



# Nonhuman Animals and the Scope of Justice

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## 1 Introduction

Nonhuman animals and their interests are pivotal for normative ethics. For environmental decisions and policies are considerably affected by the nature of the obligations of human agents (whether individual or collective) which concern nonhuman creatures, with regard both to their content and to the degree of priority that they have with respect to other obligations.

While it is widely held that we can have obligations towards nonhuman animals, there is far less agreement about whether these can be obligations of justice, and whether they can be overruled by obligations of this same kind. This makes a great deal of difference, because if our admitted obligations towards or with respect to animals can be overruled by our obligations of justice, then obligations towards or with respect to animals count for little, and the inclusion of nonhuman animals within the scope of obligation turns out to be a much slighter achievement than it might initially have seemed. It is widely held that our obligations of justice are obligations to individual humans or to groups of humans, and where this assumption is held, obligations to animals, even if recognised, will have at best a peripheral status.

To some it may seem that a recognition of animal as bearers of moral rights resolves this problem, because rights have a prominent place in people's understanding of justice. But it can be replied that not even acceptance of animal rights would resolve the problem just mentioned. This is because so much still turns on conceptions of justice and its scope. For a theory of justice might accept many kinds of rights, and yet still deprioritise some of them, in which case the obligations to animals based on these 'rights' could still be peripheral ones, particularly where the supposed rights of animals clashed with human rights. There again, justice could be so conceived that human interests were understood to take priority, and the supposed

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rights of animals could be held to make a difference only in cases where no human interests were at stake. This is not to say, though, that legal rights for nonhumans do not play a practical role in considerations of justice.

Accordingly, whether or not animal rights are recognised, there is a danger that ethical theories that include within the scope of moral concern the interests of (say) sentient beings, or maybe of nonhuman creatures in general, may make far less difference than they at first sight seem to do. The relevant theories are sentientism (which takes into account the interests and thus the good of sentient animals) and biocentrism (which takes into account the good of all living creatures). These theories initially appear likely to make great changes both to individual life-styles and to public decision-making. But if nonhumans are not recognised as falling either within or at the margins of the scope of concern for justice, then the implications of both sentientism (see Hare 1993) and of biocentrism (see Nolt 2015) are liable to be overridden by considerations of justice, with human interests trumping those of nonhumans because of the assumption that this is what justice requires.

In this paper we first survey a range of theories of justice. The theories considered will be contractarian theories, Kantian ones and other kinds of deontological ones, theories based on virtue ethics, and consequentialist theories. We will then argue that one form of consequentialist theory, the kind that prioritises needs (and within needs, basic needs) can overcome the problem just specified, and make provision for the basic needs of nonhuman creatures to be prioritised over less basic human needs and other human interests within our understanding of justice. Thus understood, justice may not after all deprioritise nonhuman interests, and theories such as sentientism and biocentrism can retain the powerful implications that they have usually seemed to have.

## 2 Contractarian Theories

Our survey of theories of justice begins with contractarian theories, theories concerned with what rational agents would agree to when negotiating on a level playing-field. The most influential contractarian theory of recent times has been that of John Rawls (1972), whose contracting parties are self-interested individuals without awareness of any human relationships. The Rawlsian conception of justice tends to be tied to a Kantian conception of personhood that maintains that being a recipient of justice depends on having a capacity for a sense of justice or depends on whether one can be classed as an autonomous, rational person who has relations with other such persons, or on being able to enter into a contract, something that nonhuman animals cannot do.

Theories of this kind can prove a useful model when what is at stake are inter-human dealings such as issues of trade, or, there again, voting entitlements. But the presupposition that the contracting parties are rational agents already begs the question, where the question is the place of nonhuman animals within justice. For rational agents, and particularly self-interested ones, are unlikely to agree to make provision for animals, except perhaps as property. Parallel criticisms can be raised for contract theories other than that of Rawls, such as theories that are

based on what we (rational agents) can reasonably expect of one another, for again animals are excluded from the agreement. This case is explained in greater detail in Attfield and Humphreys (2016, 2017).

However, so narrow and historically rooted is such a conception of justice that while animals are often recognised as being direct recipients of moral obligations, they have not, in general, tended to be recognised on liberal principles as having interests that can be considered as a matter of justice (see further Humphreys 2023, p. 108). But, as Mary Midgley has argued, 'In this theory a certain area of morality — the nature of bargains made by rational consent between articulate, self-interested, contracting parties who are equals in power — monopolizes attention. What lies outside that lit [illuminated] circle gets neglected' (1983, p. 51). Such a notion of justice is deeply problematic, a distortion of what matters in issues of justice (including the fair consideration of the interests of vulnerable beings, nonhumans included).

Despite various attempts to extend contractarianism to animals, the problem of exclusivity is a grave one, particularly for animals themselves who end up being outside of that special illuminated circle of justice. Indeed, Martha Nussbaum, although influenced by Rawls, has also argued that liberal principles do not appear to sufficiently consider what nonhuman animals are owed, as a matter of justice (Nussbaum 2006, pp. 327-33), claiming that extending justice to animals on the basis of what she calls the 'so-like us approach' (an extension on the basis of, for example, rationality, self-direction or autonomy) 'is too narrow, unworthy of the alienness and sheer diversity of animals' lives' (2023, p. 20).

A serious issue with regards to recognising nonhuman animals' interests in practice as a matter of justice from within liberal frameworks is that in liberal societies, human beings are free to reject a principle that 'impacts negatively upon their... conception of the good' such as, for example, a conception of the good bound to promoting economic interests at the expense of animal welfare (see Garner 2013, p. 38; see further Garner 2002, pp. 88-89). Again, nonhuman animals' significant interests and even basic ones can easily be trumped by the less significant, non-basic interests of humans.

There are, of course, other problems for contractarian theories. Thus they have great difficulty in handling even inter-human issues that are inter-generational, and in adequately representing future generations, adequately, that is, for generating an acceptable theory of inter-generational justice, but these issues cannot be considered here. Further, feminists have made the shrewd observation that Rawls' contracting parties are abstractions and in no position to decide on rules for society (including rules of justice) through their lack of relationships; they can be well described as 'disembedded and disembodied' (Benhabib 1992).

And even if other contract theories, such as that of T. M. Scanlon (2000) could imaginably overcome this problem, the previous problems would still stand. We can, accordingly, disregard Rawls' exclusion of nonhuman animals from the sphere of justice as itself an artefact of the skewed model that he and other contract theorists have employed and continue to employ to set up their theory of justice in the first place.

### 3 Kantian Theories

We now turn to Kantian theories, but at once find that because of their basic feature of being based on respect for rational beings, they leave no room for direct obligations towards nonhuman animals (other than angels) (Kant 2005). It might seem possible to generate some more promising principles if we began with one of the other formulations of the Categorical Imperative, such as the requirement of universalisability; but that is not going to help if we accept the assurance of Kant and of many Kantians that the different formulations imply one another, including the formulation of respect for rational beings and treating them (but only them) as ends and not means. Schopenhauer's revision of Kant's ethics could provide a more promising basis for some kind of consideration of nonhuman animals (Schopenhauer 2005 [1839]), but that revision effectively involves a completely different starting-point, and can thus be included among different deontological theories.

That said, contemporary challenges to standard interpretations of Kantian ethics have been presented in the work of Christine Korsgaard (2018 and 1996). Although she argues against the indirect view (which makes the wrongness of harming nonhuman beings turn on its indirect harm to humans) (Korsgaard 2018, p. 102), she presents Kantian arguments for our obligations to nonhuman animals, starting from the idea of humans as ends in themselves, and culminating in an obligation to view all nonhuman conscious creatures as ends in themselves, too:

As rational beings, we need to justify our actions, to think there are reasons for them. That requires us to suppose that some ends are worth pursuing, are absolutely good. Without metaphysical insight into a realm of intrinsic values, all we have to go on is that some things are certainly good-for or bad-for us. That then is the starting point from which we build up our system of values—we take those things to be good or bad absolutely—and in doing that we are taking *ourselves* to be ends in ourselves. But we are not the only beings for whom things can be good or bad; the other animals are no different from us in that respect. So we are committed to regarding all animals as ends in themselves (Ibid., p. 145).

Our justifications for action, Korsgaard argues, assume that some ends are absolute goods, and all we have to uphold such goods is awareness of ourselves as creatures for whom things can be good or bad. Further, our reason for including fellow nonhuman animals in the moral community is that we can recognise that the relation by which we stand to ourselves (in respect of our own good, our own good absolutely, 'as conscious living creatures') is the relation that we recognise in the lives of nonhuman conscious animals: it is 'a condition we share with other creatures' (Ibid., p. 148). (Thus Korsgaard supports a relational view of the moral standing of animals.) (For a critique of relational views of moral standing, see Attfield 2014 [2003], pp. 110-14. See also Humphreys 2023, p. 122.) As outlined by Jonathan Birch, this reformulated Kantian position could be seen to focus not on rationality as of fundamental value, but on sentience: 'If I take myself *qua*

*sentient being* to be of fundamental worth, then I must likewise take other sentient beings to be of fundamental worth. I can't rationally deny to other sentient beings the worth I take myself, qua sentient being, to have' (Birch 2020, pp. 7-8).

However, pace Korsgaard, it is far from clear that what is *good for* us must be good absolutely, even if one believes in an absolute good. Nor is it clear that we must presuppose absolute values before we decide how to act. In addition, while accepting that nonhuman animals can be talked of as being 'ends in themselves' (see further Korsgaard 2018, pp. 141-46), it is also not clear that we must presuppose that sentience (rather than rationality) is of value in order to act rationally, on the Kantian view at least (see further Birch 2020, p. 8).

In addition, there is a problem that is apparent when we consider the Kantian general emphasis on choice and autonomy in relation to conceptions of the good, for any conception of the good, based from the position primarily of the rational human being (free to act on their autonomous choices) could omit a conception of the good that recognises nonhuman animals as ends in themselves. That said, Korsgaard argues that 'Beneficence requires respect for someone's animal nature, not merely for his rational nature' (Korsgaard 2018, p. 145). Plausible as this is, there is a tension between this claim and obligations to respect a person's freedom of deliberation as a rational agent. One's conception of the good life may not involve those aspects of our 'animal nature', and if so, one is unlikely to recognise our commonalities with other animals.

However, Korsgaard's claims regarding absolute value may escape objections that apply to self-regarding accounts of value, but they still fall foul of the previously mentioned problems, and it is hard to see how claims regarding absolute value as *derived from* or at least *understood from* the position of ourselves (qua rational beings or even qua sentient beings) are better alternatives than an understanding of value that considers the good of creatures to be nonderivative, of value *in and of itself*, and of value even in the absence of human beings or valuers. (For further discussion of independent or intrinsic value, see Atfield 2019 [1995], chs.3-5). Of this aspect of Korsgaard's view, Nussbaum states, 'Korsgaard insists, here as in the lectures, that all value is a human creation. It does not exist 'out there' to be discovered. So when we value the lives of nonhuman animals is it because we confer value upon those lives, as we do upon our own. Korsgaard's reasons for her view are Kantian: our reason is limited in scope, and does not entitle us to make claims that go outside of the bounds of our experience' (Nussbaum 2022, p. 72).

Nussbaum argues that while proponents of the capabilities approach to justice for nonhuman animals (see Nussbaum 2022, ch.5) do need to reject certain metaphysical positions (and we should add, as do proponents of other cognate approaches), when making political decisions regarding those pluralistic ends of a society that wishes to lay the foundations for minimal justice for animals 'there is no need to decide between Korsgaard's view that all value is internal to a point of view and the position that animals have intrinsic worth (a view I hold)' (Ibid., p. 95).

There is, though, still a worry about internalist positions of value in general, particularly in the light of the climate crisis and our obligations to future generations of nonhuman animals. Given the possibility of nonhuman species outliving human beings, in practice the view that all value is internal to human points of view would

likely have different consequences from the view that nonhumans have independent value. Such consequences could mean, for example, a lack of consideration for nonhumans in the distant future who are likely to be left out of valuers' concerns (left out either now or in the future). Further, given that at least some nonhuman beings could well outlive humans on the planet, the internalist value position gives us little reason to, for example, continue to reduce emissions in the present on behalf of these nonhumans to the point where they can still meet their basic needs in the future, in a world in which valuers (human but also possibly nonhuman ones) could be absent. Consideration of such nonhuman creatures who could exist in a world without valuers would require much more strenuous efforts to reduce emissions in the present (see further Humphreys 2020, p. 58).

Further, there are some known unknowns with regard to value; unknown creatures which we know we do not know about (and such creatures could well have value), and thus are likely not to be cared about or valued from an internal point of view. Unknown life in the rainforests might provide one example here, as does the world and life under the Antarctic ocean. Certainly we can say that people (and other animals) hold these things of value from their internal points of view. But the strong conviction that these things have value even in the absence of valuers is not accounted for.

That said, Korsgaard's position may be considered to be much more than a revisionist Kantianism in relation to its recognition of nonhuman animals as ends in themselves, with some implications of her stance having some commonalities with animal rights positions, whilst still retaining some elements of the ethical or rational humanist slant of Kantian animal ethics. (For more on Kantian ethics and animal rights, see Nesseler 2023, pp. 42-64. For an in-depth discussion of Korsgaard's arguments in *Fellow Creatures*, see Nussbaum 2022, ch.4)

## 4 Other Deontological Theories

We should next consider other forms of deontological theories of normative ethics. Such theories have taken numerous diverse forms and advocated widely different principles. But historically most have prioritised principles such as refraining from the unjustified killing of human beings, or the keeping of promises and/or truth-telling to fellow users of human language. (We have in mind theories such as that of Sir David Ross (Ross 1930).) Certainly there have also been theories sympathetic to nonhuman animals, like Schopenhauer's theory of compassion, and theories based on rights, including theories in which animal rights have been acknowledged (a stance in which Schopenhauer himself also shared: see *The Basis of Morality*) (2005: 1839). Schopenhauer's view that compassion for animals is needed for a good character resembles the later stance of Rosalind Hursthouse, the limits of which are discussed in the section on virtue ethics (below). Meanwhile none of these pro-animal views are easy to square with Schopenhauer's theory of value, manifested in his claim (made in *The World as Will and Representation*: see Larrimore 2001, 262-4) that the world would have been better in the complete absence of sentient creatures, because pain is far worse than pleasure. On this basis, the value of both

human existence and of that of sentient nonhumans is implicitly negative. Accordingly, Schopenhauer's overall stance lacks the kind of theory of (positive) value that might serve to underpin the priorities that need to be observed between human and nonhuman needs, and between other human and nonhuman interests.

This is also apparent in rights-based theories such as that of Tom Regan who argues that all creatures who are 'subjects-of-a-life' have inherent value and that all who have this value have it equally (Regan 2004 [1983], p. xxxiv). His notion of 'subjects-of-a-life' is tied to the possession of certain cognitive faculties such that when subjects-of-a-life are harmed and benefited, it matters to *them*. Thus, those that have inherent value are self-aware creatures, not merely sentient, and such creatures have a moral right to be treated respectfully. With regards to such creatures, we have a prima facie duty to treat them always as an end, and never merely as a means (Regan 2004 [1983]).

One theoretical implication of this rights-based view is that benefits accruing from treating such creatures instrumentally, 'as if they exist as resources for others', cannot be appealed to as a justification for causing intentional harms. Moral rights, then, are inviolable in this sense: 'The grounds for finding unjust any practice that treats individuals who have inherent value as renewable resources are distinct from consideration about the consequences of such a practice' (Ibid., p. 344). Indeed, for Regan, practices that treat subjects-of-a-life as expendable resources reveal an '*impoverished view*' of the value of these creatures and are unjust (p. 344). In practice, one implication of this is that (with regards to commercial practices that use nonhuman animals who are subjects-of-a-life) even where practices ensure that the animals used live well or supposedly lead good lives, these practices would still be unjust if they treat the animals used as replaceable.

Though many nonhuman animals should be given the benefit of the doubt, there are, for Regan, nonhuman animals who are clearly subjects-of-a-life, including all mammalian animals who have the attributes of 'Perception, memory, desire, belief, self-consciousness, intention, and a sense of the future' (Ibid., p. 81; see also p. 243). Regan claims that these are the characteristic features of at least normal adult mammals aged one or more (Ibid., p. 81).

Regan supports an abolitionist view with regards to farming and animal experimentation, both being practices that utilise nonhuman animals as expendable, thereby violating their rights. Although animal experimentation may use other animals who are not deemed to be subjects-of-a-life, Regan accepts that there is much controversy over where to draw the line between those that are conscious and those that are not. Given this uncertainty, animals used in experiments should be given the benefit of the doubt (Ibid., p. 366). Besides, pain and suffering are morally relevant too and this needs to be considered as important within Regan's rights view. But sentience itself, though necessary for rights, is not sufficient for being a subject-of-a life on Regan's view.

That said, even where nonhuman animals are accorded rights on Regan's view, issues abound with regard to conflicts of interests. Indeed, one may consider here the hypothetical lifeboat scenario presented by Regan himself. We are to suppose that there are four normal adult humans and a dog on a lifeboat, and all will die unless one being is thrown overboard. In judging who should be thrown overboard

in such a scenario, Regan's answer is that the dog should be thrown, as this would be a lesser harm than throwing any one of the human beings.

This is because humans, for Regan, are harmed more by death than are dogs: 'Death for the dog, in short... is not comparable to the harm that death would be for any of the humans' (Ibid., p. 324). Regan also claims that the same would be true even if we threw millions of dogs over the side of the lifeboat instead of one of the human beings. The harm caused by death for any sentient creature is a matter of the foreclosure of the opportunities for satisfaction, and death in the human case forecloses more of these opportunities than it does in the case of a dog (or of dogs, or nonhumans more generally). So although all-subjects-of-a-life have equal inherent value, not all have lives of equal value. Much depends on their opportunities for satisfaction in life, and humans' opportunities are greater because they have 'the satisfaction that flows from thinking impartially about moral choices' (p. xxxv).

But it is not clear that no nonhuman animals have greater opportunities for satisfaction than human beings, and it may be the case that some nonhuman creatures have interests which are more fulfilled (and which they have more opportunities for fulfilling) than some human beings. Further, Regan's claim about 'thinking... about moral choices' being an additional opportunity that humans have (but which nonhumans lack) seems to retreat back to an age-old bias in favour of (certain) humans on the basis of their moral agency. Certainly moral agency is sufficient but not necessary for moral standing on Regan's view, but nevertheless, he seems to appeal to humans' extra opportunities for satisfaction (specifically, regarding moral choices) when considering how to weigh interests in cases of conflicts. But it is not always clear that this would be a relevant moral factor, as a long history of unjustified medical experiments on humans (on the basis that they lack moral agency or some other characteristic deemed to be uniquely human) has shown us.

In conflicts of interests, consequences do matter, contrary to Regan's view. But the ability to have opportunities for the satisfaction of moral choices seems irrelevant in regards to lifeboat scenarios in which the interests in conflict are those of continued existence. A human may have more morally significant interests in continued existence than a dog, but this may not always be the case and much depends on what is at stake for the creatures concerned. Indeed, the interests of humans may not always outweigh the interests of the nonhumans, and this is what needs to be recognised as a matter of justice in order that nonhumans' interests do not always get trumped by human ones. (Similarly the interests of sentient creatures may not always outweigh the interests of nonsentient ones; much depends, again, on what is at stake for the creatures concerned. Of course, Regan's view is sentientist and so he would not consider nonsentient creatures to have direct moral relevance in any case.)

Besides, Regan's claim regarding throwing the dog overboard is in tension with his claim that all subjects-of-a-life have inherent value. Indeed, it is unclear what work 'inherent value' should do in cases of conflict if all subjects-of-a-life have inherent value equally (but some creatures, in cases of conflict, are implied to have it more than others). In addition, Regan attaches value to beings themselves, rather than their experiential states (p. xxxiv), and as such it is also not clear that he can consistently appeal to the satisfaction of opportunities to make judgements about which lives have more value when interests conflict.



Indeed, here, the duty-based rights approach seems to be unable to make such judgments unless either it violates its own principle (that is, regarding all creatures having inherent value and having it equally) or collapses into consequentialist appeals to, for example, the value of certain experiential states (such as satisfaction or fulfilment) and / or states of affairs (which could include possible sources of satisfaction). (For a further discussion, see Jamieson 1990).

While Regan's rights-based theory is, in the literature, generally considered to be anti-speciesist, it does, in fact, sit uncomfortably with some animal ethicists, one of whom is Gary Francione (2008) who claims that Regan 'links moral significance with the concept of being a 'subject-of-a-life', a notion focusing on cognitive characteristics beyond mere sentience and requiring a sort of preference autonomy, or the ability to satisfy preferences and not merely to have interests' (Francione 2008, p. 13). (Regan's position here is problematic in itself because many sentient creatures who do not have the characteristics sufficient to be subjects-of-a-life may nevertheless have more morally significant interests at stake when their interests conflict with those who are subjects-of-a-life.) However, as Francione argues, if human life is qualitatively different from all nonhuman life in the way Regan says it is, 'then there is a nonarbitrary way to distinguish humans from nonhumans for the purposes of treating the latter as... resources, which Regan ostensibly rejects' (Ibid., p. 13). But, in effect, Regan's view has an unwanted implication, which is that we end up judging all conflicts of interests in continuing existence on the basis of species membership alone (Ibid.), reducing our judgments to a speciesism that Regan himself wants to challenge.

Joan Dunayer presents a similar objection. Challenging what she considers to be anthropocentric bias within some supposedly anti-speciesism stances, she argues that the positions of some theorists accord greater moral significance to nonhuman animals who are human-like in terms of their cognition, thereby according greater (not equal) consideration to such creatures when interests conflict. Dunayer rejects this, arguing for equal moral rights and legal protections against abusive treatment for every sentient creature, regardless of their cognitive capacities (2004, chs.8-9).

Such legal protections are certainly needed if nonhumans creatures are to be treated respectfully as a matter of justice. In the UK alone, the number of scientific procedures being carried out on animals in 2022 was 2.76 million, with a 'large number of procedures conducted on animals for the purpose of basic research (53%) where there is no legal requirement to use animal research and therefore more scope to explore non-animal approaches' (FRAME, n.d., accessed 2024).

While the 3 Rs (the imperative to replace, reduce and refine the use of nonhumans in the practice of animal experimentation: Russell and Burch 1959) could, indeed, be recognised as, in some sense, deontological ethical standards pertaining to non-human animal welfare, nonhuman animals are still being used for many tests for which there are alternatives (Cruelty Free International 2023), with an unacceptable number of animals being used in research that cause severe suffering (see RSPCA 2023). This is largely because rules around animals used in experiments allow for issues of practicality to overrule the interests of animals in not suffering.

Where animals used in the practices of animal experimentation and intensive rearing are concerned, they are treated differently from those same species of

animals that are not part of such practices. Indeed, their morally significant interests are often deprioritised; such is the extreme compartmentalisation that we see in attitudes to animals within these practices (on the one hand) and attitudes to the same species of animals outside of such commercial practices (on the other hand) (Humphreys 2022).

In general deontological theories appear either to find no place for nonhuman animals, or to accord nonhuman animals an insufficiently theorised position within deontology, or to grant them rights (or at least respect), but rights (and/or respect) liable to be deprioritised or deselected when they clash with either human rights or obligations owed to human beings. Altogether, deontological theories are unlikely to uphold theories of justice in which nonhuman animals have a secure place.

This raises the question of what to do when the fundamental legal rights of humans and other animals conflict, but consequentialist considerations within judicial systems will have a key role to play here, granted that such conflicts need to be tackled in a fair manner, giving appropriate recognition to the nonhuman animals' interests involved.

## 5 Virtue Ethics

To turn to virtue ethics, this traditionally anthropocentric approach can be adjusted to require consideration of nonhuman animals, as Rosalind Hursthouse has shown (Hursthouse 1999). Unlike some virtue ethics approaches (see, for example, Scruton 2000, pp. 209-28), Hursthouse's approach recognises the good of animals as of direct moral concern. As she states, exercising the virtues in dealings with nonhuman creatures 'involves focusing on the good of the other animals as something worth pursuing, preserving, protecting, and so on' (Hursthouse 2006, p. 153). Exercising a good disposition of character via the virtues, she argues, 'necessarily involves *not* focusing on oneself' but on the good of other creatures, humans and nonhuman included (Ibid., p. 153). This suggests that, following Aristotle, eudaimonia need not be linked to a self-regarding account of what is conducive to *my* own flourishing as an individual. For example, a callous agent may regard many kinds of callous acts as conducive to her own flourishing, but such a person would *not* be considered virtuous on Hursthouse's view. Accordingly, not taking into account the immense suffering of animals used in, for example, the practices of animal experimentation or factory farming could be seen as callous, and where humans subject animals to violence and suffering for peripheral human purposes, that treatment of animals could be seen as cruel (see Hursthouse 2006, p. 144).

While Hursthouse's approach is more plausible than the indirect duties approach (see Humphreys 2022 for further discussion here), her appeal to the good of creatures strongly suggests that our treatment of nonhumans can, indeed, be morally assessed independently of virtues (and vices). Indeed, while emotional responses such as compassion and empathy do play a key motivational rule in guiding conduct, they are not necessary for right action (Humphreys 2023, pp. 122 and 129).

Moreover, for Hursthouse, the virtues are needed for human beings to flourish and *this* is why we should cultivate the virtues: "the virtuous agent [is] at the centre

of its theory” (Hursthouse 1995, p. 62). This then makes the theory susceptible to problems related to ethical egoism if not moral relativism; in spite of the plausible claim of Hursthouse regarding animals having a good of their own, giving animals’ interests due consideration may not be conducive to one’s flourishing if one’s conception of the good life does not involve treating animals with compassion, kindness, and so on.

So the focus of virtue ethics on human flourishing appears to sit uncomfortably with taking animals’ interests into account for their own sake as a matter of justice (see further Steiner 2005, pp. 15-17), with no solid reason to consider animals’ interests as being capable of being prioritised (whether or not the good of animals is recognised as being conducive to the good of humans) in cases of conflicts of interests between humans and nonhumans.

Giving animals what they are due as a matter of justice does not depend on being able to exercise, say, compassion for each and every individual animal, and the extent of the numbers of animals used in practices that cause animals to suffer makes this impossible in any case. That said, undoubtedly moral emotions and attitudes can play a role in informing humans of right conduct. But they are not, in and of themselves, what makes certain treatment of nonhuman creatures just or unjust.

Overall, virtue ethics is limited both by its characteristic appeal to Aristotle’s human-centred account of virtues including justice, and by the claim of Aristotle and most of his successors that the virtues are invariably beneficial to the human agents who possess them, an appeal ultimately antithetical to animal interests being taken seriously. For in many practices, little or no prioritising of nonhuman interests is likely to benefit the interests of the human agents concerned.

## 6 Consequentialism

Now we come to consequentialism. Consequentialism has an honourable record of taking the interests of sentient beings into account (from Bentham onwards). But it is often found unconvincing in matters of justice, particularly in its utilitarian form, through apparently failing to provide for just distributions of well-being and of its prerequisites. For versions that call for the maximising of happiness or of preference-satisfaction are arguably incapable of making adequate provision for minority rights, let alone the rights of animals. As long as nonhuman happiness and suffering are included in the value-theory attached to consequentialism, a consequentialist defence of rules governing rights and related obligations is possible, but it remains unclear how animal interests could be prioritised over human interests within such an ethic.

However, a version of consequentialism that prioritised within its value-theory the satisfaction of basic needs is far more promising. With regard to the standard objection to consequentialism about justice and just distributions, such a theory, through recognising the value of basic needs being met as greater than the value of other valuable outcomes, such as happiness or preference-satisfaction, could provide for just distributions to the worst-off groups within society. It could also provide for the protection of vulnerable minorities, even if they were not among the worst-off, as

their persecution threatens their basic needs, and would thus receive a high priority (Ewin 1970). Here it is important to distinguish between needs and wants, despite the latter being frequently represented as needs, particularly by advertisers. Needs are either components or prerequisites of well-being; desires, however strong, whose fulfilment are neither components nor prerequisites of well-being, fail to amount to needs.

Such a value-theory would also prioritise the basic needs of conscious nonhuman animals. Thus in cases of conflict between the basic needs of nonhuman animals (for example, not to suffer a painful death) and the interests of human beings other than their basic needs, this kind of consequentialism would prioritise these nonhuman basic needs, and base obligations on this valuation. In cases where basic needs were at stake, it could also characterise the resulting obligations as obligations of justice. So this is a form of consequentialism supportive of a theory of justice in which the basic needs of conscious nonhumans would be upheld; and within this theory, obligations of justice with regard to human interests would not invariably trump obligations of justice with regard to non-human interests.

Such a theory would need at some stage to answer the question of which needs are basic needs, but that matter is too complex to be considered within the confines of the present paper. This has been discussed elsewhere: see Attfield 2020 [1987], and its sequel, Attfield 2019 [1995]. It would also need an account of the limits of consciousness within the animal world, another issue that cannot be considered here, despite the discoveries about sentience that biologists continue to make. But even without a detailed discussion of these issues, we would claim that enough has been done to show how a basic-needs-based version of consequentialism could uphold a defensible theory of justice, reconceptualised so as not to be anthropocentric in the traditional manner.

## 7 Possible Alternative Theories and Conclusion: The Preferability of a Revised Consequentialism

The possibility just presented opens up the different possibility of a new kind of deontological theory being articulated that was grounded in principles of basic needs being the primary ground of obligation, and thus of a matching deontological theory of justice. Such a theory, however, would have difficulty in supplanting the theories of deontologists such as Kant and Ross, granted that deontology allows of no appeal beyond its own basic principles. Consequentialism, by contrast, can appeal to a value-theory in which the values recognised within the theory can serve as reasons for action, and thus has a basis to defend this theory against the standard forms of consequentialism, which seek to maximise either happiness or preference-satisfaction, and against theories of other kinds that are not grounded in a value-theory at all (see Attfield 2012).

A further possibility also opens up, of a new form of virtue ethics being articulated which understands the virtue of justice as involving an orientation to prioritise basic needs. Such a theory would have to face the problem of defending a matching account of how obligations of justice include obligations to satisfy the basic needs

of nonhuman animals as well as those of human beings, and are capable sometimes of superseding obligations to humans; and this would involve stretching traditional accounts of the virtue of justice a long way. It would also almost certainly have to jettison the traditional claim of virtue ethics that all the virtues are advantageous to the agent of virtuous behaviour, which would, for some, undermine the underlying appeal of virtue ethics. Certainly virtue ethicists do on occasion appeal to value-theory (Hursthouse 1999 and 2002) and so such a stance might possibly be defended through an appeal to the intrinsic value of the satisfaction of basic needs. But problems of consistency remain unless the claim that all virtues benefit the virtuous agent is discarded at the same time as this appeal to value-theory is made.

It is worth adding that there seems no possibility of rehabilitating contractarian theories. An attempt to do this has been attempted by Mark Rowlands (1998), who suggested that in the original position depicted by Rawls, the contracting parties should be ignorant not only of their situation and prospects in life, but also of their species. One possibility here might be, then, that in the revised position (in which contractors are ignorant of their species), they choose to implement, at the very least, protections for nonhuman animals' basic needs regardless of species. But this move is surely an incoherent one, as the contracting parties (who choose principles for interspecies society) would not know what kind of species they belonged to (would not know what kind of animal they were choosing *as*: they could be an octopus, a dog, or an insect), or therefore what was good for those living their life. So the very notion of their choosing or deciding or agreeing makes no sense. The revised move is, in other words, too lacking in specificity to be of any real help in supplying social rules, including inter-species ones. (Indeed, the needs that the contractors would have if they were, for example, birds or even particular species of birds, are different from the needs they would have if they were, for example, horses). As such, contractarianism continues to have no place for including nonhuman animals in its theory of justice.

However, theories of justice can be reconceptualised so as to provide for inter-species justice, and thus for environmental justice and for climate justice as well. This can be done if, as has been argued, the basic needs of nonhuman animals are included in a theory of justice alongside the basic needs of human beings, within a version of consequentialism which prioritises basic needs over other goods such as happiness and preference-satisfaction, with obligations, including obligations of justice, being based on this value-theory. Spelling this out, however, is a demanding task, which cannot be undertaken within this article; this is a task to which we would like to encourage others to contribute.

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