



**Episode 387 – What Rights are, Where They Come From,  
and Whether Animals Have Them**

**Guest: Gary Chartier**

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**WOODS:** It's funny: this is episode 387, and yet we're still talking about something as foundational as rights. It seems like libertarianism is this source of endless fascination. There is so much you can be talking about, so many different avenues to pursue. I want to talk to you in particular for reasons that may become obvious as we go along, but there are numerous ways in which libertarians or classical liberal thinkers have tried to ground the idea of rights, and I am curious to know about your own and how it deals with some of the objections to rights.

Can you define for us what a right is? I recall some time ago reading a definition that Father James Sadowsky, the Jesuit, gave. He's the only priestly Rothbardian I have ever met in my life, and he's probably the only one I ever will, for all I know, but he conceived of a right as something you possess when—now, this isn't a full definition, but it's a way of thinking about and grounding rights—it would be wrong of someone to interfere with your exercise of it. So that was his way of saying that if I have a right to use private property or the right to speak or whatever, it would be morally wrong for somebody else to interfere with it. Now, from that point of view it becomes easy to defend the idea of rights because all you're really saying is that a right simply imposes a moral obligation on somebody else not to do something to me, and it seems like most people would accept that way of thinking. What's your way of thinking about what rights are?

**CHARTIER:** Well, I think ordinary English usage doesn't always help as much here. We can think about that pop song from a few years ago: you have no right to ask me how I feel; you have no right to speak to me so kind. And there it just seems as if right turns out to be equivalent to just kind of broadly sort of moral entitlement, but I think when in legal and political philosophy we talk about rights, we are interested perhaps a little more narrowly in claims that can reasonably be upheld using force. There are all kinds of things that I might do in relation to you that we might both agree would be wrong that it might still not be appropriate for you to respond to using force, right? Let's say for instance that I, I don't know, I tell vicious lies about your childhood behavior to our mutual friends. It certainly is the case that I have done something morally objectionable that it's, in fact, clearly wrong for me to do. I have wronged them, and I

have wronged you, and perhaps even on some views, I have wronged myself, and yet, in that case we might say that force isn't an appropriate remedy there. You don't have the right to imprison me or to fine me for doing that, at least I think on ordinary both modern and classical liberal or libertarian views.

So I want to limit rights talk for this purpose, even if not for all purposes, but when we're talking legal and political philosophy, we'll limit rights talk to those claims that can be reasonably be enforced, and I suggest that those claims ought to be distinguished from others because they are precisely claims that have to do in the first place with our bodies and our justly acquired property. So force involved in one way or another restraining people's bodies and their use or possession. Then I think we ought to limit the use of force in those cases to instances in which bodies and justly acquired property are being interfered with. Now, we can go on to talk about what the grounds for that might be, but you asked about how we might want to define rights talk. So I want to limit rights talk in this case to claims with regard to bodies and justly acquired possessions that can be enforced in ways that involve, again, how we treat bodies and how we treat property.

**WOODS:** All right, so going from here I do, in fact, want to talk about how we would defend this idea of rights and where it would come from. Of course, as we've said, there are numerous ways this has been tried, and to be perfectly honest with you, I am not entirely happy with really any of them. I am making a confession here to all the listeners. Sometimes people ask me, well, is there anything weak in libertarianism or anything that you wish could be more robust, and so I want to be honest and say—I don't find a lot of the rights discussions to be preposterously implausible; it's just that I don't find a lot of them to just sweep me away by the sheer logic of them or that if I weren't already a libertarian, would I really be persuaded by them. I am not entirely sure. So I am interested in the Gary Chartier approach to this.

**CHARTIER:** Yeah, thanks, Tom. I am quite sympathetic to the approach to thinking about rights that we might derive from the new classical natural law theory that has been developed by some very, very sharp contemporary thinkers in the tradition of Thomas Aquinas. I don't endorse anything and everything that folks in that tradition say, but I am very taken with some aspects of their approach.

This is an approach that begins with the recognition that people flourish in a whole range of ways. Well-being has a whole diverse array of aspects or dimensions, and reasonable action is action that takes appropriate account of the various ways in which both agents and those affected by their actions can flourish—ways in which their lives can go well or go not so well. So we might think about a broad range of aspects of well-being including life and knowledge and practical reasonableness and play and friendship and religion and the aesthetic experience and some other things.

The key recognition, then, is that part of the way in which my own life goes well is that I need to take appropriate account again of my own flourishing and the flourishing of those whose

flourishing is affected by my actions. And what I choose reasonably in relation to my own flourishing, that is itself part of my own flourishing. There are several ways in which I can choose reasonably or not. So a couple of obvious examples. If we think that the various ways of a life's going well are, as I think they are, incommensurable and non-fungible, those are boringly technical terms, but the idea is that life isn't something that matters only because it contributes to play and religious experience isn't something that matters only because it contributes to aesthetic experience, and it's not the same thing as friendship. All these different aspects of well-being aren't reducible to each other and don't simply serve each other. They are equally fundamental. They matter in a way that doesn't allow them to be collapsed into each other, created as equivalent to each other, or therefore, placed on a common scale, and so if they can't be placed on a common scale, then it makes no sense to damage or attack or undermine one in the interests of one or more of the others—any instance of one or the other.

So the idea then would be what aspect of reasonable choice with respect to one's own flourishing or flourishing of others is that if all these aspects of flourishing are genuinely valuable, then it makes no sense to attack them, and if they are equally fundamental, then it makes no sense to subordinate one to any of the others. And so this yields one principle of reasonable action, which is yeah, don't attack an aspect of someone else's well-being either purposefully, don't make attacking an object at the object of your action, or instrumentally, don't attack it as a means to something else. Now, we recognize that our actions may in one way or another affect others' well-being in ways that we might anticipate, but that won't be intentional, and in those cases, it may be sometimes still be reasonable to act, and that's the way they would take account of cases like self-defense cases, but in any case, don't attack or harm another's well-being purposefully or instrumentally, and then there are multiple, other criteria of reasonable action, aspects of reasonable action, including don't arbitrarily prefer one instances of well-being or another or a person who is affected by one's action. Don't prefer one arbitrarily to another, and this is kind of their way of stating the basic point that we find certainly in Scripture and in a variety of cultural traditions in the Golden Rule.

From these kinds of basic principles, I think it is possible to develop an account of rights with regard, for instance, to people's bodies. It's possible to see purposeful attacks on other's bodies or instrumental attacks on other's bodies as consistently and always wrong, and from the Golden Rule, it's possible to develop a robust account of property rights as giving people access to those aspects of well-being that contribute in various ways to their flourishing and the flourishing of their communities. So we can talk in considerable detail about what that might look like. But my own approach to rights, then, builds on this basic sense of the importance of flourishing in the way and acting reasonably with respect to one's own flourishing and the flourishing of others is itself a way in which one's life could go well.

**WOODS:** There are a couple of standard objections to this type of account. Let me raise one that's not so standard.

**CHARTIER:** Sure.

**WOODS:** I am not aware of anybody in the new natural law tradition who would describe himself as an anarchist, but yet you do. So where do they in your view go wrong, or how do they go wrong? What conclusions are they reaching that you think maybe on the basis of their own principles they ought not to reach?

**CHARTIER:** In my book *Anarchy and Legal Order* that we've talked about before, I try to develop a defense of libertarian and anarchist views drawing on the resources provided by the classical natural law theory—and listeners who are passionately interested in this sort of thing can consult chapters two and three of that book for more information than perhaps they might ever have wanted—but in brief, what I would say is that the new natural law theorists seem to be insufficiently appreciative, first of all, of the possibility that social order can be maintained on a bottom-up basis. I think they tend to assume that solving coordination problems and otherwise fostering social order requires the action of something like Leviathan, and so I think they make a mistake in failing to recognize the real capacity for bottom-up, grassroots, social self-organization.

Another way in which I think that their approach ought to be nuanced, it could be nuanced in ways rendering it more hospitable to anarchism of the sort that you and I would embrace is that while they do have a sense of the value of property rights, I think their conception of property rights allows for a great deal of interference on the part of state actors and other kind of in a systematic way or at least it would seem to given the way they state it, and I think in the way in which they sometimes work things out, and so what I have tried to show is that we can get a more robust conception of property rights using their general approach, a more robust set of standards probably than ones that [inaudible] initially inclined to endorse. So there might be other factors. I think my view, for instance, they tend to favor interference with personal liberty sometimes in ways that reflect their preference for a retributive account of justice about which I have some doubts, but I think probably the failure to see the possibility for spontaneous bottom-up social self-organization and the view of property rights would be among the crucial areas where I think their view ought to be nuanced.

**WOODS:** How do the new natural law theorists deal with the so-called is/ought objection of David Hume? If you were really following in the Aristotelian and Thomistic tradition, I think you would say it's a non-problem, but how did they—because they would say that you were jumping from an is to an ought. You are saying this is the nature of human beings. They require such and such for flourishing. Therefore we ought to do such and such. Hume claims that's an invalid leap. How is that addressed?

**CHARTIER:** The new natural law theorists, as you well know, have tended to joust with older, kind of more traditional Thomist thinkers on just this point, in that traditional Thomism has tended to emphasize the importance of building from a rich conception of human nature to an account of ethics and political theory, and the sense has been then that you can start with an essentially descriptive account and get from there to a set of normative judgments. The new natural law theorists have tended to try to bypass that discussion by saying that when I

appreciate the value of life or knowledge or friendship or play as a basic aspect of well-being, that is, of course, itself a normative judgment. It's a judgment about what's good. It's a judgment about what's worth pursuing. It's a judgment about what I have reason to do. And their view is I start from there. I am starting, as it were, from an ought judgment, and therefore, my other normative judgments can be logically defensible because I am beginning from a normative judgment and moving on to other normative judgments. So they attempt to meet Hume's challenge then by saying that we can indeed have kind of basic, non-inferential knowledge of what's good, and so that's where we start.

**WOODS:** I also want to throw at you an objection that I see among some libertarians that would run something like this, and it's not just libertarians. It would be the claim that rights can't really exist. There can't really be such things because after all, look at this example over here of this person who just got beaten to a pulp. Or look at the state of nature, where people are—at least in the standard account of the state of nature—victimized repeatedly. This goes to show either that there are no such things as rights, or that they are conventions, or that they require the state in order to exist. So how do you—is that just confusion? How do you respond to that?

**CHARTIER:** It seems to me that saying—that somebody gets beaten up, and that this shows that there aren't rights is sort of like saying that somebody writes down two plus two equals five, and it therefore follows that there are no mathematical truths, right? So my view to say that there is a right—that I have a right against you of some sort is to say that you have a good reason, and presumably ordinarily a decisive reason, to behave in a certain way in relation to me, and whether or not you acknowledge that reason is another matter entirely. Rights talk doesn't purport to be causally efficacious. The point is not that if you have a right, then there is some kind of guarantee—a physical guarantee that that right won't be violated. It's just I think a conceptual confusion to suppose that if rights are not respected, they must not exist, because rights talk is talk about the kinds of reasons people have, not necessarily a kind of description of how they can always be counted on to behave.

**WOODS:** I notice you talk about actions that would involve the invasion of somebody, and you may know that Stephan Kinsella has often preferred the term body ownership to what he considers the more confusing and clunky self-ownership. I have noted in libertarian circles that there has been, among libertarian philosophers anyway, a kind of either a backing off from the idea of self-ownership and/or the nonaggression principle or rewording it in a different way, but it seems to me that what you're describing that you have derived from the new natural law theorists, it really does arrive at the nonaggression principle anyway, just through a different route.

**CHARTIER:** Yes, I think that's right. I think the talk about self-ownership and talk about non-aggression can be defended in this way, and I do try to spell this out in *Anarchy and Legal Order* in some greater detail. I think that obviously there are puzzles that are raised when we use the language of self-ownership, and somebody who just tries to take the language literally and out

of context and perhaps push us in absurd directions in one or another, but I think the language of self-ownership and nonaggression can serve as a very useful way of summarizing the conclusions that I believe we can defend regarding the importance of respecting others' bodies and respecting others' property that, you know, it may be possible for us to work out in some greater detail, and I think sometimes people act as if they can simply cite—talk about self-aggression or about nonaggression or self-ownership, and that that is an argument stopper that that immediately solves all the problems. I think it's better to see those as summaries of conclusions we can reach after doing a fair amount of careful, logical [inaudible] work, but I think if we do that [inaudible] work, we can get to those kinds of conclusions, as I try to suggest in my book.

**WOODS:** Bear in mind that you are not a specialist in this area, and I don't want to put you on the spot. Nevertheless, I was intrigued by the section in your book *Anarchy and Legal Order* that deals with animals. It is of particular interest to me because one of my five daughters, who is about to turn 12, is an animal lover. She volunteers at the local humane society—all that sort of thing. She donates her own money to causes for humane treatment of animals and so on, and so she was wondering if I could talk about this subject on the show. I think the traditional way that we've seen libertarians deal with this question is to say that human beings probably have a moral obligation to be humane in their treatment of animals, but that animals don't have rights. What is your thought on that?

**CHARTIER:** Well, I think that as you rightly suggest, I am not an expert. I have written just a little about this. And I certainly recognize that certainly other libertarians probably have more interesting things to say. As I mentioned to you in an exchange we had earlier, I really want to encourage people, for instance, to check out the work of Stephen R. Clark, an English anarchist and libertarian philosopher who has written several books on this topic on the moral status of animals. But on my view, when we think about respect for other humans' bodies and any other aspects of their well-being, we do so because we recognize that there are genuine aspects of their well-being that we also acknowledged our aspect of our well-being, and that it really does seem irrational to acknowledge that life matters when it's my life, but that I can just dismiss that as insignificant when it's yours.

There's obviously a lot more to be said about that. I don't want to trivialize a complex discussion, but I think when we observe at least some non-human animals, we see the ways in which their lives go well, which again, I think recognizably precisely in part because we can discern in them commonalities with our own, and this is sometimes spoken about as a variant of what's called the argument for marginal cases. The idea is that we acknowledge that we ought to respect vulnerable and sometimes, in one way or another, limited humans who exhibit perhaps few of the characteristics that we associate with fully flourishing human existence in one or another—perhaps physically or mentally. And yet we say, we're not going to write them off. We regard them as still—in some ways their lives can go well that we recognize as real, and we take those seriously. And it seems as if this is true in the case of a number, at least, of non-

human animals, to say that life or friendship or other aspects of human well-being—play—matter. It's hard not to acknowledge that those same aspects of well-being seem to be evident in the lives of at least some non-human animals. Now, obviously, there are accounts of rights in accordance with which a right has to be actively claimable in order to be worthy of respect.

**WOODS:** Right, and that would be the traditional Rothbardian dismissal of animal rights—that the antelope doesn't go into court suing the attacker.

**CHARTIER:** Right, and I certainly understand that concern with a right as a kind of safeguard for autonomy in that way that to be taken seriously has to be asserted by an autonomous agent. I guess I would want to at least ask whether we couldn't think about the case of some non-human animal though, again, in a way that's analogous to the way we think about the cases of some vulnerable humans who aren't able to assert their rights. There is actually a kind of Rothbardian model that I draw on in my discussion of this in the book, which has to do with the ability to, in one way or another, homestead unasserted claims or to act in one way or another as an agent for somebody who isn't in a position to assert his or her own claims directly. I guess I can imagine at least a legal model in which some claims on the part of at least some non-human animals might be vindicated even though absolutely the antelope can't go into court and vindicate a claim, but perhaps, if I go out and maim the antelope, perhaps there is something that you in one way or another as an agent acting on behalf of the antelope might be able to vindicate. I don't think we need the state for that, but I think we can imagine agents taking the role of defenders there in the legal system. There's a lot more to be worked out there, but I can at least float that idea.

**WOODS:** And I think the way it would likely work would be given that in a purely free society, you would have a whole variety of neighborhoods and communities that would have their own rules for all kinds of behavior.

**CHARTIER:** Of course. That's right.

**WOODS:** Don't paint your house pink and stuff like that, and people would voluntarily consent to those, and presumably it would also be, and by the way, please don't mutilate animals. I mean, I think it would—people would sort themselves in a way like that. But on the other hand, it's possible to imagine people who sort themselves in a way that all the sadists in the world get together, and they do just want to engage in just pure cruelty, just unvarnished cruelty. And there's a part of me that feels like I just—I am not a bleeding heart, but I have a heart, and I don't think I can conceive of animals being just a species of land, just like natural resources, homesteadable, and once you have them, you can treat them the way you would treat any object you might have. I can't quite accept that.

**CHARTIER:** I think there's a notion for anybody who's actually engaged in a meaningful way with a non-human animal, and I am not just thinking, of course, about the domestic pets we often come to know well, but even, you know, more alien, more wild creatures. I think it's hard for somebody to have that kind of engagement and still think of that creature as just kind of

raw material. And again, it's complicated because there is, to use that familiar language, the kind of great chain of being, and there's a huge difference between the amoeba and the whale, and I don't know exactly how to draw or where to draw some of the relevant lines in the air, and I haven't really tried to do that, but when I think, for instance, about the fact that an elephant, say, can pass the mirror test—can recognize itself in the mirror as a self, and that's something we verified about 10 years ago when some work of Franz der Waal highlighted that, it seems to me that it becomes really difficult to just say therefore this is a homesteadable piece of stuff. What you do with that—I don't want to be dogmatic about it all, but I think the sadist is doing something wrong, but it seems to me it's very hard for me not to see the sadist in the case certainly of a creature like the elephant, it's hard for me not to see the sadist in that kind of case as engaging in a rights violation.

**WOODS:** Yeah, as I talk this out with you, Gary, I am shifting towards you on this, which I didn't really expect to happen, but it's just—as I give it more thought. I am opening myself up to all kinds of assaults by people over my lack of purity, but it makes me a more interesting person maybe, right? It's fun being interesting.

**CHARTIER:** You're thoroughly interesting, Tom; that's the great thing about talking with you.