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THE MORAL AND LEGAL STATUS OF ANIMALS

Professor Nick James

‘The Moral and Legal Status of Animals’. Written and presented by Professor Nick James.

OUTLINE

In this Module, you will learn about the range of theoretical, philosophical and ideological positions regarding the moral status of animals, and about the traditional, contemporary and potential legal status of animals.

Upon completion of this Module, you will be able to:

1. Explain each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals.
2. Apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance.
3. Demonstrate a reflective awareness of your own preferred position as well as open-mindedness about the positions of others.



In this Module, we will examine the moral and legal status of animals.

You will learn about the various theoretical, philosophical and ideological positions regarding the moral status of animals, and about the traditional, contemporary and potential legal status of animals.

Upon completion of this Module, you will be able to:

1. Explain each of the theoretical, philosophical and ideological positions regarding the moral and legal status of animals.
2. Apply each of the theoretical, philosophical and ideological positions to a specific moral or legal circumstance.
3. Demonstrate a reflective awareness of your own preferred position as well as open-mindedness about the positions of others.

OUTLINE

1. Who has moral status?
2. Animal ethics
3. Animals and the law
4. Moral and legal status of non-animals



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The Module will be presented in 4 parts:

1. Who has moral status?
2. Animal ethics
3. Animals and the law
4. Moral and legal status of non-animals

THE MORAL AND LEGAL STATUS OF ANIMALS

1: WHO HAS MORAL STATUS?

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Part 1: Who has moral status?

The field of **animal ethics** is concerned with the ethical relationship between humans and animals and is particularly concerned with the question of whether animals have moral status.

The term **moral status** refers to a being's entitlement to our moral consideration, usually expressed in terms of the possession of rights or inclusion in utilitarian calculations of overall wellbeing.



Moral status

Imagine a situation where one person intentionally inflicts significant harm on another person's dog or cat.

Most people would agree that such an action is morally reprehensible. It is a bad thing to do. It is wrong.

But is the action wrong because the companion animal belongs to someone else? Or is it wrong because the animal has rights of its own?

This is a question of animal ethics.

The field of animal ethics is concerned with the ethical relationship between humans and animals, and is particularly concerned with the question of whether animals have moral status.

The term moral status refers to a being's entitlement to our moral consideration, usually expressed in terms of the possession of rights or inclusion in utilitarian calculations of overall wellbeing.

If an animal has moral status it means that the animal's wellbeing should be taken into consideration when we are making decisions about what we should and should not do.

If an animal does not have moral status it means that we do not need to consider the animal's wellbeing when we are making decisions about what we should and should not do.

We should instead focus only upon our own wellbeing, or the wellbeing of other people.

THINK

In your opinion, what ethical obligations do humans have concerning the natural environment?



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Pause the video and take a moment to consider the following question:

In your opinion, what ethical obligations do humans have concerning the natural environment? Do we have an ethical obligation to care for the natural environment? Does failing to care for the natural environment necessarily make us a bad person?

Anthropocentrism refers to any ethical framework that grants 'moral status' solely to human beings.

According to this view, we owe obligations towards animals and the environment purely for the sake of human wellbeing and prosperity.



Anthropocentrism



If your answer to the previous question is either that (a) humans have no obligation towards the natural environment, since the environment exists only for the benefit of humans, or (b) humans have an obligation to protect and sustain the natural environment because humans will suffer if they do not fulfil that obligation, then your ethical position is considered to be anthropocentric.

Anthropocentrism literally means 'human-centredness'.

In the context of environmental ethics, anthropocentrism refers to those ethical theories or frameworks that grant moral status only to human beings.

According to this view, we owe obligations towards animals and the environment purely for the sake of human wellbeing and prosperity.

In other words, it is only humans and their wellbeing that count.

Non-human entities, including animals, are not entitled to our moral consideration.

They do not have moral status.

Many environmental concerns are expressed in terms of the impact upon human wellbeing:

- Pollution threatens human health.
- Resource depletion threatens human standards of living.
- Climate change and rising sea levels threaten human homes.
- Biodiversity reduction threatens the supply of potential medicines.
- The eradication of wilderness threatens a source of beauty.

Anthropocentrism



Many of the concerns about the environment that you are likely to see expressed in the media appear to be concerns primarily because of their potential to affect human beings.

For example:

- pollution is a concern because it threatens human health,
- resource depletion is a concern because it threatens human standards of living,
- climate change and rising sea levels are concerns because they threaten human homes,
- the reduction of biodiversity is a concern because it threatens the supply of potential medicines for human illnesses, and
- the eradication of the wilderness is a concern because it threatens a source of beauty for human pleasure.

This is an anthropocentric ethic.

Humans possess obligations towards the environment purely for the sake of human wellbeing and prosperity.

There is nothing inherently ethically objectionable about causing harm to animals or the environment as long as human wellbeing and prosperity are not affected.

Taken to its extreme, the anthropocentric position would claim that there is nothing wrong with killing a kitten as long as it is your own kitten and not someone else's property, and no other humans suffer as a consequence of your act.

Some anthropocentric environmental ethicists have argued for an extension of moral status – not to the non-human natural world but to human beings who do not yet exist.



Anthropocentrism



Some anthropocentric environmental ethicists have argued for an extension of moral status – not to the non-human natural world but to human beings who do not yet exist.

The granting of moral status to future generations is considered necessary because of the fact that many environmental problems, such as climate change and resource depletion, will affect future humans much more than they affect present humans.

The actions and policies of present humans will have a significant impact on the wellbeing of future humans.

In light of these facts, some philosophers have founded their environmental ethics on obligations to these future generations.

This approach to ethical obligations has become increasingly common, and many people now acknowledge that humans should take more care of the environment not only to protect themselves, but also to protect future generations.

Such an approach is not without its problems.

How can present humans owe ethical obligations to persons who do not exist and may never exist?

If those ethical obligations require present humans to do what is in the best interests of future humans, how can present humans even know what those best interests are?

THINK

In your opinion, do you owe ethical obligations to future humans? Why?

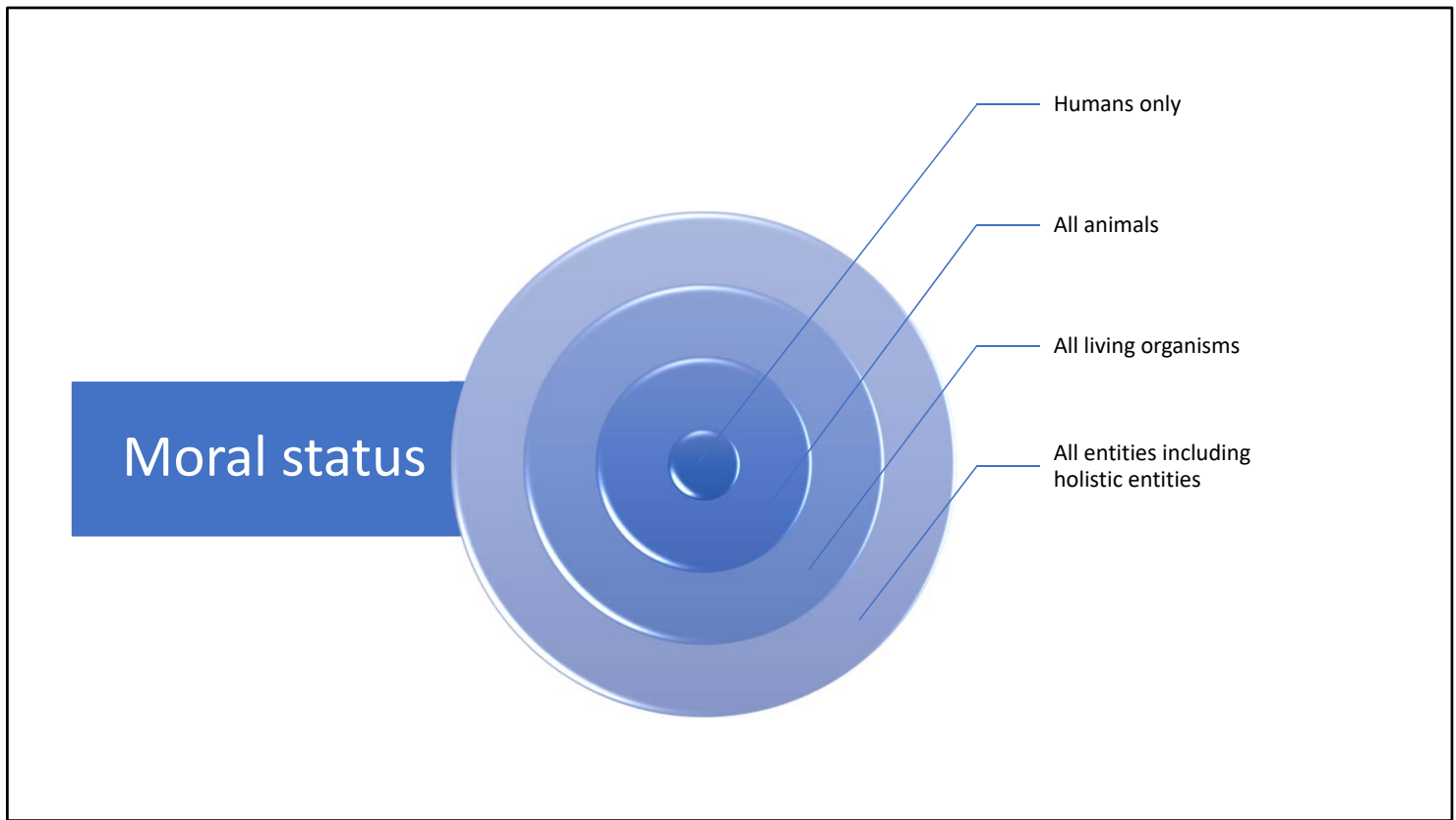


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Pause the video and take a moment to consider the following question:

In your opinion, do you owe ethical obligations to future humans? Why?



Historically, Western philosophy has been dominated by anthropocentrism.

Philosophers and ethical theorists have traditionally focused upon the moral status of humans only and have tended to view animals and other non-human entities as objects rather than subjects.

However, in recent years this approach has been strongly criticised by many environmental and animal ethicists.

They insist that the field of ethics must be extended beyond humanity and that moral status should be accorded to the non-human natural world.

Some insist that moral status should extend to all sentient animals.

Others insist that moral status must be extended to all living organisms.

And still others insist that moral status must be extended as far as holistic entities such as species and ecosystems.

According to these non-anthropocentric ethical models, humans have ethical obligations in respect of the natural environment not just because of the consequences of environmental degradation for humans, but also because humans actually owe obligations to the creatures or entities within the environment themselves.

You have an obligation to avoid causing harm to non-human entities even if no humans would be harmed by your actions and, according to some theorists, even if by avoiding causing harm to non-human entities you cause some harm to humans.

In the next part of this Module we will explore each of these ethical positions.



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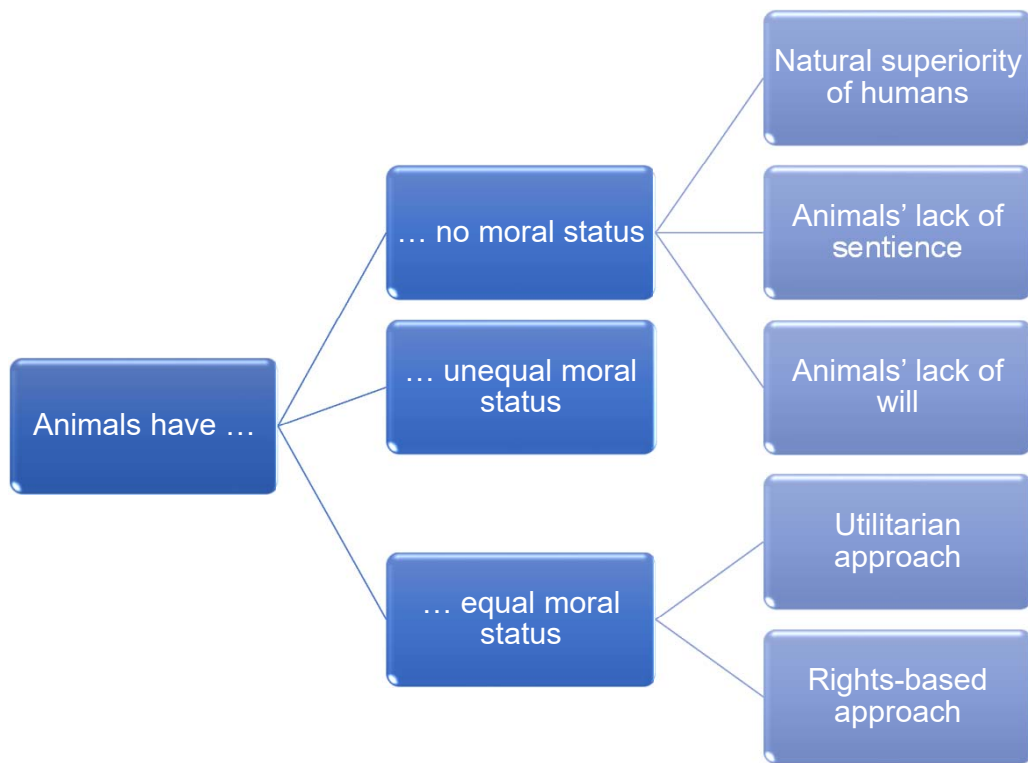
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2: ANIMAL ETHICS

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The Moral and Legal Status of Animals.
Part 2: Animal Ethics.



In Part 1 we briefly considered anthropocentrism: those ethical theories or frameworks that grant moral status only to human beings.

According to this view, it is only humans and their wellbeing that count.

Non-human entities, including animals, are not entitled to our moral consideration.

They do not have moral status.

If pressed, many people would reject a strictly anthropocentric approach to ethics and instead acknowledge that at least some non-human entities have moral status in their own right.

They would, for example, agree that it is wrong to kill a kitten even if doing so caused no harm whatsoever to any human.

In other words, they would agree that the kitten has an inherent right to live regardless of its value to humans.

On the other hand, there are many instances where most people would disregard the moral status of animals — and even deny them any kind of moral status at all — in favour of promoting the wellbeing and prosperity of humans. Common-sense thinking appears deeply divided on the issue of animals and ethics.

For example, you may be outraged when you read a story about the abuse of pets in the news, but, when someone criticises the conditions in which battery chickens or pigs are forced to live, your response may be that those affected are ‘just animals’ and do not merit your concern.

Philosophical opinion on the moral status of animals is similarly divided.

We will examine the arguments in favour of each of the following positions:

1. Animals have no moral status
2. Animals have some moral status, but less than humans
3. Animals have moral status equal to humans

According to some anthropocentric ethical theories, animals lack moral status entirely.
The view that animals have no moral status can be justified in a number of different ways:

- the natural superiority of humans;
- animals' lack of sentience; and
- animals' lack of will.

No moral status



According to some anthropocentric ethical theories, animals lack moral status entirely.
This is not to say that you are entitled to treat animals in any way you like.
Animals do not deserve our moral consideration on their own, but they may deserve our consideration if their suffering could lead to suffering by humans.
It would be wrong to cause a farm animal raised for meat to suffer if that suffering affects the quality of the meat for human consumption.
It would be wrong to kick a dog if the dog belonged to another person who would be upset to see their pet in pain.
The view that animals have no moral status can be justified in a number of different ways:

1. the natural superiority of humans;
2. animals' lack of sentience; and
3. animals' lack of will.

Then God said, "Let us make man in our image, in our likeness, and let them rule over the fish of the sea and the birds of the air, over the livestock, over all the earth, and over all the creatures that move along the ground."

Genesis 1:26



Natural superiority of humans



The first justification for not granting animals moral status is the natural superiority of humans.

This natural superiority is itself supported by several religious texts, including the Old Testament.

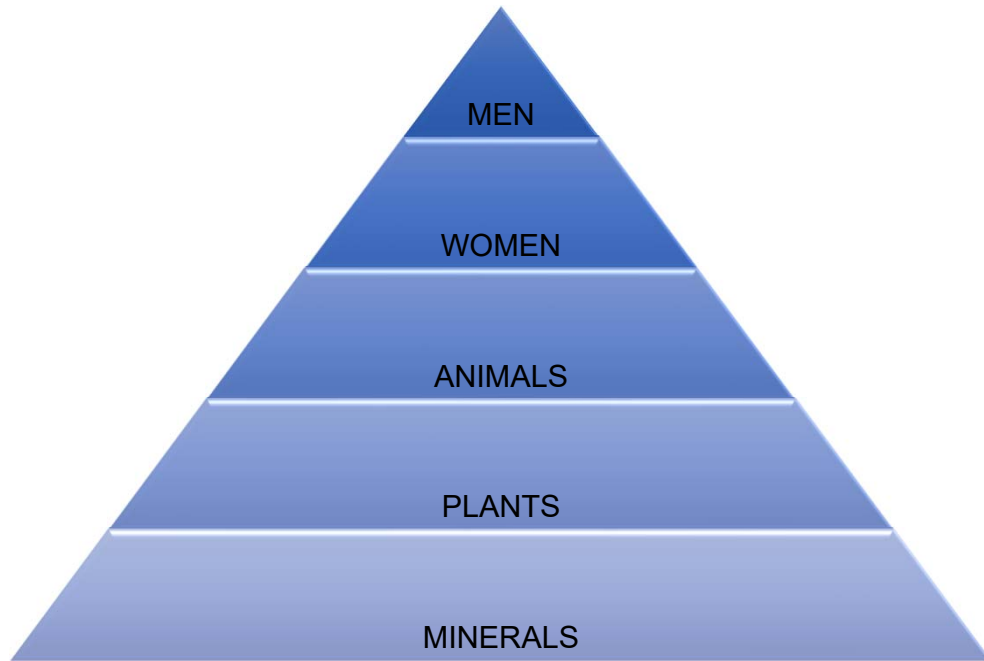
Then God said, "Let us make man in our image, in our likeness, and let them rule over the fish of the sea and the birds of the air, over the livestock, over all the earth, and over all the creatures that move along the ground."

Genesis 1:26

For many people, this is enough to support their anthropocentric position.

And even for people who do not explicitly favour a religious worldview, the fact that many cultures including Western culture were for centuries dominated by the religious worldview means that the natural superiority of humans over animals is an element of what many see as 'common sense'.

It is a justification for refusing animals moral status that is for many accepted without reflection.



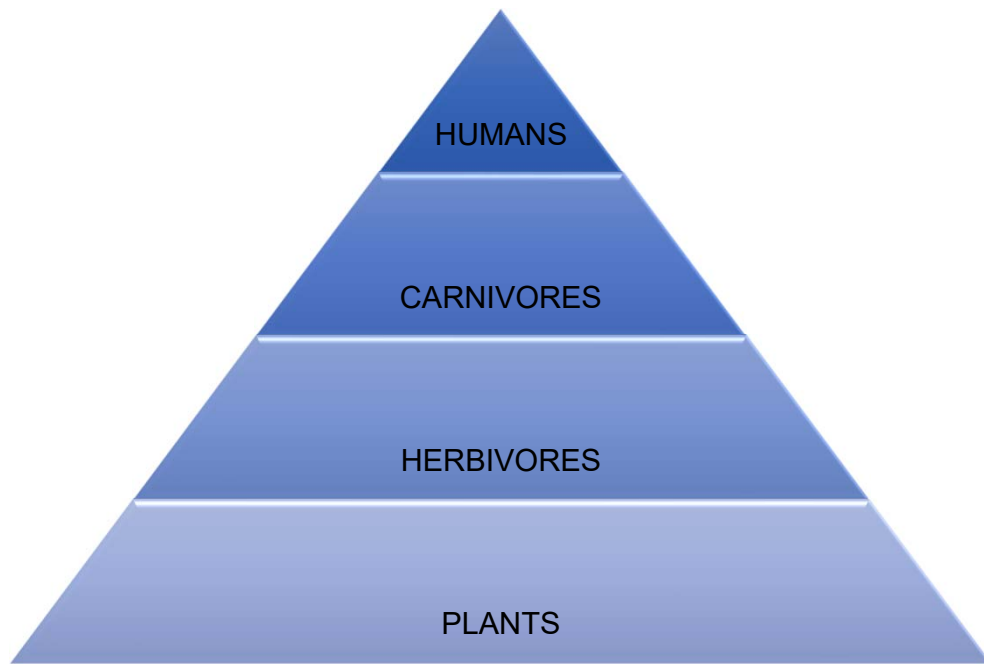
But even those who do reflect deeply upon the relationship between humans and animals deny animals moral status.

Some philosophers deny that animals have moral status due to their particular beliefs about the nature of the world and the proper place of its various inhabitants.

According to Aristotle, for example, there is a natural hierarchy of living beings, with humans at the top.

Aristotle believed that humans are naturally superior to animals because they have the capacity to use reason to guide their conduct, while animals lack this ability and must instead rely on instinct.

He thus argued that the function of animals is to serve the needs of humans and that humans do not owe any ethical obligations to animals.



This belief in the natural superiority of humans is also reflected in quasi-scientific justifications for disregarding the interests of animals on the basis of the 'food chain'.

According to this view, if one kind of being regularly eats another kind of being, then the first is said to be higher on the food chain.

If one being is higher than another on the food chain, then it is natural for that being to use the other to further its interests.

Humans sit at the top of the food chain and so their exploitation of other animals is justified.

Since exploitation of animals is 'natural', it does not need any further moral justification.

THINK

In your opinion, does the placement of an entity lower in the food chain mean that they are not owed any ethical obligations by those higher in the food chain?



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Pause the video and take a moment to consider the following question:

In your opinion, does the placement of an entity lower in the food chain mean that they are not owed any ethical obligations by those higher in the food chain?

Sentience: The ability to subjectively perceive the environment, and experience pain and suffering or pleasure and comfort



Lack of sentience



Another reason to deny that animals have moral status is the belief that animals are not actually sentient, and therefore they have no interests or wellbeing to take into consideration.

'Sentience' here refers to a being's ability to subjectively perceive its environment, and experience pain and suffering, or pleasure and comfort.

A sentient being is able to receive internal sensation and information from its environment, and interpret this as either a positive or a negative emotion.

Animals are not actually sentient, and therefore lack moral status.

I specifically paused to show that, if there were such machines with the organs and shape of a monkey or of some other non-rational animal, we would have no way of discovering that they are not the same as these animals ...

Rene Descartes



Lack of sentience



One of the most well-known denials of animal sentience was developed by Rene Descartes.

He argued that animals are mere 'automata', nothing more than complex machines made of muscle and bone that respond unthinkingly to stimulation.

I specifically paused to show that, if there were such machines with the organs and shape of a monkey or of some other non-rational animal, we would have no way of discovering that they are not the same as these animals ...

If you kick a dog it will yelp, but this yelp does not mean that the dog actually 'felt' pain.

Rather it is a mechanical response to the stimulus of being kicked.

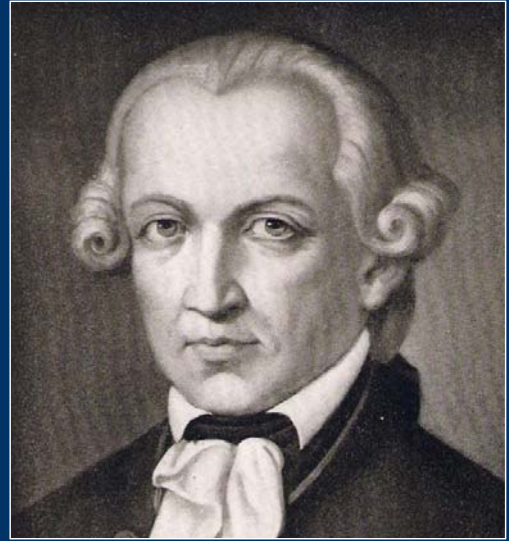
Although this theory may sound absurd, it is reflected in our approach to many animals today.

Specific animal protection or welfare laws, for example, are generally not introduced until there is scientific consensus confirming that a particular species of animal is sentient.

And in debates about factory farming, some participants default to this Cartesian viewpoint when they claim that practices such as tail docking are not animal cruelty because 'animals don't feel pain the way we do'.

So far as animals are concerned, we have no direct duties as animals are not self-conscious, and are there merely as a means to an end. That end is man ...

Immanuel Kant



Lack of will



A third argument in favour of denying animals moral status is based on the claim that animals have no will.

According to Immanuel Kant: So far as animals are concerned, we have no direct duties as animals are not self-conscious, and are there merely as a means to an end. That end is man ...

Kant argued that a person can be said to be doing the right thing only when they act with a good will, and they act with a good will when they choose to do something because it is their duty to do so.

Both animals and humans have desires that can compel them to action, but only humans are capable of willing i.e. standing back from their desires and choosing which course of action to take.

Animals lack this ability, and therefore animals lack wills.

We owe ethical obligations only towards others who act with a good will, and, since animals do not have wills at all, we do not owe them any ethical obligations.

1. If a being is sentient then it has moral status.
2. (Most) animals are sentient.
3. Therefore (most) animals have moral status.



Unequal moral status



The second position to take in relation to animal ethics is that animals do have some moral status, but it is less than the moral status of humans.

Many people today are of the view that animals are more than mere automata and that, despite the differences between animals and humans, animals do have certain inherent entitlements to our moral consideration.

We do have an obligation to act in the best interests of animals, as far as those interests are not inconsistent with human wellbeing.

In other words, animals do have rights, but those rights are trumped by human interests.

The argument in support of the claim that animals have moral status is a simple one.

1. If a being is sentient then it has moral status.
2. (Most) animals are sentient.
3. Therefore (most) animals have moral status.

Generally speaking, the justification for attributing sentience to a being grows stronger the more similar it is to human beings.

THINK

Are all animals sentient? If not all animals, then which animals?



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Pause the video and take a moment to consider the following question:
Are all animals sentient? If not all animals, then which animals?

1. Humans have [attribute X].
2. Animals lack [attribute X].
3. Therefore human interests override animal interests.



Unequal moral status



The argument that the moral status of animals is not equal to the moral status of human beings typically takes the following form.

1. Humans have [attribute X].
2. Animals lack [attribute X].
3. Therefore human interests override animal interests.

Examples of 'attribute X' include language and technology; rationality, autonomy and self-consciousness; the ability to act morally; and membership of a community.

These are abilities or characteristics that humans have, and animals lack.

This reasoning can be used — and is frequently used — to justify the suffering and the killing of animals for food, transport, sport and entertainment.

Such suffering and killing should be avoided when it is unnecessary, since animals do have some moral status, but if it is for the benefit of human survival or even merely for human pleasure then it is morally justified.

THINK

What other properties possessed by humans and lacked by animals might be used to justify the characterisation of animal moral status as being less than human moral status?



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Pause the video and take a moment to consider the following question:

What other properties possessed by humans and lacked by animals might be used to justify the characterisation of animal moral status as being less than human moral status?

According to some ethicists, animals not only have moral status but also have the same moral status as human beings.

There is no legitimate reason for placing humans and animals in different moral categories.



Equal moral status

The third possible position is that animals have a moral status equal to that of humans.

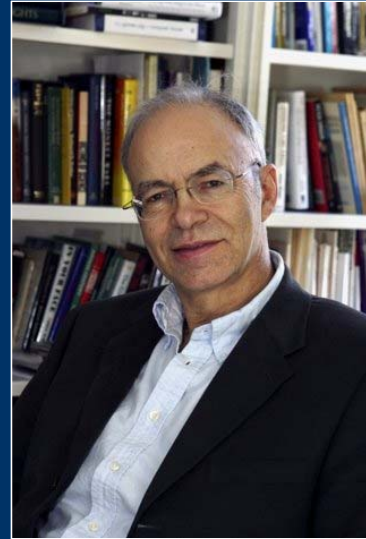
According to some ethicists, animals not only have moral status but also have the same moral status as human beings.

There is no legitimate reason for placing humans and animals in different moral categories.

Whatever argument is used to justify owing an ethical obligation to other humans also justifies owing an ethical obligation to animals.

Racists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race. Sexists violate the principle of equality by favoring the interest of their own sex. Similarly, speciesists allow the interest of their own species to override the greater interests of members of other species. The pattern is identical in each case.

Peter Singer



Equal moral status



One well-known version of this argument is set out in the book *Animal Liberation* by Peter Singer. The publication of Singer's book in 1975 marked the beginning of the modern animal rights movement.

In his book, Singer attacked the argument that the interests of animals should be given less weight than the interests of human beings.

The gist of his argument is that anything that can be used to justify treating humans differently from animals can be used to justify treating some humans differently from other humans, and that since we are committed to treating all humans equally, it would be hypocritical and irrational not to treat animals as having equal moral status to humans.

For example: We may believe that animals are inferior to humans because humans are more intelligent, but we don't reduce the moral status of humans on the basis of their intelligence, so why do we do that to animals?

Singer explained that persistently putting human interests ahead of non-human interests is no more than irrational 'speciesism'.

Racists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race.

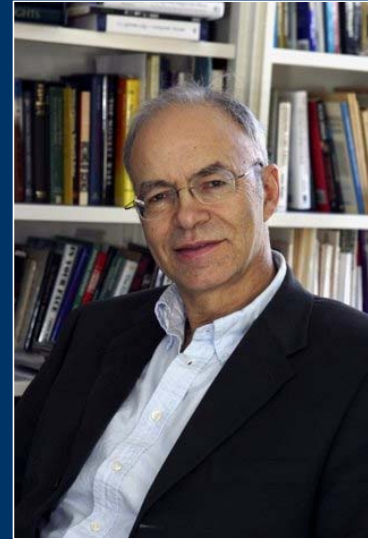
Sexists violate the principle of equality by favoring the interest of their own sex. Similarly, speciesists allow the interest of their own species to override the greater interests of members of other species. The pattern is identical in each case.

To conclude that all and only human beings deserve a full and equal moral status, there must be some attribute that all and only human beings have that can ground such a claim.

Any attribute that only human beings have is a property that some human beings lack (the marginal cases).

Any attribute that all human beings have is an attribute that most animals have as well.

Therefore, there is no way to defend the claim that all and only human beings deserve a full and equal moral status.



Equal moral status



The basic structure of Singer's argument is as follows:

1. To conclude that all and only human beings deserve a full and equal moral status (and therefore that no animals deserve a full and equal moral status), there must be some attribute that all and only human beings have that can ground such a claim.
2. Any attribute that only human beings have is an attribute that some human beings lack (the marginal cases).
3. Any attribute that all human beings have is an attribute that most animals have as well.
4. Therefore, there is no way to defend the claim that all and only human beings deserve a full and equal moral status.

For example, it might be argued that only humans have full and equal moral status because only humans have the capacity to speak.

In other words, it is the capacity to speak that entitles humans to ethical consideration by other humans.

Animals cannot speak and therefore it is morally acceptable to treat them differently from humans by, for example, eating them.

But there are humans who cannot speak.

Is it morally acceptable to eat mute humans?

What is it then that separates all humans from all animals?

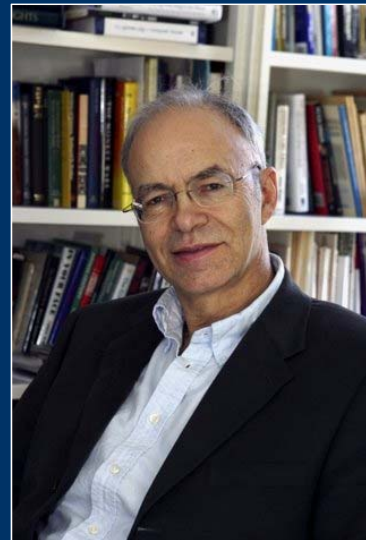
This reasoning can be applied to any attribute that apparently distinguishes humans from animals.

There are always some humans — marginal cases — who do not have that attribute.

The only attributes that every single living human shares — being alive, breathing, needing to eat and so on — are attributes shared by animals as well.

We must either conclude that not all human beings are equal, or we must conclude that not only human beings are equal.

This argument is used to justify the extension of utilitarianism to include the wellbeing of animals.



Equal moral status



The conclusion is either that not all human beings are equal or that not only human beings are equal. Singer argues that, since the first option is unacceptable, the only acceptable conclusion is that all animals, human or otherwise, are equal.

Singer is a utilitarian and his argument is used to justify the inclusion of animal interests in utilitarian calculations of overall wellbeing.

Utilitarianism is an ethical theory that states that the best action is the one that maximizes utility.

'Utility' is defined in various ways, usually in terms of the well-being of sentient entities.



Utilitarianism

Utilitarianism is an ethical theory that states that the best action is the one that maximizes utility. 'Utility' is defined in various ways, usually in terms of the well-being of sentient entities.

When choosing between two or more possible courses of action, the right thing to do is the one that leads to the least suffering or pain and the most wellbeing or pleasure.

Singer's claim is that when measuring the likely overall pain or pleasure caused by our actions we must take into account the pain or pleasure of any animals effected by our actions, and not only that of the humans affected by our actions.



For example, in deciding whether it is ethically acceptable to eat meat, we should weigh up the pleasure we experience when eating meat against the pain and suffering of the animal that must die to provide that meat.

If animals have equal moral status to humans then the animal's entitlement to life outweighs our desire to eat what we choose (no matter how much we enjoy the taste), and it becomes unethical to eat meat for pleasure.

(Arguably it would not be unethical to eat meat to survive.)



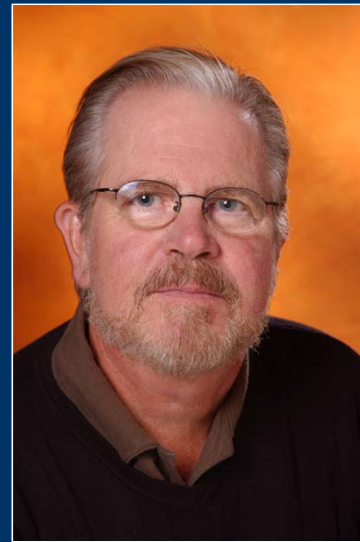
On the other hand, utilitarian reasoning can also be used to justify practices such as animal testing, even if animals are accorded equal moral status.

If a small number of animals suffer and die as a result of scientific testing, but the outcome of the testing is a medicine that saves thousands of human lives, then, even if the animals have equal moral status, the good that is caused by the testing outweighs the bad, and animal testing is ethically acceptable.

This has prompted some animal ethicists to reject utilitarian reasoning in favour of a rights-based approach and to insist that, since animals have equal moral status, they have an equal right to life and freedom from suffering, regardless of any potentially positive consequences of their suffering and death.

For the utilitarian, whether the harm done to animals in pursuit of scientific ends is justified depends on the balance of the aggregated consequences for all those affected by the outcome ... If the resulting consequences would be at least as good as what are otherwise obtainable, then harmful experimentation is obligatory. The rights view takes a very different stand. No one, whether human or animal, is ever to be treated as if she were a mere receptacle, or as if her value were reducible to her possible utility for others ... To do so is to violate the rights of the individual. That is why the harm done to animals in pursuit of scientific purposes is wrong.

Tom Regan



Equal moral status



As Tom Regan explains in 'The Case for Animal Rights'”

The fundamental differences between utilitarianism and the rights view are never more apparent than in the case of animals used in science. For the utilitarian, whether the harm done to animals in pursuit of scientific ends is justified depends on the balance of the aggregated consequences for all those affected by the outcome . . . If the resulting consequences would be at least as good as what are otherwise obtainable, then harmful experimentation is obligatory. The rights view takes a very different stand. No one, whether human or animal, is ever to be treated as if she were a mere receptacle, or as if her value were reducible to her possible utility for others . . . To do so is to violate the rights of the individual. That is why the harm done to animals in pursuit of scientific purposes is wrong.

In the next Part of this Module we will consider our legal obligations towards animals, and how they relate to our ethical obligations.



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THE MORAL AND LEGAL STATUS OF ANIMALS

3: ANIMALS AND THE LAW

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The Moral and Legal Status of Animals.
Part 3: Animals and the Law.



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Animals as property



In part 2 we considered a range of positions regarding our ethical obligations towards animals. But what about our legal obligations?

The traditional position of animals within the legal system is an anthropocentric one.

According to this view, only humans have legal rights.

Wild animals are a form of natural resource, available for human exploitation, and domestic animals are a form of personal property.

In other words, in legal terms, animals are the same as inanimate objects.

Were you to cause harm to an animal belonging to another person, the appropriate form of legal action for the owner of the animal to bring would be an action in trespass to goods.

Over the last 30 years, however, two streams of law have emerged that seek to improve the lives of animals: animal welfare law and animal rights law.

Animal welfare laws are those laws that seek to promote the interests of animals.

They are used to regulate the use of animals in educational and research institutions, in zoos and circuses, in food production, and in local communities.



Animal welfare law



Animal welfare law seeks to protect animals from unnecessary harm and, by doing so, appears to grant animals a limited moral status.

Animal welfare legislation regulates the use of animals in educational and research institutions, in zoos and circuses, in food production, in the wild and as pets.

At common law, domesticated animals are classified as personal property. However, the existence of animal welfare legislation in all Australasian jurisdictions suggests that animals have greater moral significance than their formal legal classification as personal property might suggest. Contrary to an understanding of animals as mere objects, even those philosophers who are most sceptical about an expansive moral standing for animals accept that the imposition of gratuitous suffering on an animal is wrong.

Steven White

Animal welfare law



As Stephen White explains:

At common law, domesticated animals are classified as personal property. However, the existence of animal welfare legislation in all Australasian jurisdictions suggests that animals have greater moral significance than their formal legal classification as personal property might suggest. Contrary to an understanding of animals as mere objects, even those philosophers who are most sceptical about an expansive moral standing for animals accept that the imposition of gratuitous suffering on an animal is wrong.

18. Animal cruelty prohibited

- 1) A person must not be cruel to an animal. Maximum penalty--2000 penalty units [\$220,000] or 3 years imprisonment.
- 2) Without limiting subsection (1), a person is taken to be cruel to an animal if the person does any of the following to the animal:
 - a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable;
 - b) beats it so as to cause the animal pain;
 - c) abuses, terrifies, torments or worries it;
 - d) overdrives, overrides or overworks it;
 - e) uses on the animal an electrical device prescribed under a regulation;

Consider the following extract from s 18 of the Animal Care and Protection Act 2001 (Qld).

- 1) A person must not be cruel to an animal. Maximum penalty--2000 penalty units [\$220,000] or 3 years imprisonment.
- 2) Without limiting subsection (1), a person is taken to be cruel to an animal if the person does any of the following to the animal:
 - a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable;
 - b) beats it so as to cause the animal pain;
 - c) abuses, terrifies, torments or worries it;
 - d) overdrives, overrides or overworks it;
 - e) uses on the animal an electrical device prescribed under a regulation;

18. Animal cruelty prohibited

- f) confines or transports it:
 - i. without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or
 - ii. when it is unfit for the confinement or transport; or
 - iii. in a way that is inappropriate for the animal's welfare; or
 - iv. in an unsuitable container or vehicle;
- g) kills it in a way that:
 - i. is inhumane; or
 - ii. causes it not to die quickly; or
 - iii. causes it to die in unreasonable pain;
- h) unjustifiably, unnecessarily or unreasonably:
 - i. injures or wounds it; or
 - ii. overcrowds or overloads it.

- f) confines or transports it:
 - i. without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or
 - ii. when it is unfit for the confinement or transport; or
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<https://www.voiceless.org.au/content/animal-law-spotlight-tas-dairy-farmer-sentenced>

Occasionally, statutory provisions such as this are relied upon to impose substantial penalties upon those found guilty of mistreating animals.

In 2013, a Tasmanian dairy farmer was charged with nearly 200 charges of animal cruelty against more than 180 starving and neglected cows.

According to animal rights group [Stop Tasmanian Animal Cruelty](#) (STAC), cows and calves were dying of malnutrition every day on the farm over a period of a number of months.

The eyes, udders and genitals of numerous cows had been pecked by crows.

Others that were calving were put in steep, boggy terrain despite orders by animal welfare officers not to do so, with some found dead after falling in steep boggy areas.

The farmer was found guilty and sentenced to 15 months imprisonment, fined \$110,000 and prohibited from owning livestock for 10 years.

The sentence was one of the heaviest imposed in Australia for animal cruelty offence against dairy cattle.



<http://www.centralwesterndaily.com.au/story/1804250/animal-cruelty-a-crying-shame/>

More commonly, however, the penalties imposed are minimal.

In 2013 two 17 years old boys were charged with animal cruelty after directing their pigs dogs to maul five sheep in a paddock, and then stabbing the sheep with knives.

They were caught after photos of them posing with the bloody carcasses of the sheep were posted to social media.

No conviction was recorded, and the boys were fined \$10 for trespassing.

Exemptions include:

- controlling feral or pest animals
- fishing using certain live bait
- slaughter under religious faith
- compliance with an adopted Code of Practice



Animal welfare law

It appears that animal welfare legislation is concerned to ensure that animals do not suffer unnecessarily.

However, the legislation also contains a range of exemptions, including:

- controlling feral or pest animals
- fishing using certain live bait
- slaughter under religious faith
- compliance with an adopted code of practice

- Model Code of Practice for the Welfare of Animals – Pigs
- Model Code of Practice for the Welfare of Animals - Domestic Poultry
- Model Code of Practice for the Welfare of Animals – Cattle

NB. www.animalwelfarestandards.net.au



Codes of Practice



The final exemption is particularly important.

An activity or practice that causes an animal to suffer in any of the ways set out in the legislation is not a breach of the Act if it is done in compliance with a code of practice that has been approved by the regulatory authority.

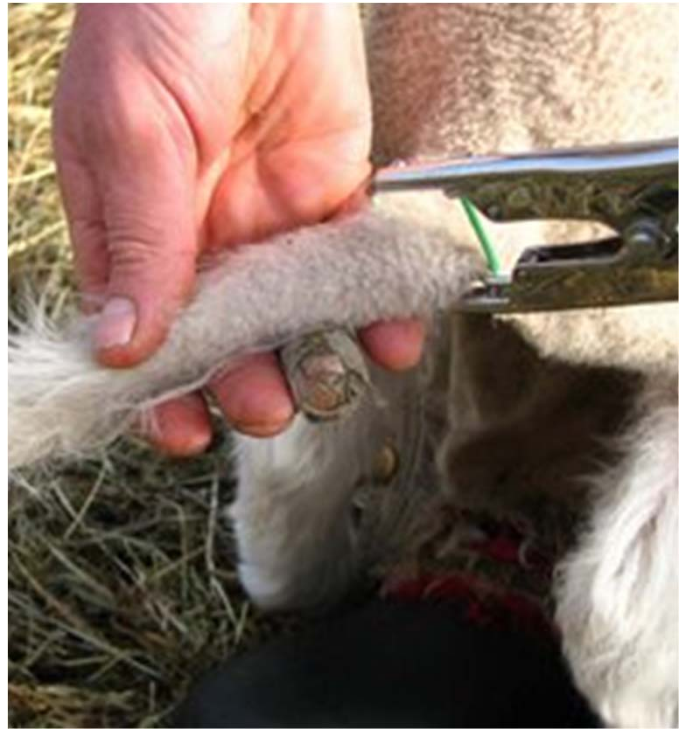
Codes of practice have been developed for the pig industry, the domestic poultry industry, and the cattle industry.

Note that a review of the Model Codes of Practice in 2005 recommended they be converted into Australian Animal Welfare Standards and Guidelines.

Standards and Guidelines for cattle and sheep have already been developed, and those for poultry are now in development.



The current codes of practice legalise practices that would otherwise be classified as animal cruelty: factory farming; the castration of farmed animals without pain relief; cutting or grinding the teeth of piglets; the de-horning of adult cattle; the hot iron branding of cattle; the de-beaking of chickens with a hot iron or wire; the transporting of cattle and sheep for extended periods ...



...the 'mulesing' of sheep (cutting the skin from their behind without pain relief); flank spaying of adult cattle; and the tail docking of adult cattle, lambs and piglets without pain relief.

Animal rights lawyers:

- find the animal welfare approach unsatisfactory because it still permits a wide range of cruel practices; and
- seek to challenge animals' status as property, with a view to securing fundamental rights for (at least some) animals.



Animal rights law



The fact that these and similar practices are legally permissible has prompted the emergence in recent years of another form of animal law: animal rights law.

Advocates of animal rights law seek to challenge animals' legal status as personal property and to secure fundamental rights for (at least some) animals.



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Animals rights law



They argue that animals should not be treated by the law as mere 'things' and that, unless animals are recognised as having legal rights, they will continue to be treated by society as no more than resources to satisfy human wants and needs.

Efforts to grant rights to animals have in recent years taken the form of initiatives intended to grant animals 'legal personhood', and consequent rights to bodily liberty and bodily integrity.



Legal personhood for animals



Efforts to grant rights to animals have in recent years taken the form of initiatives intended to grant animals 'legal personhood', and allow them to join our legal and moral community.

Once recognised as legal persons, animals will be accorded certain fundamental – and legally enforceable – rights such as the right to **bodily liberty** (freedom from unjust imprisonment) and the right to **bodily integrity** (freedom from harmful interference and experimentation).

Argument from liberty:

- Any being with the capacity for autonomy is entitled to legal personhood.

Argument from equality:

- A being is entitled to legal personhood if they are the same as other beings who already have legal personhood.



Legal personhood for animals



According to Steven Wise, arguments for legal personhood fall into two categories: arguments from liberty and arguments from equality.

The argument from liberty is that any being with the capacity for autonomy is entitled to legal personhood.

Wise insists that our legal system is at its core designed to protect the interests of autonomous and self-determining beings.

He presents evidence from ethologists and neuroscientists proving that many nonhuman animals, including chimpanzees, dolphins, orcas, and elephants, possess the cognitive capacities for autonomy and self-determination.

The argument from equality begins with the legal principle of equality: equal interests demand equal treatment under the law.

A being is entitled to legal personhood if they are the same as other beings who already have legal personhood.

Since very young children and cognitively impaired humans have legal personhood, so should any nonhuman animals that have equal or superior cognitive abilities.

In 2015, in a case brought by the NhRP, a judge in New York granted an order to show cause and a writ of habeas corpus on behalf of a nonhuman animal.



Legal personhood for animals



There has been some progress towards granting legal personhood to animals in recent years, although it has been slow.

In 2015, a judge in New York granted an order to show cause and a writ of habeas corpus on behalf of a nonhuman animal.

In a case brought by Steven Wise and the Nonhuman Rights Project, the judge issued an order to show cause and a writ of habeas corpus on behalf of two chimpanzees, Hercules and Leo, who are being used for biomedical experimentation at Stony Brook University on Long Island in New York.

Under the law of New York State, only a 'legal person' could have an order to show cause and a writ of habeas corpus issued on his or her behalf.

The Court had therefore implicitly determined that Hercules and Leo were 'persons'.

Unfortunately, the judge later issued a ruling in which she rejected the petition for a writ of habeas corpus on behalf of Hercules and Leo.

In 2018 the two chimps were finally freed from the Research Centre and sent to the Project Chimps sanctuary in north Georgia.

Other NhRP initiatives include efforts to liberate:

- Tommy, a privately owned chimpanzee living in a cage in a shed on a used trailer lot in NY
- Kiko, a privately owned chimpanzee living on private property in NY
- Beulah, Karen and Minnie, 3 elephants being held in the Commerford Zoo in the US and used for circuses and entertainment



Legal personhood for animals



Other initiatives by the Nonhuman Rights Project include efforts to liberate:

- Tommy, a privately owned chimpanzee living in a cage in a shed on a used trailer lot in NY;
- Kiko, a privately owned chimpanzee living on private property in NY; and
- Beulah, Karen and Minnie, 3 elephants being held in the Commerford Zoo in the US and used for circuses and entertainment

The Nonhuman Rights Project has recently expanded its work into other countries beyond the US, including Switzerland, Argentina, England, Spain, Portugal, and Australia.

In the next Part we will consider the moral status of non-animals, including efforts to extend legal personhood to non-animal entities.



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THE MORAL AND LEGAL STATUS OF ANIMALS

4: THE MORAL AND LEGAL STATUS OF NON-ANIMALS

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The moral and legal status of animals
Part 4: The moral status of non-animals

All living organisms have some moral status in the sense that they are owed ethical obligations even in the absence of their benefit to humans.

It is ethically wrong to clear a rainforest not only because doing so could cause harm to present and future humans, or because doing so will cause harm to the many animals that live in the rainforest, but because the trees and other plants in the rainforest have an inherent right to survive and to flourish. It is not morally wrong to eat an apple, but it is morally wrong to destroy a tree when there is no good reason to do so.



All living entities

So far we have focussed upon the moral and legal status of humans and non-human animals. But what about non-animals?

Some ethicists have questioned the notion that only sentient beings have moral status.

They claim that moral status should be extended to all living organisms, including not only animals but also plants.

These ethicists do not argue that plants have the same rights as humans, or that it is ethically wrong to eat a plant or to cause harm to a plant to benefit a human.

Rather, these ethicists are arguing that all living organisms have some moral status in the sense that they are owed ethical obligations even in the absence of their benefit to humans.

It is ethically wrong to clear a rainforest, not only because doing so could cause harm to present and future humans, or because doing so will cause harm to the many animals that live in the rainforest, but because the trees and other plants in the rainforest have an inherent right to survive and to flourish.

It is not morally wrong to eat an apple, but it is morally wrong to destroy a tree when there is no good reason to do so.



This approach to environmental ethics can be better appreciated by considering a thought experiment: the 'last tree' scenario.

Imagine that, while exploring a deserted island, you come across a tree.

The tree stands alone in a wide wasteland. No animals live in or near the tree.

If you chop down the tree, no conscious being, present or future, would be harmed by the tree's destruction.

Would you be wrong to chop down the tree?

According to a human- or animal-centred approach to ethics, such destruction would not be wrong, since no human and no animal would suffer harm as a result.

You may nevertheless feel quite strongly that it would be morally wrong to chop down the tree.

For some environmental ethicists, the intuitive response to this scenario suggests that non-human entities such as trees do have moral status.

Our ethical obligations extend beyond conscious life to include individual living organisms such as trees.

Again, the claim is not that the rights of plants override the rights of humans.

No one is suggesting that humans must refrain from the consumption of vegetables out of respect for their rights.

The claim is that all living organisms, including plants, have a right to exist, and those rights must be taken into consideration whenever humans face a decision the outcome of which would have an impact upon the environment.

Instead of focussing upon our obligations to individual humans, animals and plants we should focus upon our obligations to species, environments and ecosystems.

A holistic ethic demands that the land itself not be treated as a mere object or resource but as an essential part of the complex structure of relations between living things. It is therefore deserving of moral standing in its own right.



Holistic entities



Some ethicists have extended moral status even further and proposed a 'holistic' approach to environmental ethics.

According to these ethicists, instead of focusing upon your obligations to individual humans, animals and plants, we should focus upon our obligations to species, environments and ecosystems.

A holistic ethic demands that the land itself not be treated as a mere object or resource but as an essential part of the complex structure of relations between living things.

It is therefore deserving of moral status in its own right.



The holistic approach to environmental ethics has however been criticised as advocating a form of 'environmental fascism'.

According to this approach it would be morally acceptable to kill individual animals — and perhaps even individual humans — if by doing so you enhanced the wellbeing of the overall species or ecosystem.

It is morally acceptable to cull kangaroos, for example, if doing so protects and preserves an environment being damaged by kangaroo overpopulation.

'Legal personhood' has been granted to rivers in NZ and India.



Holistic entities



What about the legal status of non-animals?

'Legal personhood' has recently been sought for holistic and non-animal entities such as rivers.

In 2017, the New Zealand government passed legislation recognising the Whanganui River catchment as a legal person.

This legal reform emerged from the longstanding Treaty of Waitangi negotiations and formally acknowledged the special relationship local Māori have with the river.

In the same year a court in India ruled that the Ganga and Yamuna Rivers have the same legal rights as a person, responding to a need to reduce pollution in rivers considered sacred in the Hindu religion.

This means that the interests of the river can be protected from harm by appropriately appointed and qualified 'guardians'.

Whether these two legal developments are anomalous, or the beginning of a new trend in favour of the recognition of the status of non-animals, is yet to be seen.

THINK

What are some of the practical problems associated with the extension of moral and legal status to (a) animals, (b) plants and (c) holistic entities?



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Pause the video and take a moment to consider the following question:

What are some of the *practical* problems associated with the extension of moral and legal status to (a) animals, (b) plants and (c) holistic entities?

THINK

Reflect upon your own position with respect to environmental obligations. Is it anthropocentric or non-anthropocentric? If it is non-anthropocentric, how far do you believe moral status extends: to animals, to all living organisms or as far as 'holistic entities'? Justify your position.



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Pause the video and take a moment to consider the following questions:

Reflect upon your own position with respect to environmental obligations. Is it anthropocentric or non-anthropocentric? If it is non-anthropocentric, how far do you believe moral status extends: to animals, to all living organisms or as far as 'holistic entities'? Justify your position.

REVISE

1. What is anthropocentrism within the context of ethical theory?
2. How can the view that only human beings have moral status be justified?
3. According to the unequal moral status category of ethical theories (a) why do animals have direct moral status, and (b) why are animals not equal to human beings?
4. What is the moral equality theory proposed by Peter Singer?
5. What is animal welfare law?
6. What is animal rights law and how does it differ from animal welfare law?
7. How can the view that all individual organisms have moral status be justified?
8. How can the view that holistic entities have moral status be justified?



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Pause the video and take a few minutes to try to answer these revision questions. If there are any you cannot answer, return to the relevant part of the video to review the material.



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Thank you for listening.