

Are human rights animal rights?

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0. Quick overview of the argument

(Not available as text.)

1. Defending human rights: not without ethics

How can we defend human rights, justify our attachment to them?

Not by simply claiming you believe in them – that's insufficient to convince others unless they also believe you are the Messiah, and it is insufficient to convince yourself unless you know yourself to be the Messiah. If you're not the Messiah, if you do not have unique and privileged access to the Gods' own plans, then claiming that for you, human rights are valid because you believe in them, is saying that they are irrelevant and invalid for your neighbour if s/he prefers not to believe in them.

All of this is moral or cultural relativism, and relativism is logically impotent because it cannot defend or refute any idea however silly. Relativism is, even more importantly, in practice self-defeating, because it leaves you without any defence against the self-righteous, the intolerant, the fanatics, the arrogant, the conceited, the thieves, killers, rapists and murderers you want to unite against and defend yourself against.

And of course, if you are the Messiah, sorry to tell you, but an appeal to your unique and privileged knowledge of the Gods' plans cannot be universally validated, nor is it reasonable – both necessary conditions for a logically valid, a rightly convincing, defence of any idea including this one.

Nor can we defend human rights by democratic means, via popular vote. Democracy as we know it is nothing more than the aggregation of the aforementioned gut-felt tastes or preferences – it is relativism squared. It is true that rights or laws are empty, void and meaningless unless they are in practice supported by a powerful and committed section of society, which some people living in fairy land would like to equate with a democratic majority. But it is not true, it is in fact utter nonsense, to

believe that the loudest voice must be right – that any law, principle or right, be it a UN human right or the Nuremberg racial purity laws, is more legitimate, more justified, the more people believe in them.

Nor, finally, can we defend human rights by pointing out that they are implied by or derived from existing law. After all, that begs the question what justifies the justifying laws – we end up either in an endless regression or with the democratic fallacy that I just outlined.

So how *then* can we defend and justify, and analyze and test and criticize and revise human rights? The answer's obviously: its ethics, stupid! Only ethics enables us to say that practices are not just practices, facts, given, things you have to accept even if they're not after your taste; only ethics enables you to qualify acts, agents and situation as unjust, immoral, evil – or good. Human rights are valid, if they are, not because they're popular but because they're moral.

2. The ethical basis of human rights: Kant versus the rest of the world

We assess the ethical quality of our actions, institutions, practices and whatnot, by looking at three dimensions: intention, practice, result. These three dimensions also define the three major schools in ethics. While each of these schools has its attractions, I will argue that only one can defend human rights: deontology.

Consequentialism, as the name already says, looks at consequences, it weighs costs and benefits, using standards like happiness, pleasure, wellbeing, welfare or utility. Utility is the standard of utilitarianism, the most popular brand of consequentialism, Utilitarians reject the notion that good and evil can be measured by a standard external to the individual – the only standard for individual action is the maximization of pleasure relative to pain, the only standard for collective action is the maximization of the sum of pleasures experienced, relative to the total amount of suffering caused.

Consequentialism is of little help if you want to defend human rights. Jeremy Bentham, one of the founding fathers of utilitarianism, called rights nonsense and human rights nonsense on stilts. Establishing rights, that is, absolutely forbidding an action of making it universally mandatory, tends to get in the way of the maximization of happiness. A universal right to the integrity of your body, a right not to be tortured, will cost lives if torturing a terrorist might help to reveal the whereabouts of a bomb. That same right to bodily integrity also costs the lives of tens of thousands of humans in need of kidneys, lungs, livers and whatnot, lives that could be saved if we simply took the superfluous spare parts out of the bodies of healthy humans.

Trying to square human rights with consequentialism is like living in an unrestricted democracy – whatever expectations you have, whatever dreams, desires, even property, it can be taken away in an instant by the powers that be.

Consequentialist reasoning is extremely popular in politics – balancing costs and benefits is the kind of thinking that makes ethics quantifiable and seemingly objective. I consider it the ethics of psychopaths, personally. Consequentialism can defend any human right only conditionally: as long as, in so far as and to the degree that it increases overall happiness. And the thing about human rights is that they're not rights unless they're unconditionally valid.

The second school in ethics, virtue ethics, looks at the intentions behind actions – for example because what makes human being good to a virtue ethicist is not that you accidentally did the right thing but that you had the intention to do the right thing. Not to spend too much time on this school: virtue ethics can defend human rights only in so far as they contribute to the flourishing of the acting individual. While many human rights will help many individuals to flourish, to realize their potential, they don't necessarily all do – and your practising a human right may hinder my flourishing. In other words, the virtue ethics school cannot give a defence of human rights as universally, unconditionally valid.

That leaves us with the third and last school in ethics: deontology, the school that asks whether practices or actions are good in themselves, intrinsically; whether they are the things that we should do, that we have a duty to do, regardless of time, place or circumstances.

According to its founding father Immanuel Kant, deontology demands that whatever rules we follow must be rules that stand the test of universalizability: we must want that rule to apply to everyone everywhere under every circumstance. A rule that meets this demand he called a categorical imperative.

3. The deontological basis of human rights:

So how does the deontological argument for human rights work?

It starts with the observation that among all non-heavenly creatures, only Homo Sapiens is capable of true rational thought, of reflecting on goals and revising them, rather than merely being able to find smart tricks to realize pre-determined goals. Humans alone are able to order options from better to worse and goals from good to evil. Humans alone have a sense of morality and humans alone can be autonomous, literal meaning: live under self-determined rules.

We do not like it if other people arbitrarily run our lives – if a government starts shooting people at random or if your neighbour suddenly chains you and makes you his slave. The reason is not an accidental or arbitrary one – it's not that it's not

convenient today before 8.30 PM, or because you happen to be an exceptional human being. We do not like being overpowered and used *because of* our autonomy: that is what makes us independent creatures, creators, actors, agents, who want and need to be treated as such.

And the test of universalizability of course results in the conclusion that any creature capable of autonomy is a creature that deserve the same respect, the same recognition and the same freedom as you. When we check human rights as circumscribed in e.g. the UN Universal Declaration, we should find that each and every one of those rights is a necessary condition for the universal protection of human autonomy, and therefore a categorical imperative. Which, by the way, cannot be said for many of the third generation human rights.

Now this would probably be the kind of deontological defence of human rights that stays closest to Kant's original work. More contemporary writers would probably formulate their arguments for human rights slightly differently. John Rawls, for example, would say that, in a decent society characterized by reasonable comprehensive doctrines of the good life, human rights would be part of the overlapping consensus of values that define the foundations of a society's basic institutions. People like Brian Barry and Thomas Scanlon would say it in far simpler terms: human rights are rules that no sensible person can reasonably reject.

One point to note is, though, that for all these authors ultimately autonomy is the deciding factor – it is that that qualifies you as deserving protection by human rights.

And a second point to note is that on this account, animals are excluded from the realm of moral obligations. We have no obligations to them, we can, theoretically, do with them as we like. Kant did disapprove of cruelty against animals, but not because of the suffering of animals. In a famous and often quoted paragraph, he points out that arbitrary cruelty against animals (vivisection isn't arbitrary, therefore no problem) is a sign of a cruel disposition, a sign that we are dealing with a potentially insane individual who would do to humans what he does to animals.

The shrewd observer will however notice that there is something weird in using a very value-laden, disapproving term like 'cruelty' if the subject experiencing cruelty doesn't have a moral status. This is one reason why many have argued that Kant's position on animal ethics may be self-contradictory.

4. Differently perfect humans

An even more obvious problem with the Kantian view of human exceptionalism is that it is unrealistic and because of its unrealism leads to absurd conclusions. Not every human being is capable of autonomy. Aristotle already defended slavery on this basis: there are people who are basically incapable of directing and managing their own lives – they need to be guided, they deserve to be guided, they ought to be

slaves. I'm not going to go into the exact details of Aristotle's argument here (I'm oversimplifying and not doing him justice) – let's just say that a good indication of suitability for slavery is not having obtained a university degree.

But seriously – many humans lack autonomy or properties associated with autonomy – either permanently or temporarily: the comatose, the insane, children, the senile,

Are they not human then? If you prick them, do they not bleed? May we do to the elderly infirm what we do to old horses and two month old chickens? No deontologist with a beating heart would dare to suggest that these so-called marginal case humans are filth, redundant or imperfect – thanks to the late 20th Century invention of PC language, they would rather characterize them as 'differently perfect' – for once, PC talk is helpful.

So the hunt was on for an alternative understanding of the uniqueness of H. Sapiens, for an alternative to autonomy as the one and only source of moral qualification.

5. Animal Rights

And that brings me to Tom Regan who, in his seminal book from 1983 *The Case for Animal Rights*, argued on the basis of the existence of marginal cases of differently perfect humans for one such alternative to autonomy. A better, more consistent, qualifying trait would be 'being the subject of a life', which roughly means (a) that you consciously experience (and enjoy and suffer and maybe but not necessarily shape) (b) a life, which is something more than mere existence, mere being.

And of course, there's no way that we can say that many species of animals are not subjects of a life. From which it follows that they too have moral rights and that we humans have moral obligations to them.

Just for the record, Singer was not the first defender of animals against cruelty and exploitation, nor the most famous, but he was the first deontologist to offer a comprehensive defence of the idea that rights have moral *rights*.

Peter Singer is by far the most famous animal advocate with his million-selling *Animal Liberation* from 1977, but Singer is a utilitarian – he's not interested in rights. He wants to minimize pain in the universe, for humans as much as for animals, and he bends utilitarianism in just such a shape, that it prohibits all avoidable use of animals in the interest of humans. He is a so-called abolitionist, in favour of the abolition of animal exploitation, but he sees legal regulations at best as accidentally and incidentally useful tools, not as moral imperatives in themselves.

Deontology, consequentialism – you may wonder where virtue ethics is. Well, there's Martha Nussbaum. MN is the most famous political philosopher of our times –

please note that this is only the second time in 25 centuries that a woman is recognized as the most important political thinker, the first being Christine de Pizan around 1410.

You may know Nussbaum as the driving force behind the so-called capability approach in social justice theory, and if you don't know her, go home ye sinner, repent and read up on her. Nussbaum argued, a couple of years ago, that like humans, animals have need of capabilities, of the means and capacities to perform tasks that make life worth living – that allow you to flourish. That idea has generated a body of very interesting literature on animal capabilities, but the funny thing is that, to turn this descriptive thesis into a prescription, into duties, Nussbaum uses the grammar and conceptual vocabulary of deontology.

Apologies for this side-track – although it does serve three purposes: you've just had the quickest and dirtiest introduction imaginable to the basics of animal ethics; you've just seen that all schools in ethics offer ample room to defend radical changes in our treatment of animals; and you've seen evidence (or at least indications) that only the people who can defend human rights can defend animal rights.

Let's return now to Regan and the deontological defence of animal rights. There is one part of the history of animal rights thought that I have to add to this scholarly overview, and then it's time for a bit of fireworks.

Regan's views have received a lot of critique because they seem to lead to absurdities. For example: do you draw straws, one out of five, on who's to be kicked overboard in a leaking lifeboat filled with four humans and a dog – or do you do what most of us would intuitively do without hesitation – drown the dog? A tiger jumps on a human – do we let him or not? In other words, the critics felt that Regan's idea of 'subject of a life' was too broad, too inclusive, not sharp enough.

And so, in recent years a new set of authors have been working on so-called 'gradual' conceptions of moral relevancy. They argue that humans have rights because of several properties, not just one – that would be autonomy. Among those properties are sentience, consciousness, self-awareness, sense of time, sense of morality, capacity to plan, social and emotional ties. And, they argue, some animals have almost all these properties – the great apes are even almost indistinguishable from us, therefore need almost all the rights humans need, while other animals lack many of these properties, therefore don't need the whole set of rights.

That completes our detour through animal ethics – now it is time for the fireworks. Watch this.

1. Humans are an animal species.
2. Human rights can only be defended from a deontological perspective.
3. Deontology can only defend universal sets of rights if it is sensitive to the diversity of properties that make that a being qualifies as deserving moral respect.

4. So far as we know, humans have more of these properties than other animals, at least those that we know.
5. So far as we now know, there are no qualifying properties that animals other than humans have.
6. It follows that humans have the most extensive set of rights – indeed the complete set of presently imaginable rights.
7. And remembering 1, it follows that human rights are animal rights – just the most extensive set of animal rights imaginable.

Or in other words: there is no qualitative difference between human rights and animal rights. There is only a quantitative difference between the rights of humans and those of other animals. Human rights are merely a special case of animal rights.

6. Rights for nature

In my experience, I often notice that unless I'm talking to colleagues – philosophers, political theorists – I lose their support the very first moment I start to talk about possible defences of the idea of animal rights. Brains shut down, self-defence mechanisms kick in: I do not want this therefore it cannot be true. Animal rights is an absurd idea and I have just lost an hour of my life which I could better have spent drinking, sniffing glue or fornicating.

And yet... How absurd are animal rights? Only those who believe that a right is a magical spirit from another plane of existence that can be called into presence by waving around Declarations, Bills and law books, and by shouting 'I have a Right' three times and perhaps clicking your heels – only those sad losers have a conception of rights that makes them so sacred they can only be approached by the elect.

Reasonable people like us, people who do not believe in invisible friends, can learn to live with the idea that rights are nothing but permissions that we grant each other and duties we impose on each other, on pain of retaliation. We retaliate for breaches of moral rights by blame and scorn, and for breaches of positive rights we have violence, or the threat of violence combined with fines or reduced freedom.

There is nothing absurd about not permitting a particular human not to kill a particular animal – no more than it is to keep him from raping a comatose person or hitting a child. There is also nothing absurd about a generic prohibition of particular behaviour – say, unstunned slaughter for whatever reason, including and perhaps foremost commands given by invisible friends. There is nothing absurd about animal rights unless you find the whole idea of rights in itself absurd. Other than that, it is just a question of getting used to the idea.

Academic philosophers have already moved way beyond the idea of rights for animals – and they in turn have already been overtaken by developments in the real world. My American, now Australian, friend David Schlosberg is one of several

thinkers who have argued that ecosystems have capabilities just like individual animals – hence also moral rights. And in 2008, Ecuador became the first country to grant rights to nature – anyone can now sue anyone in Ecuador in the name of and on behalf of Pachamama, Mother Earth.

So if you're still hesitant about animal rights – know that you are fast becoming a fossil. On the up side, fossils often also have rights.

7. Conclusion

So. Once more.

Only ethics can defend human rights, only deontology can provide the necessary ethical support, but deontology cannot do that without conceiving of humans as only gradually different from animals. If you want to defend human rights, you automatically take animal rights on board. It's a package deal.

That does not mean that you should also immediately accept the most radical abolitionist agenda. I for one do not. But I do see animal rights theory as an intellectual challenge, and I also accept that it is a moral challenge – meaning that you and I may well have to change our ways. In the end, who are we to criticize others for human rights abuses if we are not willing to take self-critique to the final frontier?