



[www.ThePhilosophyClub.com.au](http://www.ThePhilosophyClub.com.au)

## **SO ENTITLED: RIGHTS AND PERSONHOOD**

*A philosophical enquiry session for teens and adults, designed by Michelle Sowe*

Total duration: 1.75 hours (i.e. 105 mins).

---

### **Part 1: Human nature and human rights**

#### Resources needed:

- Printable cards (printed and cut). Four sets of nine cards are provided in the PDF that accompanies this session plan. The sets are each coded a different colour to aid distribution: each small group of participants receives all the cards of a given colour. If you have a large group of participants, please print two copies of the card sets so that students are still able to work in small groups.
- Printable header cards (printed and cut). The header cards are provided in a separate PDF that accompanies this session plan.
- Easel, corkboard, butchers paper & bullclips, and markers for taking notes during discussion.

[Time from start: 00:00]

### Introduction and stimulus:

#### What characteristics of being human entitle us to human rights?

(5 mins)

*Facilitator's spoken introduction:*

It's widely accepted that just because we're human, we're entitled to certain rights: 'human rights'. These are a set of basic freedoms and protections that ensure that we're treated fairly, and that we're able to make choices about our own lives.

But what exactly is it about being human that entitles us to these rights?

There have been lots of different suggestions about what characteristics distinguish human beings from other species. To kick off our session today, we're going to be examining some of these characteristics, and we'll try to figure out *which* of them entitle us to rights.

I'm going to be handing out some cards to you in small groups. Each card describes a particular characteristic that might be considered unique to human beings.

And I'd like you to think about the characteristic on each card, and consider: Does this human characteristic entitle us to human rights?

For example, one card might say: 'We have opposable thumbs.' So you'll need to ask yourselves: 'Does having opposable thumbs entitle us to human rights?' (Or another way of asking this is: 'Is it by virtue of having opposable thumbs that we're entitled to human rights?')

I'd like you think about where you would place each card on a spectrum (*hold up header cards*) from 'Does not entitle us to human rights' at one end of the spectrum, to 'Entitles us to human rights' at the other end of the spectrum.

### Small group organisation and card distribution

*If the group is small (i.e. 8 – 16 participants), break the participants into **four** pairs/small groups. Distribute one set of nine cards to each small group (a blue set, a purple set, a green set, and a maroon set). Each group will have a different set of cards.*

*If the group is large (i.e. 17 – 22 participants), break the participants into **eight** pairs/small groups. Distribute one set of nine cards to each small group (i.e. two blue sets, two purple sets, two green sets, two maroon sets).*

[Time from start: 00:05]

### **Small-group discussion**

(10 mins)

*During small-group discussion, have each group of participants restrict themselves to sorting their cards in the space immediately in front of them (i.e. not yet connecting their responses with those of other groups).*

[Time from start: 00:15]

### **Card selection, card placement and justification (reporting back)**

(10 mins)

*Facilitator's instructions:*

**Still in your small groups, I'd like you to identify the one, two or three cards that you think most entitle us to rights. In other words, choose the cards that, in your view, belong closest to the 'Entitles us to rights' end of the spectrum. We'll be sharing these with the whole group shortly.**

*Place the header 'Entitles us to human rights' in the centre of the enquiry space where it is visible to all participants.*

*When students are ready to report back, reconvene the class.*

*Have a representative of each small group read aloud one of the cards they have identified, place it beneath (or near) the header, and explain why they believe this characteristic entitles us to human rights. Do not invite whole-group discussion at this stage.*

*Continue this process until each small group has placed each of their chosen cards by the header, and provided their reasons for its selection.*

[Time from start: 00:25]

### **Recap and whole-group discussion**

(30 mins)

*Recap the characteristics that have been identified, in order to consolidate them in students' minds.*

Considering only the cards laid out here, are there any characteristics of being human that you think are *more or less* important than the others, in accounting for why we should be granted rights?

Considering the cards laid out here, which characteristics are shared by other animals – say, by other mammals?

*Invite participants to offer examples of other animals that also possess the selected characteristics. For instance:*

- Baboons show political behavior including despotism, forming coalitions, keeping track of favours owed and earned, etc.
- Chimpanzees show self-awareness according to the 'mirror test'.

If other species share these same characteristics, should those species therefore be awarded the same rights?

If there's a difference of *degree* – in other words, humans possess the characteristic to a greater degree than other animals do – should that matter to the entitlement to rights?

---

## Part 2: Legal personhood and the basis of rights

[Time from start: 00:55]

### Introduction

(1 min)

In this next part of our session, we'll be continuing to think about the entitlement to rights, but broadening our perspective from human rights to the rights of other entities.

We'll be looking at what it means to be awarded 'legal personhood'.

A 'legal person' has rights, protections, privileges, and in some instances responsibilities and legal liability. But a 'legal person' is not necessarily a human being!

I'll be presenting three examples to help us think about personhood and rights. Let's get started!

## **Example 1: The Corporation**

**(1 min)**

*Facilitator's spoken introduction (adapted from the documentary film 'The Corporation':*

**Decades ago, business executives discovered that they could limit their personal liability by incorporating their businesses: turning their businesses into "corporate citizens", endowed with legal personhood.**

**The problem with treating corporations as 'citizens' or 'persons' is that they aren't like the rest of us/ They don't have beliefs or value systems. They only have the bottom line: the requirement to make as much money as they can in any given quarter. As Baron Thurlow of England once said, "Corporations have neither bodies to be punished, not souls to be condemned; they therefore do as they like."**

**Of course, many companies do offer real value to communities; they produce goods and services that improve our lives. The problem is they are essentially bound to put the bottom line ahead of everything else – even the public good. So the pressure is on corporations to deliver a profit, and to externalise any costs that an unwilling or uncaring public will allow it to externalise.**

## **Discussion: The status of corporations**

**(5 mins)**

**Do you think it's right for corporations to be granted 'legal personhood' and to enjoy rights without responsibilities?**

**Is it okay to allow legal structures that exonerate corporate bosses from taking responsibility for harms caused in the pursuit of profit?**

To take an example, you might want to consider the Volkswagen emissions scandal: Between 2008 and 2015, the car manufacturer Volkswagen programmed its vehicles' diesel engines to activate their 'emissions controls' only during lab testing, so that the vehicles passed regulatory testing, but emitted copious amounts of pollution in real-world driving. This act of corporate fraud caused a dramatic increase in pollution which is expected to cause 59 premature deaths (along with other health and environmental consequences). Yet many corporate bosses escaped accountability, while the corporation itself (headquartered in Germany) cannot be held criminally liable.

[Time from start: 01:02]

## **Example 2: A river**

**(2 mins)**

*Facilitator's spoken introduction – adapted from*

<https://www.nationalgeographic.com/culture/2019/04/maori-river-in-new-zealand-is-a-legal-person/>:

In 2017, New Zealand's Whanganui River became the first river on earth to gain the same legal protections as an individual, after a 150-year-long struggle by the Whanganui tribe to have their relationship with the river officially acknowledged. The victory gave the river 'legal personhood' status, allowing the Maori people to designate somebody to represent the river in court actions.

This addressed a long-standing injustice. For over a century, the New Zealand government and commercial bodies had exploited the river for its resources. Its rapids were dynamited to create easier passage for tourist paddle steamers. Its gravel was extracted for minerals. The river mouth became a drain for a city's sewage. In the process, Maori fisheries were destroyed and the river's ecological and cultural value were degraded.

Following the passage of the bill granting the river legal personhood, Gerrard Albert, the lead negotiator for the Whanganui tribe said: 'We have fought to find an approximation in law so that all others can understand that from our perspective treating the river as a living entity is the correct way to approach it, as an indivisible whole, instead of the Western model of treating it from the perspective of ownership and management... The river's new status means if someone abused or harmed it, the law now sees no difference between harming the tribe and harming the river because they are one and the same.'

## **Discussion: The status of the river**

**(5 mins)**

*Begin with pair discussion, and invite some pairs to report back:*

**Do you think it's right for the river to be granted 'legal personhood' and to benefit from the protections that affords, even if it is not capable of bearing responsibility?**

**If the river flooded its banks and destroyed artifacts in a nearby museum, should the river be sued for damages?**

**If someone drowned in the river, should the river be charged with murder?**

[Time from start: 01:09]

### Example 3: Animals: Property or Persons?

(3 mins)

*Facilitator's spoken introduction – adapted from the video 'Animals: Property or Persons?' by Voiceless – available at <https://www.youtube.com/watch?v=241srdGOFNk>:*

Currently, non-human animals can be treated as *property* of humans – and while they're property, they don't have legal rights.

We're going to be exploring the question of whether we should we *change* the legal status of animals so they *can* have legal rights. For instance, should we grant them the right not to be separated from their parents; or the right not to be held against their will?

Some lawyers argue that animals *should* have legal personhood so that their interests can be represented in a court of law.

We're shortly going to be considering whether the status of animals should be changed from *thing* to *person*.

But first, let's consider 'Tommy', a chimpanzee who is being held, all alone, in a small concrete cage in a New York trailer lot.

Lawyers argue that all chimps like Tommy have certain capacities that they share with human beings, and these shared capacities should entitle them to legal personhood: capacities like self-awareness, autonomy, choice, language, culture, and the ability to plan for the future.

The lawyers argue that because animals like Tommy have these capacities, they also have rights that protect these capacities, for instance the right to bodily liberty to protect their autonomy, and the right to have a lawyer act on their behalf if their rights are abrogated.

Some judges have not fully accepted the argument. They say animals are unable to bear responsibilities and carry out duties. And in order to be a person and have rights, you need to be able to take on responsibilities and obligations.

But lawyers at the Nonhuman Rights Project disagree. They point out that personhood has already been granted to nonhuman entities like rivers, forests, and corporations. Also, many humans (such as babies) who don't have these capacities still have rights. The lawyers at the Nonhuman Rights Project say that the reason why we don't grant legal personhood to animals is because we believe we are superior to animals. This worldview allows us to treat animals like Tommy in ways that we would not allow humans to be treated, even though they have the same relevant capacities as we do.

One judge who heard arguments from the Nonhuman Rights Project lawyers said: '*Tommy is definitely not a thing.*'

[Time from start: 01:12]

### Discussion: The status of animals

(20 mins)

*Begin with pair discussion, then open up to class discussion:*

Should animals have the status of 'things'?

Should Tommy (and animals like him) be granted legal personhood?

What do you think of the argument that Tommy ought to be granted legal personhood because he shares humanlike capacities like self-awareness, autonomy, choice, language, culture, and the ability to plan for the future?

What do you think of the counter-argument that Tommy should *not* be granted legal personhood because he can't take on responsibilities and obligations?

[Time from start: 01:32]

### Discussion: The basis of rights

(5 mins)

Should rights be granted on the basis of capacities – the kinds of capacities we considered in our previous session when we looked into what capacities entitle us to human rights? Or should rights be granted on the basis of needs – such as the river's need for protection?

If Tommy were to be granted rights, do you think it should be on the basis of his *capacities* or his *needs* (or a combination)?

Should rights always be accompanied by responsibilities?



[Time from start: 01:37]

### Discussion: The origins of human rights

(5 mins)

The UN Universal Declaration of Human Rights asserts that human rights are both *universal* (everyone is born with the same rights) and *inalienable* (they can't be taken away from us). On the other hand, we know that human rights derive from *negotiated decisions* among international stakeholders.

How can we reconcile these two claims? How can human rights be both universal and inalienable AND the products of contingent negotiations?

What gives human rights their legitimacy?

[Time from start: 01:42]

### Reflections / conclude session

(3 mins)

[Time from start: 01:45]

END OF SESSION

---

## For your reference:

### *Inspirations:*

The card sort activity in this session was inspired by the work of psychologists Thomas Suddendorf and Roy Burmeister. For further inspiration see Roy Burmeister's TEDx talk 'What Makes Us Human' at <https://www.youtube.com/watch?v=FwIDLe6O7NE>

### *Quotes about the overstatement of claims of human uniqueness:*

"One by one, almost all claims to human uniqueness have fallen aside, particularly when it comes to our close similarities to other apes. Perhaps the entire enterprise of looking for traits that distinguish us from other apes is misguided and the differences are more quantitative than qualitative?"

- Rob Brooks, Professor of Evolutionary Ecology. <https://theconversation.com/what-makes-us-human-24764>

"There's no doubt that human abilities are more developed than those of chimps, particularly when it comes to spoken language. The point is that the differences are not stark and absolute, but rather a matter of degree – and they get subtler the more we investigate them."

- Melissa Hogenboom, science journalist. <http://www.bbc.com/earth/story/20150706-humans-are-not-unique-or-special>

### *Text on printable cards:*

The boxed text below replicates the text on the printable cards:

#### **Distribute to GROUP 1 (and also to GROUP 5 for a large group of participants)**

*We have mobile shoulder joints* well suited to throwing and hunting.

*We blush when we're embarrassed.*

*We know that we will die,* and we are able to think about our own mortality.

*We have forethought.* We can imagine the future, plan, forecast, and make decisions with a view to long-term consequences.

*We use language to communicate.*

*We engage in politics:* we organise, govern, negotiate, argue, lobby, advocate and exercise power.

*We bury our dead* and adorn their graves.

*We use tools.*

*We are capable of caring for each other.*

**Distribute to GROUP 2 (and also to GROUP 6 for a large group of participants)**

*We have opposable thumbs* and other features of the hand and fingers that enable fine motor control. These features enable us to use technology and engage in detailed precision work.

*We are made of flesh and blood, and we go through developmental stages.*

*We have a conscience* and we have moral intuitions about what's right and wrong.

*We have self-control:* We can change our behavior to fit with other people's expectations or laws.

*We can think and reason logically.*

*We have social systems* like economic trade, division of labour and specialisation.

*We make war.*

*We have a long childhood.*

*We use medicine.*

**Distribute to GROUP 3 (and also to GROUP 7 for a large group of participants)**

*We have mostly naked (hairless) skin.*

*We have a big brain.*

*We have self-awareness.* We are conscious of our own individuality and separateness from the environment and other individuals.

*We can do philosophy.* For instance, we can contemplate what makes humans unique among other animal species.

*We have a physiology that enables us to speak* due to the location of the larynx and the shape of our mouth, tongue and vocal tract.

*We have free will and moral agency.*

*We have a complex and cooperative social life.*

*We make art.*

*We have advanced technologies.*

**Distribute to GROUP 4 (and also to GROUP 8 for a large group of participants)**

*We are bipedal* (we stand and walk upright). This enables us to use our hands for holding, carrying, picking up and touching. It also enables us to see from a higher vantage point than if we walked on all fours.

*We live in a moral community* that understands moral concepts and rules.

*We are sentient*: we can experience pain, comfort, joy and suffering.

*We are intelligent*.

*We have the FOXP2 gene* (a gene we share with Neanderthals and chimpanzees), which is critical for the development of speech and language.

*We understand that other people have mental states* (beliefs, desires, intentions etc) *that may be different to our own*. We can use this understanding to navigate complex social situations.

*We have culture*. We transmit knowledge from generation to generation.

*We wear clothes*.

*We shape our environment*. We cultivate land, build cities, exploit natural resources, change ecosystems, influence biodiversity, and cause climate change.