

Sentient Being Rights

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The vast majority of people express a belief that it is morally “wrong” to cause unnecessary harm to nonhuman animals, but they hesitate to express a belief that nonhuman animals should have a basic right not to be unnecessarily harmed. The issue of nonhuman animal rights has existed for quite some time and various arguments have been put forth, both for and against the idea. Regan (1983, 2003, 2004) has made an intrinsic rights argument and Singer (2002) has made a utilitarian argument to abolish “animal exploitation.” These arguments have been criticized on various grounds, some founded and some unfounded. The founded criticisms have been largely based on the questionable assumptions and inferences, related mostly to philosophical orientation. Francione (2000) has proposed a legal rights argument, which has proven less problematic. Here, I will propose an argument for sentient being rights that is similar in basic structure to that proposed by Francione. First, I will address why morality should be considered at all. Next, I will discuss what rights are and why they are important. Finally, I will discuss how we should decide whose interests should be protected with rights. I will argue that sentient beings should be protected by moral (and legal) rights. This essay is written for a skeptical audience.

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What are Rights, Ethics, Morals, and Why do we Need Them?

As a discipline, ethics is the branch of philosophy dedicated to explicating coherent theories, and normative rules to govern social behaviors that impact others. In order to provide a solid foundation for an argument, it is important to appreciate why ethics are needed. Living in a society makes available a vast number of opportunities and benefits that could not be available otherwise. Living in cooperative relationships with others allows people to specialize their skills, and community members may trade in such skills (through the use of currency), making the benefits far superior to that which would be the case if individuals lived in isolation. However, living in close social contact with others does pose some risks as well. Unless coercion and exploitation are controlled against, liberty and trading to mutual benefit is impossible. Societies devise systems of ethics in order to minimize the risks and maximize the benefits of community living. Some are conditioned as etiquette and some, the most important ones, are codified into what are called constitutions, bills or charters of rights, acts, laws, and bylaws. By abolishing coercion, liberty is possible and within such a system, cooperation to mutual benefit becomes possible. Members of society live under such principles and rules because it results in the most productive social system and allows individuals the greatest benefits.

For such a system to operate effectively, members must operate within the “rules.” The rules must be rational, just, and applied consistently in order to function efficiently and effectively. In return for the protections that such a system provides against coercion and exploitation, each member of the community must reciprocate respect for the rules. If one wants their interests to be protected against harms, they must agree that the interests of others will also be protected. One abstains from coercing and exploiting others, and in return, is not coerced and exploited by others. In game theory, reciprocators, those who observe and follow the rules, are called “cooperators” and the non-reciprocators, those who exploit others and accept protection of their interests, are called “cheaters.” “Cheating” does occur, and we commonly refer to this as criminal behavior or simply “immoral” or “wrong” behavior (depending on whether it has been encoded into law). The rules are enforced as a necessary part of the system. “Cheaters” forfeit certain benefits (rights) as stipulated by the rule of law and “cooperators” control them in a carefully formalized manner by rule of law as well. In other words, the rest of society defends itself against cheaters. The rules can range from minor etiquette-related ones such as holding doors open for others, to major ones codified into law

such as not robbing, raping, or killing others or stealing their property. The defenses that cooperators apply match the degree of harm. Those who don't open doors are sneered at by others and people may, when the opportunity arises, fail to extend cheaters similar level courtesies. Those who rape and murder are confined so they may cause no further harms. The point is, a system of cooperation makes community living (and all that it brings) possible and to the degree that a system is rational and just, it maximizes the benefits (liberty and trade opportunities) and minimizes the risks and harms (being exploited), and cheating must be eliminated as much as possible.

Ethics is the branch of philosophy that helps elucidate appropriate rules. It ensures the system is rational, logically ordered, and applied consistently. It helps elucidate concepts such as rights, morals, justice, etc. It also helps suggest appropriate political systems, the formalization of mechanisms by which ethical systems are applied and rights protected. Government is formed based on the principles elucidated by philosophy and manages the day to day activities of protecting community members in accordance with the rules. Governments, on behalf of the community members, enact and formalize charters of rights and freedoms as well as legal mechanisms by which cooperators are protected from cheaters. It is important to reiterate that benefits are maximized and harms minimized to the extent that the system is rational, consistent, and just. Irrationalities, inconsistencies, and injustices lead to a deterioration of the system, perhaps not quickly and explosively, but usually in insidiously ways. It is in each community member's best interest to ensure that rules are devised and enforced with the highest level of rationality, consistency, and justice.

A central topic of interest within the discipline of ethics is the concept of "rights" and "rights claims." Most basically, a right is the protection of an interest. A rights claim is a verbal proclamation of a specific application for a specific right. In other words, a rights claim is a statement regarding what right is owed to whom. There are a great many rights, at least as many as there are interests. A "basic right" is one from which other rights are derived or on which other rights are based or made possible. Francione (2000) defines a basic right as a right not to be treated as the property of others (Francione, 2000). Though this definition is broadly understood, it leaves vague the notion of what property is treated like. Another, less vague, way to express a basic right is to say that basic rights holders are not to be coerced or exploited. Most fundamentally, a basic right would stipulate a "negative duty" obligation imposed on community members not to exploit others. A

negative duty requires only that community members *abstain* from doing something; they do not require the member to do anything specific. Community members have many rights, but a basic right is a right not to be considered a means to someone else's end (as Rand, 1946, would put it), not to be the property of another (as Francione, 2000, would put it), that no one is obligated to sacrifice themselves for others' interests. If one's fundamental value is sustaining their life and interests, then no one has a claim on their life; nor do others have a claim on theirs (Rand, 1946). Liberty is one of the highest values in such communities and "positive duty" obligations are generally seen as coercive and hence best avoided in favor of negative duty obligations. Different rights would be successfully claimed for different populations, but a basic right is the most widely applicable, covering all community members. For example, certain members of a community, but not all members, might be said to have voting rights but all members have a right not to be assaulted or killed (except under situations of self-defense, in which basic rights are forfeited). Rights require a "buy in" from all society members for them to operate effectively. In fact, those that fail to acknowledge rights claims usually have their own rights reduced and the community as a whole applies ethical rules that serve to protect community members from the aberrant member behavior. In other words, those who breach rights claims forfeit certain rights and are managed by a justice system set in place to protect cooperators from those who breach the valid rights claims of others (i.e., criminals/"cheaters").

Rights systems must be just. Justice refers to treating similar cases similarly unless there is relevant and sufficient reason not to. Justice is a basic ethical principle providing the foundation for other principles as it is key to maintaining the stability of society. It's a fundamental principle of ethics. "Any theory that maintains that it is permissible to treat similar cases in a dissimilar way would fail to qualify as an acceptable moral theory for that reason alone." (Francione, 2008, p. 45) To maintain consistent ethical, principled behavior, we adhere to the rule of justice. That is not to say that we blindly follow the prescriptive rule and fail to consider specific conflicts among values in any given moment, but that a good rule will be applicable to situations faced in real life. In that regard, it is a good (and indeed necessary) general prescriptive rule for members of society to adhere to the principle of justice when it comes to rules regarding the exploitation/coercion or harming of others or treating others as our property in any way. This general rule is what the concept of rights is all about and it is what maintains a strong cohesive society so that we may all live together to mutual

benefit. To the extent that we recognize this we benefit and to the extent that we reject this we do not.

Rights systems must also be rational. Consistency is the minimum requirement of rationality. Each member of a community has an interest in not being harmed or caused pain and suffering, and if one seeks to protect their own principled self-interest rights claims, then they must agree that it is “wrong,” consistently, across the board, to harm or cause pain and suffering to others, for those whom, what happens to them, matters to them, as will be discussed below. In a game theory perspective, the reciprocity of maintaining consistent and just adherence to basic rights is necessary for us to maintain our own rights and be free to seek the many resources made available within such a system. One cannot demand basic rights not to be coerced/exploited and disregard that obligation with regards to others. The moral system breaks down where inconsistency is allowed.

The mechanism by which a community protects interests of individual members not to be coerced and exploited, that is, not to be treated as the property of others, is referred to as “legal rights.” Legal rights are rights that are codified in law. This is as opposed to “moral rights,” which are rights determined through philosophical argument, but may or may not be codified into law. Unless otherwise specified, when I refer to rights I am referring to moral rights since this should serve as the basis and justification for legal rights.

One cannot have his or her cake and eat it too; if one wants to be free, they have to accept that others are free. The principles of rights and freedom/liberty require that we reject the notion that one can demand another individual sacrifice him or herself for others, because it benefits these or any others, no matter whether it benefits just one other person or many other people. Consistency is key for the system to work effectively. Pardon the redundancy, but if we agree it is okay for others to harm and coerce some segment of a community because they have a need or a want to do so, then it could easily be us that is harmed and coerced at some point, that we may be sacrificed to the needs or wants of others. This is why the principle of rights itself is vitally important. Other criteria for ideal moral judgments include clarity (defining terms and meaning non-ambiguously and non-vaguely) and empiricism (objectively related to the real world; not based on emotion or faith) (Regan 1983, p. 10).

With it well established what rights and ethics are and how valuable and necessary they are as well as why consistency (justice) is also necessary, it remains an important question as to whom right claims are to be applied, what class of rights claims are valid. Who is to be considered a member in the community of basic rights holders?

Who Shall This Negative Duty Right Apply to?

The obvious next question is regarding to whom basic negative duty rights ought to apply. No one seriously argues that we treat similar cases dissimilarly (injustice) of course. The argument is that humans and other animals are sufficiently dissimilar in relevant ways that treating them dissimilarly with regards to rights is justified (McBurney & White, 2010). The most basic moral right is the right not to be treated as the property of others, to exploit or coerce others, to cause them harm. The question is, to whom shall this “right” apply. Rational and just criteria are required in order to make such a determination. Whatever these criteria are, they cannot be arbitrary or based on irrelevant conditions. Irrational and unjust criteria will only lead to conflict (just as it did when only white males were seen to possess legitimate rights claims). One way to consider such a topic is to reason through different potential proposals to determine whether they are exhaustive or insufficient, rational or irrational, consistent or inconsistent, just or unjust.

Putatively and reflectively, most of us likely want to include at least normal adult humans. This would not generate any controversy. Children should also be included, since normal adult humans must be children before they can become adults. Most people would also include senile, and enfeebled people and those with very low IQ scores; we do not expect these beings to have the unique capabilities of “normal adult humans,” but we seek to include those of groups we could be rendered a member of potentially, thereby ensuring that we sustain our rights if that occurs. Simply, we usually want to include all humans (except perhaps criminals, who have forfeited their rights by the most heinous of crimes such as murder or treason, or in self-defense of those harming/coercing others.). Given this general “desire” on the part of most humans, being human and only human has been proposed as the best criterion for valid rights claims. It certainly is simple. It recognizes age and IQ as irrelevant, as it should since these are not relevant qualities. But, is being human relevant? One argument for such a criterion is that only humans can agree to abide by the rights claims of others. It is argued that basic rights are shared by reciprocal agreement and so we owe basic moral rights only

to those who can respect ours in return. The first, most obvious, flaw in this argument is that this would render young children and certain senile or enfeebled humans as being morally inconsiderable. Although this argument seems reasonable on the face of it, it is not clear why someone must respect basic moral rights of others in order to have basic moral rights. Children or schizophrenics who harm someone do not forfeit their basic moral rights because it is generally agreed that they are not capable of “respecting rights claims.” We still, putatively, seek to cast the net of moral considerability over them. Upon close scrutiny, being human and only being human, does not capture a rational and just set of criteria for moral considerability. Just because an individual is not capable (as opposed to willing) to respect rights claims, does not exclude them from having a valid moral rights claim themselves. If it did, demanded by rationality and consistency, a great many humans would have no basic moral rights, which is repugnant and hence a different criterion must be found.

The question remains: to whom should the basic right not to be coerced and exploited apply? Whose basic interest in not experiencing pain, suffering, and death, being coerced and exploited, should be protected with a basic right proclaiming that no one who is capable of abstaining from doing so will do so without forfeiting their own rights? Perhaps the first question is this: what criteria is relevant and appropriate?

Many answers have been considered for such a question, some of which were explored above. The search for an answer often leads to efforts to propose criteria that humans and only humans would meet. Though the motivation to do so is morally suspect, the principles or criteria must be considered in any event in its own right. Since it turns out that being human and only human fails to satisfy rationality and consistency criteria, it is likely more productive to look to capabilities than mere species membership. “Self-awareness,” or the potential for it, or being a member of a species which normally exhibits self-awareness, has been proposed. These criteria cast a reasonably wide net so as to include children, comatose individuals, developmentally delayed persons, or persons rendered less than “self-aware” by injury or disease. One problem with “self-awareness” as a criterion is that it is challenging at best, impossible at worst, to determine. Another problem is that it is not entirely clear that the criteria is principled and relevant. Certainly, a group of persons can get together and agree that they will respect each other’s basic rights and not that of any others. This is

an arbitrary assignment of rights and largely the approach that humans have taken thus far. But such irrationality leads to conflicts, and potentially, to atrocities, particularly against minorities! Initially, basic rights were assigned to white male humans. Only after many atrocities did excluded community members demand less arbitrary and more reasoned, principled, and just criteria and white females became included, and again, in a similar manner, black humans were included. Exploitation of these populations was abolished and rightly so. This struggle for a principled and rational application of basic rights was aided by the ability of the offended population to fight for inclusion, which is inevitable when irrelevant criteria are used. But, fighting for inclusion is not necessarily an appropriate criterion for inclusion. Non-human animals cannot fight for inclusion on this basis. Nor, by the way could many humans, under various circumstances and others argue for them as necessary in order to ensure justice and rationality. Humans, who do exhibit a capability to make such arguments can make the arguments and demands on the nonhuman's behalf (just as they do for senile and enfeebled humans). The question remains to find a principled and appropriate criterion on which to make the decision.

What is required is a clear, empirically based, rational, nonarbitrary statements of moral considerability and rights inclusion to determine whom it is appropriate to extend moral rights to. We agree it should include normal adult humans as well as children, enfeebled, and senile people. We also agree that trees and rocks should not be extended moral rights. What nonarbitrary, consistent, just, rational criteria allow us to include these beings and exclude trees and rocks?

The only relevant trait regarding criteria for valid basic rights claims to have interests in not being caused pain, suffering, and loss of future opportunity through being killed is whether the being in question is capable of experiencing said suffering or loss of opportunity. We can only protect the interests of those who have interests and we can only exploit (using someone in a manner that harms them) those who can be caused pain, suffering, or loss of opportunity. If something cannot experience suffering or loss of opportunity, then they do not have interests and they cannot have rights, because there is no interest to protect. The relevance is obvious—we are talking about not causing suffering and identifying those who can experience suffering as the class to which this principle applies. Arguments about whether some others think exactly the same way as we do (the "similar minds theory") is just as irrelevant as being female or having black skin color. A right is the

protection of interests. With regards to the basic right not to be treated as the property of others, the only relevant feature necessary for the right to be applied is whether or not the being has interests. The relevancy is clearly established. Being able to experience pain or pleasure, what we minimally call sentience is the foundation for whether a being has interests. They have an interest in experiencing pleasure and in avoiding/escaping pain and as such, we justly apply the basic right to them. This is the most reasonable demarcation point and the only clearly relevant and nonarbitrary one I can conceive of.

Therefore, the most appropriate criterion proposed to date is “sentience.” This is the only relevant condition that casts an appropriately wide net to ensure inclusion of those we putatively know ought to be included, but excludes things for which rights seem completely inappropriate (i.e., rocks and trees). In such important matters, it is common and appropriate to err on the side of moral safety and cast the net a little wider by including those who were once, or are likely to become, sentient or those who do not meet this criterion but who are nonetheless members of a species which is known to commonly meet it. This allows us to extend basic rights to humans in such a condition that they fail to meet the criteria. It would simply be morally repugnant for most humans to exclude people who, for whatever reason, are not likely to become sentient at any point in their lives. The problem for those who seek to include humans and only humans is that for any relevant trait, including all humans, will necessarily mean that some nonhumans will then meet the criteria as well. If we wish to include severely developmentally retarded humans for instance, then the only way to exclude many nonhumans is to fall back on mere species membership, which is simply not a relevant and logically defensible criterion. If the community of basic rights holders is to be determined justly and rationally, some nonhuman animals must be included. (No one, by the way, is arguing for nonhuman animals to have voting rights or the like. It is important to note that only criteria for basic rights are under consideration here. What is being decided is only whose interest in not being harmfully exploited are to be protected with a basic negative duty right.)

What is “sentience”? Behaviorologists general avoid this term as it tends to imply or suggest agency and a contradiction to the natural science assumption of naturalism. However, behaviorologists do recognize the very real, though private and not easily confirmable by others, behaviors that involve what we might refer to as awareness or consciousness. Sentience can be argued

to be composed of a number of behaviors, but the most basic and generally agreed upon set of behaviors is the capacity to experience pain and pleasure. As Francione (2000) would put it, sentience refers to the behavior of “*those for whom what happens to them matters to them*” and I could not phrase it more eloquently.

Here is why sentience seems to be the most suitable criterion. If one is asking whose interests in not being caused pain, suffering, loss of opportunity, or death should be protected with a basic right, the most fundamental and rationally relevant answer seems to be that anyone *with* an interest of this kind should have that interest protected. What could be more relevant? Rocks and trees have no such interest as they cannot experience pain or pleasure (they do not have nervous systems so structured as to generate such behaviors). Humans clearly do. In morally relevant ways, non-human animals are like severely retarded people or young children; they may not have the same capabilities as “normal adult humans,” but they do certainly have an interest in not being coerced or exploited. We cannot extend rights to these humans, and nonarbitrarily, fail to extend them to sentient non-human animals. An arbitrary distinction is no basis for a rational moral code. Simply being a member of a particular species is not morally relevant because it is arbitrary. It is speciesism and just as we agree that sexism and racism are morally wrong, so too, must we, by analogy (and for the very same reasons), agree that speciesism is morally wrong (Dunayer, 2004; Lau & Chan, n.d.). Justice and rational consistency dictate that we “treat similar cases similarly.”

Are there morally relevant differences between some humans whom we would reflectively say should have rights (such as severely retarded or senile humans) and some non-humans (e.g., mammals, birds, and fish at least)? What is morally relevant when it comes to whether it is “right” or “wrong” to cause harm? Certainly, being able to experience said pain (i.e., sentience), “*those for whom what happens to them matters to them,*” seems relevant? They have an interest in not experiencing pain and in continuing to live since this provided further beneficial opportunity for pleasure, unlike trees and stones, which have no such interest. Level of intelligence, species membership, and “self-awareness” beyond that required to allow a being to experience pain are common retorts but no one has been able to demonstrate how these are directly relevant. And, just as with humans, we extend basic moral rights to those who do not current exhibit sentience (and my never), but they are members of species who commonly do. We extend basic moral rights to severely

mentally retarded humans out of “dignity” and if we are to do this, then we extend rights to any being, be they human or not, that would be a member of the morally considerable community if it were not for their own individual specific circumstances that render them currently insentient.

To sum up, social living requires a system of rights and to whom rights are owed must be based on a coherent, rational, consistent, and just set of criteria. Mere species membership is inadequate, partly because it is an unjust and irrelevant criterion. Unjust criteria with respect to rights inevitably lead to conflict, whereas rational and just criteria lead to prosperity. The most relevant criterion for determining whose basic right not to be caused pain and suffering would be extending rights to those who are capable of exactly that pain and suffering, those who have an interest in not experiencing pain and suffering. This would mean extending rights to all sentient beings and members of species that commonly exhibit sentience for dignity sake. This would cast a wide and morally safe net to include all humans, whether they currently exhibit sentience or not, and would include many species of animal, including mammals, fish and birds. This ensures that the safest moral judgment is exercised.

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