

The interest theory of joseph raz philosophy essay



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This essay will demonstrate that Social Contract Theory has heavily influenced modern rights theories, yet not exclusively. Rights for non-humans will be critiqued to demonstrate how other advocate theories have influenced how the nebulous 'rights theory' is analysed. First I shall discuss the background of modern theories of rights, then I shall argue that modern theories of rights are informed by extensions of social contract theory which will be supported by the analysis of the extension of rights to non-human entities.

Modern classifications of rights come from the American jurist Wesley Hohfeld (1879-1918). Hohfeld identified different categories of rights according to their effect on the right-holder and the non-right-holder. The recognition of my right to hold property has a different affect upon me than my right to free speech. Distinctions of this sort were not what Hohfeld had in mind. Hohfeld's classifications are designed to show what rights are and how they relate to other aspects of legal reasoning. This is why he differentiates between claim rights, powers and so on. Hohfeld recognised not only rights, but also their corresponding duties. He was not alone in this, nor was he the first to do so. His real contributions were the categories. He arranged them into four pairs (jural correlatives as he termed them): rights corresponding to duties; privileges corresponding to no claim rights; powers corresponding to liabilities; and immunities corresponding to disabilities. However, not every modern rights theorist accepts Hohfeld's classifications. Kramer thinks that all rights can be reduced to valid claims and Razians like James Penner abandon Hohfeld's model (which says that a right must be

held by one person against another person) in favour of general rights and duties that can be held against classes of people.

Social contract theory is the view that persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live. Some social contract theories suggest that this agreement was real and others accept that it is to make a point. Locke believed that the agreement was real, whereas Hobbes did not think it was in every case. Kant was the first to use purely hypothetical agreement and modern social contract theorists such as John Rawls or Thomas Scanlon never rely on actual agreement. Social contract theory is associated with modern moral and political theory and is given its first full exposition and defence by Thomas Hobbes. After Hobbes it was John Locke and Jean-Jacques Rousseau.

Hobbes' social contract was based upon the self-interest of the parties alone, whereas Locke especially was happy placing constraints upon what the parties could actually agree to. The main difference is that Hobbes saw the parties as trading all their natural liberty for the protection of an absolute sovereign, whereas Locke placed limits on the sovereign's power so that the natural rights of the parties (which preceded the contract) could be secured in the civil condition. In the twentieth century, moral and political theory regained philosophical momentum as a result of John Rawls' Kantian version of social contract theory, and was followed by new analysis of the subject by David Gauthier and others. Locke's example is that one consents to obey the laws of the country you live in, simply by choosing to remain there.

Hypothetical consent is never given. Rawls' social contract theory is of this sort.

The starting point for most social contract theories is an examination of the human condition absent from any political order that Thomas Hobbes termed the state of nature. Rawls differs in this respect because his contracting parties are explicitly fictional rather than being generalisations about actual people. In this condition, individuals' actions are limited only by their personal power and conscience. Hobbes argues, radically for his times, that political authority and obligation are based on the individual self-interests of members of society who are understood to be equal to one another, with no single individual invested with any essential authority to rule over the rest, while at the same time maintaining the conservative position that the monarch, which he called the Sovereign, must be ceded absolute authority if society is to survive. Hobbes does not mean equal in a moral sense: he simply suggests that humans are sufficiently equal in terms of strength and intellect to be dangerous to each other. This is why authority must be ceded to a sovereign. Many social contract theories are concerned with the moral equality of human beings rather than their relative physical equality. Locke's theory is all about securing rights. This is very different from securing safety. These thinkers do not necessarily 'build upon' the foundations of those that came before. Very often they disagree with the work of their predecessors (Locke violently disagreed with Hobbes about the absolute nature of the sovereign for example). I doubt that Hobbes has had much influence on theories of rights, whereas Locke has had a huge influence.

John Locke (1632 - 1704) was one of the theorists influential on the development of the idea of equality between men. He was a social contract theorist, believing that the legitimacy of government relies on consent from its citizens which is given on the basis of equality. Locke believed that governments were created to preserve the enjoyment of these rights not to control or curtail them - any government that attempts to do so deprives itself of validity by breaking its "contract" with the people who in turn are entitled to depose the government. John Locke, was an outspoken supporter of equal rights within a governed society. He espoused the natural rights of man, namely the right to life, liberty and property, and he articulated that every government's purpose is to secure these rights for its nationals. Locke's view of equality was not limited to the political realm; he also promoted religious toleration, with atheism being the one notable exception. He supported general toleration of alternative religious beliefs but encouraged the ex-communication of non-believers. This is a strong underlying theory for the modern legal system regarding human rights, yet this cannot be the only theory underlying the present view of rights. This is the case because there is Dworkin's theory of rights as Rights give reasons to treat their holders in certain ways or permit their holders to act in certain ways, even if some social aim would be served by doing otherwise.

As Sreenivasan notes, a Hohfeldian claim-right in itself only entails the existence of a duty with a certain structure, and not a duty with a certain force. Dworkin's theory suggests that rights trump non-right objectives, such as increasing national wealth. What of the priority of one right with respect to another? We can keep to the trumps metaphor while recognizing that

some rights have a higher priority than others. Within the trump suit, a jack still beats a seven or a three. Your right of way at a flashing yellow light has priority over the right of way of the driver facing a flashing red; and the right of way of an ambulance with sirens on trumps you both. This metaphor of trumps leads naturally to the question of whether there is any right that has priority to absolutely all other normative considerations:

Philosophical thinking in terms of the moral standing of animals is diverse and generally can be grouped into three different categories which are: Indirect theories; [arguments in this category have been made by Immanuel Kant, René Descartes, Thomas Aquinas, Peter Carruthers, and various other theories]. Direct but unequal theories, and Moral equality theories; [arguments in this category have been made by philosophers such as Peter Singer and Tom Regan].

Arguing against Utilitarian theories of justice, Rawls believes that the best conception of a just society is one in which the rules governing that society are rules that would be chosen by individuals from behind a veil of ignorance. Rawls's purpose in introducing this veil of ignorance is to remove from consideration certain particular facts the knowledge of which might lead people in the original position to favour principles which are not just. For this reason people in the original position do not know their place in society, their natural or acquired traits or abilities, what conceptions of the good they have, nor what their particular goals are. In addition, they do not know the particular political, economic or cultural characteristics of their own society nor do they know to which generation they belong. However, they do know that they are contemporaries, that they are in the circumstances of justice so

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that human cooperation is both possible and desirable and that they are each capable of a sense of justice. Moreover, there is no limit to their knowledge of general information such as is contained in political, social, economic and psychological theories. According to Rawls, the veil of ignorance has the effect of depriving persons in the original position of the knowledge they would need to advance their own special interests. While the veil of ignorance does significantly restrict the knowledge of persons in the original position, Rawls believes that it still provides them with enough information to agree on just principles for regulating all subsequent criticism and reform of the basic structure of a society. This follows from the fact that when considering the basic structure of a society what is at issue are only primary social goods, that is, goods which are generally necessary for achieving whatever goals one happens to have. Thus persons behind the veil of ignorance would still recognise the importance of acquiring goods of this sort because they are the type of goods one would want regardless of whatever else one wants. Moreover, Rawls assumes that persons in the original position would ordinarily want more primary social goods rather than fewer. Allowing for an acceptable minimum, persons so situated would strive to maximise their index of primary social goods regardless of how others fared. This means that persons in the original position would not be influenced by affection, envy or rancour. For example, they would not choose to lower their expectations merely to avoid raising the expectations of someone else. Rather each would seek to maximise his own expectations even when this required that others have even greater expectations.

The usual manner of justifying the claim that animals and human beings are not equal is to point out that only human beings have some property, and then argue that property is what confers a full and equal moral status to human beings. Some philosophers have used the following claims on this strategy: (1) only human beings have rights; (2) only human beings are rational, autonomous, and self-conscious; (3) only human beings are able to act morally; and (4) only human beings are part of the moral community.

is also very influential on the topic of animals and ethics. Regan argues for the claim that animals have rights in just the same way that human beings do. Regan believes it is a mistake to claim that animals have an indirect moral status or an unequal status, and to then infer that animals cannot have any rights. He also thinks it is a mistake to ground an equal moral status on Utilitarian grounds. According to Regan, we must conclude that animals have the same moral status as human beings; furthermore, that moral status is grounded on rights, not on Utilitarian principles. Regan argues his case by relying on the concept of inherent value. According to Regan, any being that is a subject-of-a-life is a being that has inherent value. A being that has inherent value is a being towards which we must show respect; in order to show respect to such a being, we cannot use it merely as a means to our ends. Instead, each such being must be treated as an end in itself. In other words, a being with inherent value has rights, and these rights act as trumps against the promotion of the overall good. In Regan's view, not to be used as a means entails the right to be treated with respect, which includes the right not to be harmed. This right, however, is not absolute, as, there are times when to respect someone's right not to be harmed, another's

right not to be harmed must be overridden. His philosophy employs principles such as the minimax principle and the worse-off principle to deal with these situations. The minimax principle is that when faced with overriding the rights of many innocent beings versus the rights of few innocent beings we should override the rights of the few. The worse-off principle states that, when individuals involved are not harmed in a comparable way given a certain course of action, we should mitigate the situation of those who would be worse-off. As this relates to animal rights, Regan asserts the harm in death of an animal is not tantamount to the harm in death of a normal, healthy human. This is supposedly because the ending of an animal life entails the loss of fewer opportunities when compared to the loss of a normal, healthy human. This does not make Regan vulnerable to the charge of speciesism, as the evaluation of harm is based on a criterion of opportunity, not in mere species membership. According to Regan, there would be more harm in the death of a normal, healthy dog than there would be in the death of a person who was irreversibly comatose, as the dog would have more opportunities for satisfaction than the irreversibly comatose human.

Supporters argue that Regan's argument for animal rights does not rely on a radical new theory of ethics, but that it follows from a consistent application of moral principles and insights that many of us already hold with respect to the ethical treatment of human beings. However, others criticize the lack of certainty with status can be determined, and note that the sufficient conditions he lists—for example, having sense-perceptions, beliefs, desires, motives, and memory—in effect reduce to According to Regan, it

follows from the ascription to animals of the basic right to be treated with respect that we should abolish the breeding of animals for food, animal experimentation, and commercial hunting.

Regan relies on a version of the argument from Marginal Cases, which is a philosophical argument regarding the moral status of non-human entities. Its proponents hold that if human infants, the senile, the comatose, and the cognitively disabled have direct moral status, animals must have a similar status, since there is no known morally relevant ability that those marginal-case humans have that animals lack. This may refer to a right not to be killed or made to suffer, or to a general moral requirement to be treated in a certain way. Regan begins by asking what grounds human rights. He rejects views that a being must be capable of representing itself as legitimately pursuing the furtherance of its interests on the grounds that this conception of rights implies that the marginal cases of humanity do not have rights. The argument from marginal cases takes the form of a proof by contradiction. It attempts to show that you cannot coherently believe both that all humans have moral status, and that all non-humans lack moral status. However, since we think that these beings do have moral rights there must be some other property that grounds these rights. According to Regan, the only property that is common to both normal adult human beings and the marginal cases is the property of being a subject-

This property is one that all human beings which we think deserve rights have; however, it is a property that many animals (especially mammals) have as well. So if these marginal cases of humanity deserve rights, then so do these animals. This is a right; we do not need a social contract theory to

account for rights in this way and theories such as Regan's therefore do not rely upon it a great deal.

General Jurisprudence and a range of moral theories have had a great influence on assisting the shaping of a universally recognisable application of a rights theory, alongside the Social Contract Theory; additionally, the application of animal rights advocates have also influenced this.

There are many differences in opinion between those advocating equal consideration or animal's rights and those who oppose such views are principally different in degree. The strict approach to issues of animal rights in an ideal world would demand that humans justify their possession of rights to the exclusion of all other species on the basis of a 'characteristic unique to mankind that is rationally identified and justified'. Such a unique characteristic has so far proved elusive in the sense that we have yet to identify a characteristic that is completely unique to humans.