

On the Possessors of Moral Rights

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Introduction

In this essay I will be criticizing Joel Feinberg's "Interest Principle" which he uses as a foundation for his ethical argument against environmental destruction. In his piece, "The Rights of Animals and Unborn Generations", Feinberg applies his Interest Principle to seven different groups in order to assess whether they are appropriate possessors of moral rights: individual animals, vegetables, whole species, dead persons, coma patients, fetuses, and future generations (of humans). I will be looking at a few of these groups individually and assessing Feinberg's arguments concerning their moral status in an attempt to reveal inconsistencies in his application of the Interest Principle and the anthropocentric nature of his reasoning. I hope to show that if one adopts a broader understanding of "interests" and a humbler conception of sentience, then Feinberg's interest principle can be a very useful tool for determining whether a being can have rights.

For the purposes of this paper I will be primarily concerned with the following groups: individual animals, vegetables, and future generations. The way in which Feinberg argues for the rights of individual animals, and against the rights of vegetables, is very important for understanding how his interest principle is formed and appreciating the consequential issues. I will also briefly discuss the case of fetuses, as his arguments concerning their rights help to inform his reasoning behind the more interesting case of future generations.

Moral Rights

First, it is important to understand what it is that Feinberg means by a “right”. Feinberg states that “to have a right is to have a claim *to* something and *against* someone, the recognition of which is called for by legal rules or, in the case of moral rights, by the principles of an enlightened conscience,” (Feinberg 43). For the purposes of this essay we are only interested in moral rights as opposed to legal rights. However, the legal system is the method by which our species deals with cases of moral rights violations, and so Feinberg draws from several legal cases in order to further our understanding of what it takes to be an intelligible possessor of moral rights.

His conception of a right can be made clearer by considering a relatively ordinary case of humans interacting with other humans. Imagine that there are two people, Mary and Joe, that get into a disagreement. Joe starts to lose his temper, so he picks a rock up off the ground and throws it at Mary. The rock hits Mary in the chest and she falls to the ground. It seems that any rational human observing the situation would judge that Mary’s moral right not to be harmed was violated by Joe. To use Feinberg’s terminology, Mary had a moral right in that she had a claim *to not be harmed* and in that instance, she could make that claim against *Joe*. This should sound like commonsense to most people, but the questions surrounding moral rights are more difficult to answer in cases that do not only involve humans.

Now imagine that instead of throwing the rock at Mary’s chest, Joe instead throws the rock at a nearby wall. In the moment that the rock hits the wall, it shatters into pieces. It would be an odd thing for an observer of this scenario to claim that the rock’s rights were violated by Joe. After all, what exactly could the rock claim against Joe? If it were the right not to be harmed then one would have to define what it meant to harm a rock, but our current ethical framework seems unable to make sense of this. Feinberg takes it to be obvious that rocks do not have moral rights, and places it on the other end of a spectrum from the case of Mary and Joe. The seven groups of entities that he looks at all lie somewhere on that spectrum, and he hopes that by determining whether each of them has moral rights, that he will then be able to give a clearer definition of a moral right such that future generations of humans are possessors.

In his explanation of rights, Feinberg points out an interesting distinction that is worth exploring. He states that, “it is absurd to say that rocks can have rights, not because rocks are morally inferior things unworthy of rights (that statement makes no sense either), but because rocks belong to a category of entities of whom rights cannot be meaningfully predicated. That is not to say that there are no circumstances in which we ought to treat rocks carefully, but only that the rocks themselves cannot validly

claim good treatment from us,” (Feinberg 44). As Feinberg points out in this excerpt, there is a difference between an entity being morally considerable and an entity having moral rights.

This distinction is addressed more explicitly by Kenneth E. Goodpaster in his paper, “On Being Morally Considerable”. In it, Goodpaster briefly discusses a variety of conflicting viewpoints on whether the concept of moral rights is more or less restrictive than the concept of moral consideration. In the end, he chooses to “suspend this question entirely by framing the discussion in terms of moral considerability,” (Goodpaster 311) in accordance with his thesis, due to the difficulty in finding a satisfactory conception of “moral rights”. However, one of the most notable views that he mentions is from John Passmore. Goodpaster quotes him as saying, “The idea of ‘rights’ is simply not applicable to what is non-human...it is one thing to say that it is wrong to treat animals cruelly, quite another to say that animals have rights (116/7),” (Goodpaster 311). This is meant to act as an example of a view that is extremely restrictive about granting moral rights to entities, and it is unsurprising that Passmore chose us to be the sole possessors of moral rights. This anthropocentric attitude seems to be common among many of these ethical philosophers.

This becomes more interesting in Section IV of the piece; in which he presents his ideas on how Feinberg uses the term “moral rights”. Goodpaster states that, “the context of his remarks is clearly such that ‘rights’ is taken very broadly, much closer to what I am calling moral considerability than to what Passmore calls ‘rights.’ And the thrust of the arguments, since they are directed against the *intelligibility* of certain rights attributions, is *a fortiori* relevant to the more substantive issue set out in (1) [The issue of which Goodpaster refers is the “concern for a relatively substantive (vs. purely logical) criterion of moral considerability (vs. moral significance) of a regulative (vs. operative) sort,” (Goodpaster 313).],” (Goodpaster 317). It is clear that Feinberg is more liberal with the notion of rights than Passmore is, but where exactly his view lies on this rights-considerability spectrum is uncertain. Goodpaster believes that Feinberg’s definition of moral rights as “having a claim to something and against someone” is mostly concerned with answering the question of whether human beings should include the relevant entity in their moral deliberation. This seems to be true given the way in which Feinberg argues for the moral status of each of his seven cases, for it will be seen that he derives many of his conclusions from examples of human beings trying to give moral consideration to the entity in question.

Goodpaster also notes that Feinberg’s Interest Principle operates as a way of figuring out whether it is *intelligible* to give moral rights to a specific category of entities, but this is a separate question from the one of whether those relevant entities do *in fact* have moral rights. Feinberg recognizes this, but it is not a fault of his view that it only speaks of intelligibility, because his ultimate goal in this analysis of rights is to argue for the rights of future generations of humans. He begins his piece by stating that, “Every philosophical paper must begin with an unproved assumption. Mine is the assumption that there will be a world five hundred years from now, and that

it will contain human beings who are very much like us,” (Feinberg 43). Given this assumption, if it is intelligible to give moral rights to future generations of humans, then Feinberg believes that we ought to protect the environment for their sake.

Interest Principle

With these considerations regarding moral rights in mind, we can state Feinberg's Interest Principle. He claims that

“the sorts of beings who *can* have rights are precisely those who have (or can have) interests. I have come to this tentative conclusion for two reasons: (1) because a right holder must be capable of being represented and it is impossible to represent a being that has no interests, and (2) because a right holder must be capable of being a beneficiary in his own person, and a being without interests is a being that is incapable of being harmed or benefitted, having no good or ‘sake’ of its own,” (Feinberg 51).

Using this principle, Feinberg will be able to determine whether it is intelligible for a being to have moral rights by determining whether the being itself has interests or not. If a being has interests, then others will be able to defend those interests through representation, and it will make sense to say that the being is benefitted or harmed in the ways that are necessary for it to be a possessor of moral rights. For example, the rock that Joe threw off of a cliff does not seem to have any interests of its own. It is unable to express to us any preference about its existence, and there is no current evidence to suggest that it experiences pain or pleasure in a way that is comparable to our experiences of pain and pleasure. Due to the rock's lack of interests, a hypothetical defender of the rock's moral rights would have no way of determining what the rock's claim is that they would be defending. If we cannot figure out whether the rock has any claim, then it is therefore unintelligible to say that the rock has a claim to something against someone; the rock does not have any moral rights.

The interest principle is developed from Feinberg's discussion of the rights of individual animals, because he considers them to be one of the easier cases to assess among the seven, given the plethora of philosophical debate on the matter. His views on animal rights are therefore the most informative for his position and demand the deepest analysis.

Individual Animals

Whether or not individual animals have rights has been a topic of great controversy in recent times. The increasing awareness of the horrible conditions of factory farms and slaughterhouses has been motivating people to withdraw their support of this industry in favor of more sustainable alternatives, such as adopting vegan and vegetarian diets. But the motivation behind becoming a vegan or vegetarian is questionable. Are these people concerned about violating the rights of the animals, or is there some other reason that is more anthropocentric? It may be the case that animals are only protected because of their benefit to humans. This seems potentially likely when one considers how society treats pets. We sincerely love our pets, and many pet-owners would even be willing to jump in front of a car in order to save their furry companion, but if the car is quicker than the heroic pet-owner, it is not obvious whether any rights have been violated.

Feinberg explains how there are numerous laws and regulations in place to protect the well-being of animals (especially pets) but that does not necessarily mean that the animals themselves have rights. “During the nineteenth century, for example, it was commonly said that such statutes were designed to protect human beings by preventing the growth of cruel habits that could later threaten human beings with harm too,” (Feinberg 45). This line of reasoning would likely seem absurd to most people today; we like to believe that animals should be treated well for their own sake, not just because it could promote violent behavior that might be exacted on other humans. Still, this is not a sufficient reason for claiming that the animals themselves have legal rights; there are more important things than our emotions to consider when assessing whether it is intelligible for them to have rights at all.

Animals are essentially incapable of overcoming their basic impulses and understanding the nature of morality in the human sense, which is one of the most relevant distinctions between animals and human beings in regard to being possessors of rights. Feinberg conveniently lists what he considers to be the relevant faculties that a being must have in order to be considered a moral agent capable of having “duties”.

“Animals cannot be ‘reasoned with’ or instructed in their responsibilities; they are inflexible and unadaptable to future contingencies; they are subject to fits of instinctive passion which they are incapable of repressing or controlling, postponing or sublimating. Hence, they cannot enter into contractual agreements, or make promises; they cannot be trusted; and they cannot (except within very narrow limits and for purposes of conditioning)

be blamed for what would be called ‘moral failures’ in a human being,” (Feinberg 46).

These moral deficiencies are why we are unable to hold animals morally blameworthy for defecating on the carpet (they might be able to understand acceptable behavior through classical conditioning, but this is different from moral sensibility). They simply do not know any better, and so it would be ridiculous to claim that an animal has any kind of moral duty whatsoever.

But what if that parenthetical regarding conditioning is more important than the average parenthetical statement? Classical and operant conditioning are relatively simple concepts; behavioral reactions become associated with certain stimuli through either repetitive simultaneous exposure to an unconditioned stimulus and a new stimulus, or through punishments and rewards. Much of the initial psychological research on classical conditioning was famously done on canines (e.g. Pavlov’s dogs), and as a result it seems that most people are familiar with the concept of conditioning in relation to animals. After all, this is the method by which people train their pets to follow commands and abstain from certain behaviors. If Spot pees on the nice dining room carpet, you punish him by limiting his mobility in some way. If Spot gets locked away in a crate for 3 hours every time that he pees on the dining room carpet, eventually he will learn not to pee on the carpet at all. Likewise, giving Spot a stick of chewy meat every time that he listens to the command “Sit!”, will eventually result in him promptly sitting down when told in the same manner to sit down, even without the presence of a stick of meat.

Even though these psychological ‘tricks’ are generally attributed to animals that are lower on the cognitive ladder than human beings, we are still very much subject to the effects. In fact, parents of young children use operant conditioning all of the time in order to shape their kin’s behavior. If little 3-year-old Tommy eats all of his vegetables at dinner, then he gets to watch his favorite cartoon on the television afterwards. Given the truth of this conditional, Tommy will eventually learn to always eat his vegetables; at least, that is the mother’s hope. Luckily, the principle works in reverse as well. Tommy might start getting comfortable with watching his favorite cartoon every night, and so it becomes his new norm. Then the next night, he might refuse to eat his vegetables thinking that he will still get to watch television. Now, (assuming that the mother holds her promise from earlier,) instead of getting a reward for doing something good, Tommy has something that he likes taken away from him for doing something bad. However, the same behavior is conditioned; eating all of his vegetables.

It might seem unfair to use a young child as an example since many people consider children to also be ineligible for the status of “moral agent”. Tommy doesn’t have any more of a moral sense than Spot does, and that is exactly why we do not *blame* a child for screaming in public or defecating in Santa’s lap, in just the same way that we do not *blame* Spot for peeing on the carpet. So, what is it about adult humans that makes them such obvious possessors of moral duties? It might be that we simply have

the ability to control our own conditioning. We have some further cognitive ability to judge our own actions and assess whether they are actually moral or not, independent of previously conditioned behaviors. This seems to be the moral sense that Feinberg believes is required in order for one to have moral *duties*, but it seems strange to judge the moral capabilities of a dog using the moral standards of human beings.

Thankfully, even if we accept that an individual animal cannot have moral *duties*, there is still the question of whether they can intelligibly have moral *rights*. As Feinberg points out, John Chipman Gray holds the view that animals cannot have moral rights for the very same reasons that they cannot have moral duties (refer to the aforementioned list). But Feinberg states that the only reason these inabilities would disqualify an individual animal from having rights is because they are unable to *claim* rights on their own. “They cannot make motion, on their own, to courts to have their claims recognized and enforced; they cannot initiate, on their own, any kind of legal proceedings; nor are they capable of even understanding when their rights are violated, of distinguishing harm from wrongful injury, and responding to indignation and an outraged sense of justice instead of mere anger or fear,” (Feinberg 46). My neighbor’s dog cannot call its lawyer and sue its owner for mistreatment; it might not even be able to properly understand that its being mistreated in the first place. It might respond to physical abuse by withdrawing and whimpering but exhibiting pain behavior is not the same making a moral claim against someone.

However, if this is the case, then human babies and the mentally ill would not have any rights by the same reasoning. A person suffering from severe mental illness might be unable to comprehend their being mistreated by another and would be equally incapable of claiming their rights against that person, but still we would say that they have rights. The same goes for an infant child; they do not yet have the ability to even understand what rights are or how they can be violated, but this does not exclude them from being rights-possessors. It therefore seems that a being does not need to fully understand the concept of rights (or morality in general) in order to have them. This makes it ridiculous to claim that animals do not have rights because of their inability to call a lawyer on their own.

Feinberg thinks that at this point it is informative to look at how the rights of children and the mentally handicapped are actually defended. When a nasty individual decides that beating their child is the best way to spend their Saturday morning, how does the child go about claiming that their right not to be harmed has been violated by their parent? Well in our legal system, they do so through proxies and attorneys that represent them. It may not be the case that the child is able to call a lawyer and set up an appointment to discuss the finer details of their claim (they might not even be able to spell the word “claim”), but there are systems in place to defend children in the event that abuse is reported. A representative then steps in and speaks for the child, ensuring that their rights are properly recognized and that violators are appropriately punished.

It is by this reasoning that Feinberg argues individual animals could be represented in the same manner. He mentions cases in which peoples' pets are given trust funds after the owner dies, and that those funds are run by human beings that represent the interests of the animals. "If a trustee embezzles money from the animal's account, and a proxy speaking in the dumb brute's behalf presses the animal's claim, can he not be described as asserting the animal's *rights*?" (Feinberg 47). This seems to be the case, although some philosophers point out that representation is a much more complicated matter than simply finding a willing attorney. There are some representatives that play a very minimal role, with the principal explaining all of their interests to their agent and simply using them as a legal "tool". Animals do not have the ability to explicitly communicate their interests to us, and so they would need to be represented by the type of agent that essentially makes all of the decisions for the principal. Even though the animal itself cannot choose between these types of representation, nor express any real opinion on the matter whatsoever, it is still intelligible for them to be represented in the latter fashion for the same reason that children and the mentally handicapped are. Feinberg further argues that philosophers taking a stance against animal rights on the grounds that they cannot participate in the process of assigning representation are being inappropriately anthropocentric in their reasoning, because, "although the possibility of hiring, agreeing, contracting, approving, directing, canceling, releasing, waiving, and instructing is present in the typical (all-human) case of agency representation, there appears to be no reason of a logical or conceptual kind why that *must* be so," (Feinberg 48). Once again, Feinberg is currently only concerned with the question of whether it is *intelligible* to give rights to animals, not whether they actually *do* have those rights.

So far, Feinberg has shown that it makes sense for animals to have their rights defended through representation, but it still might not follow from this that it is intelligible for them to have rights. He mentions that it is not really the animal's *rights* that are being defended when they are being represented in court, but rather it is their *interests* that are being defended. This is where his interest principle begins to form, and he explains the notion of interests by further explaining why it is so obvious that rocks and other "mere things" do not have rights.

"Consider a very precious 'mere thing'—a beautiful natural wilderness, or a complex and ornamental artifact, like the Taj Mahal. Such things ought to be cared for, because they would sink into decay if neglected, depriving some human beings, or perhaps even all human beings, of a something of great value...try as we might, we cannot think of mere things as possessing interests of their own. Some people may have a duty to preserve, maintain, or improve the Taj Mahal, but they can hardly have a duty to help or hurt it, benefit or aid it, succor or relieve it," (Feinberg 49).

The main issue is that a person can certainly damage a mere thing, but it would not be considered “harm” because we are unable to conceptualize of the object as having a good “for its own sake.”

It is for this reason that mere things do not have moral rights, but the notion of something having a “sake” is a complicated one. Feinberg asserts that one of the apparent requirements for something having a sake is that it has “conative life.” It’s not very clear what he means by this, for he only seems to define it when he is describing why mere things do *not* have conative life. He says that mere things have, “no conscious wishes, desires, and hopes; or urges and impulses; or unconscious drives, aims, and goals; or latent tendencies, direction of growth, and natural fulfillments,” (Feinberg 49). Just like the Taj Mahal, the rock that Joe threw at the wall does not have any of these qualities, and so there does not seem to be any evidence that the rock has the kind of rich internal life that is required for a being to have interests. Without any interests, a representative has nothing to defend, and so it seems unintelligible for the entity in question to be a possessor of rights.

However, these criteria also might rule out some entities that are not mere things, such as insects and other simpler forms of animal life. There seems to be just as much evidence that a dog or a cat has “conscious wishes, desires, and hopes,” as there is evidence that a cricket does, but it seems much less obvious that crickets have rights as opposed to dogs and cats. Feinberg seems to be implicitly aware of this scope issue, and Goodpaster points out that he tries to deal with this by claiming that sentience is also a requirement for a being’s having conative life, but this will prove to be problematic later in his discussion of vegetables (plants).

Based on the arguments that Feinberg has presented so far, one need only show that an animal has a conative life (whatever that is) in order to show that it has interests that can be appropriately defended by a representative. By proving that an entity has conative life in the way that Feinberg describes, one can show that animals should be treated well for their own sake, and not just for the sake of beings that do have rights. Feinberg believes it to be evident in our deliberations about animal rights that we *do* think that they should be treated well for their own sake, and that they do indeed have conative life. The only reason that some people are reluctant to say that they have rights is, “because of the conceptual confusions about the notion of a right that I have attempted to dispel above,” (Feinberg 51). If we take this assumption to be true, then not only is it intelligible for animals to have rights, but they in fact *do* have moral rights.

In a later section of his paper, Feinberg asserts that whole species, “cannot have beliefs, expectations, wants, or desires,” (Feinberg 55), and thus that they have no rights. Feinberg’s application of the interest principle is pretty cut and dry here, but there is a very interesting point that he makes in this section regarding the rights of individual animals that is worth exploring.

“Individual animals can have rights but it is implausible to ascribe to them a right to life on the human model. Nor do we normally have duties to keep individual animals alive or even to abstain from killing them provided we do it humanely and nonwantonly in the promotion of legitimate human interests,” (56).

It is not clear what he means by “legitimate human interests”, but if he is not even willing to grant individual animals the right to life, (which seems pretty basic if you are going to accept that an animal has rights at all,) then one can only hope that it has a decent moral foundation.

He seems to be alluding to the fact that most people in the world eat meat, which requires violating an animal’s right to life, were it to have a right to life in the first place. In his discussion on individual animals he notes that for one to finally accept that they have rights, one must believe that animals should be treated well for their own sake, and not just as a means for human pleasure like whole species and plants. Feinberg assumes that most people think in this manner, but some may beg to differ. Some might claim that the majority of people think altruistically about their own pets and/or animals that they are close to, but those same people also seem happy to consider any other animal potential food if they are told its meat tastes good. Desiring to taste something good is not a sufficient justification to kill a being with a right to life, but it is a very commonly cited reason for eating meat. It therefore seems odd that Feinberg implicitly considers this to be a permissible moral attitude while also claiming that most people consider animals to have rights.

Presumably he does not consider the right to life to be a basic right, but are not all other rights rendered invalid when a being’s right to life is taken away? If you don’t have the right to survive, then what good is the right to free speech? I could just shoot you off of your soapbox and murder you in cold blood; you would have no claim against me. In the same way it seems odd to say that an animal has a right to, say, clean drinking water (so that it can survive), but not the right to not have its head separated from its body with an axe. There are certainly some cases where human beings need to kill animals in order to survive, but Feinberg does not make it clear what he means when he says, “legitimate human interests.” Survival seems like an obviously legitimate human interest, but is my interest in tasting meat legitimate enough to justify the violent murder of an animal when I have the option of choosing a vegan meal with the same amount of protein? It does not seem so, and as such it is difficult to accept Feinberg’s line of reasoning in this section.

Vegetables

With his interest principle in place, Feinberg proceeds to apply it to the case of vegetables, by which he means plants. It might seem like an odd thing to some people to consider the rights of a plant, but there are plenty of laws and regulations against the destruction of public land like national parks. The Environmental Protection Agency actively penalizes companies that do not properly dump their waste, a hiker can be fined for littering along the trail of a public park, etc. Given all of the legislation that is in place to defend plants, it seems reasonable to ask whether the plants themselves have rights.

The main point behind this section is Feinberg's assertion that sentience is also a necessary requirement for one to be a possessor of rights. This is because he considers interests to be "compounded out of *desires* and *aims*, both of which presuppose something like *belief*, or cognitive awareness," (Feinberg 52). Plants do not have beliefs about the things that they need in order to survive, and so they have no desires that would correspond with those beliefs. Without desires it is unintelligible to claim that they have interests, and therefore it is unintelligible to claim that plants have rights.

While plants are more than just mere things, Feinberg believes that the only difference between the two is that plants have "biological propensities" which define what is good or bad for them. There are certain conditions which can be "good" or "bad" for a plant in that those conditions affect how the plant grows and reproduces, but this may not be the same thing as the "conative life" that animals presumably have. According to Feinberg, this is a case, "where 'what we say' should not be taken seriously: we also say that certain kinds of paint are good or bad for the internal walls of a house, and this does not commit us to a conception of walls as beings possessed of a good or welfare of their own," (Feinberg 52). He recognizes that there may be some kind of equivocation on the term "good" when philosophers suppose that a plant has rights, but this forces one to wonder what the difference between the usages of "good" are. Clearly, busting a hole in someone's kitchen wall is not "bad" for the wall in the same way that punching another human in the face is "bad" for that person, but the distinction is not as clear as Feinberg makes it out to be when comparing plants to humans. For example, when a plant is deprived of water, this is "bad" for the plant because it needs water in order to grow; without it, it will eventually wither and die. But it seems that depriving a human being of water is "bad" for them for the very same reason; without it, they will eventually wither and die. In this way, the "bad" of a plant seems to be much more closely related to the "bad" of a human being than the "bad" of a wall or of any other mere thing.

According to Feinberg, the reason that these “biological propensities” are qualitatively different from “conative life” is because they lack some cognitive quality; namely, sentience. “Having no conscious wants or goals of their own, trees cannot know satisfaction or frustration, pleasure or pain. Hence there is no possibility of kind or cruel treatment to trees,” (Feinberg 52). (By “no possibility of kind or cruel treatment” Feinberg seems to be implying that they do not have a sake of their own, and therefore that they do not have interests.) As it stands, humans and higher animals seem to be the only entities possessing sentience, and by Feinberg’s reasoning those would therefore be the only beings that possess rights.

He explains further that the driving forces which many might point to when attributing *desires* to plants are, “mere brute longings unmediated by beliefs,” which are, “altogether different from the sort of thing we mean ‘desire,’ especially when we speak of human beings,” (Feinberg 52-3). He does not provide any kind of defense for this claim, and it is because he is equivocating on the term “desire.” When many writers use the term “desire,” it is often in reference to the base desires that we attribute to feelings of hunger, thirst, sex drive, etc.; these can be called “first-order desires”. Then there are the desires that Feinberg is alluding to in this quote, which some might call “second-order desires.” Some philosophers conceptualize second-order desires as “desires about desires,” and they are generally depicted as being desires determined by long term goals and, possibly, moral principles. First-order desires are essentially on par with biological propensities, while second-order desires provide evidence of conscious reflection; beings with second-order desires can think about their own thoughts.

There does not seem to be any evidence that plants have any second-order desires, and this seems to be the motivation behind Feinberg’s assumption that their desires do not qualify them to be possessors of moral rights. He mentions how *real* desires imply some kind of cognitive awareness, and in this way, (according to the descriptions of first-order and second-order desires mentioned above) it is clear that he is speaking about second-order desires. This is further evidenced by the fact that he describes beings with “those other desires” as coming into existence with a set of goals and no ability to think about why they have them (Feinberg 52). Being *aware* of one’s desires is the thing that Feinberg seems to consider to be the most important requirement for being a possessor of rights. But just like how animals do not need to be aware of our moral system in order to have moral rights, so too it seems that plants should not have to possess these second-order desires in order to have moral rights.

After all, what would it take for an animal to be aware of our moral system? Presumably they would have to possess a rudimentary level of conscious awareness such that they know the structure of their belief system and have the ability to “step back” from it in order to assess its validity. With this capacity, animals could be held morally responsible for their actions in a way that gives them moral duties. But Feinberg ended up claiming that an animal’s awareness of morality is not a requirement for them to have rights, because their interests can still be represented by others. He explains that mere things do not have interests because they have no conative life, and

from this we are meant to infer that beings that DO have conative life presumably also have interests that found moral rights. Considering that Feinberg believes that it is intelligible for animals to have rights, he must think that they have the kind of conative life necessary for having interests. However, Feinberg also seems to believe that animals do not have the types of desires that he denies plants of having; higher-order desires that reflect at least a basic level of conscious awareness. If animals can intelligibly have rights without any higher-order desires, why does Feinberg require this of plants? It seems that their interests could be identified with their “biological propensities”, and a representative would be able to easily defend those interests.

One might argue against this by explaining how “higher-order desires” are something more than just “rudimentary cognitive awareness of one’s lower-order desires.” Higher-order desires are also themselves desires, and they are the ones that form our interests. Without them, beings have no “good for their own sake,” they just have “goods” and “bads” in the sense that gasoline is good for running an automobile. But this just brings us right back to the original problem of trying to explain why these desires coupled with awareness are more important for having interests than the lower-order desires of animals and plants. Feinberg believes that animals do have a “good for their own sake” and that while their rights may be denied, it is still *intelligible* for them to have rights. It has yet to be shown that plants cannot intelligibly have rights in the same way, for I see no difficulty in representing the interests of a plant when “interests” is defined in such a way as to encompass the biological propensities of plants.

There are two other main issues with Feinberg’s conception of plants that he considers, and he thinks that both of them are a result of our tricky use of language. The first involves our usage of the word “needs.” It seems that the needs of plants are analogous to the needs of animals, and so it is strange to claim that animals can intelligibly have rights while plants cannot. The difference between the needs of plants and the “needs” of mere things is obvious; to say that my kitchen wall needs a new coat of paint is not the same thing as saying that a plant needs water. But it is less obvious that a dog’s need for water is not the same as a plant’s need for water.

In order to try to clarify the matter, Feinberg mentions two meanings of the word “need” that often get confused. “To say that A needs X may be to say either: (1) X is necessary to the achievement of one of A’s goals, or to the performance of one of its functions, or (2) X is good for A; its lack would harm A or be injurious or detrimental to him (or it),” (Feinberg 53). The second sense of the term “needs” is the one reserved for beings with interests. He gives the example of an automobile as something with needs in the first sense, stating that, “An automobile needs has and oil to function, but it is no tragedy for it if it runs out—an empty tank does not hinder or retard its interests,” (Feinberg 54). On the other hand, an animal needs water in the sense that if it does not get water it will die (the ultimate form of harm), thus the animal has needs in the second sense of the term.

It is controversial whether plants “need” things in the second sense. Feinberg believes that they have needs in the first sense, but his reasoning is a bit strange. Compared

to the car, he states, “Similarly, to say that a tree needs sunshine and water is to say that without them it cannot grow and survive; but unless the growth and survival of trees are matters of human concern, affecting human interests, practical or aesthetic, the needs of trees alone will not be the basis of any claim of what is ‘due’ to them in their own right,” (Feinberg 54). The way in which Feinberg frames his example here is very questionable. He considers “growth and survival” to be functions of the plant because the plant’s lack of sentience makes it impossible for it to have a good of its own. If it can only have needs in the first sense, then its need for sunshine and water must be for performing one of its functions, i.e. growth and survival. But it seems very strange to claim that growth and survival are merely *functions* of an organism. If this were so, a human being’s need for water might also just be considered a need in the first sense, but this is clearly not the case.

Growth and survival, in the context of human beings, are generally considered to be the types of things that found our moral rights. Consider a case in which a dastardly psychopath kidnaps a young girl and locks her up in his basement. He does not provide her with any food or water, and instead sits in the living room watching Jeopardy reruns. To say that the young girl needs water is not using “need” in solely the first sense of the term; she does not need water solely because “it is necessary to the achievement of one of her goals, or to the performance of one of her functions,” she needs water also because “its lack would harm her or be injurious or detrimental to her.” It is incredibly obvious that the young girl has a right that is being violated in this case, and it would be absurd to claim that her need for water was predicated on the interests of other human beings (such as her parents). The young girl deserves to be treated well for her own sake, not just for the sake of people that value her, and this is because she has a legitimate interest in growing and surviving. Instead of even considering the idea that plants might need things in the second sense, Feinberg assumes that the lack of sentience in plants makes them immediately ineligible to be rights possessors, and this should make us wonder why sentience was not needed in order for the rights of animals to be intelligible.

Goodpaster makes some interesting observations about Feinberg’s sentience argument in this section. He notices that Feinberg intentionally restricts the range of potential interest possessors due to the fact that his interest principle, as devised in his section concerning animal rights, permits that any and all living things have interests. He parses out the two arguments that found Feinberg’s interest principle in the following way (note: instead of moral rights he uses the term “moral consideration” for reasons mentioned in this paper’s section on Moral Rights):

“(A1) Only beings who can be represented can deserve moral consideration.

Only beings who have (or can have) interests can be represented.

Therefore, only beings who have (or can have) interests can deserve moral consideration.

(A2) Only beings capable of being beneficiaries can deserve moral consideration.

Only beings who have (or can have) interests are capable of being beneficiaries.

Therefore, only beings who have (or can have) interests can deserve moral consideration,” (Goodpaster 318).

According to Goodpaster, the second premise of each argument equivocates in an important way (his use of the term “equivocates” is non-traditional here). He states that the second premise in (A1) could either mean exactly what it states, or it could mean “that ‘mere things’ cannot be represented because they have nothing to represent,” (Goodpaster 318). Likewise, the second premise of (A2) could either mean exactly what it states, or it could mean “that ‘mere things’ are incapable of being benefitted or harmed—they have no ‘well-being’ to be sought or acknowledged by rational moral agents,” (Goodpaster 319). These latter interpretations sound like accurate representations of Feinberg’s premises, especially considering the fact that Feinberg explains why he believes interests to be so important for rights possession by considering why mere things do not have them. The argument that he uses to defend his definition of interests hinges on our understanding of the reasons for the lack of interests in mere things.

When the premises of Feinberg’s argument are construed in this way, Goodpaster thinks that it leaves him with a definition of interests that encompasses any being that is not a “mere thing.” This is because reinterpreting the second premise of each argument in the ways that Goodpaster suggests results in different conclusions. The modified (and corrected, according to Goodpaster) arguments would then look like this:

(A1*) Only beings who can be represented can deserve moral consideration.

Mere things cannot be represented.

Therefore, mere things do not deserve moral consideration.

(A2*) Only beings capable of being beneficiaries can deserve moral consideration.

Mere things are incapable of being beneficiaries.

Therefore, mere things do not deserve moral consideration.

If these are the correct interpretations of Feinberg’s arguments, then he immediately backs himself into a corner in the section on plants when he claims that they are *not* mere things. He even goes so far as to say that, “certain conditions are ‘good’ or ‘bad’ for plants, thereby suggesting that plants, unlike rocks, are capable of having a ‘good’,” (Feinberg 51). His observations are correct; plants clearly have a “good” that is

distinct from the “good” of mere things. However, instead of considering broadening his understanding of what an interest is or could intelligibly be, he chooses to modify his principle—upgrade it, if you will—so that it now requires that a being be sentient and have some level of cognitive awareness such that desires and beliefs develop. He admits at the end of his section on animal rights that the interest principle may need to be slightly modified in order to accommodate our intuitions in the other cases, but he also states that it should be modified, “as little as possible,” (Feinberg 51). Adding on this additional sentience requirement seems to be modifying the principle substantially, and therefore it seems that Feinberg is inappropriately modifying his principle in order to confirm a previously held bias against the rights of plants. As it is originally conceived, the interest principle seems to grant rights to plants, and Feinberg should accept this.

Another small but interesting point made by Goodpaster is that there is a possible equivocation on “needs” when Feinberg is describing the first sense of the term. The example that Feinberg uses is an automobile that needs gasoline. The car needs gasoline in order to perform its functions, but it is not harmed in a morally significant way when gasoline is withheld from it. Those functions are functions that are defined by human beings; humans built the car in order to travel long distances more easily. In the same way, to say that the coffee machine needs water is to say that the coffee machine requires water in order to perform its function, which is to brew coffee in the manner that humans constructed it to. To identify those types of needs with the needs of plants seems to imply that the plants are performing a function that was assigned by human beings, but this obviously could not be further from the truth. Trees don’t grow because we designed them to grow, and flowers don’t bloom just because we made blooming their “function”; plants just do these things naturally and without our input. It therefore seems ridiculous to claim that plants need water and sunlight in order to perform functions that are only relevant to human interests, because humans played no role in assigning the functions of “growing and surviving” to plants.

The second problem concerning Feinberg’s conception of rights has to do with our use of the terms, “thriving and flourishing, or withering and languishing,” (Feinberg 54). He explains how the meanings of these terms have shifted drastically over time, and that we have allowed ourselves to become fooled by metaphors in the end. The verb “to flourish” (and other similar terms like “blossom” and “thrive”) was originally only applied to plants, but over time the meaning has been extended so as to also apply to human beings. “When a person flourishes, something happens to his interests analogous to what happens to a plant when it flowers, grows, and spreads,” (Feinberg 54). This meaning is purely metaphorical, but Feinberg asserts that those who believe that a plant’s biological propensities might qualify as interests are attempting to fallaciously apply the extended metaphor back to plants. “To speak of thriving human interests as if they were flowers is to speak naturally and well, and to mislead no one. But then to think of the flowers or plants as if they were interests (or the signs of interests) is to bring the metaphor back full circle for no good reason and in the teeth of our actual beliefs,” (Feinberg 55).

He uses an example to further explain the difference that he sees between the flourishing of plants and the flourishing of human beings, but it is questionable whether it helps or hinders his view of interests. Imagine a woman that is pruning dead flowerheads off of a rose bush in order to encourage the bush to produce more flowers. Feinberg claims that when one says that the bush is flourishing, what they really mean is that the *woman's interest* in the bush is flourishing. Overall, this example seems to be a bit confused. Feinberg is trying to provide a case where we say that a plant is flourishing due to the efforts of human beings, and this is because he realizes that frequently, "there is a correspondence between our interests and the plant's natural propensities," (55). If these two types of "flourishing" can be made distinct, then Feinberg believes it will help show why the flourishing of plants is not indicative of their having interests which grant them rights. However, making the distinction alone is not convincing, for he has yet to show that the version of flourishing that plants take part in is not morally relevant. The meanings of terms change all of the time, and Feinberg seems to assume that the original intended definition of flourishing still applies. It seems equally as plausible that our understanding of the natural world has evolved such that when we say that a plant is flourishing, we *are* saying something morally relevant and comparable to the flourishing of our own interests.

Fetuses

Before discussing Feinberg's reasoning concerning the case of fetuses, it is important to briefly mention the concept of "conditional rights" that he brings up in his discussion of coma patients. Just like infants and the mentally handicapped, Feinberg notes that coma patients can have proxies that represent their interests while they are unconscious. However, these rights are only valid if there is a chance for the patient to recover and wake up from their persistent vegetative state. If there is no chance of recovery, then the patient has just as many rights as someone that is already dead; namely none. In this way, the coma patient's rights are predicated on their potential future.

Similarly, Feinberg asserts that the rights of a fetus are also conditional. If one looks at the case of the infant child (whom undoubtedly has rights), it appears that they are granted rights because they have the *capacity* to possess rights when they're older. Proxies for infants are essentially protecting the rights of the infant until the grown infant can claim their rights on their own. Feinberg argues that we could apply the same reasoning to fetuses and conclude that they do in fact have rights. However, this is different from the fetus having the right to be born. Feinberg states that the rights of a fetus are not defensible until the child is born because it has no definable interests before then (a fetus does not have an 'interest' in being born), and so in the event of the fetus's death, its rights are "instantly voidable." It is in this way that the fetus's rights are conditional, because they only apply if the fetus is to be born. (Feinberg's argument also seems to imply that the rights of a fetus cannot be employed in defending the moral impermissibility of abortion, because aborting the fetus does not actually violate any of the fetus's rights.)

The fact that Feinberg departs from his conative life criterion here is potentially problematic for his argument. While in previous sections it seemed that infants and the mentally handicapped were granted rights due to their having conative life (despite their inability to claim rights on their own), in this section Feinberg is for some reason motivated to assert that a newborn infant's rights are predicated on their growing into a being that is able to defend their rights on their own. "A new infant, in short, lacks the traits necessary for the possession of interests, but he has the capacity to acquire those traits, and his inherited potentialities are moving quickly toward actualization even as we watch him," (Feinberg 62). This brings up a huge worry, because if a fetus's capacity for acquiring interests does not give it the right to be born (which may be construed as the right to life), then so too does it seem that a newborn infant's capacity for acquiring interests does not give it the right to life. Following this line of reasoning, it seems to be morally permissible to kill a newborn infant due to its current lack of

interests; a newborn infant lacks an interest in growing up in the same way that a fetus lacks an interest in being born.

But this is clearly false according to our intuitions, and Feinberg recognizes this. He says that, “Children grow and mature almost visibly in the first few months so that those future interests that are so rapidly emerging from the unformed chaos of their earliest days seem unquestionably to be the basis of their present rights. Thus, we say of a newborn infant that he has a right now to live and grow into his adulthood, even though he lacks the conceptual equipment at this very moment to have this or any other desire,” (Feinberg 62). It’s good that he recognizes a newborn child’s right to life, but this explanation does not seem to provide sufficient reason for denying a fetus’s right to life. Is it because the fetus’s interests are not currently “rapidly emerging”? It would be inappropriately arbitrary to claim that an entity which lacks interests only has the right to life if its interests are “currently” evolving, for it seems that a fetus’s interests are still currently evolving in an important way, they just aren’t as far along in the process as a newborn infant.

Furthermore, this reasoning about capacities seems to also entail that a sperm and egg jointly constitute an entity that has rights. One could plausibly argue that the “capacity for acquiring rights” begins at the moment of conception, and that a zygote has just as much of a capacity for acquiring interests as a fetus in the third trimester. One could even push this idea of capacities to its extreme and claim that individual sperm and eggs each have their own “capacities” for acquiring interests. It could be argued that these capacities are qualitatively different from a fetus’s capacities in a significant way, but Feinberg’s argument, in its current state, does not give any reason to believe this. Overall, Feinberg only seems to be motivated to argue for these capacities because they are vital for asserting the rights of future generations, but it introduces a whole host of problems that threaten his conclusions about previous cases.

Future Generations

Finally, this brings Feinberg to his final case: future generations. He believes that we should feel motivated to preserve the environment not for our own sake but for the sake of future generations of humans such that they can enjoy the same natural pleasures that we do. It seems that these people should have rights in much the same way that fetuses have rights, for they are simply people that haven't come into existence yet but whose interests can be injured before their arrival.

Feinberg explains that many people find this case harder to swallow because future generations seem "far more remotely potential" than fetuses. It seems much harder for the average person to consider the rights of a faceless, nameless descendant than it is to do so for a fetus due in one month, but Feinberg points out that the apparent mysterious nature of future humans' identities has no bearing on whether they have rights. "Whoever these human beings may turn out to be, and whatever they might reasonably be expected to be like, they will have interests that we can affect, for better or worse, right now," (Feinberg 65). Regardless of their identities, if one allows the assumption that future humans will exist and be comparable to us, then it cannot be doubted that they have relevant interests and corresponding rights that should be respected today. "We can tell, sometimes, that shadowy forms in the spatial distance belong to human beings, though we know not who or how many they are; and this imposes a duty on us not to throw bombs, for example, in their direction," (Feinberg 65-6). Among these rights is the right of future generations to enjoy the natural world, which makes us obligated to protect the natural world for their sake.

He finds it important to note that just like fetuses, this does not imply that future generations have a right to exist; their rights are also conditional. If human beings decide to stop reproducing as a species, the rights of future generations would be rendered null and void. Thankfully that seems very unlikely to occur, and so Feinberg is satisfied to conclude his discussion. With the rights of future generations established, environmental activists can defend the planet in the name of their distant descendants.

Now that the entire argument is revealed, let us first go back to the issues concerning the consumption of meat. Many people choose to switch to a vegan diet not because of the health reasons or the rights of the individual animals, but because of the ethical implications of industrial farming. This industry and its practices have been shown to be huge factors in the greenhouse effect and they threaten great harm to the environment. If we follow Feinberg's argument through, we seem to find that thanks to the right of future generations to enjoy a beautiful natural world, it would violate the rights of future generations to promote an industry that threatens the death of

the natural world. This is consistent with his reasoning in his section on whole species when he mentions that these, “duties derived from our housekeeping role as temporary inhabitants of this planet,” (Feinberg 56), include the duty to protect whole species from extinction and endangerment.

Plants don’t have any rights because they don’t have any interests derived from conative lives according to Feinberg, but they are still protected for the sake of future generations (and for the sake of animals too if they have rights), similarly to whole species. Therefore, it seems that eating meat violates the rights of future generations on Feinberg’s account of rights. Much of this depends on how far the rights of future generations would extend. An extremist might claim that their right to enjoy the splendor of the natural world encompasses every single aspect of the natural world, including mere things like rocks (assuming that rocks are considered natural in the same sense) and rivers. Would damming a river in order to generate hydroelectric power be considered immoral by this reasoning? Part of the answer would come from a more detailed explanation of how far the rights of future generations extend, and in which cases they are prioritized over the rights of beings that exist currently.

I have one final criticism of Feinberg’s argument, and it involves the assumption that he makes at the very beginning of the paper; that human beings will still exist on this planet in five hundred years. One of the main purposes of his argument is to provide some philosophical defense for defending the natural world, but it seems as though he may have forgotten why the natural world needs defending in the first place. In his conclusion he states that, “For several centuries now human beings have run roughshod over the lands of our planet, just as if the animals who live there and the generations of humans who will live there had no claims on them whatever,” (66-7). Our species has been actively destroying and draining the natural world ever since the Industrial Revolution (at the least), and we now find ourselves in a situation where the future is not guaranteed. It therefore seems odd to make the assumption that future generations of humans will exist when their very existence may itself depend on our treatment of the nature world. The reason that conservationists and environmental activists are concerned for the planet is not because the rights of future generations of humans are being violated, but because those future generations of humans may not end up existing at all!

It is difficult to say what Feinberg would say to this. Future generations do not have a right to exist in the same way that a fetus does not have a right to exist; their rights are contingent, and so to completely destroy the environment would technically not be violating any of their rights because their rights are voided in the event that they fail to come into existence. But it seems very strange to say that someone, in the process of completely obliterating the natural world, is violating the right of future generations to enjoy the natural world up until it has been completely eradicated; at that point, there are no rights left to be violated. This seems to be the reason that Feinberg made his initial assumption, but it hardly seems warranted if it is simply an attempt to avoid this circularity problem.

If he had just granted rights to the plants by accepting a broader understanding of “interests” then he would have been able to defend the planet for their sake, for the sake of the beings that turn carbon dioxide into oxygen, clean the water, feed us, and bless our aesthetic lives. I have attempted to show that the way in which Feinberg deals with many of these cases, and the assumptions that he makes, reveals a hidden anthropocentrism to his reasoning that creates a bias in his judgements. The interest principle has a lot of promise as a tool for philosophically protecting our planet, but a more detailed explanation of the relevant terms and a broader understanding of interests could greatly help the principle overcome the issues that it faces with particular cases.

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A critique of his ideas & actions.



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