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Dale Jamieson

University of Colorado at Boulder

Tom Regan

North Carolina State University at Raleigh

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WHALES ARE NOT CETACEAN RESOURCES*

Dale Jamieson† and Tom Regan‡

†Department of Philosophy
University of Colorado
Boulder, Colorado 80302

‡Department of Philosophy and Religion
North Carolina State University
Raleigh, North Carolina 27695

ABSTRACT

What we know about whales is sufficient for ascribing to them the analogues of human rights, including the fundamental right to be treated with respect. Once we recognize their possession of this right, it follows that whales are not to be used or exploited by us for the promotion of our ends, however "benign" they may appear. In the case of humans, to refrain from killing them is to discharge only a small part of our total duties. We must also refrain from exploiting them, whether "consumptively" or "nonconsumptively." Having come as far as we have in our understanding of the moral ties that binds humans and whales, we must now go further in our deeds. Just as whales are not here for us to kill for our purposes, so they are not here for us "to study," or "to watch," or "to play with." The moral task before us is the most difficult. It is to *let whales alone*.

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In 1946 representatives of fourteen governments met in Washington to sign the International Convention for the Regulation of Whaling. This was the meeting that established the International Whaling Commission. The declared purpose of the Convention was to safeguard the "great natural resources represented by whale stocks" in order to "make possible the orderly development of the whaling industry" (International Whaling Commission 1946).

Since 1946 attitudes towards whales have changed enormously both within the IWC and among the general world population. Public opinion surveys have indicated that in most countries, including Japan, opposition to whaling is the majority sentiment. The IWC, and especially its Scientific Committee, has reflected this shift in opinion, as well as playing a role in bringing it about. The Commission has contributed to our knowledge of whales by supporting the collection and collation of scientific data. This in turn has focused attention on the plight of the planet's largest mammals. In its 1980 Washington conference the IWC even began to explore tentatively the ethical issues involved in killing cetaceans. Today it seems to many that the IWC is as involved in protecting whales as in protecting the whaling industry. There seem to be at least two sources for this shift in attitudes towards whales.

First, recent research has suggested that whales are remarkably intelligent and sensitive creatures. Exactly how sensitive and intelligent, and how exactly these terms are to be applied to whales, is difficult to say, however. There are serious problems involved in studying whales. They live in very different environments than we do. The course of their evolutionary history has been very different, and there are also significant variations among species. Still, some things are known. Whales have extraordinarily large brains. Some have about 30 billion neurons in their neo-cortex compared to about 10 billion in humans. With brain to body ratios that are similar to those of the higher primates, their brains are also highly differentiated and exhibit a high degree of folding of the cortical surface. For these reasons one of the leading researchers in the field, P.J. Morgane, has claimed:

...only the brain of whales and men have the amount and quality of neocortex making both appear at the pinnacle of the animal kingdom... (Frost 1979).

In addition, whales have extremely rich behavioral repertoires, sophisticated communication systems, and complex forms of social organization. Whatever finally may be decided about the exact nature of whale intelligence and sensitivity, it has become increasingly clear that whales are comparable to the higher primates and perhaps even to humans. For this reason it has seemed to many that killing whales for

their blubber and oil is a moral crime akin or even equivalent to wanton murder.

A second reason why attitudes towards whales have changed is due to the apparent harmony in which whales live with their environment. Millions of years before our ancestors came out of the trees whales had already evolved to about their present state, and they were living lives very much like the ones they live today. For millions of years they were clearly the most intelligent beings on the planet. Seen from this perspective, we are evolutionary upstarts. In an incredibly short period of time we have become masters of the planet. And what do we do? We devote ourselves to destroying all other intelligent forms of life. But at least we are consistent. We seem just as willing to destroy ourselves as well. For people who despair at the havoc humans have wrought, whales are role models. They are symbols of how intelligent beings can live joyful, peaceful lives in harmony with their environment. From this point of view, whales are the teachers, we the students, about the things that really matter.

Whether or not we are willing to fully accept either of these lines of thought doesn't really matter. It is clear that we have all come a long way since 1946 in our attitudes towards whales. To some degree this Conference marks the progress we have made. Instead of talking about "maximum sustainable yields" we are now talking about "whales alive" and the "nonconsumptive utilization of cetacean resources."

In the light of the progress we have made it would be nice to say that we have gone far enough, that we are on the verge of a new era in which we give the whales their due. If this were the case, this Conference would be the occasion for a double celebration: one for the whales, and one for us for celebrating them. We shall argue, however, that although we have freed ourselves from the worst aspects of the anthropocentric ethic, which holds that everything on the planet only has value insofar as it has value to us—our ends, our purposes, our interests—we have not yet fully liberated ourselves from its lingering vestiges.

Not everyone will be willing to accept what we say. But whatever beliefs we finally come to, it is important that we be willing from time to time to reconsider them, and to scrutinize honestly the fundamental presuppositions and commitments on which they are based. We hope that this paper will be a contribution to such a reconsideration.

First we shall argue that what we know about whales is sufficient for ascribing to them the analogues of human rights, including a right to life, a right that is violated by those whaling practices that we are beginning to put behind us. We shall argue further that this right is undergirded by a more fundamental right that whales share with humans: a right to be treated with respect. It is this right which would be

violated by allowing, for instance, exploitative benign research on humans. And it is this right that is violated when we treat whales as "cetacean resources." Next we shall discuss some of the implications of our view for the concerns of this Conference.

WHALE RIGHTS

To credit whales with a comparatively sophisticated mental life is hardly new. It is in the spirit of Darwin who claimed repeatedly that consciousness forms a continuum; the mental life of the higher animals differs from our own only in degree, not in kind. Any rationally viable ethic of how whales ought to be treated must take their mental sophistication into account. And it is the demonstrable failure to do this that exposes the grave inadequacy of the "ethic" that allows these animals to be viewed and treated as a resource for us, as if they were trees or mineral deposits. Just as Bonnie is not a resource for Clyde, nor Clyde for Bonnie, so whales are not a resource for us—though of course they can be, and almost always are, treated as if this is their "place in the scheme of things." That we are, so to speak, on all fours with whales on this morally crucial matter will be seen more clearly once we reflect on the philosophical underpinnings of why we do, and should, deny that human beings are to be viewed and treated as other peoples' resources.

In our case we avoid this impoverished view by postulating that we have a different kind of value. Sometimes this is said to be our worth, or our dignity, or our sanctity; sometimes, as in Kant's writings, the root idea is expressed by saying that human beings exist as "ends in themselves." That is to say, people as individuals have their own projects and purposes that imbue their lives with meaning. As a member of the human community I recognize that others have virtues and excellences which they strive to develop more fully. I may not share their conception of virtue and of the good, but I recognize that they, like me, have legitimate ends which they pursue, which are valuable to them, and so if I am to be moral I must treat them as independent beings with their own excellences—as "ends in themselves." Let us here call the kind of independent, nonresource value attributed to individual humans inherent value. It is because we have such value that we must not be treated in ways that fail to show respect for us as individuals, and respect is not shown whenever we are treated in ways that assume that our value is reducible to how much we answer to or advance the interests of others—as if, that is, we exist as a resource for others. Acts and institutions that fail to treat us with appropriate respect, from a deceitful promise to slavery, are to be morally condemned. Or so it is commonly believed. Were we to grant

this much, how could we rationally avoid the same view about the value of whales, since they too seem to have their own virtues and excellences? How could we rationally defend, that is, the view that we have this special kind of nonresource value—inherent value—but they do not?

Many possibilities come to mind: Whales lack immortal souls. Whales lack moral autonomy and reason. Whales lack the ability to enter into contracts. Whales lack the ability to choose between alternative life-plans. And so on. Some of these claims are almost certainly false. But even if they are granted, for argument's sake, they neither singly nor collectively provide a rationally satisfactory basis for affirming inherent value in our case while denying it in the case of whales. For example, even if it is true that we do, but whales do not, have immortal souls, nothing whatever follows concerning the sort of value each of us has during our terrestrial life. Again, that whales lack the ability to recognize the inherent value of others, should this be true, is no better reason to deny that they have such value than it would be to say that a daffodil cannot be yellow because it lacks the ability to recognize that lemons are yellow too. And as for the other sorts of considerations mentioned (for example, that whales lack, but humans possess, autonomy and reason), each conveniently overlooks the fact that *many* human beings who we regard as having inherent value—young children, the senile, and the mentally enfeebled, for example—are similarly deficient. We do not, and we should not, treat these human beings as if they exist as a resource for those of us who, as luck has it, happen to possess the list of favored attributes under review. To persist in viewing and treating whales, creatures who, it bears emphasizing, have a mental life of greater sophistication than many human beings, as if they exist as a resource *here for us*, their value to be measured in terms of how much they answer to and advance human interests, while denying that the same is true in the case of these humans—to persist in doing this is neither rationally nor morally defensible. Rationally, we are inconsistent in judging relevantly similar cases in dissimilar ways; morally, we are prejudiced because we draw moral boundaries on the basis of a biased consideration (namely, species membership), a tragic moral failing in the case of our dealings with animals that is not unlike other failings, such as racism and sexism, in our dealings with one another. For just as the moral status and value of a human being does not turn on such biological considerations as race or sex, so the moral status and value of an individual, whether human or cetacean, does not turn on the different biological consideration of species membership.

There is an obvious way around these charges of prejudice and inconsistency: give up the belief in our own inherent value. This is an op-

tion that will tempt some, but few on reflection will give in. And that is a good thing too. For the moral theory we would be obliged to put in the place of one that recognizes *our* independent, nonresource value will prove to be weak at the joints, unable to stand up under the weight of sustained, fair, and informed criticism (Regan 1983). So we do well not to make a shambles of our theoretical understanding of *interhuman* right and wrong in order to avoid recognizing our prejudice and inconsistency when it comes to the value of individuals beyond our species' borders. We do well, that is, to expand our moral vision rather than to close our eyes to our human fallibilities.

The inherent, nonresource value of a human being is the linchpin of the idea that individual human beings have *basic moral rights*, including such rights as the rights to life, to liberty, and to privacy. If Jack is to show respect for Jill's inherent value, he is obliged to respect her rights; he must not do anything to her that reduces her status in the world to that of a mere resource for others. Thus must he not kill her, for example, so that he, or his children, or the chronically destitute can have more of what they want or need; nor may he limit her freedom or invade her privacy just because he or others stand to reap some benefits, whether the benefits be monetary, recreational, or scientific. To recognize the inherent value and basic moral rights of a human being is to accept the *moral* inviolability of the individual. Like "No Trespass" signs, our basic rights mark off the boundaries of that unique "moral space" which, as individuals, we each occupy.

These same signs come into view once we accept the inherent, non-resource value of whales—and, with this, their basic rights. This is not to say that they do or must have *every* right a human being has—the right to vote, for example, or the right to attend the church of their choice. The basic rights they *do* have are those they *can* have. These include the ones mentioned earlier—rights to liberty, to privacy, to life, and to pursue their own wellbeing or happiness, all violated in a flash, one might say, when whales are killed for their meat or blubber, their oil or bone. But are any of these rights violated when, as many aspire to, we view and treat whales as objects that satisfy and advance our scientific, recreational, or, in either case, our economic interests? That is the central question that remains to be considered.

WHALE WRONGS

Let us consider the recreational uses of whales first. One way that people use whales for recreational purposes is by observing them in their natural habitat. Each winter in California, for example, thousands of people view the gray whale migration. Whales and other ceta-

ceans are also kept in captivity so that they can be used for recreational purposes. Aquatic parks like Seaworld and Marineland train cetaceans to perform tricks for the pleasure of paying customers.

In the previous section we said that if whales have rights then they must be treated with respect. Their value and dignity does not rest on their place in our plans, purposes and projects. From this perspective our exploitation of whales for recreational purposes is not morally acceptable. They are not nature's toys to be "oohed" and "aahed" at by humans. They are not human artifacts made by us to fulfill our intentions. They are creatures of inherent value with lives of their own and the capacity to lead them in their own ways. To confine them in aquatic parks and to make them perform tricks that people find amusing is to try to remake them into our own creations. This attempt to appropriate such marvelous and magnificent creatures for such trivial purposes, denying them their liberty in the bargain, is morally to be condemned.

The commercial whale-watching industry—often viewed as the "benign" substitute for commercial whaling—is similarly unacceptable, though for a different reason. Whales do not exist as visual commodities in an aquatic free market, and the business of taking eager paying sightseers into their waters, though nonconsumptive, is exploitative nonetheless, morally analogous to making a business of conducting sightseeing tours of human beings who either cannot or do not give their consent to be exploited by other people in this way. Moreover, just as Grayline Tours of the black ghetto, or the barrio, or the gay community would tend to dehumanize and trivialize those whose very lives were being regarded as objects of curiosity and amusement, so it is also true in the case of the whales.

The "nonconsumptive uses" of whales for scientific purposes are extremely diverse. They include observing them in aerial surveys, recording their sounds, taking samples of tissues and fluids, and observing their behavior while held in captivity. Though "nonconsumptive," all too often whales are again directly treated as means to our ends. They are studied to satisfy *our* scientific curiosity or to test *our* scientific theories. Even so apparently harmless an activity as aerial viewing for purposes of population estimates should not completely escape moral skepticism, if the object is to determine whether a given species is at risk of extinction. Such studies foster, and are often in the service of, a false understanding of whales—as if, for example, the death of a whale matters only when a species is endangered. As with humans, so also with whales, it is individuals, not species, who have rights. We must take care not to accept that science that smothers the individual whale in numbers, graphs, charts, and so on. And we must also free ourselves from those enterprises that help perpetuate the general view

that whales exist as one or another kind of resource, to be thought of in terms of "herds" or "stocks." To the extent that population and migratory studies are cut from this cloth, to that extent, and for that reason, they are wrong (Jamieson and Regan 1982; Regan 1983).

In defense of research on captive cetaceans it will be said that we overlook the many benefits, both real and potential, that have and will accrue for the animals themselves as a result of our scientific understanding of them. We have learned something about the maladies of cetaceans in captivity and as a result of this we are now better able both to prevent and cure them in the case of those animals now in our care. Like all benefits, however, the morality of those in question depends on the means used to secure them. And no benefits are morally to be allowed if they are obtained at the price of violating individual rights. Because, then, keeping these animals in captivity violates their rights, the gains obtained for whales and other cetaceans are ill-gotten. To take the rights of an individual whale seriously is to believe that individual whales no more exist as a source of benefits for other whales than they do for us.

Two kinds of response might be given to our argument. First, it is often said by people who work with whales and dolphins that these animals enjoy their interactions with humans, even those in experimental settings. Just as people like observing whales, so whales enjoy observing people. If this is correct then perhaps it can be said that in many cases whales "consent," in some sense, to be the subjects of benign research and to be entertainers in aquatic parks. If this is true then such "nonconsumptive uses" do not harm them, or if they do harm them, they do not violate their rights. It is difficult to know what to make of this claim. We should remember, however, that similar claims have often been made about oppressed humans as well as about other animals. It was said in defense of slavery that blacks enjoyed picking cotton and being taken care of by the master. It was said in defense of sexism that women preferred to stay home and do housework, and not compete in the cutthroat male world. Frequently today we see television commercials depicting happy cows and chickens, more than eager to lay down their lives for the sake of our palates. Perhaps these claims about the voluntary cooperation of cetaceans are true, but in the light of this history we should be highly skeptical. It is extremely doubtful that we add anything to the quality of cetacean life by our presence, more than doubtful that our absence would be missed by them.

The second response is that the "nonconsumptive use" of whales is important, because the whales themselves are the main beneficiaries of increases in our knowledge. This argument takes two forms.

The first claims that as a matter of *realpolitik*, whales will be killed as long as it is economically profitable to do so. If it can be shown that

"nonconsumptive uses" of whales are economically preferable, then whaling will cease. There are a number of problems with this argument. First, it presupposes that "consumptive" and "nonconsumptive" uses of whales are mutually exclusive. James E. Scarff has argued that this is not the case (Scarff 1980). He cites as an example the fact that the Russians kill various numbers of gray whales every year in the Arctic Ocean, without any apparent effect on the California whale-watching industry, even though both industries exploit the same species of whale. This suggests that nonconsumptive uses could simply add to rather than subtract from our repertoire of cetacean exploitation. But second, *realpolitik* is, so to speak, a two-edged sword. Even if it can be shown that whaling is an economically inferior use of whales relative to "nonconsumptive" uses, that still would not put the anti-whaling position on a firm foundation, since to accept the argument in this form suggests that whaling *should* continue if it can be shown to be the economically optimal use of whales. And while whaling may not be economically optimal now that whale populations are so low, there is no guarantee that the economic equation won't change in the future. The basic problem with this argument is, then, that it is analogous to saying that the reason we ought not to kill derelicts is because it is not economically efficient to do so. One would have thought the reason against this has *nothing whatever* to do with dollars and cents; and this is what we have argued is true of whales as well.

The second form of this argument suggests that the more we learn about whales the better able we will be to protect them. This argument undoubtedly has merit. We would not be in a position today to argue for the rights of whales were it not for the scientific research that has been done. And if we could be certain that additional benign research would redound to the benefit of the whales, who could oppose it? But again, history provides reason for skepticism. Sad though it is to say, science has been more often used against animals than for them. In the past we mainly have studied animals in order to make them a better resource rather than to ensure that they have better lives. By its very nature scientific knowledge is public information, and scientists are not in a position to control its uses. Sidney Holt has given one such example in which the results of benign research involving wolves is now being used against them (Global Conference on Non-Consumptive Utilization of Cetacean Resources 1983). Who can have confidence that this will not be the case with the whales as well? Even if we are motivated to do benign research on whales by the desire to improve their lot, we should be skeptical of our ability to do that. We have learned over and over again that human intervention in complicated natural systems often only makes things worse. Trying to be friends of the whales may only be another way of making us their enemies.

What we owe the whales is the recognition that they too are the bearers of moral rights, worthy of our respect. Once we are willing to accept, as we should, the idea that whales have the right not to be killed or needlessly harmed, consistency demands that we then acknowledge that they also have the right not to be exploited for the promotion of our ends, however "benign" they might appear, whether such exploitation is "consumptive" or "nonconsumptive." Having come as far as we have in understanding the moral ties that bind humans and whales, we must now go further in our deeds. Just as whales are not here for us to kill for our purposes, so they are not here for us "to study," or "to watch," or "to play with." The moral task before us is the most difficult because the most hidden and possibly self-sacrificial: It is to *let whales alone*, satisfied with the mere knowledge that these "other nations" continue to roam the vast reaches of the oceans in no small measure because of our principled efforts to save and preserve them.

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