

Changing the subject

Commentary on [Birch](#) on *Precautionary Principle*

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Abstract: I detect at least two unspoken assumptions in Birch's project, and I question, indeed, reject both of them. One is that welfare is the primary concern of animal ethics. I think liberation is. Birch's other assumption is that the scientific investigation of animal sentience is key to promoting animal ethics. I think science is largely irrelevant to progress on this front and can even be counterproductive.

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I tend to think of philosophy as an inquiry into unexamined assumptions. The result is that I often seem to be changing the subject. Jonathan Birch (2017) has presented a cogent argument for refining the application of science to questions of animal welfare and even provided a preliminary program. But I don't want to talk about that. I detect at least two unspoken assumptions in Birch's project, and I question, indeed, reject both of them. One is that welfare is the primary concern of animal ethics. I think liberation is. Birch's other assumption is that the scientific investigation of animal sentience is key to promoting animal ethics. I think science is largely irrelevant to progress on this front and can even be counterproductive.

For me animal ethics is a very simple matter. It's about the onslaught by human beings on all other animals in their natural state in the wild. Encroachment and domestication are the culprits. Encroachment has led to depopulation by denial of habitats and excessive hunting and fishing due to human overpopulation and arbitrary dietary choices. Domestication has led to the creation of a massive population of enslaved, exploited, and immiserated sentient beings, who have become dependent on us and are either killed in their youth or, if maintained as pets into adulthood, infantilized.

Again, even the solution is simple. The injunction I would address to us humans is: Use birth control, go vegan, follow a healthy lifestyle (in other words, let medicine be more about prevention and public health), adopt only shelter animals as pets, and so forth. Of course, putting all of these practices into worldwide effect would not be simple at all, and might very well involve

scientific research. But my point here is only that scientific research into animal sentience has little if anything to do with this program.

More directly to the point of Birch's target article, the simple truth of animal ethics is that the sentience of the animals most exploited and in need of liberation from human tyranny is not in any doubt that requires or would even benefit from scientific scrutiny. Animals in the wild are clearly sentient in the sense that they populate habitats that are sufficiently complex to demand intelligence and sensitivity to survive and thrive in. Meanwhile, the domestic exploitation of animals is mainly about chickens (Marino 2017), and anybody who doubts their sentience need only talk to [Karen Davis](#) or visit her sanctuary in [Machipongo, Virginia](#).

I don't want to sound like an obscurantist. I love science. I also love music; but I don't want us to be fiddling while Rome burns. Animal ethics concerns a pressing, perhaps the most pressing ethical issue of our time: the immiseration and slaughter or extinction by human agency of sentient beings on an unprecedented scale. Much work, including of the mind, needs urgently to be done. But fine-tuning the treatment of confined or captured animals by the scientific investigation of sentience is not part of it, it seems to me.

Birch's target article is admirable in that it does focus attention on large neglected populations, in particular, fish and other aquatic animals. However, even here my objection stands, and for several reasons. One is that the kind of scientific investigation engaged in to determine whether an animal is sentient, in Birch's sense of being sensitive to pain or distress (or joy etc.), usually itself involves the infliction of what would be painful if the animal were sentient ... and sometimes finally killing the animal. See, for example, work on fish sentience described by Braithwaite (2010). Another is that, as Birch tells us, this field is in its infancy, and so we must think of a proper inventory of the sentient world as "a long-term goal for animal sentience research" (although he balances this by noting that "the most exploited orders ... tend to be the most studied").

But my main objection remains: it is concerning the starting assumption that these are even hard cases requiring scientific investigation. For example, Birch mentions "many orders of mollusc ... for which the burden of proof has not yet been attained." This happens to be something I grappled with myself a while back when I was pondering whether dietary vegans might be able to benefit from a loophole. (See also Fleischman 2013.) A remark by Peter Singer and Jim Mason (2006) had caught my eye:

"... with the bivalves, the evidence for consciousness is barely stronger than it is in plants.... Ethical arguments against eating animals that are based on not causing — or not risking causing — suffering therefore get little grip on eating oysters, clams, and scallops ..." (p. 133).

Meanwhile I had learned that these animals are particularly rich in nutrients that an unsupplemented vegan diet lacks. Why not, then, revise the notion of vegan to exclude not all animals (and animal products) but only sentient ones? (An alternative conceptual possibility would be to revise the notion of "animal" to denote only sentient beings.)

However, I soon faced the very issue Birch addresses, namely, how to know with reasonable assurance whether these beings are sentient. (Singer [1990, p. 174] himself had expressed more doubt about the *denial* in an earlier publication, therein embracing a precautionary principle.) So I asked myself: How do I know that *anything* (other than myself) is

sentient? The answer that came to me was by their behavior, especially their motility. And I suddenly realized that I had no idea what bivalve behavior (if any) was like.

This being the Internet Age, I then thought to investigate the matter on YouTube. In a matter of minutes, my jaw was dropping from what I observed in amateur videos (of clams and scallops moving, if not so much oysters). I even sent some links to Singer, who replied that “the videos do serve to indicate that the doubt is genuine, which suggests we should give it more weight, when we have no real need to eat them” (personal communication, December 14, 2013). I myself was moved beyond doubt by what I saw. Call me naïve, but I don’t think I bring any more bias to my everyday observations than scientists, singly or en masse, bring to their experiments.

I don’t want to defend naïve perception against science, however, since, as I say, I love science. The point is rather that, for ethical purposes and goals, science is not always the best tool. After all, animal experimenters keep announcing more and more startling (to them) revelations about how smart and sensitive various other species are; but does that result in any but the most grudging institutional changes? Will psychologists studying empathy in rats and mice ever stop withholding their own empathy toward the rats and mice on whom they perform clever but cruel experiments to reveal the rodents’ empathy? Such absurdities are the rule not the exception in animal research of the kind in question.

For me a smoking gun sentence in Birch’s paper is this one:

“If an animal is not regarded as sentient, practices that would be considered clearly inhumane if performed on a vertebrate, such as the removal of limbs without anesthetic or analgesic, may be allowed to persist.”

As I read this sentence, it implies that removing the limbs of an animal (not to mention the conditions of confinement and other cruel treatment and then, typically, being killed) could be humane, provided it is done “painlessly.” What science could possibly alter such an assumption? Something quite different is needed, I’d say: an epiphany, as it were, or, to use Dorothy Day’s (and Gary Francione’s) phrase, “a revolution of the heart.”

The science we do need for animal ethics is how to bring *Homo sapiens* to its senses about other species (as well as our own, of course); see for example Cooney (2011). How can we overcome the fundamental contradiction that permits us to be complicit in unending cruelty toward beings whom we are fully capable of loving?

Now, it is possible that my objections are guilty of an *ignoratio*. I did acknowledge at the outset that I might be changing the subject. Was it appropriate for me to do so? Birch’s concern is specifically to increase the scope of “animal protective legislation.” And it may just be a sad fact that scientific backing is required to make one’s case before legislative bodies. So even though a child knows that other species are sentient, both scientists and legislators require hard data to be convinced. (I myself don’t know what to say about oysters.)

Well, perhaps that is true in some cases. But I would hardly judge contemporary U.S. politics, anyway, by that standard. (Allen [2006] has also expressed some skepticism about the efficacy of animal ethicists’ way of invoking science.) The [Animal Welfare Act](#) is the most obvious case in point: It was inspired by an article about dogs in *Life* magazine (Perry 2006). That’s what sells newspapers, and apparently that’s what moves legislation also. Plus, horse trading and other

shenanigans ... and maybe some hard science, but also pseudoscience, as part of the mix. And I dare say that the change of attitude becoming apparent among younger biomedical experimenters has more to do with what they learned from [PETA](#) and [Mercy for Animals](#) and [Vegan Outreach](#) and [HSUS](#) and the [Humane League](#) et al. about how animals are treated than what they learned from their textbooks and teachers about which animals are sentient.

Animal ethics as I conceive it is not in the business of determining what is sentient and who needs protection (who is “morally considerable”), but needs to focus much more on the strategy and tactics of protecting the sentient. Animal ethics no more needs science to prove things than the abolition of slavery needed theology ... although, as I am granting, the animal movement could conceivably be served instrumentally by marketing and other sciences of persuasion (but also the work of gifted artists and filmmakers), just as emancipation and the civil rights movement were served by the church (when it wasn’t opposing them!).

But suppose the science of sentience would be helpful. There remains my other objection to Birch’s paper, namely, its assumption that animal ethics is about animal welfare. For Birch considers it an endorsement of his proposal that:

“... it is well-aligned with existing views on this question in animal welfare science. The proposal can thus be seen as articulating and making precise what I take to be the conventional wisdom in large areas of the field, rather than as calling for substantial changes to current practice.”

That for me is a rebuttal! Here is another smoking gun sentence:

“One might suppose, at first glance, that an animal’s pain, though surely bad, is not a bad outcome on a large enough scale to justify precautionary reasoning. This can be rebutted, however, by noting some relevant figures. For example, if our policy target is the treatment of fish by commercial fisheries, we should note that approximately 1 to 3 trillion fish are caught annually in wild fisheries, excluding fish farms (Mood and Brook 2010; Balcombe 2016; Jones 2016). If we fail to regulate effectively the way fish are treated, the threat to animal welfare is not simply that one animal will be subjected to preventable pain, but that over one trillion animals per year will.”

As heartened as I was to see this exceedingly disheartening number cited by Birch, I could not help but notice that there is not a hint in the passage that the *killing* of these trillions of sentient beings is itself an ethical issue. Birch appears, then, to fall in with the prevailing view among animal welfare theorists that death is not a welfare issue. (Consider for example the much-cited Five Freedoms [FAWC 2009, pp. 1-2], which oh-so-conveniently omit the freedom to go on living.) This view certainly need not be granted; see for example Yeates (2010). But if it were, as Birch appears to do, then all the more reason to reject animal welfare as the touchstone of animal ethics.

Birch’s conservative bent with regard to animal ethics is well-illustrated by his own extended example of the EU’s *rejection* of including decapod crustaceans in an animal protection directive, despite the scientific evidence of sentience considered, due to “fierce resistance from the biomedical research community.” Indeed, the scientific evidence itself went back and forth. Nonetheless, Birch found *support* for his project in this process.

Another of his extended examples pertains to the Replacement component of the Three Rs (“reduce, refine and replace”) of animal welfare in biomedical research. While suggesting (by

aptly putting “lower” in scare quotes when referring to some animals) that the very notion of hierarchizing extant species is problematic, Birch nevertheless seems to accept the common use of “replacement” in biomedical research to refer to the substitution of one species for another. But the way he does so is actually twice removed from the original intent, judging by the authoritative definitions given at [NC3RS](#):

Replacement refers to technologies or approaches which directly replace or avoid the use of animals in experiments where they would otherwise have been used.

Full replacement avoids the use of any research animals. It includes the use of human volunteers, tissues and cells, mathematical and computer models, and established cell lines.

Partial replacement includes the use of some animals that, based on current scientific thinking, are not considered capable of experiencing suffering.

For Birch not only accepts partial replacement, which in my opinion is already a bastardization of “replacement,” but allows (with parenthetical reservations) that it may be “appropriate” and “reasonable” to substitute a species with a less “rich” or “complex” form of sentience for one having more. Yet recall that Birch’s own usage of “sentience” implies hedonic sensibility; so this violates even the definition of “partial replacement” cited above.

The main problem with animal welfare as a touchstone, however, is that it is honored in the breach. It serves animal industries as a convenient sop to citizen and consumer conscience. It is far from clear that animals are better off after all these years of institutionalized welfarism, or – if some are marginally better off – whether this is offset by ever more of them being immiserized and killed. And from Birch’s own exposition of how he would advise the use of replacement in biomedical research, for example:

“It is possible in principle to bring decapods within the scope of animal protection law while ensuring that there are still incentives to use them in preference to fish”

it came across to this reader that it was, in the end, only a way of making current practice (or exploitation) seem more acceptable by means of a “more sophisticated structure.”

References

- Allen, C. 2006. Ethics and the Science of Animal Minds. *Theoretical Medicine and Bioethics*. <https://link.springer.com/content/pdf/10.1007/s11017-006-9011-z.pdf>. Accessed 2017/10/12.
- Birch, J. 2017. [Animal sentience and the precautionary principle](#). *Animal Sentience* 16(1).
- Braithwaite, V. 2010. *Do Fish Feel Pain?* Oxford UK: Oxford University Press.
- Cooney, N. 2011. *Change of Heart: What Psychology Can Teach Us about Spreading Social Change*. New York: Lantern Books.

- Farm Animal Welfare Council (FAWC). 2009. *Farm Animal Welfare in Great Britain: Past, Present and Future*. London, UK. http://www.fao.org/fileadmin/user_upload/animalwelfare/ppf-report091012.pdf. Accessed 2017/10/12.
- Fleischman, D. 2013. The Ethical Case for Eating Oysters and Mussels. <http://sentientist.org/2013/05/20/the-ethical-case-for-eating-oysters-and-mussels/>. Accessed 2017/10/12.
- Marino, L. 2017. [The inconvenient truth about thinking chickens](#). *Animal Sentience* 17(1).
- National Centre for the Replacement Refinement & Reduction of Animals in Research. n.d. The 3 Rs. <https://www.nc3rs.org.uk/the-3rs>. Accessed 2017/10/12.
- Perry, N. 2006. A Dalmatian, a Camera, and Congress: The History of the Animal Welfare Act. *AV Magazine* 114:3 (2-5), Summer.
- Singer, P. 1990. *Animal Liberation*, 2nd ed. New York: Avon Books.
- Singer, P., and Mason, J. 2006. *The Way We Eat*. Rodale.
- Yeates, J. W. 2010. Death Is a Welfare Issue. *Journal of Agricultural and Environmental Ethics* 23 (3): 229-241.