

PHL 310

Environmental Ethics

Week Six
Dr. Jeff Johnson

Sophisticated Cognitive Capacities

- Kant
- What I most care about
 - Happiness
 - Love
 - Reason
 - Autonomy
 - Purpose to my life
- Presupposition of sophisticated cognitive capacities

Cognitive Capacities

- Consciousness
- Self-consciousness
- Reason
- Emotion
- “Mind”
 - Religious — soul
 - Secular — central nervous system

Problems and Questions

- Defective humans?
 - Early term fetus
 - Late term fetus
 - New born baby
 - Anencephalic baby
 - Severely impaired
 - Comatose adult

Potentiality

- Potential to develop sophisticated cognitive capacities
- Potentiality and rights
- New borns
- Early and late term fetuses
- Anencephalic baby
- Severely impaired
- Comatose adult

Rudimentary Cognitive Capacities

- Humans and animals
- Strong presumption to treat fairly?
- Over inclusive?

Group Membership

- Collectives
 - Family
 - Corporation
 - Species
- Martians?
- Animals?
- Under inclusive?

Special Relationships

- Non-interference, reason to aid, reason to treat fairly
- Family
 - Parent-child
- Friends
- Colleagues

Other Grounds

- Intrinsic value
- Naturalness
- Harmony
- Beauty

“Cluster-concepts”

- Necessary and sufficient conditions
- Wittgenstein on games
- Family resemblances
- Privacy
- Full moral status
- Moral status?
- Judgment calls
- Disagreement

Moral Standing

- Legal standing
- Right to have your case heard in a court
- Moral standing
- Right to have your “case” heard in “the court of moral judgment”
- Procedural judgment about standing first
- Substantive judgment about the merits of the case second

A Case Study

- You have full moral standing
- I have full moral standing
- My child has full moral standing
- My promise to you
- The emergency with my child
- Your case against me
- My defense
- Who wins?

Moral Standing and Trees?

- Does the environment have moral standing?
- Assume at least some standing
- Plaintiff — Particulars of the case for environmental damages
- Defendant — Details of the defense
- Judgment in the “court of moral judgment”

Moral Standing and Animals

- Do animals have moral standing?
- Assume at least some
- Plaintiff — details of the case for animal damages
- Defendant — details of the defense
- Judgment in the “court of moral judgment”

Moral Standing and Future Generations

- Do future generations have moral standing?
- Assume they have at least some
- Plaintiff — Details of the harm to future generations (or individuals in a future generation)
- Defendant — Details of the defense by current generation
- Judgment in the “court of moral judgment”

Christopher Stone

- BA — Harvard — Philosophy
- JD — Yale Law School
- Private practice
- University of Southern California Law School
- “Should Trees Have Standing?” — *University of Southern California Law Journal* (1972)

Central Strategy

- Arguments from analogy
- Corporations, trusts, etc., have legal standing
- It makes sense to say that the environment should have legal standing

The “Unthinkable”

- Historical status of Blacks, Chinese, Indians, Jews, women and children
- It was odd to think that these people should have rights
- All this changed when they were accorded rights

Granting Rights to the Environment

- Forests, oceans, rivers, and other “natural objects” should have rights
- The environment as a whole should have rights
- Not every right that humans have
- Not everything in the environment will have exactly the same rights

Being a Holder of Legal Rights

- “Some” recognition by legal institutions
- Initiate legal action
- Taking the right holder into consideration for legal relief
- Relief must run to the benefit of the right holder

Current Legal Status of the Environment

- No legal standing
- Cannot initiate legal proceedings
- Damages do not consider injury to the natural object, only to affected humans
- Not beneficiaries of damage awards

Natural Objects and Rights

- Natural objects lack cognitive capacities — no right nor standing
- But, corporations, estates, children, incompetents, etc.
- Why not treat natural objects similarly?

Guardianship

- Incompetents
- Petitioning for guardianship
- The needs of natural objects
- One can tell without communications — grass e.g.
- Joint ventures, corporations at etc. have even less tangible needs

Advantages to Giving “Trees” Standing

- Makes legal issues clearer
- Damages could be used to repair natural object themselves
- Might bring about a change in cultural thinking

Do “Trees” Have Moral Standing?

- Moral right to sue
- Moral culpability?
- Moral culpability of corporations?
- Wrongs to the environment?
- What if there were no more humans?
- Borderline moral standing

Where Do I Stand?

- Jonathan Bennett
- Teaching animal rights
- I am not a vegetarian
- The power of animal rights arguments
- Inference to the best narrative
- Moral standing

Inference to the Best Narrative

- Tom Regan's story
- Peter Carruthers' story
- Will Jeff have a story?
- Which story makes the most sense?

Regan's Story

- Animals have rights!
- Analysis of counter-arguments
- Indirect duties — dog e.g.
- Rejection of contractarianism
- Rejection of utilitarianism
- The rights view
 - Discrimination
 - “Experiencing a life”
 - Sophisticate cognitive capacities?
 - Species?
 - Animals must be included

Carruthers' Story

- Animals have no rights!
- Endorsement of contractarianism
- Problem of humans with diminished cognitive capacities
- Biological accounts of human nature
- All human beings can be included, while excluding animals

Contractarianism

- Crude contractarianism
- Rawls
 - Principles of justice
 - Greatest equal liberty
 - Social equality
 - Equal opportunity
 - Difference principle
 - Cognitively diminished humans?
 - Animals?
 - Totally different principles?
 - Who is included in the original position?
- Scanlon
- Social contract
- Original position
- Veil of ignorance
- Maximin strategy