

The Rights of Humans and Other Animals

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Human moral rights place justified limits on what people are free to do to one another. Animals also have moral rights, and arguments to support the use of animals in scientific research based on the benefits allegedly derived from animal model research are thus invalid. Animals do not belong in laboratories because placing them there, in the hope of benefits for others, violates their rights.

Key words: animal rights, biomedical research, human rights, utilitarianism

Because the theme of this issue lends itself to emphasizing the differences that exist between the participating philosophers, it seems especially important to make a few observations about some fundamental points on which we are all agreed. As will be clear momentarily, our unanimity concerns what we all think is false rather than what we think is true.

POINTS OF AGREEMENT

We all agree that moral judgments—judgments about what is right and wrong, good and bad, just and unjust—are not simply and solely expressions of individual feeling or attitude. Some of the things we say are simply and solely of this sort. For example, if I say “I like coffee,” and you say “I like tea,” each of us has expressed our personal preference regarding what we like to drink. And about such matters there is, of course, no right or wrong, no true or false, and no thought of justifying or supporting or validating what is said. About matters of taste, things just are the way they are, with different people liking different things.

Moral judgments are not like this. When two people make conflicting judgments about a controversial moral issue—about the morality of abortion, for example—they are not simply and solely saying what they like or dislike, as a matter of personal preference. They are saying something *about abortion*, not something *about their individual response* to abortion. And the person who says that abortion is always wrong is saying something about abortion that contradicts what is said by someone who says that abortion is sometimes morally permissible. As such, and unlike the situation in which different people simply and solely express their feelings or preferences, moral judgments do need to be defended, do need to be justified, do need to be validated. *How* to do this is a question whose possible answer divides the philosophers taking part in this discussion. But *that* this needs to be done—that moral judgments need to be justified, defended, validated—is common ground between all of us.

A second important agreement concerns a second falsehood. Just as some people think (mistakenly, in our view) that moral judgments are simply and solely expressions of personal feelings or attitudes, others think they are statements about a culture's mores. On this view, moral right and wrong are defined by the dominant customs of a culture, at any given period of its history; and because different cultures have different customs, this view, which usually is referred to as *cultural relativism*, concludes that there is no universal right and wrong; rather, there are as many rights and wrongs as there are different cultures with different customs.

The philosophers here, without exception, reject cultural relativism. When Frey (this issue) denies that human beings have moral rights, he does not think he can be shown to be mistaken if we point out that most Americans disagree with him, any more than the rest of us are inclined to agree that slavery was not wrong among White citizens of the antebellum South, given the prevailing customs of that time and place. Even if it is an exaggeration to say, as Henrik Ibsen is said to have observed, that "the minority is always right," it is too obvious to need argument that the majority sometimes is wrong. We do not defend, justify, or validate a moral judgment by doing cultural anthropology.

Neither do we do this—and here I come to the third and final point of agreement among all of us—by consulting some holy book or by taking instruction from God's will. In saying this, I am not saying that no books are holy or that there is no God. I am only saying that, among the philosophers writing here, we all agree that judgments about moral right and wrong, good or bad, the just and the unjust must be defended, justified, or validated independently of what any God says or wills.

THE NATURE AND IMPORTANCE OF HUMAN RIGHTS

As for our disagreements, it is important to realize that it is not only our respective views about animal rights that divide us. We also are divided when it comes to human rights. Cohen (this issue), Beauchamp (this issue), and I seem to be of one

mind concerning the nature of human rights. (Let me add parenthetically that when I speak of human rights this is shorthand for human *moral* rights; and the same is true when I speak of animal rights: I am referring to their moral rights. Questions involving human or animal legal rights are an entirely separate matter.) Here, briefly, are those points on which I think the three of us agree.

Human rights place justified limits on what people are free to do to one another. For example, the right to bodily integrity disallows physically assaulting another person's body simply on the grounds that others might benefit as a result. To use Cohen's example, one cannot justify the Nazi hypothermia research because what was learned might help other people who suffer from exposure. Or take what I call the Mickey Mantle case. Mickey has a good heart, good kidneys, and, recently, a good liver.¹ Suppose that Cal Ripken, Bobby Bonds, and Kirby Puckett each needs one of these vital organs. Would it be permissible to transplant Mickey's organs, against his will, in these other ball players? After all, other things being equal, the world would be a better place with three healthy ball players in it than it is with just one aging former player.

Well, this is not something that is permissible, given that Mickey has a right to bodily integrity. There are some things that *morally cannot be done* to the individual even if others stand to benefit as a result of doing it. As Ronald Dworkin (1984) said, the rights of the individual "trump" (p. 153) the collective interest. In the moral game, the rights card is the trump card.

Even with these very few comments about rights on the table, I think we should be able to see why Cohen is correct when he says that the idea of animal rights is a very important idea, one fraught with massive potential practical significance. Because if animals have rights—including, for example, the right to bodily integrity and the right not to be made to suffer gratuitously—it is difficult to see how anything less than the total abolition of animal model research could be morally acceptable. In particular, if animals have rights, certain familiar ways of defending animal model research will be silenced. No longer will we want to listen to the long list of benefits attributed to research of this kind. If animals have rights, and if rights are the trump card in the moral game, their rights override any benefits, real or imagined, we have gained, or stand to gain, from using them in biomedical research. So, yes, Cohen is on the money when he states that animal rights is an important idea.

Now, Cohen, Beauchamp, and I agree that humans have rights. And Beauchamp and I agree that animals have rights (although we disagree over what rights they have). It is Frey who disagrees with all of us, maintaining, as he does, that neither animals nor humans have rights. Before going on to state my views concerning animal right, I want to say something about his views concerning human rights.

¹This article was written before Mickey Mantle's death (ed. note).

Frey's Utilitarianism

Frey is a utilitarian, and a utilitarian of a certain stripe. All utilitarians think that the morality of what we do—whether our acts are morally right or wrong—depends on what happens as a result of the choices we make. Utilitarianism is a forward-looking view. The consequences, results, or effects of our actions determine their morality. And by our actions we should be trying to make the world better, to bring about the best possible consequences or results, in any given situation.

What is best all considered, however, is not necessarily what is best for each individual. Utilitarians are committed to aggregating—to adding and subtracting—the positive and negative consequences experienced by different individuals. This means that one person might lose a lot so that another might gain. The Mickey Mantle case illustrates this general point. Mickey (literally) loses everything, but the three other ball players each gets back a healthy life. From the point of view of Frey's utilitarianism, it is an open moral question whether anything wrong would be done if Mickey were treated in this way.

Now, Frey has two choices. He could try to tell some story or another that is supposed to show why the consequences really would be better if Mickey's organs were not transplanted in the way we have imagined. This maneuver is known as *the utilitarian shuffle*. Or Frey could say, "Look, sometimes you just have to bite the bullet. If the world really would be a better place without Mickey, but with Mickey's organs redistributed, then that *is* the right thing to do."

Whichever option Frey chooses, the essential point is that his utilitarianism is, in my view, a fundamentally mistaken way to think about morality. Here is a simple test case that I think makes my point. Some time back four teenage boys raped and in other ways sexually abused a seriously retarded teenage girl. Among other things, as I recall, the boys took special pleasure in invading her body with a broom handle and a Coke bottle.

I assume that no one will question that the abuse this poor girl suffered was wrong. But I hope you will notice that Frey's theory cannot easily explain why it is wrong. After all, there were four boys and just the one girl, and the boys evidently had a very good time. Shuffling along, Frey might suggest that there are other consequences that need to be taken into account—for example, the insecurity experienced by other young girls as a result of what happened to this one, and so on.

But this is not the central point. The central point is that, *before* Frey can pass a moral judgment in this case, his theory requires that we take the pleasures the four boys experienced into account—that we count *their* equal interests equally. By my lights, however, the pleasures experienced by these four boys are *totally irrelevant* to assessing the morality of their actions. More generally, the interests of those who do what is morally wrong have no bearing on the determination of the wrong they do. It is because Frey's view requires that we count these interests, *and weigh them equally with those of the victims of wrongdoing*, that I think his way of thinking is fundamentally mistaken.

Thus, the importance of human rights, in my view. Because if we suppose that this young girl has rights, then the good time had by the boys—the benefits they derived from abusing her—emerge as beside the moral point. Her rights trump their good time; indeed, their good time has no bearing whatsoever on assessing the morality of what they did. If there is a valid way of defending or justifying our moral judgments, I believe that it involves thinking along the lines I have just sketched, crude as that sketch is.

ANIMAL WELFARE AND ANIMAL RIGHTS

I turn now to the topic of animal rights, beginning with some comments on the distinction between animal welfarists and animal rightists. As the name suggests, animal welfarists are in theory committed to taking the welfare of animals seriously. Animals should not be caused gratuitous physical pain; their psychological well-being should not be diminished unnecessarily. These are among the principles that guide a conscientious welfarist.

As such, welfarists can, and some of them sometimes do, call for important reforms, in the name of humane improvements, regarding how humans utilize nonhuman animals. Provided, however, that the welfare interests of these animals are taken into account and counted fairly, we do nothing wrong in principle by utilizing them to advance human interests. In particular, the use of nonhuman animals in biomedical research is in principle morally right, from a welfarist perspective, even if this human endeavor occasionally goes wrong in practice, as when a particular researcher neglects or otherwise mistreats animals in his laboratory.

Animal welfarism, therefore, can be seen to embody the utilitarianism championed by someone like Frey. The many benefits allegedly derived from animal model research outweigh the many harms experienced by the animals. Indeed, if the biomedical community is looking for a coherent spokesperson to defend their activities philosophically, it could well be true that they will not be able to find anyone better than Frey and his utilitarianism.

Animal rightists differ from animal welfarists. Although animal welfarists can have reformist aspirations, animal rightists are necessarily abolitionists. From their perspective, the use of nonhuman animals in scientific research is wrong in principle, not simply occasionally wrong in practice. These animals do not belong in laboratories in the first place: They do not belong there because placing them there, in the hope of gaining benefits for others, violates their rights. Rights being the trump card in the moral game, it is not larger cages, but empty cages, that animal rightists call for.

Whatever we might think of the animal rights–animal welfare debate, it is important to realize that it represents a type of debate that has many logical cousins. The ongoing debate over the justice of the death penalty is an example. Some people believe there is nothing wrong with capital punishment in principle, even as they

acknowledge there certainly have been some things wrong with it in practice. It was not too long ago that convicted criminals were hanged in public, burnt to death, or drowned for offenses that included such crimes as (here I cite North Carolina law) breaking a fish pond, stealing apples, dueling if death ensued, and (most remarkable of all) growing tobacco plants. Over the years, reformers of the death penalty sought to make the setting of the punishment more dignified and the method of execution more humane. Death by lethal injection, carried out in a sterile, hospital-like setting, would seem to represent as far as we might be able to go in the direction of such reforms.

This is not far enough for death penalty abolitionists. Think what one might of their arguments, these critics of capital punishment believe that it is wrong in principle, not merely sometimes grotesquely immoral in practice, and they therefore call for its complete abolition, not merely various “humane” reforms.

Thus does the logic of the animal rights–animal welfare debate mirror the logic of other important, divisive, and enduring social controversies. Other examples include the debates over reforming or abolishing slavery, child labor, and legal access to abortion. That all these controversies differ in important ways from the animal rights–animal welfare debate is too obvious to be denied. My point is not that this debate is like these other controversies in each and every way; mine is the far more modest point that they share a common logic.

Animal Rights

But *do* animals have rights? And if they do, what rights do they have? My answers to these questions are explained in my book, *The Case for Animal Rights* (1983), and it is this work that I recommend to anyone who is interested seriously in what my answers are and why I answer as I do. Concerning the latter point, let me remind you that all the philosophers writing in this issue agree that we do not offer answers to moral questions just by saying how we happen to feel or what we happen to like, or by making reference to the dominant customs in America today, or by citing selected passages in the Bible or some other sacred book. Our moral thinking needs to move in a different direction than those these paths open up to us.

But if not in these ways, how? No easy question, this; certainly not for the philosophically faint of heart. But here is a way, although certainly not the only way, to proceed.

Suppose we begin by assuming that humans have rights and ask how we might be able to illuminate or explain why we do. Of course, Frey will protest. You will recall that he denies *both* animal *and* human rights. But you also will recall where, in my opinion, his utilitarianism-without-rights lands him. So, although beginning with the assumption that humans have rights is certainly not noncontroversial, it is a place we can defend using on this occasion—one that, by the way, Beauchamp and Cohen can be counted on as approving, given their agreement that humans do indeed have rights.

If humans have rights, there must be something about being human that helps explain or illuminates why we have them. Put another way, there must be some characteristic or set of characteristics (for brevity's sake, I refer to these possibilities as *C*) that makes the attribution of rights plausible in our case and implausible in the case of, for example, clouds, negative afterimages, and microfungi. The question is: What could this *C* be?

Possible answers are many. Some, although possibly widely believed, will not pass muster with my fellow philosophers. The idea that *C* is the soul, and that God endowed us with rights when he endowed us with a soul, rests on a religious basis that we agree is unsatisfactory. A more promising, nonreligious candidate is rational autonomy. It is because humans are rational autonomous agents, and because clouds, negative afterimages, and microfungi are not, that we have rights and they do not.

Suppose we grant this candidate for *C* for the moment; then we can ask how nonhuman animals would fare. In other words, we can ask, Are any nonhuman animals rational and autonomous? Because if some are, it would smack of prejudice to deny that they have rights but to affirm that we do.

Whether any nonhuman animals are rational and autonomous is a very difficult empirical question, one that we are unlikely to settle on this occasion. My own view, for what it is worth, is that there are many species of animals whose members satisfy these conditions. Nonhuman primates are the most obvious example. Next are the great whales and other mammals. Obviously, where we draw the line that separates those animals who are rational and autonomous from those who are not will be neither easy nor free of controversy. Indeed, it may be that there is no clearly defined line we can draw with confidence, given the abundance of our individual and collective ignorance. However, it is enough for our purposes to recognize that *some* nonhuman animals are like humans in being rational and autonomous. So if rational autonomy explains or illuminates why we have rights, consistency requires that we make the same judgment in the case of these other animals: They, too, would have rights.

There is, however, a problem. Not all human beings are rational, autonomous agents. Infants are not, although most of them some day will be, and older people who suffer from serious mental deterioration are not, although most of them once were. Plus there are those many thousands of humans who, like the young woman raped by the four teenage boys, are seriously mentally retarded throughout their entire lives. In any or all of these cases we have individuals who *are* human beings but who are *not* rational and autonomous. So if *C* is rational autonomy, it appears that billions of human beings lack rights and, in lacking them, lack the most important card in the moral game. In their case, we cannot say that it would be wrong to harm them in the hope of benefiting others because their rights trump the collective interest. In the nature of the case, they have no rights.

This problem can be avoided by putting forth a different candidate for *C*. Instead of using what Beauchamp refers to as "cognitive criteria" (this issue, p. 115), criteria

such as rationality, we might instead rely on noncognitive criteria, criteria such as sentience (the capacity to be able to experience pain and pleasure) or emotion. And this does seem to be a more promising way to think about C, especially because all those humans who were denied rights, given the criterion of rational autonomy, seem to satisfy these noncognitive criteria.

Noncognitive criteria do more than increase the number of human beings who qualify as rights holders. These same criteria also increase the number of nonhuman animals who qualify. Line drawing problems doubtless will persist, but, wherever one reasonably draws the line, it seems evident that there are many more nonhuman animals who are sentient or who feel emotions than there are nonhuman animals who are rational and autonomous.

Although much more needs to be said to complete the argument for animal rights, some features of the central plot emerge from the little that has been said here. We face a choice: *Either* we can set the criteria of rights possession (C) rather high, so to speak, requiring capacities such as rationality and autonomy, *or* we can set the criteria of rights possession lower, requiring noncognitive capacities such as sentience. If we choose the former, some (but not a great many) nonhuman animals arguably will qualify as possessors of rights; but many human beings also will fail to qualify. If we choose the latter alternative, these humans will be enfranchised within the class of rights holders; but so will many nonhuman animals. Rationally, we cannot have it both ways—cannot, that is, rationally defend the view that all and only human beings have rights. Cohen may think he can do this. But for reasons I hope to explain in the future, I believe he is seriously confused and mistaken.

Which choice should we make? Informed people of good will can answer this question differently. I favor a view of rights that enfranchises the most vulnerable humans among us. Infants and young children, the elderly who suffer from degenerative diseases of the brain, the seriously mentally retarded of all ages are the most obvious examples. I do not think those of us who are more fortunate should be free to utilize these human beings—in biomedical research, for example—in the hope that we might learn something that will benefit us or others. Frey's utilitarianism certainly could allow this, which in my opinion is all the more reason not to accept his moral philosophy. If we recognize the rights of these humans, however, we recognize that they hold trump cards that have greater ethical force than what is in the general interest. And that certainly is the position I hold and recommend in their case.

I also recognize, however, that any plausible criterion that would enfranchise these humans within the class of rights holders will spill over the species boundary, so to speak, and enfranchise many hundreds, possibly many thousands of species of animals. That being the case, these animals also must be viewed as holding the trump card in the moral game. And because the rights they have should not be overridden in the name of seeking benefits for ourselves or others, it follows that none of these animals should be in any laboratory for that purpose. From an animal

rights perspective, as noted earlier, it is not larger cages, it is empty cages that recognition of animal rights requires.

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