be committed to saying that, other things being equal, there is no difference between these options. This may be taken as proof that they treat the individuals in question as lacking inherent value.

There are two points to be made about this example. First, it is essential to appreciate that the example does not allow us to drive a wedge between the inherent value of the individuals and the inherent value of their experiences, while the individuals are having those experiences. Even if utilitarians are committed to saying that there is no difference between the options, they will still hold that the individuals have inherent value during every instant of their existence. Thus the example has application only to the specific point of whether we attribute inherent value to the continued—rather than the moment-by-moment—existence of particular individuals.

Second, not all utilitarians are committed to treating subjects-of-a-life as if they were replaceable in this manner. Hedonistic utilitarians may be, but preference utilitarians are not. In *Practical Ethics* I wrote:

Rational, self-conscious beings are individuals, leading lives of their own, not mere receptacles for containing a certain quantity of happiness. Beings that are conscious, but not self-conscious, on the other hand, can properly be regarded as receptacles for experiences of pleasure and pain, rather than as individuals leading lives of their own.⁸

With the benefit of hindsight, I can see that the use of the term 'receptacles' was liable to mislead; but I still hold that a preference utilitarian must take into account the preferences for continued life which some individuals have. This means that preference utilitarians will not be indifferent to the choice between the two options described above, except in those cases in which the individuals have no preferences for continued existence. Note, incidentally, that at least so far as my own version of preference utilitarianism is concerned, Regan is wrong to describe 'preference satisfaction' as some kind of 'experience'. What the preference utilitarian seeks to maximize is not an experience of satisfaction, but the bringing about of what is preferred, whether or not this produces 'satisfaction' in the individual who has the preference. That is why killing an individual who prefers to go on living is not justified by creating a new individual with a preference to go on living. Even if the preference of this new individual will be satisfied, the negative aspect of the unsatisfied preference of the previous individual has not been made up by the creation of the new preference plus its satisfaction.⁹

Apart from individuals whose lives are so miserable that they do not wish to continue living, the only individuals likely to have no preferences for continued life will be those incapable of having such preferences because they are not self-conscious and hence are incapable of conceiving of their own life as either continuing or coming to an end. Since Regan includes memory and a sense of the future, including one's own future, in his list of the characteristics which subjects-of-a-life must possess, it is clear that the individuals which a preference utilitarian may regard as replaceable are not subjects-of-a-life.

We have been considering the suggestion that utilitarians fail to recognize the inherent value of individuals when they treat them as if they were mere receptacles of valuable experiences. We have now seen that utilitarians do not regard sentient creatures as 'mere receptacles', if by this is meant that they value the experiences of these creatures and not the creatures themselves. Considered on an instant-by-instant basis, this distinction cannot intelligibly be drawn. If, on the other hand, we transform the question into one which hinges on whether utilitarians attribute value to the *continued* existence of particular individuals, we find that preference utilitarians, at least, *will* attribute value to the continued existence of all those beings whom Regan calls subjects-of-a-life. So even if we allow the issue to be re-stated in this manner, we still find that preference utilitarians deny inherent value only to beings who are not subjects-of-a-life. Since Regan attributes inherent value only to beings who are subjects-of-a-life, on this point he and the preference utilitarians do not disagree.

We come now to the third and most crucial of the ways in which Regan seeks to characterize treating individuals as if they lacked inherent value: harming individuals so that we may bring about the best aggregate consequences for everyone affected by the outcome of such treatment. We have seen that Regan writes as if the assertion that such treatment indicates a lack of proper respect for inherent value has somehow been deduced from the more general descriptions of treatment which preceded it. Even if we had unquestioningly accepted that the forms of treatment I have labelled (i) and (ii) were indicative of lack of respect for inherent value, however, it isn't easy to see how we could validly infer that this was also true of (iii). Regan gives a hint as to what he has in mind in the following passage:

The grounds for claiming that such treatment is disrespectful and unjust should be apparent. It can hardly be just or respectful to harm individuals who have inherent value merely in order to secure the best aggregate consequences for everyone affected by the outcome. This cannot be respectful of inherent value because it is to view the individual who is harmed *merely* as a receptacle of what has value (e.g. pleasure), so that the losses of such value credited to the harmed individual can be made up for, or more than compensated, by the sum of the gains in such values by others, without any wrong having been done to the loser. Individuals who have inherent value, however, have a kind of value that is distinct from, is not reducible to, and is incommensurate with such values as pleasure or preference satisfaction, either their own or those of others. To harm such individuals merely in order to produce the best consequences for all involved is to do what is wrong—is to treat them unjustly—because it fails to respect their inherent value. To borrow part of a phrase from Kant, individuals who have inherent value must never be treated *merely as means* to securing the best aggregate consequences.¹⁰

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The first part of this passage attempts to link (iii) with (i) by claiming that (iii) involves treating individuals as if they were *merely* receptacles for valuable experiences. We have already seen that such references to receptacles can be misleading, and that to treat individuals as valuable only because of their capacity for certain experiences is not to deny them inherent value. So even if (iii) could be linked with (i), this would not show that (iii) involved a denial of inherent value. But this is by no means the only gap in the argument. It is simply not true that to harm an individual in order to secure the best aggregate consequences for everyone 'is to view the individual who is harmed *merely* as a receptacle of what has value' After all, utilitarians and others who are prepared to harm individuals for this end will view those they are harming, along with those they are benefitting, as equally possessing inherent value. They differ with Regan only in that they prefer to maximize benefits to individuals, rather than to restrict such benefits by a requirement that no individual may be harmed.

Those who incline towards Regan's view of this matter might consider the following. Suppose you had to choose to live in one of two societies, call them R and S. All you know is that in R, no individual is ever harmed to secure the best aggregate consequences for everyone, while in S individuals are harmed if careful scrutiny shows beyond any doubt that such harm is the only possible way to secure the best aggregate outcome for everyone. (Such harm is, of course, kept to the minimum necessary to secure the beneficial outcome, and the harm is included in the calculation as to whether the consequences really are the best aggregate outcome for everyone.) Assume that there are no differences between R and S, other than those traceable to this difference of moral principle. Let us also assume that the worst off in R and the worst off in S are at the same level; though there might, of course, be different reasons in the two societies for why they were at this level. Remember that you have no way of knowing whether, if you choose S, you will yourself be harmed; but you know from the description already given that, if there is any difference in the overall welfare of the two societies, it must favour S. How would you choose? I would certainly choose S, and so would anyone seeking to maximize her or his expected welfare. Is it plausible to say that a moral principle which would be chosen under such conditions is a principle which views those harmed merely as receptacles? Since we do not know if we will be harmed, to say this would imply that people who are rationally seeking to maximize their own welfare must view themselves merely as receptacles. This strikes me as absurd; and at the very least, it makes it clear that to maintain such a view is to empty all the critical impact from the charge of viewing individuals as receptacles.

We have now considered the first part of the passage in which Regan offers reasons for his view that (iii) involves a denial of the inherent value of individuals. In this first part, Regan attempted to link (iii) with (i). This attempt fails. Regan goes on, however, to make two additional claims about (iii), claims which go beyond (i) and (ii) and could thus be seen as giving support to (iii) as an independent assertion.

The first of these additional claims is that "individuals who have inherent value . . . have a kind of value that is distinct from, is not reducible to, and is incommensurate with such values as pleasure or preference satisfaction, either their own or those of others." The second claim is the Kantian assertion that 'Individuals who have inherent value must never be treated *merely as means* to securing the best aggregate consequences."

The first claim looks like the point about receptacles again, but it adds to that a point about incommensurability. The difficulty of weighing up incommensurable values is a familiar one in normative ethics. Regan's invocation of incommensurability, however, is unusual in that he is not referring to the incommensurability of, say, justice and welfare, or knowledge and beauty. The incommensurability to which he refers is that between the inherent value of individuals, and values such as pleasure or preference satisfaction. For reasons already given in our discussion of receptacles, it is not easy to see how the individuals and the valued experiences are to be separated; but in any case, more crucial to the present discussion is the absence of any explanation why (iii) requires that these values be commensurable. Suppose, for example, that we inflict a specified harm on one individual in order to prevent ten other individuals from suffering exactly the same harm. Here there is no problem of comparing incommensurable values. All that is needed is the recognition that ten harms are worse than one harm, when all the harms to be considered are exactly the same. If, therefore, harming one person in order to secure the best aggregte consequences for everyone involves denying inherent value, this cannot be shown by reference to incommensurability.11

What of the second claim? Taken literally, the second claim is merely a re-statement of (ii). It amounts to a rejection of treating beings with inherent value as if they possessed only instrumental value. It is obvious that to harm an individual in order to produce the best aggregate outcome for everyone is not necessarily to treat that individual *merely as a means*. It is compatible with giving as much consideration to the interests of that individual as one gives to any other individual, including oneself.

Perhpas Regan means to assert more than this; Kant, no doubt, did mean much more. But there are notorious difficulties in Kant's own attempt to defend his categorical imperative. Moreover, as Regan himself acknowledges, he is borrowing only 'part of a phrase' from Kant. To borrow Kant's argument in full, and apply it to all subjects-of-a-life, Regan would have to find an alternative to Kant's reliance on rationality and autonomy. It is not obvious what this would be. Regan certainly offers no further account.

We have now completed our discussion of the three ways of treating individuals which Regan says indicate a lack of respect for their inherent value. We have found that only the second is a clear-cut case, and this, of course, is the one that utilitarians reject as emphatically as Regan does. The third is not indicative of treating individuals as if they lacked inherent value; and the first is also not indicative of such treatment, unless we consider the attitude to continued, rather than instant-by-instant, existence. Even then, preference utilitarians will value the continued existence of subjects-of-alife who wish to go on living, just as Regan will. We can conclude that respect for the inherent value of subjects-of-a-life is not a reason for embracing the rights view rather than the utilitarian view. The principle of equal consideration of interests, which is the foundation of utilitarianism as well as of many other ethical views, fully satisfies the demand that we recognize the inherent value of subjects-of-a-life.

IV

It is not my aim, in this essay, to indicate all the difficulties which face defenders of rights. I have elsewhere indicated some of the problems Regan has in applying his moral views to two apparently similar situations: the experimental use of animals, and his own hypothetical case of the dog in the overcrowded lifeboat.¹² These problems are characteristic of the difficulties faced by all adherents of rights-based ethical theories, because such theories are too inflexible to respond to the various real and imaginary circumstances in which we want to make moral judgments. That is, however, another issue. My aim here has been to show how a position based on equal consideration of interests recognizes the inherent value of individuals, including nonhuman animals. The most impressive case for animal rights published so far is unable to provide adequate grounds for moving beyond the equal consideration stance, to a view based on rights. In the absence of any such grounds, there is no case for attributing rights, rather than equal consideration, to animals.

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NOTES

1. The review was part of 'Ten years of Animal Liberation', *The New York Review of Books* (January 17, 1985), pp. 46-52; Regan's response is in 'The Dog in the Lifeboat: An Exchange', *New York Review of Books* (April 25, 1985), pp. 57-58.

2. Henry S. Salt, Animals' Rights, London, 1892.

3. See, for instance, A. V. Townsend, 'Radical Vegetarians', Australasian Journal of Philosophy, vol. 57, no. 1 (1979), p. 93.

4. For further discussion of this point, see Helga Kuhse and Peter Singer, *Should the Baby Live?* (Oxford: Oxford University Press, 1985) ch. 5.

5. For a more detailed exposition of this point, see the first chapter of my *Animal Liberation* (New York, 1975).

6. See my Practical Ethics (Cambridge, 1979) chs. 4 and 5.

7. T. Regan, *The Case for Animal Rights*, (Berkeley, CA: University of California Press, 1983) pp. 248-49; italics in original.

8. Practical Ethics, p. 102.

9. For further details see *Practical Ethics*, ch. 4; and also my reply to H. L. A. Hart's review of that book, in *The New York Review of Books* (August 14, 1980), pp. 53-54. I develop these ideas further in "Life's Uncertain Voyage", forthcoming in P. Pettit and R. Sylvan (eds) *Mind, Morality and Metaphysics: Essays in Honour of J. J. C. Smart (Blackwell, Oxford, 1987).*

10. The Case for Animal Rights, p. 249; italics in original.

11. Frank Jackson has pointed out to me that Regan's assertion of the incommensurability of the inherent value of the individuals, and values such as pleasure or preference satisfaction, should in any case be rejected because it has absurd consequences. Consider, for instance, what taking such a view seriously would do to perfectly ordinary projects, like your next car trip to the movies. There is a finite, though very slight, probability that you will hit and kill a pedestrian. Are you nevertheless justified in making the trip? We all agree that the death of a pedestrian is a very much greater evil than your enjoyment of the movie is a good; but the risk of killing a pedestrian is so extremely slight that we think it outweighed by a strong probability of achieving the lesser value. What if, however, the value of the pedestrian's life and of your enjoyment of the movie are truly incommensurable? If this means anything, it must mean that no finite probability of your causing the death of the pedestrian could be outweighed by any amount of enjoyment. You would never be justified in furthering your own, or anyone else's, pleasure or preference satisfaction by any activity which carried any finite risk of causing an individual's death. So long, movies—and most other recreational activities as well.

12. See my comments in 'Ten Years of Animal Liberation', *The New York Review of Books* (January 17, 1985), pp. 46-52; and Regan's response, with my rejoinder, in 'The Dog in the Lifeboat: An Exchange', *New York Review of Books* (April 25, 1985), pp. 57-58.

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