

## Replies

(IN RE E&A II/2, Review by Squadrito of Watson's "Self-Consciousness and the Rights of Nonhuman Animals and Nature")

### SELF-CONSCIOUS RIGHTS

The central issue in discussions of animal rights is the notion of "right". In "Self-Consciousness and the Rights of Non-human Animals and Nature" I consider two senses of "right". A full-bodied right is one that can be possessed, enjoyed, and exercised. In order to have a right in this sense, an entity must know that it has the right, and this requires that the entity be self-conscious. This is a reciprocal or "societal" right in that it implies at least minimal duties among self-conscious agents to respect each others' rights. Such rights and duties are cultural artifacts that arise in the context of social evolution. They are "natural" in the sense that societies could not exist without them, but they are artificial or artifactual because members of a society can decide among themselves about the content of these rights and their reciprocal duties.

In contrast to societal rights that arise among self-conscious agents as they interact intentionally in a social context, there is a derivative sense of right that self-conscious agents assign to other entities that may or may not be self-conscious. I call these "legal" rights, and their distinguishing feature is that they do not necessarily bind the entity that has them to reciprocal duties. This is because many entities that are assigned legal rights cannot act intentionally as agents; they cannot exercise rights, let alone fulfill duties. Legal rights do, however, bind self-conscious members of a society in a matrix of reciprocal rights and duties. For

example, if members of a rare species of blind shrimp are assigned a right to survival, they neither self-consciously exercise the right nor have any duties to perform to maintain it. However, self-conscious members of society do have the duty not to destroy the shrimp, and the right to enjoy the survival of the species.

The key point here again is that self-conscious knowledge as a basis of intentional action is required for an entity to have rights in the sense of possessing, enjoying, and exercising them as its own. The legal rights of entities that are not self-conscious agents are derived from rights in the full-bodied sense. Legal rights do not benefit or bind non-self-conscious entities that have them, but rather make those entities into pawns that play roles in societies of self-conscious agents whose intentional social actions are guided by a matrix of reciprocal rights and duties.

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Let me approach this in another way. The traditional reciprocity view is that an entity cannot have rights unless it can fulfill related duties, i.e., it must be a moral agent. I argue simply that one cannot fulfill duties unless one knows them, and thus self-consciousness is a necessary (but not sufficient) condition for having rights. Peter Singer (Animal Liberation, New York: Random House, 1975) denies that an entity must be able to fulfill duties to have rights, but need only be capable of suffering. It seems to me that the relevant sense of suffering requires that an entity can know self-consciously that it is suffering. Self-consciousness is logically prior to and necessary for the ability to suffer. Thus self-consciousness is required for an entity to have rights, even if the criterion is taken to be the ability to suffer. Self-consciousness is in fact a

criterion of wider scope than the ability to suffer, for one can conceive of an entity that is self-conscious without the ability to suffer, but not of an entity that can suffer without being self-conscious.

Could an entity have, benefit from, and exercise rights without knowing that it had them? Presumably it could. But such an entity must at least be capable of knowing that it has, benefits from, and exercises rights. This is because the concepts of 'having', 'benefitting from', and 'exercising' here imply an entity that knows the relation of the thing to itself, and that can act intentionally with relation to it. It makes no sense to talk of entities having, benefitting from, and exercising rights and duties unless they can act intentionally in accordance with or against them.

This rules out, e. g., a cat owning a building, although if a building were willed to it, there is a legal sense in which the cat owns the building. But the cat does not know it owns the building, and has no duties to fulfill to maintain its ownership. And this is just the point. The cat has legal rights in this case, but does not know it has or benefits from them, and cannot knowingly exercise them. So far as the cat is concerned, the good things happening to it because of its legal rights might as well be accidental. Having rights makes a difference to entities that know they have them. To entities that cannot know they have them, it makes no difference whether they have rights or not, for nothing (not even damage or destruction) makes any difference to entities that cannot know that they have things, i.e. to entities that are not self-conscious. In fact, the legal rights of the cat in this case primarily involve the full-bodied societal rights of certain self-conscious lawyers and guardians to benefit from the cat's legal right of

ownership, and it binds other self-conscious entities like you and me to duties not to trespass on the building, and so on.

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The main issue is that we would like non-self-conscious animals and nature to have some rights. This is in part because we will benefit from their preservation. Do they benefit from it? Suppose the universe contained no self-conscious entities that could act knowingly and intentionally in accordance with or against rights and duties. What purpose would rights and duties serve in such a universe? Consider that in standard discussions of the ecological balance of a pond, e.g., the notions of rights and duties are not applicable in talking of how the balance is maintained as frogs eat some mosquitoes, fish eat some frogs, birds eat some fish, and so on. To whom are we addressing our talk of rights and duties when we dispute about whether or not nonhuman animals and nature have rights? We are addressing each other. We are trying to regulate the intentional activities of those self-conscious agents who might destroy some species of non-human animals and disrupt nature. When we assign legal rights to non-self-conscious entities or nature, e.g. the right to be protected from unnecessary suffering, then full-bodied rights and duties pertain to self-conscious agents that do know they have rights and duties, and that can be persuaded to act in various ways. The concepts of necessary and unnecessary suffering here make sense only in a context of intentional actions, and thus do not apply to nature bereft of self-consciousness. There is nothing either necessary or unnecessary in this societal or moral sense in a universe with no self-conscious entities.

That is why self-consciousness is

basic in any discussion of the rights of animals and nature. Some nonhuman animals (even cats) appear to be self-conscious. But there is little or no evidence that Nature or the Universe itself is self-conscious or that there is any World Spirit or Guiding Force or God in Nature, and there are good arguments that mere existence or life or non-self-conscious (behavioral) "suffering" does not give an entity a Natural Right to Be. An implication of this "naturalistic" bias is that most discussions of the rights of animals, e. g., of battery chickens, are really about human property. Garrett Hardin is on the right track when he says "Ethics is the study of the ways to allocate scarce resources. (This definition serves equally well for economics and ecology -- which indicates the essential identity of these three disciplines.)" (Promethean Ethics, Seattle: University of Washington Press, 1980, p. 3). When we assign legal rights to non-self-conscious entities, what we are really nailing down are the societal rights and duties of self-conscious agents in a societal context of intentional actions. We are determining whether or not the suffering we supposedly cause chickens is necessary or unnecessary to our (self-conscious) interests.

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I do not think there are natural rights in the sense of rights pertaining merely because an entity exists or possesses some natural characteristic, not even self-consciousness. But I do think a self-conscious entity might earn or generate or construct societal rights by fulfilling reciprocal duties, and that rights in this sense are the logically prior conceptual foundation of assigned legal rights that can pertain to non-reciprocating non-self-conscious entities.

Suppose you are walking through a forest and a tree falls breaking your

arm. You have no recourse against the tree because trees are not self-conscious. They cannot do things intentionally, they are not agents, and thus they cannot have natural rights and reciprocal duties in a societal context as defined above. If someone owns the forest and allows you to walk through it, then you might be able to sue the owner for negligence. On the other hand, we can assign trees the legal right to fall naturally, e. g. by legally designating a forest as a wilderness area. Here, and also in a state of nature where there is no self-conscious entity in a property-owning or custodial relation to the trees, you proceed at your own risk, and have no recompense. That is why the wilderness is a rather frightening place. There is no societal cushion of rights and duties out there. In the wilderness you are on your own.

Richard A. Watson

Washington University  
(for 1981/82: Center for Advanced  
Study in the Behavioral Sciences)

(IN RE: E&A II/3, Cave's review of  
Russow's "Why Do Species Matter?")

To the Editor, Ethics & Animals

Dear Sir:

Not being a philosopher, I am somewhat loath to take issue with George Cave's review of Russow's article on the moral status of species. However, I feel that both Russow and Cave make a semantic error when talking about the "aesthetic value" of species. The fact that a householder may recoil in horror from a scuttling

cockroach or a housefly on the cheese does not mean that these creatures are unaesthetic. They occupy specialized niches in the ecosystem and surely have some aesthetic value as parts of the ecosystem.

The sugarcane farmers of Natal, South Africa, decided several decades ago that the black mamba (a poisonous snake) was a dangerous pest and decided to try to eliminate as many as possible. They were very successful, their success being announced by a veritable plague of cane rats which caused heavy damage to the sugar cane until the snake population built up again.

The perspective that we have of an object greatly affects our appreciation of its aesthetic quality. A human face may appear very beautiful from ten feet but not when seen through a magnifying glass which shows the hairs and pores in all their detail. As David Hume remarked, "beauty in all things exists in the mind which contemplates them." (Essays, of Tragedy). A species should not be confined to a moral limbo on such flimsy and subjective grounds. We can surely develop better criteria of each species' ecological aesthetics.

Yours sincerely,

Andrew N. Rowan, BSc.,  
M.A., D. Phil., Associate  
Director, The Institute for  
the Study of Animal Prob-  
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(IN RE: E&A II/1, Johnson's  
review of Frey's Interests and Rights)

### The Upshot of Scepticism over Some Criteria for Moral Standing

My book Interests and Rights, reviewed by Edward Johnson in Volume II, number 1, is an exercise in scepticism, on the surface, about whether animals possess interests and rights (and whether there are any specifically moral rights), but, at a deeper level, about the criteria for the possession of moral standing. I tried to be rather remorseless in tracking down and presenting a case against a number of suggested criteria, such as the possession of interests, the capacity to feel pain, the possession of certain mental states or a certain sort of psychological make-up, the possession of desires or desires of a particular sort, and so on. I devoted most of my efforts to the interest-criterion, both because it is perhaps the most prominent criterion used today to confer moral standing and because the concept of an interest plays so important a role in moral philosophy (from utilitarianism to rights-theory, where rights are not uncommonly regarded as devices for protecting interests).

My aim was to shake people's confidence in the criteria examined. It is in this connection that I saw my case against animal interests, my case for maintaining that a criterion of pain or the having of experiences or states of mind is both arbitrary and discriminatory, my doubts about whether pain is an intrinsic evil, my case for saying that animals lack desires, beliefs, reasons, and emotions, and so on, as relevant. Nearly all this is negative, and that is why the book is negative; so to speak, I saw myself as contributing something positive to present moral debates involving animals (and not just animals), i. e., compelling us to face afresh the question of the

criteria of moral standing, by means of something negative, i. e., shaking people's confidence in the prominent criteria examined, especially in the interest-criterion (and, partly through it, in the use of pain to confer interests and the use of interests to confer rights). Because the vast preponderance of those who have been a party to and taken a public stand in these moral debates over the past five to ten years have been, so to speak, pro-animal, I spoke of an 'orthodoxy', against which my doubts about interests, rights, and some of the criteria used to concede animals moral standing collided.

In his review, Johnson alleges that my position does not provide answers to 'moral questions about how, at least in general, animal welfare ought to be weighed against human welfare', and these questions are, if I understand the purport of his remarks, the important ones. Perhaps they are the important ones; it is easy to see why someone might think so. But it is not true that my position never provides answers to them; it often does, but, admittedly, in the unusual sense of forcing us to see that we cannot weigh what is not there to be weighed. What I mean is this: the very way Johnson writes, of how animal welfare ought to be weighed against human welfare, obscures the upshot that my attack on criteria for conferring moral standing can or does have, namely, that unless this attack can be deflected, it is not clear that a particular theorist, in terms of his own theory, has anything to put on the animal side of the balance. For example, Joel Feinberg concedes animals moral standing because they have interests; if I am right, and animals lack interests, then animals lack moral standing, and Feinberg is left with nothing to weigh against human interests. Tom Regan's position on vegetarianism depends upon there being some moral rights and upon animals

possessing one or more of them; if I am right, either about the existence of moral rights, a topic I explore further in some forthcoming papers, or about animals possessing them, Regan's position is in trouble. He will simply be left with our preference for eating meat and no reason in terms of his own theory for thinking it is wrong to eat it. Peter Singer's position on animal liberation turns fundamentally upon the application of the principle of equal consideration of interests; if I am right, and animals lack interests (in the operative sense), then Singer has nothing on the animal side to be weighed against and to impede the pursuit of human interests.

The point runs deeper. For example, I try to show in my book why utilitarianism, whether of the pain/experiences/mental state variety or the desire-satisfaction variety, has trouble over moral standing. A part of what I say in this regard about the former variety has already been mentioned above, so let me pass to the latter. There are great difficulties with desire-satisfaction utilitarianisms, some of which I go into, if the desires in question are actual ones; but what is clear beyond a doubt is that animals have moral standing in their own right in such theories only if they have desires. If I am right, and animals do not have desires, then such theories have nothing on the animal side to weigh against human desires and so nothing to take into account in terms of the maximization of desire-satisfaction. Most utilitarian desire-theorists today, however, are tempted to move in the direction of formulating their theory around rational desires. But now animals must have rational desires in order to have moral standing in their own right; if I am right, and they do not have rational desires, then the same result as before ensues. In short, a theorist cannot weigh what he cannot get into his

theory in the first place, and if my attack on the criteria for moral standing I examine succeeds, then we have strong grounds for thinking he cannot encompass animals within his theory.

Now I do not deny that some of this on my side is rather startling; but that is not Johnson's point, nor is it in itself enough, I think, to show that I am wrong.

R. G. Frey  
University of Liverpool,  
University of Toronto