

## A PRIMER ON NONHUMAN PERSONHOOD, CETACEAN RIGHTS AND 'FLOURISHING'

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Recent discussions about the philosophical implications (especially the ethical implications) of the scientific research on whales and dolphins have shown that a variety of claims can be easily misunderstood: 1) that whales and dolphins are “nonhuman persons”; 2) that they are entitled to “rights”; 3) that these rights are violated by such human activities as whaling, drive hunts and captivity; and, therefore, 4) that these activities are ethically indefensible. This short essay attempts to clarify these claims and to point to the scientific research that underlies them.

### Personhood

#### *Background:*

The concept of a “person” as opposed to a “human” is a standard part of metaphysics, the part of philosophy that the most fundamental features of existence. “Personhood” has a long history in philosophy and is closely connected to the discussion of “personal identity.” (For a couple of good, basic articles, see the entries to “personal identity” and “persons” in [The Encyclopedia of Philosophy](#).)

#### *What do we mean by ‘person’?*

The simplest answer is that a person is a *who*, not a *what*. The more technical answer is that a “person” is any being, no matter what their species, who has the traits that imply a sophisticated level of intellectual and emotional sophistication. The set of criteria used in my *In Defense of Dolphins* sets the bar quite high: being alive; aware; the ability to experience positive and negative sensations (pleasure and pain); emotions; self-consciousness and a personality; self-controlled behavior; recognizes and treats other persons appropriately; and a series of higher order intellectual abilities (abstract thought, learning, solves complex problems and communicates in a way that suggests thought). Other sets of criteria for personhood have less to them.

The distinction between “human” and “person” leads immediately to two questions: Are all humans persons? And, are there any persons who are not human?

The first question has come up repeatedly in medical ethics. For example, is someone “brain dead” a person? Or, is a fetus a person? If we were to say that the answer to one or both of these questions is “no,” what does this say about the ethical character of an action to end the life of a “human non-person”?

The second question is discussed in animal ethics. Scientific research has continued to uncover impressive intellectual and emotional abilities in such nonhumans as chimps, gorillas, elephants, whales and dolphins. If these abilities are sophisticated enough to suggest that these mammals are “persons,” what does that say about the ethical character of human treatment of these animals: use in medical experimentation, willful killing, captive breeding, confinement in captivity for the sake of research, human therapy, entertainment, generating profit and the like?

*Why do we bother to use the term “person” and approach things this way?*

One of the most important reasons is to limit the amount of species-bias that can color discussions of the treatment of nonhumans. Ideally, ‘person’ is a species-neutral term.

*Why does personhood matter?*

From an ethical perspective, personhood matters because persons have what philosophers refer to as “moral standing.” If you’re a person, then you’re entitled to be treated in certain ways. To have “moral standing” means that in any calculation about what the right thing to do is in a situation, you count. Your pain, happiness, rights and interests matter. Also, you count *as an individual*.

This is one of the most important implications of the fact that nonhumans like dolphins are persons. They count as *individuals*—the same way that you and I count as individuals. Conservationists, however, talk about dolphin “stocks” and “populations.” One of the most disappointing things about the letters that the Society for Marine Mammalogy have sent to the Japanese government opposing the drive hunts is that they referred only to “stocks” and fail to take up the issue of the welfare of individual dolphins. The underlying assumption is that the drive hunts kill too many dolphins for the population to sustain itself. Unfortunately, this implies that if the hunts kill fewer dolphins, it would be OK. This would be like saying that—if we take a small human community as an example—as long as the number of people we kill doesn’t have a significant, negative impact on reproduction rates in the village, then the deaths are acceptable.

*Isn’t this a bad approach for “animal ethics” because it means that only persons deserve special treatment?*

No. To say, “If A is a person, then A has moral standing” does not imply that “If A is not a person, then A does not have moral standing.” That’s the logical fallacy of denying the antecedent.

Unfortunately, a common objection to the “personhood” argument is that it encourages people to think that other animals deserve proper treatment only if they’re “just like us.” As Diana Reiss has commented, “Since dolphins are, like humans, intelligent, self-aware beings with personalities, emotions, and the capability to govern their own behavior, [Thomas White] proposed they be viewed as ‘nonhuman persons’ . . . I worry about this argument, however—does it mean that other species may be mistreated?” [248-9]

My answer is that if people are looking for an excuse to mistreat nonhumans, they’ll find one. And they may use the “personhood” argument as a rationalization. But that just means that animal

rights advocates need a different argument for nonhumans. It's important to recognize, however, that the personhood argument is the strongest case to use with average people if we're talking about how we should treat cetaceans better. In my experience, the "personhood" argument explains even to someone with anthropocentric biases why it's wrong to kill dolphins or keep them captive.

Also, it's appropriate to use the distinction between "persons" and "nonpersons" because they have different capacities for pain and harm. For example, if I mock and berate a friend in public for the purpose of cruelly humiliating him for my own pleasure, I'm sure he'll experience pain. If I say exactly the same thing to a squirrel I may come across, I doubt that my words will have any impact on him. He doesn't have this particular vulnerability to being hurt in this way.

*But aren't things like corporations also persons?*

Corporations are "legal persons" not, shall we say, "moral persons," which I'll discuss shortly. I appreciate that there is a legal tradition that thinks this makes sense, but I'm not one of them. Legally, a legislature could make my toaster a 'person.'

*So what's the connection between personhood and rights?*

Personhood implies moral standing. The way that I describe the next step is to say that this is a recognition that the complexities that go with being a person mean that the conditions that we need in order to grow, flourish or experience life in even a rudimentarily satisfying way are more complicated than the conditions nonpersons need; it also means that these complexities make us vulnerable to harm in a way that nonpersons aren't.

But notice that I'm talking about "needs" not "rights." That's deliberate because I maintain that rights are derivative from basic needs.

*Huh?*

First of all, we aren't talking about "legal rights" at all. So set aside any thought about how we enforce any of this or enshrine it in laws or treaties until we can get everyone discussing this through at least one conversation at the simplest level and stay on track.

We're talking about "moral rights," and they're grounded in the idea that the fact that someone's a person means that the only way they'll grow, develop fully, flourish and experience even a basic sense of satisfaction with life is if they experience certain conditions. This approach says that a person has a *right* to something because he or she absolutely, positively *needs* it in order to fully grow, develop, etc.

*OK, and what are those conditions?*

That depends on the species, which is why this is all "species-specific."

For humans, look at any of the various statements of “basic human needs” or “basic human rights.” What we get is something like these: Life; Physical health and safety; Emotional health and safety; Freedom of choice (actions, beliefs); Education (way to get necessary skills); Fairness, care, equality, respect for our dignity as persons; Access to meaningful emotional relationships; Rest.

The most logically fundamental piece of this, then, is the idea of “basic human *needs*.” This then lets us say that there are such things as “basic human *rights*,” or, if you like, “inalienable rights.” We have a *right* to them because we *need* them. If we don’t get them, we’re in some way *harmed*.

The logic would be the same with cetaceans—except we know so much less than we need to about what their “basic needs” are. But we do know that they need: life; a rich and complex social life; the liberty to operate in a way that individuals and communities are able to operate successfully enough in an environment to survive in both the short and long term.

The Declaration of Rights for Cetaceans, then, is a statement meant to describe what we have to do in order to allow cetaceans to get these needs met.

That’s why it’s a Declaration of *Cetacean* Rights, not *human* rights.

*But the Declaration also says something about cetaceans having the right not to be treated as property? If I can guarantee that their needs are met in captivity, wouldn’t that be OK? No harm, no foul?*

Yes and no. On the one hand, if it were possible, it would seem as though no cetacean is being *harmed*. However, what we’ve learned about the social lives of wild dolphins makes it clear that we can’t replicate those conditions in captivity. Your facility would have to be at least as big as, say, the Sarasota Bay.

However, one of the most important needs that persons seem to have is to be treated with dignity, with respect for their autonomy and ability to determine their own fates. This is the idea that persons have inherent worth, that they’re somehow special in and of themselves, and that it’s intrinsically wrong to treat them as objects. Hence, the Declaration’s statement that cetaceans have a right not to be treated as property.

Even among humans, we’d say that it’s simply fundamentally wrong to own another person or to treat them as though were simply an object. Even if we treated slaves well, we still say that it’s wrong.

*OK, so let’s concede that, in theory, this all makes sense. Isn’t it unrealistic to think that the average human is going to sign on to this?*

No. I’ve been doing presentations on this to all sorts of audiences for more than 20 years. When most people hear the evidence (which, minimally, takes about an hour to lay out even the most basic case), they understand that it makes sense. They recognize that putting this into practice is

going to be complicated. But when they understand the concept of “person,” when they hear the evidence and when they hear what the philosophical and ethical implications of the evidence are, they’re basically OK with this.

They recognize that there will inevitably be conflicts between human rights and cetacean rights that we’ll have to resolve—just like we have to resolve conflicts between the rights of one human and the rights of another human now. But not all of this is impossibly complicated. For now, I’d settle with everyone recognizing that the deliberate killing of cetaceans is wrong, that captive breeding is wrong, and that we have to figure out what to do with the cetaceans who are in captivity. (Can they go to preserves? Can some be released? What’s appropriate?)

*Anything else?*

Yes. Personhood is neither the only nor, probably, the best philosophical argument for treating cetaceans in an ethically acceptable fashion. It still has problems with species bias. But it’s the best one to use with the general public, and it’s probably the only approach the courts will eventually listen to.

Personhood has major weaknesses, however, because of how anthropocentric the criteria are. This is especially evident in the way “intelligence” gets defined and studied, and in the human fixation on “language.” (It’s beyond the current scope of this piece to go into this, but I’m beginning to think that the best evidence for “cetacean intelligence” lies in “cetacean culture.”) I’m currently developing an approach that tries to address the weaknesses of personhood by making central the species-specific conditions related to “flourishing.”

*Flourishing?*

I’m adapting a new approach to animal ethics pioneered by philosopher Martha Nussbaum (a philosopher at the University of Chicago). She calls it the “capabilities approach.”

The central idea I’m advancing is that we need to begin with what cetaceans need in order to *flourish*—that is, what they need in order to develop the physical, emotional, social and intellectual capabilities inherent in their species which allow them to have a successful and satisfying life. I’ll explain this perspective in my next book. As a way of illuminating the biological foundation of the claim that cetaceans have *moral rights*, I’ll describe what marine scientists have discovered about the conditions cetaceans require in order to grow and develop fully. I’ll argue for a broader understanding of what constitutes *harm* for cetaceans than has traditionally been used in discussions about how marine mammals should be treated. For example, it is obvious that we can *harm humans* by subjecting them to a life which, while physically safe, is barren in many other ways and prevents the development of certain capabilities (e.g., literacy). I’ll argue that it is similarly *harmful* to limit captive *cetaceans* to a life which, while physically safe, deprives them, for example, of the opportunity to learn the social skills needed to manage the many and varied relationships which are central to the lives of wild dolphins and orcas and which are critical to their well-being.

*The current state of things*

I'd like to be able to put this more diplomatically, but, in my opinion, at least, what strikes me as “mainstream thinking” in the marine mammal science community is obsolete and philosophically uninformed. (To be fair, most of the discussion by philosophers is scientifically uninformed. This is one of the challenges of multi-disciplinary work. And I never make a presentation to philosophers without stressing the importance of concentrating on a specific species [not “animals”], having a thorough familiarity with the scientific literature and having some serious exposure to field-work.) The evidence for the personhood of dolphins—and what the ethical implications of that are—are so clear that this is not really a controversial issue any more. *Anyone challenging it (or saying they ‘aren’t sure’) either hasn’t studied the scientific evidence closely enough, or, if they have, they don’t understand the philosophical and ethical implications of the data.* This is no more debatable than the fact that global warming is taking place. People can spin things to make it sound as though it’s debatable. But if you really know the facts and understand what they mean, there’s nothing to debate.

The best recent example of this is the 2012 letter that the leadership of the Society for Marine Mammalogy sent to the Japanese government objecting to the ongoing killing of dolphins in the annual drive hunts there. Despite the overwhelming scientific evidence that dolphins, like humans, experience life as self-aware *individuals*, the letter employs an obsolete perspective that discusses only the sustainability of “stocks” or “populations” of dolphins. The letter fails to offer the strongest ethical argument—that the killing of any *individual* dolphin is indefensible. In my opinion, the traditional, “conservation” outlook in which these senior scientists were trained makes it difficult for them to appreciate fully the ethical significance of the empirical research in their field.

Another common example is the idea that captivity is defensible because the benefits to a large number of wild dolphins outweigh the costs to the far smaller number of captive dolphins. This is the classic weakness of “utilitarianism.” In my opinion, the only way you can make this argument work is to advance the claim that a minority is less important than the majority, and a smaller number of people can be used, in effect, as tools to advance the welfare of the majority.

*But doesn't captivity actually produce some positive benefits?*

In theory, I suppose it's possible, but I currently see two major problems. First, Lori Marino's research suggests that, in practice, it doesn't.

The other problem is that I think that much of what is presented in captive facilities is “mis-education.” What's described about dolphins is carefully edited to omit, for example, the research that suggests that dolphins are individual, nonhuman persons whose welfare depends on social conditions that couldn't possibly be replicated in captivity. In my opinion, when it comes to education, anything less than “the truth, the whole truth and nothing but the truth” is unacceptable. Take a look at the websites of the major captive facilities. They'll give lots of detailed information about many aspects of dolphins—*except* intelligence, self-awareness, individuality, etc. It can reasonably be argued, then, that captivity doesn't “educate,” but “perpetuates a stereotype”—Lassie of the sea.