

Animal Rights are Mere Preferences

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Abstract

Animal rights are mere preferences. A monkey dressed up in a beautiful suit is still a monkey. A pig in a dress is still a pig. A preference dressed in the clothes of a right is still a mere preference. An enforced right, an entitled right, is something else again, something cross-culturally recognisable, carrying a certainty of empowerment and enforcement, but still a mere successful preference. This distinction between playing fast and loose with the English word right and its more careful use to mean an enforceable entitlement forces the conclusion that even the most reasonable conventional desiderata remain, in the absence of enforcement, mere pretentious preferences. By way of adding entertainment value, this paper uses stories to illustrate that preferences are sometimes mutually exclusive.

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Introduction

This paper begins with the observation that rights are mere preferences. From there I propose to distinguish between the two main uses of the word rights in English; I will call them Rights A and Rights B. Rights A are enforced entitlements, and Rights B are not. From there this essay takes you, gentle reader, on a frightening journey through an unusual jungle of preferences concerning animals.

Not that preferences are unimportant. The entire writings of Jeremy Bentham, of which I am probably one of the only poor souls on earth to have read every word, is more or less a set of footnotes to a simple preference. Yet Bentham is one of the few philosophers in history to have had a group of active disciples who spent their lives promulgating his simple preference into public life.

The most important human observation about preferences is that they are often in competition and often mutually exclusive. Perhaps you are bored with my writing and you would prefer to kill me. My preference to live and your preference to murder me are in competition, and may yet prove mutually exclusive. If an enforced law upholds my preference to live by giving me an enforceable entitlement to stay alive, then the enforcement operates by constraining you from acting on your desire to kill me, understandable though it clearly is. We will return to this jungle of conflicting preferences after we look at the two main uses of the English word rights.

Sometimes the English word rights is used to mean enforceable entitlements. Let us use the term Rights A for enforceable entitlements. If Mary has an enforceable entitlement, she has an imputation attached to her name, and the meaning of that imputation is that a set of specified obligations to Mary will be enforced. No enforcement, no entitlement. No certainty of enforcement, no certainty of entitlement.

When an entitlement has a guarantee of institutional enforcement, then it acquires money value, or equity value. Equity value is the amount which a

lender will lend on the strength of the certainty of enforcement. This is the root of all value, the basis of all markets and the fundament of capitalism. All institutions exist in order to enforce entitlements, therefore their most important products are compliance and acquiescence. Enforceable entitlements, or Rights A are to be found in the records of every civilization of which records are kept. The Chinese word for Rights A consists of two characters, one for benefit and one for power, expressing the two necessary elements of imputation and enforcement. Remembering my opening observation that all rights are mere preferences, it follows that any competing preferences are sidelined by enforced preferences. I might entertain in my thinking a preference to take Mary's money; I might think of all sorts of moral reasons why in a better world I should have Mary's money, but my reasonable but toothless preference is sidelined by her enforceable preference, her Rights A.

Another meaning is commonly given to the word rights in English, let us call this meaning Rights B. Rights B are unenforceable preferences, like dogs that bark very loudly but have no teeth. Many people give obsessive attention in the English speaking world to Rights B. One of the effects of this obsessive attention is that sometimes it achieves by political means a change in institutional enforcement, and so after a time Rights B become Rights A. This is pretty much a description of what happened when slavery was abolished in the British Empire after two campaigns over fifty years at the end of the eighteenth century. This is an example of a toothless preference that gained not only in popularity but also in status. The competing preference to own and trade in slaves, which had been enforced as an entitlement for centuries, was sidelined in a political process in which a moral idea was promulgated by moral experts who assumed moral superiority, inviting everyone to locate within their moral scheme as moral experts, as morally righteous, or immoral and deviant. Those interests with a preference to own or trade slaves were depicted as immoral and deviant, and their once-enforced preferences were consigned to the dustbin of history. So although for now, Rights B are mere toothless preferences, there is a proverb in English, "Every dog has its day." It may seem to some outsiders to the English speaking world, that people who obsess about Rights B in one form

or another are playing fast and loose with the word rights, but such an obsession makes sense when seen as part of an historic contestation of preferences.

I promised a frightening journey through an unusual jungle of preferences concerning animals. Now we begin.

In favour of animal pain

Imagine that I belong to a traditional group of hunter-gatherers in a tropical rainforest habitat. Imagine that I live inside a set of stories, categories, concepts, protocols and practices that have been handed down through many generations. My competencies and habits are adapted to the places and to the rhythms of my natural and social world, my habitat. Imagine that we hunters normally walk for a whole day from camp in order to hunt small animals. We never continue to hunt an animal that has once seen us. We must take our food by surprise. That is our way. Our weapons are not meant to kill; we bring an animal down to carry it back to the camp alive. A dead animal must be eaten immediately; it will soon putrify in the wet tropics. Therefore we wound an animal just enough to capture it, then we carry it long distances alive and in pain before killing it to eat. This is the healthy way for our people. We would not think it proper to give our children meat from an animal that had been carried home dead. It might bring sickness upon us.

If an animal dies on our way back to camp, we take it as a sign that the animal does not wish to be eaten, and we honour that. If the animal shows signs of pain, we take this as a sign that the animal wishes to be eaten and we rejoice and are thankful to the animal. The more an animal shows pain, the more we rejoice. Our children rejoice with us in the pain of captive animals.

The welfare of our people depends on causing suffering to animals while carrying them alive back to our families. We are rational, we are reasonable. This principle is universalizable: It is always good when an animal shows pain. Thus pain is useful and a great gift to us.

In favour of pain

A terrible curse has afflicted some of our people. It begins with the inability to feel pain in some part of the body. This no-pain curse results in an unintentional injury, followed by ulcers and rotting of muscle and bone. Visitors to our forest call this no-pain curse, “Leprosy.” We are rational, we are reasonable. The principle is universalizable: It is always good when a person can feel pain. Thus pain is useful and a great gift to us.

We use the giving of pain to guide the behaviour of our children. We are rational, we are reasonable. The principle is universalizable: Pain is a good thing to give children. Pain is useful and a great gift.

There are times when even the best of us feels ungrateful for pain, and forgets its usefulness. This is a matter for regret and shame, but we tolerate occasional ingratitude for the great gift of pain. It is our way.

In favour of liberty, never mind the suffering.

In this section, I abandon the imaginary persona of a forest dweller. I am in fact an old Australian gentleman with whom some kind Taiwanese people have made friends. Now I will tell a story, to illustrate that the social liberty of dogs and their freedom from pain are two possible desiderata which can sometimes in practice come into conflict. The following story illustrates this. In March 2011 a young Confucian scholar asked me to comment on a paper she had written, concerning the practice in Taiwan, of euthanasia of those stray dogs which were in such veterinary crisis that a quick death is deemed preferable to a horrible life with the clinical certainty of great suffering.¹ It seems that since there are many stray dogs in Taiwan, a great many of them suffer from being hit by cars. Some have injuries so shocking that veterinarians euthanase them. The scholar was part of a group of students

¹ Hsuan-Ju Wang, *Is it Moral to Euthanize Animals?* (Chungli, Taiwan: National Central University, Graduate Institute of Philosophy, 2011).

dedicated to animal welfare, who felt compassion for the suffering caused to the many stray dogs in car accidents.

I told the young scholar that in Australia where there are very few stray dogs, due to stringent regulations requiring registration of dogs and owners and due to active municipalities returning any dogs on the streets to their owners. The scholar was impressed and pleased. She looked forward to this development in Taiwan, saying she felt that keeping dogs off the streets was preferable to the great suffering caused by their conflict with cars.

Now let us examine this preference, in the light of its social impact on the lives of dogs. To do that, let me tell the story in Australia as I see it.

The story in Australia is that when I was a boy, dogs were pretty much everywhere in the streets as they are in Taiwan today. As in Taiwan, most of the dogs had owners who cared about them in the mornings and in the evenings, who would talk to them and feed them and take them for walks. But everyone knew that was not enough for a dog, because dogs like to be together with other dogs. So during the day dogs would socialise in groups of two or three or four, like friends. They would spend a lot of time together marking and sniffing a territory. No dog would ever defecate or urinate in its own yard. ‘Stray’ dogs were not lost dogs. Their spatial awareness is acute and measurable. In some unfenced rural areas, a property boundary was known by the place where the next group of dogs starts to bark. When I was a boy, Australian dogs had their own social groups and each group had its territory. Sometimes there would be a fight with a dog from another territory. Dogs had liberty.

Back then when I was a boy, a few dogs got hit by cars and were killed or injured horribly. If their injuries were so bad that they would continue to suffer terribly all their lives, some were euthenased. Now instead, in Australia today, dogs are locked in their owners’ homes all day and night, and never are seen on the streets unless on a leash. Each is registered with a tag attached to the collar, so if it jumps a fence it is caught by the municipality and jailed until the owner comes and gets it, and pays a fine. So in Australia, unlike Taiwan, there are no small groups of dogs on the streets any more. In this way all Australian dogs are saved the pain of suffering from being hit by cars.

The price of that is that dogs cannot develop anymore to become social. If dogs were human, we would probably say they are being made crazy by loneliness. Every dog is forced to defecate in its own yard, and since we humans have only a small part of our brains for smell, and dogs have a large part, it is impossible to imagine how bad it is for a dog to have to live in the same place with its own stink. Since dogs in street groups use their urine to mark their territory, a dog without a group has no group territory, with unknowable results for the social and conceptual development of young dogs.

We simply cannot know with any certainty what passes for a concept or a category in the thinking of a dog, let alone how they develop and flourish. It is perhaps unlikely that dogs themselves use a concept analogous to our word 'stray.' If, however, we start by saying that dogs are social creatures with complex capacities for relationship with other dogs, if we start with the observation that dogs consistently show a preference for liberty to relate to other dogs, then when we override that preference by a public policy driven by another preference (to prevent the suffering of some), we are playing God.

To save the pain of some we remove the liberty of all. We play God. Stray dogs in Taiwan have social liberty, but dogs in Australia have none. It is not possible to be sure that jailed dogs have fully developed brains. Even though they are at grave risk of great suffering from car accidents, the free dogs of Taiwan are almost certainly better off than the jailed dogs of Australia.

Can dogs be wronged?

I have two more stories about dogs, the first is imaginary, but the second story is true. In the first story, imagine that you are a member of an ethics panel that has been convened to consider disciplinary action against two veterinary students. Their supervisor had stepped out of the operating theatre for a few moments prior to demonstrating a surgical procedure on a dog which had already been anaesthetized. During the minute that the supervisor was out of the room, in our imaginary story one of the students

used his mobile phone to video the other pretending to have sex with the anaesthetized dog as a joke.

In our imaginary story the video clip was seen by a journalist, and there followed a public outcry for the expulsion of the students. If the veterinary institution is to retain its reputation by making an example of the students, it must be made clear just what they had done wrong and why it was wrong. That is your job.

The ethics panel of which you are a member has already considered two questions. The first question, “Is there evidence of physical harm to the dog?” has been answered in the negative. The dog was not physically harmed in any way. The dog was asleep and was not actually touched during the alleged offence. In answer to the second question, your ethics panel has found that the students had wronged the owner of the dog by violating a professional standard of trust.

The ethics panel now considers the third question, “Has the dog been wronged?” Your panel agrees that the dog was owed moral consideration, and was wronged. The purpose of this imaginary story has been to illustrate that the avoidance of pain is not the only preference giving rise to animal rights.

That story was imaginary but my last story, again about the wronging of a dog, is true. Many years ago I lived in a disused convent with a small and very woolly white poodle dog named Ziffy. One of the offices in the convent was used by a faith-based organization, and every day Ziffy would stop in that doorway and wag his tail. The office secretary named Joyce always nodded a greeting but never encouraged the dog to come in.

One steamy summer’s day that dog was panting so much I shaved off its wool to give it some relief from the heat. Underneath all that wool that dog turned out to be really very small. When Ziffy stood in Joyce’s doorway she looked up, she stared, pointed at him, and laughed mightily.

In a flash Ziffy ran into that office, and bit Joyce on the ankle. A light bite, not enough to break the skin, a calculated bite, an admonitory bite rather than a savaging. We who were there were in no doubt that Ziffy considered himself wronged. We felt that the dog’s action commanded respect. Perhaps we were mistaken; we can only guess about what goes on

in the brain of a small dog, but we agreed that by mocking the dog, Joyce had wronged him.

Conclusion

Like all rights, animal rights are mere preferences. These stories have had the purpose of overthrowing the proposition that animal pain is an incontestable source of universalizable human obligation to animals. Those who promote the capacities of animals to suffer pain as a basis for animal rights, whether Rights A or Rights B, are merely promoting one preference above others.