

Article

The Place of Animals in Theodicy and in Justice

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Abstract: It is widely recognized that the animal suffering of the evolutionary past is a problem for believers in a good and just God. However, this problem is not insuperable if the intrinsic value of nonhuman flourishing is recognized as integral to the Creator's plan (including the sentience that makes this flourishing possible among most species of animals), and if this intrinsic value is recognized as comparable to the intrinsic value of human suffering. These considerations have a bearing on justice. Many philosophers, while granting the moral standing of nonhuman animals, assume that, where justice is concerned, human interests trump those of nonhumans. However, most people accept that the central interests of nonhumans, such as the avoidance of a painful death, are not trumped by trivial human interests. But the obligations to animals that are presupposed here are not ones that are liable to be superseded by each and every interhuman obligation. Hence, theories of justice need to recognize that the needs and interests of nonhuman animals generate obligations of justice, as well as of charity.

Keywords: nonhuman animals; animal suffering; theodicy; justice; obligations of justice to animals



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1. The Place of Animal Suffering in Theodicy

The suffering of sentient nonhuman animals has long been a problem for those seeking to reconcile the beneficence of God the Creator with the world as we experience it. Much of this suffering, of course, is caused by human action or by human neglect, and these kinds of suffering, accordingly, form part of the problem of moral evil. This problem, insofar as it is a problem for theodicy, cannot be discussed here. Evils of this kind are the ones about which, from Augustine onwards, theists have put forward the free-will defence, which has been supplemented in recent decades by John Hick's Irenaean theodicy (Hick 1966). For a further discussion of such a defence, see (Attfield 2006, 2017). However, I will be returning below to ethical issues that relate to the human treatment and mistreatment of animals.

This leaves as a problem for theodicy the kinds of animal suffering for which human beings are not responsible, either by action or by omission; for example, the suffering that is undergone by sentient animals when they are attacked and eaten by nonhuman predators. Certainly, there are further moves that practitioners of theodicy can make about such sufferings, as opposed to the kinds that are ascribable to human beings and their choices. One of these is the claim that the universe must be governed by laws of nature (Leibniz [1710] 1985), from which this suffering results, if human beings are to be capable of understanding and predicting it, and, thus, to be capable of making intelligent free choices; however, this move still seems to leave this kind of animal suffering unacceptably uncompensated.

Furthermore, this problem becomes more intense when the Darwinian theory of evolution by natural selection turns out to disclose the many millennia of animal suffering of the past, with much of it taking place before human beings came into being. Anthropocentric forms of theodicy that are premised on the whole creation being brought into existence for the sake of human beings, and on their making choices that are responsive to the will of God, are hard-pressed to account for the extent of such animal suffering. They fail to explain why millennia of such suffering should have had to take place before there were

any human lives, and, thus, before the benefits of the laws of nature for human lives could have even begun to find expression.

Certainly, there is an apparent inconsistency in the way that this problem has so far been expressed. Anthropocentric forms of theodicy assume that animals are not central to the divine purposes, and that, possibly, they do not have any independent value at all, whereas the recognition that animal suffering is a problem for the belief in a beneficent Creator clearly assumes that animal suffering matters, and that a beneficent Creator might be expected to prevent it. Thus, the framework in which the problem has been addressed is unstable. Indeed, someone seeking greater consistency might attempt to reject the claim that animal suffering matters and attempt to present a more consistent theodicy for which prehuman animal suffering does not matter in itself, but simply exemplifies the natural order and the laws of nature that are indispensable if human beings (once they evolve) are to be able to understand and predict the world around them, and to make responsible choices accordingly.

This line of argument may be more consistent, but it remains profoundly unsatisfactory. For many centuries, theistic believers, from the saints of the Early Middle Ages onwards, have recognized that animal suffering does matter, and that it requires an attitude of tenderness and of empathy, rather than one of indifference. Animals, as St. John Chrysostom held, 'are of the same origin as ourselves', and we ought to show them 'kindness and gentleness' for this and certain (unspecified) other reasons (Hume 1957, p. 26; Linzey 1976, p. 103, n. 22). Likewise, St. Isaac the Syrian (who lived in the seventh century) urged compassion for all creatures, and 'a heart which could not bear to see or hear any creature suffer hurt, or the slightest pain' (Arseniev [1925] 1979, p. 88; Attfield [1983] 1991, p. 35). Moreover, this is not only an ethical claim. For if, as Chrysostom assumes, animal suffering is comparable to human suffering and it warrants comparable sympathy, then we can hardly suppose that a beneficent, just and loving Creator would be indifferent to it; rather, it must matter in the eyes of God, as many Biblical passages also imply (such as Psalm 104; Matthew 6: 26, and Romans 8: 20–22). If God were indifferent to animal suffering, then God could hardly be regarded as either good or just. Hence, the unqualified anthropocentric view needs to be rejected.

It does not follow, however, that the apparent inconsistency that was mentioned earlier is now reinstated. This is because the practitioners of theodicy have no need to assume that God is indifferent to animal suffering. A beneficent and just Creator could be concerned about 'all creatures great and small', and so our awareness of the evil of animal suffering need not involve a contradiction. The recognition that this suffering matters does certainly involve the acceptance of the intrinsic disvalue of animal suffering. However, that could be recognized by a loving and just God as well. There would still be a problem for theodicy concerning the reconciliation of this suffering with the divine goodness, but at least the supposed inconsistency can be dismissed.

However, if God is concerned about all creatures, the suggestion that the goods that God cares about are limited to human goods, and, thus, to goods that emerge only after humans come into being, needs to be revised. For if the suffering of nonhuman animals has intrinsic disvalue, it is reasonable to suppose that the well-being or the flourishing of these animals has intrinsic value. Moreover, if a beneficent Creator would regard animal suffering as an evil, such a Creator would be likely to regard the well-being or the flourishing of animals as having positive value, whether they are human animals or nonhumans. If so, this would mean that the goods that God favours are not limited to goods that emerge only after human beings enter the scene, but they include those that have been in evidence ever since creatures that are capable of flourishing emerged, or at least since sentient ones did.

Thus, it is open to the practitioners of theodicy to appeal to the flourishing of nonhuman animals, as well as to that of human beings. The flourishing of these animals depends on there being laws of nature, just as that of human beings does. While the laws of nature are what make animal suffering likely, they also facilitate the growth and development of animals, and, thus, their flourishing in the manner of their kind, and in a way that would

not be possible without them. If the universe were not governed by laws of nature, there would be no stable context in which animals could grow and develop because their lairs, their nests and their burrows would be prone to disappear unpredictably, and their food supplies would be just as precarious, if they were existent at all (Attfield 2000). Thus, the laws of nature turn out to contribute to the divine purposes to a much greater extent, and over a much longer period, than an anthropocentric theodicy could suppose.

Objectors could, however, suggest that different laws of nature might contribute to the likely purposes of a beneficent Creator better than the actual laws do. However, what is difficult is to propose cogent examples of these better laws. This is much more difficult than it might initially appear, for the supposedly better laws would need to contribute better to good outcomes across the whole of space and the whole of time. However, one of the findings of cosmologists is that the actual laws of nature, if changed by even small quantities, would make life on our planet impossible (Craig 1993, p. 268; Attfield 2006, p. 106), and that the actual universe and its laws facilitate life as we know it through what is sometimes called ‘the Goldilocks effect’, with the fundamental forces neither too weak nor too strong. Accordingly, the case for saying that a beneficent and just Creator would establish and employ different laws of nature is not one that is at all likely to be vindicated. Furthermore, when suggestions for different laws of nature are considered, their impacts on the full range of (at least) sentient animals need to be considered, and at all times and all places too, and this means that it is much harder to propose better laws than if the issue were just of laws that were better for human beings, problematic as that is already.

One supposed improvement is that predation might somehow be prevented from having any place among living creatures. Certainly, much suffering results from predation. However, at the same time, we need to be clear about what this suggestion involves. Predation includes the eating of plants by herbivores; however, this practice is not what is usually objected to, and, in its absence, many fewer species could exist.

Perhaps, then, the suggestion is that what should be prevented is carnivorous predation, and that herbivorous predation should remain intact. This, however, would mean that there would be no carnivores, from insect-eating birds to higher predators, such as lions and crocodiles. It also means that there would be no checks on the populations of herbivores, which could increase their numbers until the grasses and other plants of their neighbourhoods were exhausted. However, these checks on the multiplication of herbivores are important, as things are, for the maintenance and preservation of ecosystems. Furthermore, as Rolston remarks, many of the carnivores that would cease to exist if this suggestion were somehow to become reality are species whose excellences of speed, of flight and of sight and smell we admire. Moreover, all species of birds, with the exception of vegetarian ones, would have to be prevented from existing, and our woods and forests would largely fall silent. Thus, the world would be poorer without carnivorous creatures (Rolston 1992, p. 253), and value would be lost rather than gained.

There are also issues with regard to how the evolution of carnivorous creatures could be replaced, and what kind of world would result. Evolution through natural selection is, in effect, a further law of nature, and its prevention would involve either a large number of miraculous interventions, or some different law that prevented the evolution of carnivores. However, the world would hardly be what a beneficent Creator would choose if it operated through miraculous interventions, for that would, in and of itself, obliterate the stable context in which human beings (and other creatures too) can develop their powers of understanding and of choice.

As for laws of nature that in some way prevented the evolution of carnivores, they would prevent not only the existence of lions and tigers, but also the predation that is carried out by fungi and bacteria. However, as Rolston also remarks, ‘in a world in which things are assembled something has to disassemble them for recycling’ (ibid., p. 253). Thus, there has to be some form of predation if any communities of living creatures are to exist for any length of time.

Moreover, human beings themselves evolved as carnivores. These days, there are vegetarian and vegan minorities within human societies, and the moves towards a more vegetarian diet are certainly praiseworthy on the grounds of these practices, which contribute to the mitigation of greenhouse-gas emissions. However, in the absence of the predation of human beings towards other living creatures, including other animals, humanity would not have evolved in the first place. Thus, if what adds value to the world is, in part, the choices and the achievements of human beings, then predation was indispensable for this value to come about.

What emerges is that the positive value that is present in the flourishing both of human beings and of other creatures, including other animals, depends on a system of natural laws and natural interactions in which predation plays an indispensable part. It also emerges that the flourishing of both human and nonhuman animals involves the creation of a system of nature within which the evils (such as suffering) that are considered by theodacists are ineliminable. To see this, we need a perspective that is both evolutionary and ecological; however, such a perspective is itself increasingly indispensable.

The suffering of nonhumans, then, is important, and in cases where it befalls nonhumans that are held within human custody, it should be minimized. However, the biological system from which it results also needs to be taken into account, for, without that system, there could be neither human flourishing nor suffering, nor the suffering and the flourishing of nonhuman creatures. As do biologists, theodacists need to take an extremely broad picture into account. The system that they need to take into account remains consistent with creation by a beneficent and just Creator. However, none of this would emerge if the well-being and the suffering of nonhuman creatures were ignored.

2. The Place of Animals in the Account of the Justice of Contract Theories

In this section, further implications of the obligation to be considerate to nonhuman animals are elicited. I begin by returning to St. John Chrysostom. In the same context as that in which he declared that ‘we ought to show them [sc. non-human animals] great kindness and gentleness’, he went on to declare that ‘Even in the case of creatures which lack reason and perception men ought not to deviate from the consideration of what is just and unjust’ (Rodman 1979, p. 8). Here, there is a clear assertion from a leading father of the Church that the treatment of (nonhuman) animals is a matter of justice.

We have already seen that the reconciliation of God’s goodness with the state of the world involves recognizing the intrinsic value, and the value in the eyes of God, of the flourishing of nonhuman animals. What I will argue across this and the following sections is that what has just been said means that human beings have obligations of justice towards these animals, and that they are not just objects of compassion or of related duties that can be automatically overridden when they conflict with the obligations of justice to human beings. There will doubtless be times when obligations of justice to humans supersede obligations towards nonhuman animals; however, obligations towards nonhuman animals, I shall argue, are obligations of justice that are capable of overriding obligations to other people. (See further Attfield and Humphreys 2016, 2017).

However, this is not the general view of ethicists. The majority view is that any obligations that we may have towards nonhuman animals fall short of obligations of justice, and that obligations of justice trump all other obligations. Since, on this view, obligations of justice are owed to human individuals and to human collectives, such as companies, corporations and countries, and to them only, this means that human interests ultimately prevail, however pressing the interests of nonhuman animals may be. The clearest case (although, sadly, not the only case) of this stance is contractarianism, which is the stance that represents the idea that all obligations emerge from contracts (whether historical or hypothetical) between rational decisionmakers. Not surprisingly, since nonhuman animals are not (or are not considered to be) rational decisionmakers, nonhuman animals are excluded from the contract, and therefore from the core of morality.

It is appropriate to illustrate these claims about contractarianism. The most prominent example of a contract-based theory of justice is the stance of John Rawls, as expressed in his *A Theory of Justice* (Rawls [1971] 1999). For Rawls, those rules are just and fair that rational agents would agree to behind a veil of ignorance; that is, in ignorance of their prospects and their likely position in the society in which they would be living together. Nonhuman animals are understood to warrant sympathy, but they are not part of the contract, nor are they recipients of its provisions. They belong to a kind of penumbra or an annex of morality, and they have no entitlements within the realm of justice. This is how Rawls explains the matter:

A conception of justice is but one part of a moral view. . . . Certainly it is wrong to be cruel to animals. . . . The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly imposes duties of compassion and humanity in their case. I shall not attempt to explain these considered beliefs. They are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them. (Rawls [1971] 1999, p. 448)

Since these considered beliefs cannot be included within the contractarian theory of justice, those animals to which they relate are excluded from its scope; this means that, whenever the interests of those within its scope clash with their interests, the former take priority because of the fundamental place of justice in morality.

A comparable stance is adopted by other contractarian writers, despite minor differences of emphasis. Accordingly, the position just presented is largely adhered to by other contractarian writers, such as T.M. Scanlon and D. Möllendorf (Scanlon 1998, pp. 177–87; Möllendorf 2002, pp. 31–36). This is because even variants of contractarianism, which treat as fundamental questions like what reasons agents could give to others to justify their behaviour, assume that the parties that are concerned are rational language users and, thus, human beings. In this way, they too exclude nonlanguage users (with the exception of human infants and humans with advanced dementia) from the scope of justice. Similarly, theorists who limit rights to moral persons or human beings, and who hold that rights-holders take precedence over all other sentient creatures, are thus committed to excluding nonhuman animals from the sphere of justice (Möllendorf 2002, pp. 19–21, 31–33).

Some philosophers of religion may harbour some small degree of sympathy for contract theory, granted the important place for covenants in the Old Testament and in moral theology, and the apparent similarities between covenants and contracts. However, there are important differences. The covenants of Genesis were made between God and selected human beings, unlike the social contracts of Hobbes, Locke, Rousseau and Rawls. In addition, and more crucially for present purposes, one of these covenants was between God, Noah and his descendants, as well as with all the living creatures of his household, birds and beasts included (Genesis 9: 9–13). Far from excluding nonhuman animals, the covenant with Noah specifically includes them. Thus, the similarities between contract theory and covenant theology do not in the least signify that nonhuman animals must be excluded from theories of justice. Rather, the covenant with Noah suggests that nonhuman animals are fit to be included in covenants, and, thus, to be recipients of justice, just as much as human beings.

Another difference between contracts and Biblical covenants concerns future generations. Contract theory has to struggle to make provision for future people, which is to be premised on either an historical contract or a hypothetical contract between people who are of the same generation as each other; by contrast, covenants were sometimes said to be made not only with the current generation, but also with their future descendants, as in the case of the covenant with Noah of Genesis 9. However, Rawls, in particular, had to modify the stance of his first edition, where the provision for future people was widely regarded as inadequate, and even his revised edition hardly satisfied his readers that future people were adequately included in his contract.

A brief excursus may help the reader to grasp the limitations of contract theory in this context. Let us say that a contract theorist wants to include future generations, or

their representatives, in deciding societal rules. It is not possible to stipulate that all future generations will be represented, because the rules that the contracting parties agree to play a large part in determining how many generations there will be. Let us instead suppose that the contract theorist includes not all future generations, but some of them, and, naturally, that he or she selects the closest generations, these being the likeliest to come into existence. However, if the contracting parties are selected on this basis, and if they select societal rules accordingly, by basing their selection on the interests of the generations that they represent, then the rules that are selected are likely to be ones that favour the closest future generations, to the likely detriment of at least some of the subsequent generations. In neither of these models for selecting the contracting parties is it plausible that the rules that emerge from the contract will be fair and just ones. In the first model, it is not possible to select the contracting parties, let alone for just rules to be selected on that basis at all; in the second one, the rules that are selected are likely to be discriminatory in favour of the present and the near future, and against the further future.

Enough has now been written to disclose that contract theories, in general, have inbuilt defects, and they cannot be expected to present a cogent basis for just and fair rules, even for human societies, quite apart from societies that are construed broadly enough so as to include nonhuman animals. It is important that there are grounds, which are independent of the issue about the exclusion of nonhuman animals, for holding that contract theories are bound to fall short of what it expected of them. Thus, the fact that contract theories imply the exclusion of nonhuman animals from the scope of justice does not show that they really are so excluded. This is because contract theories are radically unsatisfactory as theories of justice.

Here is another way of reaching the same conclusion. Seyla Benhabib points out that the contracting parties in Rawls's contract scenario are so deprived of human connections, having no idea of what relations, families or friends that they will have, nor even of their own identities, that they are 'disembodied and disembedded'. Rawls makes them like this so as to avoid having them select rules that involve partiality, although he modifies this assumption to make them aware of their 'lineage' (or their descendants). However, the outcome, as Benhabib points out, is that they would lack the range of feelings and motivations that most people have, and therefore the rules that they would choose are utterly unreliable (Benhabib 1992).

This argument can be extended so as to set up a dilemma. Either Rawls's contracting individuals are too disconnected from human society for the rules that they select to be reliably just ones, or (instead) they are aware of their families and friends, in which case, the rules that they select are liable to partiality, and are thus unreliable for this reason. In either case, the rules that they select and agree upon cannot be expected to be fair or just, even to current human beings, let alone to future generations or to nonhuman animals. Thus, theories of justice should begin somewhere else, and contract models should be abandoned, whether historical or hypothetical.

3. The Potential of Alternative Normative Theories

It is time to investigate the capacity of the other main theories of normative ethics to cope with the place of nonhuman animals in justice. The main remaining types of ethical theories are deontological theories, virtue ethics and consequentialism. Deontological theories are normative theories that stress duties rather than outcomes.

Deontological theories subdivide into three main kinds, the best known of which are Kantian theories. Immanuel Kant (1724–1804) held that reason tells us only to act in ways that we could will that everyone could and should similarly adopt (his 'Categorical Imperative') (Kant [1785] 2005). This basis serves to uphold the keeping of promises and the telling of the truth, as well as (to all appearances) the helping of other people. However, it is only human beings to whom help extends for Kant, on the strength of their rationality. Nonhuman animals are explicitly excluded, except insofar as harming them sets up habits that may impinge adversely on human beings. Thus, for Kant, nonhuman animals are

excluded not only from the scope of justice, but also from that of direct moral consideration. Others have suggested amending his theories so that respect is owed not only to humanity, but also to other animals. However, Kantianism is clearly an unpromising place to start if a place for nonhuman animals within justice is to be found.

A second variety of deontological theory is that of W.D. Ross. Ross held that there are five basic principles that are integral to morality, and that no appeal can be made beyond them. They prohibit murder and lying, and they also call for beneficence (Ross 1930). While Ross had in mind beneficence towards human beings, there is nothing to prevent his followers from extending it to dealings with nonhuman animals. However, beneficence is an inadequate basis for a theory of justice, and, for this reason alone, we should probably look beyond this kind of deontology. Another reason is that Ross offers no criterion for what agents should do when any two of the five basic principles clash with each other. Yet a further reason is that he offers no reason why the fundamental list should stop short at the five that he identifies.

A third kind of deontological theory focuses on rights. Certain rights are widely held to be morally basic, such as the right not to be tortured, and it is also widely held that such rights cannot be regarded as contingent upon consequences (Shue 1996). Some have also argued that our role as moral agents confers on each of us rights that all other moral talk presupposes (Gewirth 1982). However, these rights are human rights, whether they are basic human rights or rights that are less central, and it has often been held that rights do not belong to nonhuman animals, and also that rights trump all other moral considerations. This combination of theories serves, once again, to marginalize nonhuman animals.

In some other theories, however, a much weaker and broader sense of 'rights' is held, for which 'rights' attach to all beings that have interests of their own to which moral consideration should be given. For this kind of theory, nonhuman animals are strong contenders to be the holders of rights. However, for the same theories, the real work is conducted by the concept of 'interests', and that of 'rights' makes so little difference that it is difficult to tell whether the animal rights of this theory amount to conferring on animals inclusion within the realm of justice or not. As R.G. Frey suggests, there may be little that can be achieved through the concept of 'rights' than cannot be achieved without it (Frey 1983).

Others again have maintained that nonhuman animals (or some of them) are bearers of infeasible rights, which are comparable to the rights of human beings. The pioneer of this version of deontological theory was Tom Regan (Regan 1983). This stance almost certainly does claim a place for nonhuman animals within the sphere of justice. However, it is also open to problems. Thus, the bearers of rights are standardly held to be able to claim those rights, and this has supplied much of their point to the advocacy of black rights, women's rights, gay rights and the rights of the disabled. However, nonhuman animals are unable to claim the rights that are attributed to them. For this reason, some doubt the coherence of the talk of animal rights, while others hold that the rights of nonhuman animals are more easily overridden than those of human beings. Accordingly, it is doubtful whether this promising variety of deontology supplies a satisfactorily resilient place for animals within the realm of justice after all.

It might seem that the prospects for the inclusion of nonhuman animals within justice must still depend on issues of rights. However, this is a premature view. Take the case of future (human) generations, which are widely acknowledged to have a place within the scope of justice, just as the talk of 'inter-generational justice' assumes. Derek Parfit, however, has shown that most future people lack rights in the present. This is because the holders of rights need to be able to be treated both in ways in which their rights are respected and in ways in which they are not, and, thus, they need to exist in more than one possible world. However, most future people will exist in one possible world only, which is the possible world into which they are brought into being. Hence, they cannot individually be harmed or benefited by the people of the present, and they lack rights in the present, as opposed to present agents who are able to affect, for better or for worse the quality of life of whoever will be brought into being in future times (Parfit 1984). However,

none of this means that future people have no place within the sphere of justice; indeed, many of Parfit's examples show an awareness of the importance of accepting sacrifices in the present to enable future people to enjoy a higher quality of life.

Accordingly, future people can be (and may well be) included within the sphere of justice in the present, even though most of them lack rights in the present. Thus, even if nonhuman animals lack rights, it by no means follows that they are excluded from the domain of justice, any more than future people are.

Another of the prominent types of normative ethical theory is that of virtue ethics. For this school of thought, it is the virtues that are fundamental in ethics, and right action consists of acting as the virtuous person would do. Justice is itself a virtue, which consists of the set of dispositions that the just person would express, and the upholding of the implicit rules of justice to the degree that the just person understands to be appropriate. A stance of this kind was first presented by Aristotle, and most particularly in his *Nicomachean Ethics* (Aristotle 2000).

In Aristotle's version, there was little or no recognition of nonhuman animals; however, the possibility of expanding (for example) sympathy so that virtue ethics involves consideration for animals has been well expounded by Rosalind Hursthouse (Hursthouse 2006). Furthermore, there is no particular obstacle to the expansion of the virtue of justice so that it is understood to require fairness and the just treatment of nonhuman animals; accordingly, virtue ethics is not incompatible with the inclusion of animals within justice in the way that contractarianism and Kantianism are.

The problem is, rather, that for Aristotle and most of his modern followers, each of the virtues is understood to be beneficial to the person who has these virtues, and this requirement appears to counter attempts to enlarge the virtues so that their beneficiaries include nonhuman animals, as each enlargement makes the virtue in question less apparently beneficial to its human bearer. Thus, it begins to look as if this Aristotelian expectation needs to be discarded if animals are to be adequately included within the scope of justice, and indeed if other virtues, such as sacrificial love, are to be adequately included in the catalogue of virtues. These are internal problems for virtue ethics, and they cannot be discussed further here. What emerges is that virtue ethics can accommodate the inclusion of nonhuman animals within justice, but only at a cost to some of the traditional themes of virtue ethics.

We now come to consequentialism, which includes its most discussed variant: utilitarianism. The founder of utilitarianism, Jeremy Bentham, had no hesitation about including nonhuman animals within ethics, and he famously held that the criterion of inclusion was not an organism's ability to reason, but its ability to suffer. He was also committed to understanding justice as a function of the distribution of pleasure and pain, and he was therefore not committed to excluding animals from the sphere of justice in the manner of the adherents of contract theories.

His successor, John Stuart Mill, defended utilitarianism against a number of criticisms, which included its supposed inability to make provision for just distributions of various goods, and the requirement of justice that the poor should be prioritized. His main response involved citing the law of diminishing returns; each pound spent on benefiting a poor person makes far more difference than the same amount spent on someone who is comfortably off, and so utilitarianism, accordingly, mandates its adherents to prioritize the poor, and for as long as doing so makes more difference to the total value than allocating funds elsewhere would do. This response needs further elaboration if it is to deflect such criticisms adequately, but it cannot receive that here. Mill would, no doubt, have accepted the importance of an adequate provision for nonhuman animals; however, his explicit examples are drawn from the various divisions within human society (Mill [1863] 1910).

Despite its strengths, utilitarianism suffered from the confinement of its understanding of good and evil to pleasure and pain, or, in more modern versions, to preference-satisfaction and its absence. What it continues to need is a broader value theory, in which objective states, such as the realization of capacities (and the like), have positive value, and

their frustration has negative value; however, this value-theory is so far removed from the subjective value-theory of utilitarianism that a different generic name is needed for the resulting ethical theory: consequentialism. Consequentialism is able to take into account, for example, the deprivations to which the poor and the oppressed are subject, without having to translate them into the language of pains.

As Peter Singer has shown in recent decades, such a theory is well able to take into account the interests of nonhuman animals, and to argue that similar interests should be given equal consideration. While Singer's own value-theory stands in need of enrichment, his theory, as it stands, makes it easy to grasp how, from the perspective of consequentialism, the suffering of animals (for example, in factory farms) involves such a strong failure to treat equal interests equally as to involve a profound injustice (Singer 1976, Singer [1979] 1993). Other consequentialists, who are equipped with a broader value-theory, have shown how, when a wider range of goods is recognized to have intrinsic value, consequentialism becomes better suited to the role of a normative theory for society in general (Railton 1984). However, the potential bearing of consequentialism on the relation of animals to justice has already been amply illustrated.

What emerges is that several normative theories have the capacity to include non-human animals within their understanding of justice. The degree to which they make this inclusion plausible varies, but, in contrast to contract theories, and to the Kantianism of Kant, which precludes such an inclusion, they distinctively leave room for animals to be included. These more promising normative theories range from Regan's kind of rights theory, via virtue ethics, to consequentialism. This is not the place to argue which of these theories is preferable, beyond the pointers that have already been supplied. What remains is to return to an argument that upholds this inclusion, regardless of the theoretical framework within which it is framed.

4. An Argument for the Inclusion of Nonhuman Animals in Justice

Nonhuman animals, just as human beings, have central interests, as well as more peripheral ones. One of their more central interests consists of the avoidance of a painful death. What should we say for cases where the alternative to an animal suffering a painful death is an infringement that is of trivial interest to a human being, such as the loss of five minutes of their time, or of a trifling sum of their money? Almost everyone would say that the central interests of the animal take precedence over the trivial interests of the human being.

However, conventional accounts of justice often imply that even the trivial interests of the human being take precedence. Someone may have promised that the person concerned will not lose any time, or there may be a debt of the trifling sum of money, which must be paid if justice is to be done. This information would sometimes be regarded as apparently showing that the interests of the human must be prioritized, trivial as they are.

Thus, if we believe that the interests of the nonhuman animal still take precedence, then those interests must count in matters of justice. It is not enough for them to evoke sympathy or compassion, since justice is widely held to trump such considerations. It is and must be fair and just to take the interests of the animal into account. Sometimes animal interests will still be superseded, but, importantly, there will be times when they will supersede the clashing interests of human beings, and as a matter of justice at that.

This is not the place to discuss whether the normative theory that should be used is virtue ethics, a Regan-like rights theory or a consequentialist theory, although my own inclinations in this matter will probably be apparent. However, the appropriate theory will neither be contractarian nor Kantian (or at least not one that closely follows Kant), since theories of these kinds actually preclude giving moral consideration to nonhuman animals in matters of justice. Our ethical theories need to transcend considerations that are restricted to what rational agents would agree to, or to how rational beings (and rational beings only) should be treated. Only in these ways can the independent value of nonhuman well-being and suffering be given its due.

We have seen that attempts to reconcile God's beneficence to the state of the world need to take into account the intrinsic value of nonhuman flourishing and the intrinsic disvalue of nonhuman suffering. However, these are precisely the considerations that we need to take into account if our understanding of justice is to be remotely defensible. Thus, the implications of the key moves in the philosophy of religion turn out to be transformative for our understanding of justice as well. It would, no doubt, be possible to proceed to a consideration as to whether our understanding of divine justice should undergo a parallel modification. However, that is an issue for another occasion.

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