

Does the extension of basic moral rights to mentally impaired humans entail that some animals also have those rights?

Introduction

In this essay, I provide definitions of what makes a moral community, and then explore how membership of that community might be decided, with specific reference to whether there is any reason to treat animals differently from mentally impaired humans. I argue that there is reason to treat humans, mentally impaired or otherwise, as significantly different from animals, and that it therefore does not follow that animals ought to have moral rights.

Some Definitions

In this essay, I will use the following terms (these are adapted from Regan, but using my own definitions):

- (a) a *moral agent* is an individual who is able to take into account moral considerations before acting, and whose actions can be judged as being morally good or bad. In this essay, I'll use the names Andy and Angela for my moral agents.
- (b) a *moral patient* is an individual who, while not able to act as a moral agent, is capable of being on the receiving end of actions performed by a moral agent in such a way as to give a moral dimension to those actions. My moral patients' names are Pippa and Peter.
- (c) the *moral community* is made up from all moral agents and all moral patients: those individuals who are able to influence (directly or indirectly) the moral value of a

situation.

- (d) a *moral void* is one who is outside the moral community altogether: perhaps able to act, but not capable of making moral choices, and, if on the receiving end of actions performed by a moral agent, gives those actions no moral value. Meet Vic.

I shall not attempt to justify these divisions, taking it that the uncontroversial examples of each type can be made, such as: Angela the university lecturer, Peter the six month old baby, and Vic the banana.

All moral agents are capable also of being moral patients when other moral agents are involved: for example, if Andy hurts Angela, then that's bad of him. But it would be good of Angela to forgive Andy. The way that Andy treats Pippa might mean that Andy is being morally good or bad, but no matter what Pippa does to Andy, her actions can't be judged that way. And anyone can do whatever they want to Vic without accruing any guilt or virtue (unless, of course, by so doing they happen to affect another moral patient).

This leads to a definition of moral rights, which says that

- (e) what it means for an individual to have *moral rights* is that a moral agent *ought* to consider the effects of his actions on that individual when considering a course of action.

In other words, moral rights are accorded to any moral agent or moral patient. Of all the characters we've met, only Vic has no moral rights.

The question being addressed starts from the assumption that we are prepared to extend moral rights to “mentally impaired humans” (MIHs). Let us take “mentally impaired” here to mean a level of disability which means that such humans are not only incapable of moral judgement, but that they display inferior levels of self-consciousness and reasoning than, say, a normal chimpanzee. Such humans are not capable of being moral agents, and so (based on the definitions given earlier), any moral rights they have are by virtue of being a moral patient.

How can an individual be a member of the moral community?

Given that MIHs are members of the moral community, then we need to understand what qualities they have which results in their membership. If animals share those qualities, then that would entail that they also be accorded rights. In the following sections, I will look at three possible criteria that may be used.

- By being an individual who can “reason”

One of the first things that springs to mind when defending the idea that humans are in some way uniquely different from other animals is based on some kind of intellectual ability. Aquinas says that the quality of being rational is what distinguishes man from animals; for Descartes the distinguishing feature is “language”, and Kant says the relevant difference is that animals are not self-conscious. While on the face of it these may sound

reasonable benchmarks, when explored they seem less certain: some animals appear to be able to behave in a rational as opposed to purely instinctive way, some are able to communicate (e.g. Kanzi:1998), and scientific research suggests the possibility that some animals are self-conscious. Scruton attempts to avoid giving such a hostage to fortune by saying that he uses the term *reason* as a “convenient shorthand” for what he sees as the unique mental characteristic of human beings which is manifested in such abilities as imagination, morality, aesthetic sense, and language (Scruton 2000:19-20). However, while there is a certain appeal in such a defining characteristic, it is difficult to avoid the feeling that this is simply a way of excluding anyone who isn't a normal human being. And it doesn't really help in the case of MIHs, since whatever set of mental characteristics we use to define “reason”, it is hard to argue that MIHs possess some mental faculty which is absent from all animals, no matter how intelligent the animals may be. By using this as our yardstick, Vic would surely be excluded from the moral community, but so would Pippa and Peter.

- By being a potential moral agent

Regan says “one possible specification of who belongs to the moral community is that *all and only moral agents belong*” (Regan 2004:152, emphasis in the original). In this form, the specification conflicts with my definition (c), but by using a qualifier such as “potential”, it comes more into line with that definition. And there are arguments for modifying the specification in this way. The point of interest here is that the quality of

being a moral agent is not a permanent one. Andy, when first born, did not start off as a moral agent. And he could conceivably cease to be one should he be involved in an accident which renders him “mentally impaired”. Arguably he stops being a moral agent when he is asleep. If *only moral agents* belong to the moral community, then Andy's rights are not permanent, and Angela's duties towards him vary throughout his life, and even throughout the day and night. This seems to run counter to our moral intuition. But by extending the Regan definition to include “all and only potential moral agents”, Andy retains his moral rights throughout his life. By using “potential moral agent” as our defining feature, we are not necessarily ruling out animals from ever being included in the moral community, nor are we excluding as-yet undiscovered beings, such as extraterrestrials. Should a creature demonstrate that it is able to act as a moral agent, then all creatures of its type ought, on this criterion, be regarded as having moral rights.

One justification for arguing this position is based on a Rawlsian contractarian view: if I am making a choice about how society should be ordered from behind a “veil of ignorance”, not knowing whether I shall be a teacher, asleep, an infant or a MIH, then it is unlikely that I will choose a society in which rights are only granted to those able to act as moral agents. The duties I have are to other individuals such as myself, and it is my interest to treat them well, since by so doing I hope to ensure that reciprocal respect will be accorded to me. I have no duties to those who have no potential ever to be moral agents, since there's no benefit to me in considering their interests. Perhaps this to some extent begging the question, in that there seems to be an assumption by Rawls that those behind the veil of

ignorance do have a moral sense, and so are moral agents. In other words, the result of any choice is biased in favour of what moral agents would favour, and does not take into account the preferences (assuming they have any) of non-moral agents. We, as rational agents, may believe that we don't want to be in Pippa or Vic's position, but we have no way to tell whether they are content as they are, let alone what choice they might make from behind the veil.

However, the idea of “potential” brings problems with it. It is one thing to say that the infant Andy is a potential moral agent, but how far back in time does his potentiality stretch? The sperm that fertilized the egg which together became Andy's foetus had in them some sort of potential. “My car is potential scrap, but it is not scrap, and its being potential scrap does not justify anybody in treating it as scrap” (Blackburn 2001:53). Further, it is even less plausible to regard Andy as a potential moral agent if he's suffered irreparable brain damage in a car accident.

- By being a human being

So far as we know, Andy and Angela must be human beings; no other species has the capacity to fulfil the criteria for being a moral agent. Since all moral agents are humans, then any actions or situations that occur in the absence of human beings can never have any moral value. This unique characteristic of human beings may give ground for treating them differently from non-humans, regardless of other incidental properties such as mental

abilities.

One reason that Andy might treat humans differently from an animal is that the human, being of the same species, has a relationship that has a stronger bond than any animal could have. If Andy is faced with a decision to save an MIH or to save his pet cat, it does not seem counter to moral intuition to believe that a decision to sacrifice the cat is the right thing to do. “To choose to save one's own child from a burning building when an impartial consideration of the balance of general utility would favour rescuing someone else first, is *not* (as impartialists must claim) a perhaps understandable but nonetheless regrettable lapse from the highest moral standards; on the contrary, it is the morally correct course” (Cottingham 1986:357). However, even if it is legitimate to have such a preference, this does not mean that it would not be morally wrong to let the cat die when he could have saved it.

However, there is a stronger reason why all humans should be included in the moral community and animals excluded, which is a refinement of the “potential” case given earlier. Specifically, it is that humans, whether MIH or not, are a *different kind of thing* than non-humans: “It is in the nature of human beings that, in normal conditions, they become members of a moral community, governed by duty and protected by rights. Abnormality in this respect does not cancel membership. It merely compels us to adjust our response. Infants and imbeciles belong to the same kind as you or me: the kind whose normal instances are also moral beings.” (Scruton 2000:54-55). As an analogy, both

motorbikes and steam-trains have common features, and arguably there are features of motorbikes which are “better” than steam trains and vice versa. But although in some ways they are treated as equivalent (both need refuelling and maintenance for example), they are not treated identically in all respects. Even if a motorbike is damaged beyond repair, it may still have an intrinsic value *as a motorbike* (for example, to a motorbike museum) that no steam-train, whatever condition it is in, can ever have. In the same way, a human being, whatever condition she is in, may be said to have moral value, simply because she is an instance of the kind of thing which, in its normal state, is a moral agent. It is not “transport-ist” for a motorbike museum to express no interest in steam-trains; it is not “species-ist” to deny moral rights to animals.

Conclusion

In many ways, MIH may be regarded as being equal, or inferior to, animals. However, humans are unique in having the potential for moral agency which animals (so far as we can tell) do not. Even if MIH lack this ability, and even if they are impaired to such an extent that they will never be able to achieve it, the fact that they are instances of human beings is sufficient to grant them membership of the moral realm, without this entailing that animals must also be admitted.

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