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ANTHROPOID RIGHTS AND PATERNALISM

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Those who are keen on maintaining a moral cleavage between humans and other animals — more specifically, other anthropoids — allege that, whereas humans are capable of engaging in some sort of higher-order practical reasoning and of being led in their behaviour by moral values, all other animals, whether anthropoid or not, lacking as they do any moral awareness or any sense of responsibility, cannot be treated as free persons. Thus, whether they are said to have rights or not, in any case our duties towards them cannot consist in respecting their liberty — at least not solely or primarily in that — but unavoidably include some sort of paternalistic attitude.¹ Unlike animals, [human] persons — they go on to claim — cannot be subjected to paternalistic treatment at all.

This paper argues that such a view is wrong, by contending that freedom is just one value among others, not «the» supreme, ultimate or paramount value, or anything like that; and that the differences of treatment humans and other anthropoids are entitled to do not hinge upon the question of paternalism.

¹ In this paper I assume a common definition of ‘paternalism’ as an abridgement of an agent’s liberty for the sake of the agent’s own good. Some authors have argued that the definition does not capture our usual conception of paternalism, which applies to situations wherein the agent’s liberty is not abridged; e.g. cases of a physician withholding information from his patient, or proceeding with blood transfusion upon an unconscious patient who, due to religious convictions, would oppose it were he awake; or other cases of hiding information or even lying. Thus David Archard («Paternalism defined», *Analysis* 50/1 (jan. 1990), pp. 36ff) defines ‘paternalism’ in a complex way, which, among other things, includes an intended denial or decrease of choice opportunities. That seems to me to stretch the notion of paternalism a little too much. Notice that whenever the authorities hide an information from you, they are resorting to coercion, since they employ coercive means in order to keep the information to themselves. For our present concerns we can ignore cases of «paternalism without compulsion» if there be such.
§1.— Moral Responsibility

One of the speciesist arguments pointing to a sort of gulf between humans and all other animals, including apes, is that humans alone are capable of a superior kind of rationality, noninstrumental rationality. The issue of the two kinds of rationality has gone along for quite some time among German thinkers like Max Weber, the Frankfurt school and most notably Habermas. In the English-speaking world and among analytical philosophers, similar — if in general more subdued — considerations have also been put forward — conspicuously by Noam Chomsky and his followers, with a ring of such outlook being also heard in such circles as profess contractarianism and other rationalistic conceptions of general and political morals. According to such views, only creatures [at least] as humans engage in a kind of practical reasoning that does not merely draw practical conclusions from antecedent premises including aims or preferences, but furthermore criticizes those ends or goals or purposes on the ground of higher values or perhaps second-order designs. Such a kind of superior practical rationality would in fact require conscience of self-awareness of a sort which would entail not only a conception of oneself but also a moral self-appreciation, a sense of values as standards or precepts to be complied with in order to achieve a self-contentment beyond the one that is bestowed by mere gratification or elementary desires or urges.

The view under consideration can be split into two different sorts of opinions. One is that the superior rationality pertaining to humans consists in the ability to criticize and challenge one’s own direct or elementary desires on the basis of other desires which, on balance, may turn out to be more strongly motivating. The other approach has it that those alternative desires on the ground of which spontaneous urges can be resisted and even abandoned are specifically moral considerations, values, corresponding to a perception of oneself as a moral subject who is to be praised or blamed depending on one’s own worth or merits.

1.1.— Do [all] humans enjoy a monopoly of practical «reflectiveness»?

The first approach draws a line between humans and other animals which only ascribes to the former a more sophisticated, or second-order, sort of the very sort of instrumental rationality all higher animals are credited with. Nonhumans would accordingly lack a capacity to resist their primary impulses, to give second thought to their desires or to deny themselves free rein. An animal would want something and act accordingly on the spur of the desire. A true person — a human — would be able to hold back, by restraining such impulses, reflecting that other goals or aims can be compromised by yielding to one’s unbridled urges. Thus, the cleavage would boil down to humans being more clever or more cunning, not so rash as other animals purportedly are.

2. Such a claim is often linked with a denial of consciousness or self-consciousness to all nonhumans, grouped helter-skelter into the bag of «animals» — as if monkeys were closer to coelenterates than to humans! An extremist espousal of such a denial is Peter Carruthers’s in his «Brute Experience», The Journal of Philosophy 86/5 (may 1989), pp. 258ff. All such views assume an all-or-nothing approach to the effect that either a creature enjoys full self-awareness or else it (she/he) has no self-awareness at all; a maximalistic mistake fostered by classical logic, which disregards the fact of evolution, the theory of biological evolution, one of the greatest achievements of the 19th century, has been thus far all but ignored by philosophers, specially philosophers of mind. Most of our analytical colleagues lag far behind Charles Darwin, for whom the differences between humans and other apes is one of degree and not of kind; see: Maxine Sheets-Johnstone, «Taking Evolution Seriously», American Philosophical Quarterly 29/4 (oct. 1992), pp. 343ff.
Such a characterization cannot please everybody. It is difficult to attribute to such a difference a terribly important moral significance. On the one hand, the difference is clearly of degree. On the other, such a description is an oversimplification. But most of all a greater shrewdness does not seem to licence a moral privilege of the sort that is being claimed for humans, their being alone entitled to have rights or to be treated in an entirely nonpaternalistic way.

Let us go into the three parts of the argument. First, that the difference is merely of degree is backed up by a lot of empirical data, which show that not just apes and monkeys but many other animals learn to resist their spontaneous impulses and to behave in a primarily unattractive way in order to achieve other goals which, on reflection, seem more valuable. Otherwise no animal could be tamed or domesticated. Even some reptiles learn not to yield to their primary impulses in order to obtain better food or to avoid punishment. But then much the same is obviously the case everywhere in nature: animals (including insects and other invertebrates) learn to hide, to take roundabout roads, to refrain from eating too much in order to keep a part of their quarry for the future, to skirt dangerous objects or places and so on. Some (nonanthropoid) monkeys evince an enormous cunning in their desire to deceive and not to disclose worthy information; thus when water resources are scarce they avoid being seen on the road to hidden ponds in order — clearly — to keep them to themselves; only when their thirst becomes maddening do they yield to the impulse of running towards the pond if competitors are looking or following them.

Likewise, not all human behaviour is equally reflective. There are infinitely many degrees of astuteness. In the same way you can forbear from yielding to first-order desires, you can also refrain from succumbing before second-order goals which turn out, on balance, to be less worth-pursuing than others on the basis of third-order desires and so on. Thoughtfulness or the ability to go up such as scale varies in degree. (On the other hand devoting one’s life to pondering on whether or not one’s nth-order goals are worth pursuing when looked upon from the view-point or \([n+1]\)th-order preferences and so on would not be regarded as an intelligent behaviour.)

In fact there are several sorts of degree discrepancies here. One turns on the degree of a person’s perceptiveness of the importance and consequences of a course of action as against alternative courses; this difference concerns the scope — whether narrow or broad — of the person’s considerations or perceptions. A separate discrepancy is that concerning strength of the will. A third one is the greater or smaller capacity to climb up the scale — degrees of high-mindedness so to speak (in a morally neutral sense).

In fact most humans seem — for the time being — to behave frequently in extremely unreflective ways. In democratic countries, e.g., participation in elections is almost the only means by which most people can — to a very small degree — influence their society’s life as a whole. That being so, it is very important to vote in the most enlightened way. Yet a number of surveys show that quite often most voters choose whom to vote on the very morning they are called to the polls, so to speak on the spur of the last moment’s inspiration. Moreover, since their participation is so important — at least for them, who lack virtually any other saying in their society’s affairs — you could expect them to do whatever is in their power to learn about all candidates’ proposals, both those of established and non-established parties. Yet the latter get almost no audience while the former are not in general carefully studied.
It can be objected that people are not well prepared for coping with such issues; that they show themselves more reflective, less superficial in their judgments when it comes to personal matters. There is doubtless a lot of truth in that reply. However, even there most humans are often quite unreflective. Take for instance the issue of cars. What with traffic accidents, pollution, deterioration of the quality of life because of our «car-life», it is hard to know on what [reasonable] grounds car-fondness can rest. Taking into account the costs, it has been figured out that many — perhaps most — people would live far better without cars. If that is so, car-indulgence is a whimsical caprice or an addiction. Or take the water issue. Among all challenges we must face, water is going to become the most serious one. In semi-arid countries such as Spain it already may be the most severe. Yet, millions of people unthoughtfully and blithely squander what little water there is in order to have north-European lawns in a quasi-Saharan climate. Or take bush-fires, which are mostly brought about by barbecues. A country like Spain is in an acute process of desertification because of such fires — among many other reasons — but barbecue-addiction is both tolerated and increasingly popular.

There are so many similar addictions — lotteries, games, and the like — which cause much misery and in most cases little or no solace — that, even though a balance is hard to attain, at the very least we ought to say that we cannot be proud of our current human rationality. Nor are many humans particularly reflective or clever about the choice of a job or a vocation either. Last, how people manage their love affairs does not show them to rank very high as reflectiveness is concerned either.

The second part of my [counter]argument shows that the aforementioned schema — nonhumans indulging in unreflective impulse-following, humans evincing self-restraint in order to achieve more desirable targets — is at most an oversimplification. We must realize that a number of humans — infants or seriously mentally handicapped people — find themselves here on a level much lower than many nonhumans. There are many other cases about which it is not as easy to know whether that particular human is as clever, reflective, forbearing and so on as that particular chimpanzee or gorilla. In fact our recent dealings with apes prove those closest relatives of ours to be capable of feeling nor just regret, but even remorse, of (partly) modifying their behaviour or their intentions on the basis of such feelings. (But more on that below.)

The third thread of my argument contends that no hugely significant abyss concerning rights or entitlements can be based on a different degree of shrewdness alone. If humans are endowed with a particular quality in virtue of which it is wrong to treat them in a paternalistic way, that quality cannot be their greater astuteness. Many humans — perhaps most of them — do not rank high by stringent standards even of common instrumental rationality. They are short-sighted, unreflective, impulsive, they lack will-strength, and cannot be regarded as enlightened egoists. More to the point, what if they were enlightened, shrewd egoists? Are those who show themselves especially crafty more entitled to freedom? It appears that if humans deserve a nonpaternalistic treatment, that must be on account of some different sort of quality, a moral quality.

1.2.— Are humans alone able to perform morally praiseworthy behaviour?

Thus I go on to canvass the alternative view of the purported cleavage between the two kinds of practical rationality. This alternative approach claims that noninstrumental rationality — pertaining to humans alone — is characterized by value-motivation, and that,
although many nonhumans can be reflective, shrewd, and so on, only humans can take values as reasons for their decisions, i.e. they alone can choose to act thus and so, rather than in such an alternative way, because it is the right thing to do — something morally valuable, praiseworthy or the like. In other words, non-humans in general, and apes in particular, are like young children in lacking the capacity to reach a moral outlook; and so they cannot take morally significant decisions, whether good or evil. (Let us henceforth call this claim ‘the premise’ of the argument — which is obviously an enthymeme.)

There are at least four serious weaknesses in the argument. One is that, should the premise be true, it would not have been proved yet that, unlike apes, human adults in general deserve not to be treated in a paternalistic way. Another weakness is that such a moral sense in humans is a continuous magnitude, which makes it unbelievable that on reaching the 6574th day after their birth people become, then and only then, entitled to be treated without paternalism, whereas all apes remain rightfully amenable to paternalistic treatment until their death. The third weakness is that the sense in which humans are said to be «able» to choose morally — as against their in fact choosing so — is open to so many difficulties that it can hardly support such a drastic entitlements cleavage. The fourth weakness is that it is far from easy to back up the premise with cogent considerations true to empirical evidence.

That human adults must be exempt from paternalistic treatment on account of their possessing a moral sense — or the capacity of moral choices — is an inference which calls for an assumed major premise to the effect that creatures endowed with moral sense are not to be so treated. Such a thesis is not obviously true. We usually think that our dear children, of whose heart-goodness we are so sure, who — no doubt — choose (at least part of) what they do on the basis or such moral principles as we teach them, need nevertheless a strong protection, even sometimes against their will, in order not to fall into dangers with which they cannot cope with yet. We do not think the paternalistic treatment we impose on them is justified by their [relative] lack of morality, but by their ignorance and innocence. Hence, there is in general no proof that freedom from paternalism — or perhaps deprivation from paternalistic protection — is ensuant on moral sense; nor even that it is usually viewed as being so ensuant.

The second weakness concerns the clash between the continuity of people’s acquisition of a moral sense and their sudden «coming of age». Were it the case that what exempts people from paternalistic treatment was their moral capability, it would be particularly absurd to claim that they reach such a stage on their 21st or 18th birthday or anything like that.

Let us come to the third weakness of the argument. Suppose we accept the view under discussion and claim that (normal) human adults cannot be treated paternalistically on account of their moral-sense capability. What exactly is being claimed? Not the fact of their choosing what they do in virtue of moral motivations, but the mere possibility of their doing so. What sort of possibility? Not just abstract possibility, such as can be claimed for any human infant to become a Nobel prize winner or the like. Such remote possibilities are immaterial to moral or legal entitlements. Even if every human baby has the abstract possibility of becoming a Hitler, he is not to be dealt with in any particular way on account of that vague possibility. What we are looking for is not even, then, a physical possibility which would remain «abstract» — or qualified by a phrase like ‘in principle’ or something
like that. No, we doubtless require a concrete possibility. Elucidating what such concrete possibilities consist in is an extremely arduous metaphysical task. I think a partial elucidation can be offered.\footnote{See my paper «Grados de posibilidad metafísica», \textit{Revista de Filosofía}, vol VI, Nº 9 (Madrid: Editorial Complutense, 1993), pp. 15-57.} But then it is doubtful that we must wait for it in order to be clear about the moral issues we are now discussing. As happens with logical foundations of mathematics, metaphysical foundations of ethics are less certain or clear than what they attempt to ground. Withal, there is no evidence pointing to what the thesis under discussion claims, namely that such a concrete possibility of behaving or choosing on the basis of moral reasons entitles those who have it to be exempt from paternalistic treatment. Criminals probably are capable of such a moral viewpoint — if other human adults are — and yet they had rather been treated paternalistically, both for their own good and others’.

For what the thesis we are criticizing holds is that it is the twofold capacity of doing [moral] good and of doing [moral] evil what founds the exemption from paternalism. This twofold capacity is comprised of two abilities: one for good, another for evil. (Admittedly, indeterministic free-willers would probably argue that those two abilities entail one another, since a moral capacity for good requires free will; but even if they could not be separated, those two capacities are, and remain, different.)

Let us look at the twofold-capacity claim more carefully. The claim points to a conjunction of two different capacities (whether separable or not). And it claims that very same twofold capacity entitles those who enjoy it to something (purportedly) good, namely exemption from paternalistic treatment. Yet a capacity for evil can hardly contribute to such an exemption, especially if it is exercised. (You can say that those who, while having such a capacity, refrain from exercising it are thereby praise-worthy.) If and when a capacity for evil is going to be exercised, the agent had better be treated paternalistically, both for his own good and others’; before he becomes an evil-doer.

Thus, only the capacity for doing good can matter in order to entitle an agent to exemption from paternalistic treatment. But again, assume a person enjoys such a capacity, but he is certainly going to do evil. In such a case, wouldn’t it be better, for his own good and others’, to treat him paternalistically in order to prevent the evil he is going to commit? Admittedly it is very hard to know for sure what people are going to do, but that is outside the point. The point is that the mere fact that an agent has a capacity to do good does not entitle him to be exempted from paternalistic treatment. Some preventive measures are quite in order which restrict the liberty of people who nevertheless have a capacity for good; measures which protect the would-be victims, certainly, but which also protect the would-be wrong-doer (among other things from legal prosecution and punishment).

Let us come to the fourth point. Many people both talk and behave in ways which reveal little moral sensitivity or insight. In fact there is little evidence supporting the idea that most adults act mainly in accordance with moral reasons or moral considerations. Let me refer again to electoral campaigns. Not many candidates put forward their proposals from a moral viewpoint. They probably tend to think that such considerations wouldn’t carry much weight with their potential voters. More often than not, what the candidates promise is to defend the voters’ interests, be they right or wrong. Such issues as acting charitably towards — for instance — the poor or the third-world play at most a very marginal
role in elections. Of course there have always been thousands of human decisions which are morally motivated, and consciously so. It is quite difficult to know for sure how frequent or widespread they are. Nonetheless, one gets the impression that moral motivation tends not to be the rule. Anyway, what proves that all (normal?) human adults are really capable of raising themselves to the moral viewpoint? Not the fact that they actually take moral decisions, since it is by no means clear that there is such a fact. Perhaps the fact that they are humans, who «by essence» — or something like that — have such a capacity. Or the fact that they belong to the human species, which is endowed with it by nature. Any claim of that sort is moot, to say the least. Arguing like that virtually amounts to repeating the claim one is supposed to buttress with some sort of evidence. Perhaps what makes us think that normal human adults are capable of moral choices is that we embed such a capability into the very notion of normality. The question then arises of how many human adults are normal. Needless to say, from such a definitional stipulation you cannot infer that those who are not mad in an obvious sense — violent demeanour or gross, blatant infringement of customary rules of behaviour — are necessarily «normal».

Furthermore, our recently increased acquaintance with a few apes shows them to be able to experience almost all our feelings, love and hatred, capriciousness and compunction, shame and pride, generosity and egoism, vengeancefulness and forgivingness. Of course they are less sophisticated than we think we are. Likewise may young people are less sophisticated than many aged people; and at about the same age some people are less sophisticated than others. No absolute gulf can be reasonably grounded on such differences.

§2.— Is Freedom the supreme value?

Ever since J.S. Mill raised the issue of paternalism, a broad consensus has emerged to the effect that he was right in that nobody (no normal human adult) is to be treated paternalistically, which means: no one has to be compelled to act, or refrain from acting, in some way just because the act would be bad for him, but only on account of the act harming other people.

Needless to say, many authors have found lots and lots of difficulties surrounding the implementation of the principle, since it is in general obscure whether or not an act harms other people. Causing harm to oneself can indirectly harm others, too; e.g. one’s children, one’s parents, one’s espouse, one’s students, one’s colleagues, and so on. But in general most authors seem to agree that, if [counterfactually] the harm could be limited to the agent, there would be no rightful way of stopping the act.

4. There are many fascinating accounts of recent experimental primatology. Besides The Great Ape Project, ed. by Paola Cavalieri & Peter Singer, a nice narrative is offered by Michael Bright in The Dolittle Obsession, London: Robson books, 1990. Long before our contemporary discoveries, Charles Darwin evinced his outstanding insight by claiming that «man and the higher animals, especially the Primates, have the same senses, intuitions and sensations — similar passions, affections and emotions ... they feel wonder and curiosity; they possess the same faculties of imitation, attention, memory, imagination and reason, though in very different degrees’ (quoted by Maxine Sheets-Johnstone in his paper referred to above, p. 347). Current studies seem to support Darwin’s view, except in that, probably, the degree-discrepancy is not as great as that. See also Peter Singer’s Practical Ethics, Cambridge U.P., 1993, pp. 110ff. In this connection, an enlightening discussion of the comparative abilities of normal apes and non-normal humans is offered by Christoph Anstötz in «Gli umani con gravi disabilità mentali e i grandi antropoidi: un confronto», Etica & Animali VI/1-2 (1993), pp. 26ff.
Now, when such issues are dealt with in a way which assumes an all or nothing approach, it is difficult to remain reasonable. The counterfactual assumption is probably more than that: it is a counterpossible assumption. And there is no consensus about what the truth conditions of counterpossible statements are. If — *per impossible* — two and two were not four what would they be? Three? Five? Seventy seven? All? Nothing? If a human individual is related to other human individuals, no harm can befall him without hitting other individuals in some way or other. (Let us suppose a criminal who has become the enemy of everybody else and who commits suicide: he thereby deprives the other people of some goods, like that of forgiving him for his offenses, or helping him to become a good person by reeducation.) The hypothesis of a human individual unrelated to any other can be sidestepped.

Furthermore, most rights we are keen on and which we claim in the name of Mill’s principle of being exempted from paternalistic treatment are such that obviously by exercising them we can harm other people. I may claim the right to speak in public, to spread my political opinions by means of loud-speakers. By using them I harm those who claim they are entitled to quietness and silence. But then you claim to be entitled to drive your car, whereas I claim I have a right to that very same quietness and silence, whereas cars are terribly noisy, not to mention other bad things about them.

Thus, the all or nothing approach is a non-starter. But a qualified approach, taking degrees into account, could be regarded as plausible. Then what would be claimed would be that, to the extent that an action only harms the agent, it must not be prevented — provided the agent is a normal human adult. The less an action impinges on other people’s rights, the more the agent must be free to perform it, whatever the consequences for himself.

The problem with such a precept is that it can only be justified on the basis of a principle to the effect that liberty or freedom is the supreme value. For otherwise it is far from clear why we ought to obey the precept. Why is an agent entitled to do evil to himself? Why is society entitled to prevent him from doing evil to others? Is it because society is entitled to prevent evil? No, because then it would also be entitled to hinder self-harm. The only discrepancy between harming oneself and harming others is the difference between selfhood and otherness. Thus, what would be legally objectionable about harming others would be, not the fact that it is an act of harming, but that they are others and, as such, must be free from being harmed by anyone except by themselves. In other words, people would be free to be harmed and also free not to be harmed, which could not be the case were they subject to a harming action by others. What the view under debate claims is that freedom (both to be harmed and not to be harmed) ranks higher in the scale of values than well-being, happiness or the right to enjoy a good life. Therefore, only freedom’s supremeness would be a reason for Mill’s precept.

Now, what is the evidence supporting the thesis that freedom or liberty is a supreme value? Such a thesis can be pronounced self-evident. Or it can be laid down: (1) as a definitional stipulation, a meaning postulate or something like that; (2) on the basis of how we in fact act and think about such issues; (3) in virtue of considerations concerning human nature. All those strategies fail. That the thesis is far from obvious or self-evident is proved by the fact that until quite recently (the late 18th or the 19th century) it had crossed the mind of nobody writing on ethical or political matters. (Unless we redefine ‘self-evidence’ in order to foil empirical counter-examples!)
2.1.— **Is freedom supreme by definition?**

Laying down the thesis like a stipulation or postulate does not serve any fruitful purpose. A man is free to stipulate it; another man is free to stipulate the opposite. Nor is it helpful to remind us that every reasoning must have a starting point. For one thing, it is quite fallacious (a quantificational scope sophism) to infer from ‘There is always an entity such and so’ that ‘There is an entity which is always such and so’. For another, it is a legal fallacy to infer from the (so-called) fact that there must be a boundary somewhere that the boundary must be here rather than elsewhere — perhaps on the ground that it would be equally arbitrary to draw the line anywhere else.

Moreover, laying down freedom’s supremacy by definitional stipulation is particularly fraught with difficulties. What is the phrase to be defined in such a way that freedom’s supremacy is thereby ensured? Is it ‘freedom’ itself? Is it ‘value’? Or what? (Or is it again ‘human normal adult’, to be defined as an agent for whom freedom is a value ranking at least as high as any other and, in case of conflict, higher? But then, we are owed a proof that there are many «human normal adults».)

2.2.— **Is there a consensus for freedom’s supremacy?**

No more successful is the second strategy. That freedom is the most precious jewel according to everybody’s lights is plainly false. We have some inkling of what human preferences and criteria have been through thousands of years. As already pointed out above, only quite recently freedom’s supremacy has been claimed. Even in our societies, it is far from clear that most people cleave to freedom at whatever cost, come what may and above all other goods. On the contrary, what seems the most natural way of arguing for freedom is that, other things being equal, the freer you are to act as you please, the happier you feel. Curtailing your freedom entails diminishing your enjoyment or well-being.

I am not maintaining that joy or happiness is the supreme value. There needn’t be a value higher than all the others. But, were it the case that some value or other ought to be supreme, I think both common thought and philosophical tradition would tend to give the prize either to happiness or else to virtue or rightfulness or something like that. (My own consequentialist leanings bring me close to the former alternative.) Anyway, not liberty. The reason why there needn’t be a supreme value is that practical reasoning can go on ad infinitum, as theoretical reasoning does. We argue for freedom on the basis of happiness. For happiness on the basis of how its enhancement makes for a more beautiful and harmonious habitat (our surroundings or mini-cosmos); for beauty and harmony on the basis of what? Perhaps on account of the fact that we feel more free in a harmonious and beautiful environment. Or perhaps for some metaphysico-ethical reason (the more our cosmos is harmonious, the more real it is, with reality-enhancement being a paramount good). Even if the whole chain thus becomes circular, it may be quite legitimate, each link thereof being possessed of plausibility and some degree of cogency. We can kiss goodbye to the illusion of the supreme value.

What I am arguing for is that, were we to need a supreme value, happiness would be a more likely candidate. Were freedom that supreme, how could we be justified in curtailing our children’s? It is for their own good, we say. And so what? It is in order for them to enjoy a larger, unabridged freedom later on in their lives, we tell ourselves. But then thwarting or halting any self-harm at any age is conducive to a greater freedom of the
agent later on (except in cases like preventing suicide or euthanasia for painful terminal disease sufferers, but in such cases what can be plausibly claimed is that what by far harms such people more is to coerce them to live on and endure grief and misery).

Likewise, except pure retributivists, most everybody agrees that penal confinement ought not to be a mere punishment but also helpful for the prisoner, helping him to relinquish his vices, to learn a trade, to behave in a better way. No such consideration could apply were freedom the supreme value, for in such a case whatever goods might be done to the prisoner would be offset by his being deprived from liberty. Thus an exclusively retributivistic approach to penal sentences would become mandatory were it the case that freedom was supreme. (Well, yes: a man’s modus ponens...) (On the other hand, if freedom ranks above all other values, it seems very difficult to justify depriving a man from his liberty because of theft or other similar misdemeanours which are not clearly infringements on another person’s freedom in any straightforward sense. Of course, you can claim the liberty of using your property as you think fit without interference. Yet it seems clear that an imprisoned burglar’s degree of unfreedom is infinitely more serious than the robbed man’s unfreedom brought about by his property-lessening.)

Life, happiness or well-being, self-contentment, self-esteem, joy, beauty, harmoniousness, friendship, togetherness, love and even life, or existence: none of them seems to be subordinated to freedom or to be a mere corollary of freedom or to derive whatever value it is possessed of from freedom alone. Anyway no consensus seems to exist in favour of such a subordination. Nor is it the case that in cases of conflict between freedom, on the one hand, and one or several of those values on the other, we tend to favour the former, sacrificing friendship, loyalty, togetherness, even our own well-being or our life on the altar of liberty. Only a fool would do that.

(But isn’t it commendable to die for freedom? Well, it certainly is laudable to sacrifice one’s life for the freedom of one’s family, or one’s people. As to what we are supposed to make of a nation’s collective suicide aimed at escaping unfreedom, that seems to me debatable. It depends. There are a number of historical examples, like that of the Spanish Numantines, who destroyed their own city by fire in order not to be enslaved by the Romans. Now, for one thing, what they were desperately evading was not just lost of freedom, but an exceedingly miserable life of servitude — or, more exactly, their own death at the hands of the Romans followed by an extremely harsh enslavement of their women and children. For another, I surmise that we admire their self-immolation to the extent that we think it contributed to some good, such as encouraging other people to secure, through their struggle, better surrender-conditions from the Romans or making the latter more lenient towards other Spanish rebels.)

George Eliott once said that, taking into account the amount of misery people bring upon themselves when they have their own way, it is amazing how bent they are on having their own way. Probably the reason is that by doing so, by exercising their freedom, they have an enjoyable life and so increase their happiness. At least for the time being. Thus they are not necessarily regarding freedom as supreme.
2.3.— Is freedom’s supremacy rooted in human nature?

We can of course define ‘man’ in such a way that only agents for whom freedom is supreme are human, or «normal» humans, or anything like that. As for non-adults, impaired adults, people serving prison sentences etc, the definition either fails to apply to them or else applies with some qualification, perhaps a counterfactual condition.

The claim that an agent is, by her nature, a human only if she is such that freedom is supreme for her can be construed either in a subjective or in an objective way. The former construal (for an agent to be human she must be aware that freedom is a supreme value) yields the odd result that millions upon millions of people all through history have not been human! The latter construal (that for an agent to be human she must be more entitled to freedom than to anything else — or any similar formulation) falls back on some sort of redefinition. It is obvious that having a brain, a head, lungs, at least one kidney are essential features of human nature. No similar evidence is available concerning a link between human nature or essence and freedom’s supremacy as an objective value.

But, even if as a matter of fact, freedom could be shown to be supreme for us humans, would the result favour the case of those who want a moral cleavage between humans and non-human animals? That is not obvious either. Your cat would feel extremely happy were she allowed to flee from your home. Afterwards she would probably be most unhappy; she could even fall ill or die, since she is not prepared for wild life. Thus you, who love her, constrain her to remain home, even against her own will. Despite such a deprivation from (unrestrained) freedom, she is, all in all, happy, fairly happy (let us suppose).

What entitles you to treat your cat as you do? Oh — you reply — freedom is only supreme for men, not for animals. But then how can you, independently, argue for a moral abyss between humans and all nonhumans on the basis of freedom’s being the supreme value? Were freedom a supreme value, what would be the ground for it to be granted to «human normal adults» alone? Either the reason is that what is supreme is freedom-for-a-normal-human-adult or it is something else (e.g. that as a matter of fact normal human adults alone can enjoy it, or can realize how good it is, or anything like that).

The former disjunct boils down again to an unwarranted (definitional?) stipulation. The latter is both question-begging and, at least in some versions, clearly wrong. It is e.g. obviously true that also nonhumans want freedom. For the time being, your cat is likely to agree to your ranking freedom above all else — until she suffers from her flight. On the other hand, most humans, whatever they say, do not actually behave as if deeply down they were absolutely convinced of freedom’s supremacy. They — reluctantly, perhaps — resign themselves to some lessening of their liberty in order to secure other goals in life. After all contractarians agree that such is the origin of society. Of course you can say that a curtailment of liberty is justified provided a certain boundary is not transgressed. Thus freedom could remain the supreme value but only to some extent: all other values would rank lower, but not all of them separately — let alone jointly taken — much lower; thus in case of conflict, a certain amount of freedom could be relinquished for the sake of other goods. In practice though even with such qualifications freedom’s supremacy is implausible. That only a small amount of freedom can be reasonably sacrificed for the sake of much happiness seems odd, to say the least.
2.4.— **Is, then, higher-order freedom supreme?**

Alternatively it can be claimed that even when freedom is renounced, provided the renunciation is freely chosen, what happens is a free act which shows freedom’s supremacy even in its own self-sacrifice. To put it Sartre-wise: freedom is supreme in its own self-commitment (even though by committing itself it commits suicide). Or less paradoxically, second-order freedom is better than first-order freedom. (And what about third-order freedom and so on?)

Such ploys are not convincing. On the face of it second-order freedom is not clearly seen as more valuable or beneficial than first-order freedom. There is no similarity with the hierarchy of preferences or wishes of different orders. Acting in accordance with second-order preferences pertains to a reflective, rational creature more than acting on the mere impulse of first-order wishes, because higher-order belongs with reflection, thoughtfulness, conscience, pondering; the higher a preference’s order is, the more it corresponds to the agent’s considered plans for his life. One does not see what sort of similar insights can back up the purported supremacy of freedom, provided it is of a higher order.

Nor is it obvious — far from it — that it is better for you to sacrifice love, friendship, loyalty, well-being, beauty, harmony, joy on the altar of second-order freedom, or on that of third-order freedom (freedom to compromise or even obliterate one’s lower-order freedom). In fact Sartrean heroes do not do that. They sacrifice freedom for the sake of such other goods as those just mentioned. Even a tragic hero who would allegedly forego his freedom in order to relish his free enslavement — so to speak — would be most probably motivated not by second-order-freedom’s inner supremacy as a paramount value, but for the sake of the heroic gesture’s beauty, or for his own self-righteousness feeling or the like.

2.5.— **What does unfreedom consist in?**

When we speak about liberty or freedom, we may refer to several situations, closely related but all the same different — even though the boundary is fuzzy. Being unfree is being thwarted, hindered, hampered, restrained. There are several sorts of restraints. One is compulsion. Another is coercion. A third one is pressure. A prisoner is under strict compulsion. He cannot leave the jail. ‘Cannot’ in a quite stringent sense. Not only is he threatened with reprisals if he attempts to go beyond the enclosures or barriers, but jumping over an electrified barb-wire or a very tall palisade is often unfeasible, at whatever cost. Then, the bank-employee who faces a hold-up is in some sense free not to obey the brigands’ orders, if at the price of probably being killed afterwards; he is free from strict compulsion, not from coercion. Finally, in many cases when we complain about our lack or liberty or we boast of our having forsaken some liberty for the sake of some other good — ours or other people’s— what actually happens is that we are (or we have voluntarily put ourselves) under some sort of pressure such that, if we fail to comply with what is expected, some more or less irksome or annoying consequence may or will ensue. Thus, when a couple decide to live together, each member renounces some liberty and binds himself to joint action or to refrain from actions not mutually agreed on. For instance, the couple’s members may bind themselves to loyalty, mutual faithfulness, mutual assistance, to enjoy much of their leisure time together, to go to bed at a certain time (rather than letting the lights and the music on through the whole night) or anything like that. What if they then infringe those explicit or implicit agreements? In general there is no reason for them to fear for their life or anything of that sort. But unpleasant quarrels are likely to arise, or at least explicit or implicit rebukes
or disapproving stares or hints. Or a deterioration of their mutual enjoyment, or of agreeable
talk, etc.

Such differences are almost certainly of degree, including that between compulsion
and coercion (the physical impossibility of filing the grid’s bars off, or of jumping over the
barbed-wire fence, would be much less were it not for the gaolers’s surveillance and the au-
thorities’s threatened reprisals in case of attempted escape). On the other hand there are also
degrees in both the scope of each of those three «sorts» of freedom and the extent to which
a lack of freedom affects the well-being of him who suffers it. With our current international
law, there is no generally recognized right of human adults to travel abroad — still less to
emigrate — but, at most, only an obligation of state authorities not to compel their respective
citizens to remain at home. In practice that means for the inhabitants of many countries that
they are unfree to choose to live elsewhere. They are compelled to live within a confined
territory. Yet such unfreedom is not equally serious in all cases. If the territory is vast, if
it contains plentiful and various resources and assets, the enclosed inhabitants may have dig-
nified and even happy lives despite their lack of liberty to travel abroad or to emigrate. If,
however, the territory is small, barren and overpopulated, things are much worse.

Those who deem liberty — lack of constraint — to be the supreme and most valuable
end of life — liberty for liberty’s sake against and above everything else — are probably
thinking about freedom not only from [strict] compulsion but also from coercion. We fail
to enjoy the relevant liberty, even in the absence of physical obstacles or hurdles impeding
our movements, if we are put under a serious threat of reprisals in case we decide to per-
form the forbidden action. What degree of reprisals is to be counted as the one such that not
being under threats of them is the end of life? Perhaps not being jailed, not being whipped,
etc. Not being insulted? Not being blamed? Not being criticized? Not being ostracized? Not
being maligned behind one’s back? Not being looked-at with a flicker of reproach or
amazement or mockery? Not being badly thought-about? Well, whatever our right to act as
we like, other people can be claimed to be entitled to have their own opinions and to voice
them. If not being under threat of anything unpleasant in case we choose to act as we please
— provided no one else is harmed (whatever such a proviso really amounts to) — is going
to be the end of our lives, is it not clear that what makes such a threat’s existence obnoxious
is that the consequences are nasty and, should they materialize, they would impair our well-
being? But then, why is a well-being impairment to be more offensive if it is inflicted on
us as a reprisal for one of our actions than if is wreaked on us for no reason or by mishap
or ill-luck? Is it not plain that that on account of which such threats are repugnant is the
very undesirableness of the threatened consequences? But then, being or feeling free turns
out to be of instrumental value, bestowing on us a sensation of security, of exemption from
such unpleasant situations and thus increasing our expectation of joy, pleasure or well-being.
An expectation which already contributes to our present well-being.
§3.— The extent of paternalism in our societies

Our societies do not abide by Mill’s precept. Of course it is hard to muster conclusive evidence to that effect, since every freedom curtailment can be justified on the basis of other people’s interests — e.g. the agent’s children. Yet in many cases it is chiefly in the interest of the person whose liberty is abridged that the curtailment is enforced.

One case is compulsory education. Admittedly if people were allowed not to learn, society would be worse off. Yet it is mainly for the sake of those who are thus compelled that obligatory education has been instituted.

True, those who are compelled are children or youngsters. And they are compelled to many other things, too, by their own parents or tutors. But in this case it is even the parents’ freedom which is encroached upon. We think that, since the obligation is for the sake of their children, it is also for their own good, isn’t it?

Another infringement of Mill’s principle is compulsory vaccination — and in some cases compulsory medical treatment. Again those rules can be argued for on the basis of society as a whole being interested in health and in preventing its members from spreading contagious diseases. That is part of the explanation, but we also think that such dictates are mainly licensed for the sake of the very same people who are compulsorily vaccinated. Otherwise it would be hard to justify them. In effect vaccination is never one hundred percent safe. There is some marginal risk, even of death. If compulsory vaccination was enforced only or mainly for the sake of others, it would amount to subject all human persons to a risk of death for the sake of other people’s health.

Compulsory affiliation to social security institutions is also a violation of Mill’s principle. Yes, everybody else is going to be more at ease if you receive free medical treatment in case you fall seriously ill, and if you get an old-age pension; otherwise many people would suffer from seeing you in a state of mortification and distress. Yet, it is mainly for your own good that you are lawfully obliged to pay your contribution to social security in order for you to eventually receive social help.

Likewise there are rules against purchase of human organs, self-enslavement, or against activities with a serious risk for one’s health or life, like bathing in a swimming-pool when there is a storm, or in certain beaches when there are tempests, and so on. Of course in such cases, again, it can be claimed that the commands are enacted for the sake of

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5. One of the many issues concerning paternalism turns on the difference between hard and soft paternalism — the latter claiming that anyone’s will has an absolute right to be respected unless it is not his «real will», or something like that. My feeling is that supporters of soft paternalism fall back on dubious manoeuvres and ad hoc adjustments, in particular counterfactual assumptions which are quite often debatable to the utmost. One of the odd things about soft paternalism is that its advocates tend to assume that an agent’s «real will» can be known by other people better — in some cases — than by the agent himself. For a defense of soft paternalism see: Alan H. Goldman & N. Goldman, «Paternalistic Laws», Philosophical Topics 18/1 (1990), pp. 65-78. The authors claim (p. 71): ‘A hard paternalist takes prevention of self-harm to be sufficient in itself to override choice, whether truly voluntary or not. This is not true. All hard paternalists grant that not every prevention of self-harm justifies interfering with the agent wishes; from a consequentialist view-point (hard paternalists tending to be moral consequentialists), all consequences matter, including the action’s most «intrinsic» features; those different consequences have to be gone into, canvassed and weighed; since tampering with an agent’s wishes is likely to produce a feeling of failure, which is bad, a high degree of harm-prevention is needed in order for a paternalistic intervention to be more right than wrong. An excellent defense of hard paternalism is offered by John Kultgen, «Consent and the justification of paternalism», Southern Journal of Philosophy 30/3 (1992), pp. 89-114.
society, since should you find yourself in a terrible danger, owing to your rashness, society could not or would not shrug, rescuing operations being costly and entailing dangers for others. That said, obviously the first beneficiaries of the prohibitions are those people who are forbidden to do certain things.

Prohibitions of pedestrians crossing the street when cars are passing are hard to justify as rules against doing harm to others. Admittedly if a pedestrian is crushed by an automobile, a number of disagreeable consequences ensue, even for the motorist. But after all the motorists could be declared in all such cases immune from any legal inconvenience or disturbance. It is hard to think that such prohibitions are solely for the sake of the motorists. At least officially such is not the case.

Compulsory wearing of security bells by motorists, or helmets by bikers, are also hard to justify on non-paternalistic grounds. Or take prohibitions of living in houses that have not been built in accordance with official norms of aeration, sanitary installations and so on. In general what is thereby forbidden is not a course of action which would harm others.

There also are compulsory evacuations in cases of volcanic eruptions, earth-quakes, fires, blasts or even threats of explosions. Everybody is to gain from such constraints, but first and foremost those upon whom they are imposed.

Drug usage is also forbidden for the sake of those who would otherwise become the victims of those terrible products. Yes, you are not free to ravage yourself into a waif because, if you do, society will have to try to rescue you, which costs dear. But is that the only or the main reason for the prohibition of harmful drugs?

Prohibitions of consenting to being engaged under conditions which are demeaning, insalubrious or probably conducive even to death can only be justified for the sake of those who are forbidden from accepting such job offers. Yes, other people will have to pay if you, led by your joblessness situation, are desperate enough to hire yourself under those conditions. But it is mainly for your own sake that the prohibitions have been enforced.

In fact there are many prohibitions concerning bargain arrangements which would harm nobody except perhaps one of the undertaking parts: you are allowed to sell neither a special discount rate you are entitled to on account of conditions of family membership or age, nor your citizenship or majority rights nor your suffrage.6

It can be replied that, when you pledge yourself to any such transaction, you are thereby compromising or surrendering your liberty. Nonetheless, were the argument correct, then, for the same reason, all contracts or deals or compacts would have to be forbidden in order for your freedom to be preserved. When you buy a table, you henceforth forfeit your liberty to use the money you have been charged for it.

6. Not just that. In order to protect you against ill-judgment, you are forbidden to vote for candidates who do not meet the officially prescribed conditions; e.g. candidates seeking unlawful reelection. Again it can be argued that such bans protect third parts (e.g. against abuse of power), but the argument yields results which are unsavoury. For one thing, if every voting choice likely to lead to power abuse was banned, no political freedom would remain. For another, if such prohibitions are imposed upon you in order to protect other people's liberty, then the system is clearly oppressive. Thus the real reason is not a general norm protecting third parts. In fact you yourself — as well as all your county people — are meant to be protected from power abuse by such electoral laws as restrict your voting rights. For your own good the authorities curtail your liberty.
Thus many agreements are outlawed which would harm no non-contracting part. Contracts have to comply with many constraints to be lawful. Of course the prohibitions are enforced for the sake of the weaker part. (Selling commodities which do not comply with official requirements is as forbidden as buying them on account of their lesser price.) But then, such a part is after all compelled to act — or not to act — in a certain way for her own good.

Nor can society allow free agreements leading to mutilations, humiliating or cruel treatment or whimsical killing of one of the free contractors.\(^7\)

From womb to tomb our lives are regulated by thousands of prohibitions due to which not only each of us is less harmful to others than he could be were it not for the prohibitions, but furthermore each of us has a better life than he would otherwise have. Not only indirectly, but even as a direct consequence of the prohibitions he is put under. (Not that all such bans are good or reasonable. Prohibitions of auto-thanasia in cases of painful terminal illness are not.)

There is a broad range of disagreements in our society as to what can be legitimately outlawed. Many people endeavour to broaden the field of liberty above everything else. Other people argue that it is unjust to establish a number of such constraints and prohibitions while at the same time not going all the way towards a more protective egalitarian society. (It is — they claim — somehow hypocritical to forbid working contracts under such or such conditions while society does little or nothing to provide everybody with a job.)

Anyway there are good arguments in support of a mild paternalism. Whatever the all-or-nothing juridical boundaries about «coming-of-age», there is no reasonable sharp demarcation separating adulthood from adolescence; if teenagers deserve — for their own sake — some benign and enlightened paternalistic treatment, why not those who are 20, 21, 22, ..., 70 years old? (Or 99, for that matter, the latter perhaps more so on account of so-called senile childhood.)

Nor does it seem reasonable to counter that what confers a right to a human individual or group is their decision to stand up for the right, their claiming the right and resisting infringement thereof. For he who claims a right either does it legitimately or not. If the former, it is not his claim or his struggle which grounds the legitimacy; it is the rightfulness or soundness of his demand which justifies his stand. And if his claim is illegitimate or morally unwarranted, it cannot be rendered licit or appropriate by the mere fact that he acts in a prompt or strenuous or energetic manner in order to get what he demands. Nor would a weakling or a listless man forsake his rights because of his lack of vigour or zest or stamina, let alone because of his being a cripple or a physically weak individual or an isolated powerless person. Nor is it even the case that the rights of a person or a group of persons become higher, or greater, or more inviolable, when they put up a struggle for their rights or when they claim those rights. What makes a right a right is not its being claimed. You can only rightfully claim as yours what is — whether you claim it or not, and to whatever extent you claim it — rightfully yours.

\(^7\). See in that connection: John Kleinig, «The Limits of Consent: A Note on Dr. Kevorkian», *Applied Philosophy* 7/2 (1992), pp. 63ff. Although I entirely disagree with Kleinig’s concluding objections against euthanasia, his paper sheds light on the fact that we usually admit that what contracting parts can and cannot agree upon ought to be subject to some paternalistic constraints.
Moreover, the principle that each man has the right to harm himself as he pleases is far from obvious, for it concedes to the individual at one moment the unrestricted licence to wrong himself at later times. And even though I — unlike other authors — contend that the very same entity, the man or person, who exists and acts at a certain time is he who also exists and acts at a later time — with metaphysical strict identity or sameness —, even so it may be reasonably assumed that that person has, at times later than those of his assumed self-wrong-doing action, rights to claim against the wrong-doing, rights he was not entitled to ignore at the time of the action. Whether such arguments are cogent or not, they cannot be brushed away without debate. And — more to our present point — our society seems to think that some such considerations do rightly apply — otherwise the huge extent of public paternalistic enforcements and prohibitions would be hard to explain.

My purpose in this section has only been to show that, if our dealings with other anthropoids are — and unavoidably are bound to remain — paternalistic in many respects, and rightly so, our collective treatment of ourselves is paternalistic too. Perhaps we cannot help being more paternalistic to other anthropoids than towards humans, but then we cannot be equally non-paternalistic to all humans either.

§4.— Protection for the nonhuman Apes

For the first time, we humans can decide about the life or death of thousands of species; decide in a conscious, premeditated, planned way. There are planetary institutions and treaties through which such decisions can be taken and implemented. If we fail to take some decisions, then through the scattered and unplanned action of human individuals and groups, many of those species will soon disappear. They include those most closely related to us — those whose members are cousins of each living human being, the number of generations backwards which unite us being but a small drop in the sea of biological evolution in our planet.

What now emerges is that, whatever we choose to do, we cannot help acting to our cousins the apes in some sense like masters, whether good masters or bad masters. Why?

First, there are those apes who — through our fault — live in zoos or other enclosures; and those, more unfortunate perhaps, who are subject to experiments in clinical prisons. Our cry for the apes’ rights is, among other things, targeted at such cruel exploitation of those rational cousins of ours. So, we must demand that no clinical or other experiment be inflicted upon them which we are not prepared to consent to if inflicted upon humans. But what then? And what about the zoo prisoners? We cannot — I think — release them into wild nature. That seems pretty obvious. They are not acquainted with such a life or with such an environment. Nor are they in many cases of such an age that they can learn how to cope with a wild environment. Nor are the young necessarily in a better situation, since they cannot go into the wilderness with their parents and close relatives.

Are we going to allow them to live wherever they please? That does not seem a good solution either. For one thing, despite their high intelligence, their linguistic aptitude, their reasoning which is not far below that of humans, or of many humans, despite all that, they are not prepared for a free life in human territory. We cannot fancy chimpanzees or gorillas going about, taking residence here or there in Verdi street or wherever. Such unconstrained
liberty of movements would give rise to huge difficulties. Perhaps they could be solved, but I fail to see how. So, continued confinement seems unavoidable.  

But by confining them to an enclosed space — be it that of a natural park or a «reserve» — we are acting paternalistically towards them. That confinement may be good, nay mandatory for their own sake, yet it is us who decide for them, even against their will (it seems certain that they will try to roam beyond the park’s confines). However our paternalism can be humane and good. We can grant them sufficient space for them to enjoy happy and dignified lives there, and — to the extent that (because of us, by the way) — they no longer are capable of conducing normal ape lives, help them to have sufficient foodstuff and the like.

Fortunately not all apes are in similar situations. A dwindling number live in the wilderness. Yet as things now evolve, they will be soon expelled from their dwellings and their habitat by humans. Again the only solution is to enforce a number of natural reserves forbidding humans from encroaching upon them. That project will be costly. The apes live in countries whose population tends to be poor and badly needs lands and new food sources. So, preservation of the apes’s habitat will have to be paid for by the whole of humanity — unless we are ready to bear the blame for the genocide of the latest survivors amongst our closest relatives. More to the point, any setup of such «natural» reserves (what is natural about the encloses, or the fences?) will entail a paternalistic protection of the apes by us. We confine them in an encircled area, we deprive them from unconstrained freedom of movement, and we artificially decide the extent and conditions of their reserve. Unfortunately, owing to our uncontrolled expansion, those reserves may turn out to be inadequate for a truly natural life for the apes. We may thus face an alternative: either we let them die of hunger — a hunger brought about by our past encroachments and murders and kidnappings — or else we have to make up for our faults by supplying them with a part of the food and shelter they need in order to have happy lives. I assume everybody who has realized to what extent they are like us — not only our close cousins, but quite similar to us in behaviour patterns, reasoning, and communication — will advocate the latter option. The option is clearly paternalistic.

So, whatever we decide to do towards them, we will be either paternalists or else inhumane. What brings me back to my main subject in this paper. If our dealing with the [other] apes has to be paternalistic, that — it has been claimed— marks a world of difference with respect to our dealings with other humans. I hope I have sufficiently refuted such a claim in this paper.

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8. By the way, whenever some creatures — whether human or not — are enclosed or confined, other people — «free» people — are confined too, since their liberty of movement is thereby restricted: they are usually debarred from freely entering the enclosed territory and always from freely leaving it as they choose (some controls ought to be set up in order to thwart the confined creatures’ escape). In the case we are now considering of enforced segregation between humans and other apes, the paternalistically protective motivation concerns both.
§5.— Conclusion

Nonhuman apes are not as intelligent as humans are, by and large. Nor are humans as intelligent as they think they are. But apes are very very intelligent, quite close to us in their behaviour, feelings, attitudes, and wishes. The [small] difference makes it impossible — regrettably, to my mind — or at least very unlikely that we can live with them together in a common society with the same rights and the same duties. They will have no use for voting rights. Nor is it decent to impose upon them obligations for whose fulfilment they are not equipped, like that of contributing to the common well-being by their work. Segregation seems inevitable. But even without segregation, there would remain a lack of freedom, a protective treatment without which they could not survive.

Although [normal] human adults are not in such a situation, our arguments have shown that the difference is not as large as that. A difference of degree — and not terribly big at that.

Of course, every paternalistic action — be it a legal imposition or an intrusion by private citizens into the life of a friend, a colleague, a companion, a neighbour, a spouse or whatever — impinges on the concerned agent’s freedom, making him do something (or refrain from doing something) to some extent against his will. Thus any paternalistic action clashes with the value of liberty. Hence, either it is unjustified or else a conflict of values arises. In cases of conflicts of values, or dilemmas, one of the values or duties may have precedence over the other, but that on its own does not nullify the «overridden» value or duty.9

One of the good things of being good or fair to our cousins the apes is that we gain a deeper insight into ourselves. We are apes after all. What is the end of their lives is also the end or goal of ours: to live, and to live well; to secure such a life both for ourselves and others.

I am not erasing or obliterating differences of degree. Nor am I denying that they may be important, even decisive when confronted with moral dilemmas and how to cope with them. On the contrary, I think degree differences matter because almost all differences are of degree and some differences matter. Yet, they matter to a degree (up to a point). To what extent? It depends on many factors. One of them is the very size of the degree disparity. After recent research we now know that in most relevant respects the discrepancy between humans and other apes is very small. They are much more human-like than we were used to think. And — such is the conclusion of this paper — we are much more ape-like than we had fancied to imagine. A man’s life is an ape’s life.

9. See my paper «El problema de los dilemas morales en la filosofía analítica», Isegoria 3 (Madrid: CSIC, 1991), pp. 43-79. The existence of deontic paradoxes concerning freedom is the gist of Sidney Hook’s very well-argued book Paradoxes of Freedom, Buffalo: Prometheus Books, 1987. The book contains a great many remarks which bear on our present discussion, and which serve to refute an absolutistic (all or nothing) view of rights. Absolutism can only admit paternalistic interventions either by denying the value of freedom altogether or else by way of casuistry — as soft paternalists do —, with claims to the effect that, whenever a paternalistic intervention is justified, freedom, «real» freedom, is not «as such» genuinely tampered with, and so no value-conflict arises (the agent on whose «apparent» will the paternalistic intervention encroaches wouldn’t wish to do what he does were he duly informed, or put in a situation suitable for quiet deliberation, or anything like that). Although arguing in that way is, to my mind, resorting to a dubious counterfactual trick, I think that, such counterfactual considerations could be stretched in order for them to apply at the very least to non-human apes; and even to flies and worms.