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## **Towards an interspecies health policy : great apes and the right to health**

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## **2. Considering animals: moral status and interests**

In which manner should animals enter into our moral deliberations? Does an animal have moral status, and if so, on which criteria is this discussion based? This chapter will focus on these basic questions hereby providing a basis for the following chapters.

Many argue that sentient animals deserve direct moral concern based on their subjective experience of the world around them. Presuming that an animal does indeed have a moral status, what does this conclusion entail for humans in terms of moral obligations? This assumption requires that we know what is conducive to the lives of animals. How do we know what is in their interest? And, to what extent does the ability of individuals as to making meaningful choices regarding their own subjective good affect the interests of animals?

The final part of the present chapter will look closely at several distinct interests: the avoidance of suffering, continued life, freedom and ways of life. To what extent do cognitive capacities affect one's interests?

### **2.1 The moral status of animals**

The boundaries of the realm of moral status are notoriously controversial. For, a historic perspective reveals a continuous questioning as well as a vindication of the lines drawn, with an ever-expanding range of the scope of moral and political status. Especially during recent decades, animals have been the subject of serious philosophical debate. The starting points hereof are presented by the Australian moral philosopher Peter Singer in his magnum opus entitled *Animal Liberation: A New Ethics for our Treatment of Animals*, originally published in 1975, in which he takes issue with, while at the same time popularizing the term, "speciesism". In his opinion, this form of discrimination involves "a prejudice or attitude of bias in favor of the interests of members of one's own species against those of members of other species" (Singer 1990: 6). Morality demands we should consider the interests of all involved based on significance rather than on species-membership.

What causes speciesism to be morally problematic? Is Singer not overly quick in jumping from a mere empirical finding to a moral conclusion, hereby falling victim to the widely disparaged is-ought problem that blocks such reasoning? Singer sets off from the subjective experience of animals, their sentience which provides them with the ability to feel both pain

and pleasure. Sentience is present throughout the animal kingdom.<sup>25</sup> The crux is that much like humans, sentient animals can undergo negative experiences (e.g., suffering, anxiety, pain) as well as experience pleasure and affection. These experiences pluck our moral strings, as it were. Humans and animals therefore, as Singer demonstrates, share an interest in avoiding any suffering. If we would recognize this interest in humans, it is question-begging to disregard this interest in other species merely because they belong to another species. At least, vertebrate animals share the neurobiological make-up required for these subjective experiences<sup>26</sup> which separates them (and us) from non-sentient beings in a morally relevant manner, as the argument against speciesism goes. Non-sentient beings cannot subjectively experience what happens to them, rendering sentience an important and, as certain scholars (Cochrane 2013b; DeGrazia 1996; Donaldson & Kymlicka 2011; Feinberg 1974) state, not only a necessary but also sufficient condition for establishing moral status. In other words, sentience confers the individual something that appears to touch upon the nature of morality.

Starting with sentience deviates from understandings that link moral status to the capacity for moral agency. A well-known example hereof is Immanuel Kant (1724-1804), who argues that animals are not directly morally considerable as they lack any capacity for moral agency and autonomy. It is however unclear why the capacity for moral agency should be a necessary condition for moral status.<sup>27</sup> Should we not, for example, take into account the interests of humans who lack this capacity (Cochrane 2012)? Perhaps the interests of children matter by reference to their future autonomous agency? Nonetheless, such deferral to the future does not convince due to the following two reasons: (a) one could argue that the present interests are of moral relevance, rather than a roundabout justification referring to their future self (DeGrazia 1996) and (b) if we accept the reference to the future self for the sake of the argument, this results in people whose lack of moral agency is of a more permanent nature being omitted from the scope of any direct moral consideration (Nussbaum 2006). These arguments obviously also apply to non-autonomous animals. It is apparently plausible to claim that moral status follows from the capacity to subjectively experience the world.<sup>28</sup>

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<sup>25</sup> Determining the exact extent of its presence in animal species is difficult at the frontiers as the intense discussion on the sentience in fish and insects reflects. For a rich source of these debates, see *Animal Sentience. An Interdisciplinary Journal on Animal Feeling*: <https://animalstudiesrepository.org/animsent/>

<sup>26</sup> Non-vertebrate animals (e.g., cephalopods) also display high levels of consciousness, see DeGrazia 2014.

<sup>27</sup> For a defence of animal moral status within a Kantian framework, see Korsgaard 2013.

<sup>28</sup> Viewing moral status in terms of degrees has been suggested (DeGrazia 2008; Warren 1997) as has distinguishing between moral considerability (matter morally) and moral significance (the extent to which one matters morally) (Goodpaster 1978). I assume moral status in rather absolute terms. You either have this status or you do not as it is tied to the capacity for sentience.

It has been argued that we even need to expand our moral horizon a step further. Plants can become diseased and perish if exposed to harsh conditions. In that sense, they appear to take an interest in staying healthy. Moreover, such interests may even impose a moral obligation upon others to ensure that plants remain healthy.<sup>29</sup> Such a biocentric perspective considers individual life to be a central moral criterion whenever determining moral status.<sup>30</sup>

This perspective, in my opinion, conflates biological needs with the condition for moral standing. Indeed, it appears plausible to state that individual plants take an interest in remaining healthy and avoiding diseases. However, these interests appear to categorically differ from the interest that humans and other sentient beings share as to being healthy. It would perhaps be more accurate to describe the interests of plants as biological interests, which does not comply with the above-mentioned interests which relate to subjectivity and sentience.<sup>31</sup> Biological interests reflect the evolutionary development of plants in terms of their environmental needs. Needless to say, humans have biological interests, too. Proceeding from biological facts to moral consideration does require further normative work. Hunger, for example, is not of any moral relevance because of its contributions to species-typical functioning, but of its effect on well-being. It is simply unclear whether a plant is harmed by cutting its life short or causing a disease. We still have to take non-sentient individuals into consideration here, but the reasons for doing so may well be of an indirect nature. These individuals do not clearly hold interests that demand any direct moral consideration (DeGrazia 1996; cf. Goodpaster 1978).

Sentience presents us with a compelling criterion as to moral status. Firstly, it explains the moral status of non-autonomous humans without the need to refer to any future capacities or species-membership, both of which prove to be problematic. Secondly, it provides a straightforward explanation of the moral wrongness of inflicting animal cruelty (DeGrazia 1996). These two considerations combined establish a basis for regarding sentience at least to be a sufficient criterion as to moral status, hereby entailing that humans owe animals direct moral consideration. What does this imply? What should the contents of our moral deliberations be when taking these considerations into account? These questions necessitate a further

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<sup>29</sup> The existence and extent of moral obligation is of course a matter of ethical theory rather than the mere recognition of moral status.

<sup>30</sup> See e.g., Baxter (2004) and Taylor (2011) for a defence of this position.

<sup>31</sup> It may be noted here that Varner (1998) applies the term: biological interests.

discussion on that which makes an animal's life good. In other words, what lies in the interest of animals?

It has been proposed that the interests of humankind categorically differ from animal interests. Raymond G. Frey (1980) holds the view that interests require desires, which animals lack as they do not possess the capacity to think in concepts as we humans do. Animals behave in certain ways which seemingly involve desires for instance when chasing after a ball in the park. Nevertheless, dogs have no linguistic capacities and thus lack the ability to acquire beliefs and concepts. Canine behavior is not aimed at goals that could be articulated in language. According to Frey, language and the way it structures thinking distinguishes animals from us humans to the effect that only we pursue interests that demand moral consideration. Perhaps Frey employs an overly rational idea of interest. David DeGrazia (1996: 4) challenges Frey's view as follows: "It is hard to believe that kicking a cat does not harm her – causing her to suffer – and that doing so is not contrary to her interests". In other words, it is obviously implausible to require that the cat needs to be aware of the fact it is in pain rather than the direct experience of suffering pain. In fact, the dog might very well enjoy running after a ball without being reflectively aware it is playing.

So, despite the lack of human language and concepts, a number of animals appear to behave with intention. Based on certain beliefs, they act with expectation regarding the outcome (Thomas, 2016). Research suggests that, for example, chimpanzees are able to intentionally deceive conspecifics (De Waal 2005; Crockford et al. 2015). The discovery of tool-use by chimpanzees as another example of intentional behavior entails a significant challenge to human exceptionality, as this phenomenon was considered a unique human trait. The fact it has been witnessed in non-primate species, e.g., corvids, as well (Weir et al. 2002), further challenges the divide between humans and other animals.

R.G. Frey, on the one hand, adopts an overly demanding view of interests, rendering it so as to prevent humans who lack language and concepts to immediately fall beyond the scope of moral consideration. In some regards resembling mammals also without such cognitive capacities, these humans obviously have interests, such as pertaining to avoiding suffering, which demands moral consideration. On the other hand, Frey underestimates animals when he merely notices their lack of human language and concepts, without paying any due attention to their abilities as to intentional action. Although almost all animals lack human language,

specific research findings suggest a significant ability as to the intentional behavior encountered among various animal species.

How are we to understand interests? Being of a prudential value, they pick out those factors that will cause the life of an individual to go well. Interests are good for the individual herself (Cochrane 2012: 658; DeGrazia 1996; Raz 1986; Feinberg 1974). Before investigating any prudential values in more detail, it is worthwhile to look into a distinction made between preference-interests and welfare-interests (Regan 2004: 87-88). Preference-interests need not be in the interest of the individual who pursues them. One could display for example a strong interest in copious consumption of alcoholic beverages, but this may not serve one's interest. Welfare-interests encompass a broader conception of interests reaching beyond the immediate experience or temporary desires of the individual (DeGrazia 1996: 39). In other words, it tracks what is in the interest of individuals rather than what they happen to take an interest in. These interests are central in determining that which morality demands when dealing with animals. Sentience provides us with a threshold level for moral consideration of one's interests without immediately informing us what these interests entail.<sup>32</sup> Whereas numerous animal ethicists and political theorists agree upon sentience being a threshold for moral consideration, this consensus is also the starting point for dissension regarding the good life of animals. Who is to say what lies in the interest of animals?

## ***2.2 Perspectives on well-being***

To what extent do animals have interests as to the avoidance of suffering, a continued life and/or functioning in accordance with species-typical norms or freedom? What contributes to a good animal life? This brings us to interspecific value theory. The viewpoints on what comprises well-being proposed within this specific field of philosophy involve three main contenders: (a) mental statism, (b) desire or preference-satisfaction and (c) the objective-list account of well-being (Parfit 1984; DeGrazia 1996). As to mental statism (a), the mental state theory of prudential value limits well-being not only to the presence of positive mental states, but also to the absence of negative mental states. In its most basic version i.e., hedonism, it involves maximizing pleasure over pain. This version can be broadened to include favorable subjective experiences (e.g., happiness, contentment, tranquility, equanimity) as well as the

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<sup>32</sup> Nussbaum and Singer, for example, both agree on sentience being a threshold condition for moral consideration whereby they disagree upon welfare interests. Nussbaum's conception of well-being, however, involves flourishing, whereas Singer advocates welfarism.

absence of suffering (Sumner 1996). Where mental statism is limited to the mental states of individuals, desire or preference-satisfaction (b) covers the satisfaction of preferences rather than the mental states of individuals, hereby reaching beyond the mental states of individuals because preferences may be satisfied without being noticed. Objective-list accounts of well-being (c) attempt to define well-being in a more objective manner. Rather than suggesting subjective foundations (e.g., positive mental states or preference satisfaction to a certain degree), this perspective introduces the need for an objective account of goods that make up a good life.

These perspectives on welfare-interests are normative in the sense that they presuppose a theory of value (DeGrazia 1996). Moreover, they converge on numerous issues, including the importance of experiential welfare and thus the interests in avoiding suffering (Horta 2013b). Relevant differences nevertheless add contrast between the three perspectives. For an objective list devotee welfare-interests may indicate all kinds of species-typical functioning which not necessarily impinge either positively or negatively on the experiential well-being of individuals. For a mental statist proponent, preference-interests and welfare-interests will not diverge significantly, as a result of the supreme value accorded to experiential welfare (DeGrazia 1996: 39). Species-typical functioning will only be relevant to such an account if its absence causes either suffering or frustration and if its presence creates happiness.

Such accounts are not without difficulties. The libertarian American philosopher Robert Nozick (1938-2002) challenged the mental state account of well-being by means of a thought-experiment. Arguing that mental statism cannot explain an intuition triggered by the so-called Experience Machine argument, Nozick invites us to imagine an individual being connected to a device that alters the mind significantly to the effect that he or she experiences a total and surreal, but importantly, highly satisfying lifeworld. Many will argue that even if people are having great fun while being attached to this machine, they are not faring well and even misled as to the true nature of reality. However, as mental statism is limited to subjective experience only, it cannot substantiate this intuition. Whether or not one is being deceived, satisfying experience is all that matters. A possible way to address this could perhaps



comprise accepting a Reality Requirement (Griffin 1986; Sumner 1996). A second means to this goal would be to accept the counter-intuitive implications.<sup>33</sup>

Perhaps well-being concerns desires we humans cherish, one of which is the heart-felt wish to not be deceived and to live our lives in an undistorted reality. This yearning leads us to a preference-desire satisfaction understanding of well-being i.e., the second view on prudential value. Preferences may also be easier to measure than mental states, as individuals could indeed disclose their preferences by means of their behavior (Crisp 2001). However, this theory is vulnerable to several objections. The first hereof is aimed at the problem of preferences we may satisfy without becoming aware of this. For example: “Suppose that I meet a stranger on a train. She describes her life’s ambitions, and the hopes and fears with which she views her chances of success. By the end of the journey, my sympathy is aroused, and I strongly want this stranger to succeed. I have this strong desire even though I know that we shall never meet again (Parfit 1984: 151). If this stranger succeeds in life, an outcome we will never find out, how can this be relevant to one’s individual well-being? The thought-experiment employed by Parfit highlights the intuition that well-being, in terms of preferences, becomes significant to the extent that they affect our experience. One may respond to this objection by installing an Experience Requirement (Sumner 1996). The issue that matters is the “felt satisfaction” of preference (DeGrazia 1996: 225). If we accept this additional filter to serve the meaningful kind of preference satisfactions, subsequently for animals, the differences between a theory of preference-satisfaction and a mental-statist theory are not that substantial, because animals appear to not hold the type of preferences that can be satisfied without being felt (Palmer 2010: 133). Animals do not wish something to occur in the future to the benefit of other beings e.g., pursue the desire that a stranger with whom you have spoken only briefly succeeds in life without this event ever affecting your own experience.

A second challenge to preference-satisfaction relates to experience in another way whereby individuals may have acquired preferences by living in sub-optimal conditions. This prompts the question whether satisfaction of such adaptive preferences indicates any genuine well-being. Preferences of an individual may to a certain degree be misguided. For instance,

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<sup>33</sup> Departing from an experiential account of well-being, Palmer (2010: 133) opines that the Experience Machine objection is not problematic for animals as they do not possess the conceptual ability for distinguishing between reality and virtual reality.

imagine an individual who is perfectly happy in the sense that all his or her preferences are satisfied but who is a nonetheless enslaved. Examples such as the “happy slave” have led a preference-satisfaction theorist to demand that the preferences held are informed in terms of the relevant facts (Crisp 2001). If animals can be enlightened as to the relevant facts pertaining to the world, ultimately the “informed” requirement will distinguish the mental-state from the theories on preference-satisfaction. The appropriate question is now perhaps: Which preferences must an individual hold?

Instead of understanding well-being either in terms of mental states or in the satisfaction of preferences, one could perhaps be inclined to establish a comprehensive list of factors which create a good life. Even if a situation gives rise to any negative mental states or does not satisfy the preferences one holds, the state of affairs may still be considered exemplary of well-being. For example, it has been noted that animals need to (be able to) engage in certain species-typical behaviors in order to flourish, thereby exemplifying their telos, thus bringing out the “the pigness of the pig, the dogness of the dog” (Rollin 1995: 159). This telos not only guides our attention to the relevance of the evolutionary history of an animal but also focuses on how interests could follow from its nature: “social animals need to be with others of their kind; animals built to run need to run” (Rollin 1995: 159). A list of ten capabilities has been proposed in order to capture adequate levels for animals to flourish in accordance with their own species and dignity, ranging from between life and to play, and having control over one’s environment (Nussbaum 2006). Both telos and capabilities provide a broad account of well-being, hereby reaching beyond mental states or the preferences animals may opt for. Such a view not only enables the possibility for well-being to either increase or decrease independent of the impact on experiential welfare but also facilitates that any negative and positive mental states need not affect well-being.

However, natural behavior often contributes to the experiential welfare of animals (Cochrane 2009). The actual ability of social animals to move around and to engage in social interaction for example contributes significantly to their experiential welfare. Confinement may negatively affect the well-being and lifespan of animals, for instance, by hindering social interaction, keeping them from physical exercise as well as overall inducing boredom, frustration and ill health. Impeding social animals in their interaction with conspecifics or other animals induces frustration, thus decreasing experiential welfare. The same may apply to animals that are “born to run” but are kept in close quarters. The emphasis on species-

typical flourishing could very well boil down to safeguarding and promoting the experiential welfare of animals. Therefore, preference interests and welfare interests may indeed largely converge (DeGrazia 1996). In the case they do not close in, accounts of objective lists face a challenge in explaining and justifying the reason why certain goods are of interest to individuals even if not affecting subjective experience. This phenomenon is especially problematic if pertaining to perfectionist theories, which steer furthest away from an Experience Requirement. Several objective list theories opt for a more flexible or hybrid approach in order to avoid the question-begging aspect of an objective list, by including only goods which are generally considered conducive to experiential welfare (DeGrazia 1996; Haybron 2011).<sup>34</sup> Moreover, the inclusion of autonomy and enjoyment in an account of an objective list could not only help to provide room for individuality but also to challenge other items listed here, narrowing the gap between objectivist and subjectivist theories of well-being (DeGrazia 1996: 217).

In sum, none of the three theories pertaining to well-being is without its problems. Regarding animals, on the one side, a subjectivist account (including mental states and/or preferences) has been advocated because any additional concerns are believed to involve non-prudential values e.g., aesthetic values or other human opinions on how animals should behave (Musschenga 2002). All that matters to an animal is what he/she, as an individual, experiences and prefers (Kasperbauer 2012). On the other side, objectivist theories reject the reduction of any well-being either to a positive experience or to preference-satisfaction irrespective of circumstances and opportunities (Nussbaum 2006). The question if there is perhaps a way to do justice to both the experiential and objectivist inclinations brings us to the relevance of agency.

### ***2.3 Why we need to take agency seriously***

An experiential account of well-being is commonplace in animal ethics (Palmer 2010; Cochrane 2012; Garner 2013; Singer 1990). While humans themselves can challenge the items included in an account of an objective list, animals lack this ability. This observation renders such an account to be perhaps more controversial for animals, especially if goods are demanded that do not contribute to the animal's experience. I assume that an experiential account of well-being is indeed plausible for animals. Well-being comprises experiences,

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<sup>34</sup> The gap between subjective and objective theories of well-being are hereby narrowed down. As to the remaining differences a "virtual tie" between the two approaches may exist, see DeGrazia 1996: 226.

including mental states and the felt satisfaction of preferences. However, this conclusion need not necessarily entail a reduction to the binary pair of pain and pleasure. In actual fact, an experience account rather entails that well-being involves all those factors which positively impinge on one's subjective view on the world, which may include a broader spectrum of happiness including joy, contentment, equanimity, confidence, affiliation, acquiring insight, etc. (Crisp 2001).

Well-being also involves flourishing. Whereby an element of living up to one's potential captures the nature of well-being, this primarily resonates in objectivist theories. However, flourishing could also make sense within a subjectivist understanding of well-being. Rather than complying with objective standards, flourishing involves endorsement by the subject as much as possible. One can only present a complete account of subjective well-being if the individual is provided with sufficient opportunities to determine his or her own good, with the caveat that individuals are able to make such an assessment (Sumner, 1996). Well-being is both experiential and subjective with the additional requirement being: the individual is correct in feeling satisfied about his or her existence. To a certain degree, this requirement resembles the demand that preferences have to be informed. Hinging on the capacity of autonomy, however, the addition includes more: "If a subject's endorsement of some particular (perceived) condition depends on a factual mistake, or results from illusion or deception, then it is not an accurate reflection of her own underlying values. And if those values have been engineered or manipulated by others then they are not truly hers" (Sumner 1996: 174). Sumner thus provides a subjective account of well-being i.e., happiness which calls for an autonomous endorsement. In this manner, he seeks to tackle the above-mentioned objections to subjective accounts of well-being (Haybron 2011). His strategy disarms both the Experience Machine (see the mental-state theory) as well as the happy slave objection (see the theory of preference-satisfaction), as autonomous individuals will not endorse such situations upon reflection. As the autonomous individual knows best, the need for objective reference points also evaporates.

How does this subjective perspective on flourishing translate to animals? Does it improve upon the experiential accounts of well-being central to many recent works on animal ethics? This subjective account agrees with their experiential understanding of animal well-being but adds to this the individual's endorsement of her own happiness. However, whereas this possibly provides us with a plausible account of well-being for humans, the majority of

animals lacks autonomy. While humans may be capable, considering their autonomy, to assess and endorse their personal lives as a whole, animals cannot. As Wayne Sumner (1996: 145-6) puts it, “(c)learly this sort of prudential stocktaking is possible only for creatures capable of asserting their lives as wholes either at a time or over an extended period of time”. The happiness of adult autonomous humans includes both cognitive and affective aspects, whereas non-autonomous humans and animals only possess the latter. This entails that

the minimal wherewithal for having a welfare is being a subject who is capable of being satisfied or unsatisfied by the conditions of one’s life. In the case of paradigm human subjects with complex cognitive capacities, more is necessary as well: their judgments about the quality of their lives must be authentic. Where these more sophisticated skills are absent, the *sine qua non* is the base-line ability to experience one’s life, in the living of it, as agreeable or disagreeable. (Sumner 1996:178)

Thus, animals do have welfare, a term defined in terms of agreeable experiences largely irrespective from context. Is this a plausible interspecific perspective on well-being? Those with autonomy are able to endorse their life as a whole, whereas the well-being of non-autonomous beings is defined by means of agreeable, pleasurable experiences. Doubt concerning the adequacy of this view has been expressed tentatively by Sumner himself (1996: 178), after which the animal question is no longer pursued.

The three main responses to Sumner’s view on animal happiness concern:

(a) taking issue with the claim that all animals (excluding humans) lack autonomy. The cognitive capacities of great apes and cetaceans have led certain scholars to report that these creatures could be autonomous much like adult humans (Cochrane 2009; Andrews 2014; Thomas 2016; Beauchamp & Wobber 2014). Thanks to training, a number of great apes are able to communicate by means of sign language not only with humans but also among each other (Singer 1993; Savage-Rumbaugh et al. 2007), hereby reflecting a high level of mental complexity. These animals may thus perhaps be able to endorse their lives much like autonomous humans would. However, whereas language does not appear relevant with regard to interests if we recall the discussion on Frey’s account of interests, it might very well be of great importance to autonomy. Considering that sign language-trained great apes present us with a plausible case for the existence of autonomy in non-human animals, this “indicates the

question of whether autonomy is possible without language” (DeGrazia 1996: 209).

Therefore, while several species of animals might possess the cognitive capacity necessary for acquiring some level of competency with human language including second-order reflections, and consequently achieve autonomy, this is something that the large majority of animals lack. At least for less cognitively complex animals, the case for autonomy appears far-fetched.

(b) alternatively, that if we assume animals lacking autonomy, animal well-being is not merely reduced to enjoying pleasurable experiences.<sup>35</sup> Taking Sumner’s view on welfare as a starting point in order to develop a subjective understanding of animal well-being, it is argued that only after providing animals with sufficient opportunities, similar to assessing the well-being of children, are we able to deliver a genuine evaluation of animal well-being (Haynes 2008). As Richard Haynes (2008: 125) invites us to wonder: “How can we be assured that a particular environment is one in which, while the animals in it seem satisfied with their opportunities, this satisfaction is the result of their own conditioning or ignorance of what is possible”. This observation illustrates the need for not only assessing well-being over time but also in the light of adaptive processes. Well-being involves more than just the momentous presence of pleasurable experiences. While positive experiences are key, taking note of them at one point in time does indeed appear to be incomplete.

Where Sumner remains in doubt as to the authenticity requirement and its implications for animals, Haynes does not consider the lack of autonomy a reason for reducing animal welfare to the presence of agreeable experiences. If the individual is unable to judge whether it is justifiably satisfied, Haynes suggests by proxy assessment will do. The question now arises: which standard should we apply in such assessments? Does this ultimately result in an objective understanding of well-being? Interestingly, Haynes refers to the aforementioned capabilities approach developed by Nussbaum, which lists several goods that together comprise a minimal flourishing life. In doing so, he distinguishes between items that are generally of prudential value and a theory of well-being.<sup>36</sup> The difference becomes noticeable

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<sup>35</sup> Haynes (2008: 120) disagrees with Nordenfelt, a Swedish philosopher working on concepts of health and welfare, who in his publication of 2006 entitled *Animal and Human Health and Welfare: a comparative philosophical analysis* opts for a preference-theory of happiness. Haynes argues that such a view causes animal welfare to be too contingent and is determined by the situation, whereas Nordenfelt does not impose either a standard or threshold for well-being. If there is only relative happiness, one might argue that, as long as animals are either not frustrated or suffer, their well-being is fine.

<sup>36</sup> Haynes (2008: Introduction XV) follows Sumner’s example when stating that ‘Sumner has no objections to what Parfit [...] calls an “objectivist list” theory as long as it is understood to be a list of things that are standardly taken to contribute to or are sources of human well-being, and not a theory of well-being’.

when the importance of species-typical behavior is considered. Agreeing that numerous capabilities provide us with a list of those items that are generally of prudential value, Haynes takes issue with Nussbaum's adherence to the species-norm when defining the term "flourishing", an issue that, as the former reports "strikes me as problematic, for it assumes that animal wards should associate primarily with their own kind and not with other species, including humans" (Haynes 2008: 124). Haynes thus shares with Nussbaum the criticism of preference-satisfaction views but disagrees on the question: which kind of opportunities should be open to the individual animal?<sup>37</sup>

(c) a third response which closely resembles (b) but entails more attention to be paid to the agency of animals and their ability to make meaningful choices. Sumner tentatively holds that animal welfare can be defined in terms of having "agreeable experiences". Agreeable means "quite enjoyable and pleasurable; pleasant" and/or "willing to agree to something".<sup>38</sup> While Sumner opts for the first reading, by doing so he deflects attention from the other possibility. While Haynes gravitates towards the second reading, he defers to by proxy assessment, instead of fully investigating the capacities and willingness of animals to agree; to endorse. It has also been suggested that "animals may well have an interest in autonomy if the latter is largely a matter of having, acquiring, and acting upon desires which are truly their own" (Milligan 2015: 13).<sup>39</sup> On this reading, animals can be autonomous in part because of modifying the definition of autonomy. Can the concept of autonomy survive such pulling in another direction, away from the second-order reflection that characterizes human adult reasoning? Like DeGrazia, I beg to differ. Such an understanding of autonomy "appears to make autonomous action almost the same as intentional action, suggesting a failure to capture the degree of critical reflection and decision making embedded in the concept of autonomy" (DeGrazia 1996: 207). Comprehension of the ways external or internal mechanisms interfere with our personal thoughts and actions is critical to the concept of autonomy.<sup>40</sup> This is not to say that authors who attempt to attune this concept to animals are totally mistaken, because intentional action does matter. However, it should not lead us to redefine autonomy but instead lead us to taking agency more seriously. These authors and their preoccupation with autonomy may point towards agency and not autonomy as being the relevant concept. One

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<sup>37</sup> For similar remarks, see Kasperbauer 2012 and Donaldson & Kymlicka 2011.

<sup>38</sup> <https://en.oxforddictionaries.com/definition/agreeable> [accessed 17 October 2018].

<sup>39</sup> See also Gruen 2011, Beauchamp & Wobber 2014 and Thomas 2016.

<sup>40</sup> Whether or not we are indeed truly autonomous is another issue which does not need not bog us down now.

might argue that although animals lack autonomy, they do have cognitive capacities relevant to determining their subjective good, such as agency. Perhaps well-being should include the endorsement of animals in terms of agency.

What does agency involve? In general terms, it involves the ability of individuals to act with a specific aim or goal in mind (Thomas 2016; Donaldson & Kymlicka 2016b). Do animals display such competency? It has been advocated (Wynne 2005) that ascribing human-like intentionality to animals involves anthropomorphism: “the attribution of human characteristics or behaviour to a god, animal, or object”.<sup>41</sup> The ethologist-*cum*-primateologist Frans de Waal has been criticized for introducing overt anthropomorphism into his work, for example in how he describes the behavior of chimpanzees in terms of political action, and thus as human-analogue social behavior.

Those scholars who forward objections against De Waal’s descriptions, however, should provide a compelling answer which distinguishes humans from animals when dealing with their behavior. Moreover, De Waal argues, it is precisely the continuity between species and their traits that questions the claim that only human behavior can be explained by means of intentional terms. Instead of characteristics being either present or not, they exist in different degrees in different species. De Waal therefore argues, for agency and even levels of moral agency in non-human animals. An intentional stance which explains behavior in terms of intentional terms towards animals often provides a plausible explanation of their behavior; a method to avoid the scientific error of overt anthropomorphism (De Waal 2005; Thomas 2016).

To counterweigh the objection of anthropomorphism, De Waal coins the term “anthropodenial”. This process involves the unjustified denial of intentionality when describing animal behavior, as De Waal (1997: 51) mentions: “a blindness to the humanlike characteristics of other animals, or the animal-like characteristics of ourselves”. Just as it would be wrong to uncritically ascribe human traits to animals, one should take intentionality seriously wherever one finds it, thus irrespective of species membership. This procedure of employing an intentional stance allows scientific scrutiny to avoid anthropomorphism. Scientific research into the cognitive capacities of various animals supports the claim they

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<sup>41</sup> <https://en.oxforddictionaries.com/definition/anthropomorphism> [accessed 2 January 2019].



lead rich mental lives, involving beliefs, desires, a certain degree of self-awareness, and memories.<sup>42</sup>

Following the naturalistic line of argument De Waal himself follows, it is plausible to argue that agency is more gradually present in the animal kingdom than autonomy. This assessment entails not only that a larger number of creatures possess agency, but also that that certain animals possess more of it than others. Whereas dogs, for example, are not autonomous in the sense as discussed above, they display significant levels of agency, as do human children. As Thomas notes: “The intellectually disabled and small children are examples of humans whose ability to reason is diminished, and yet we would still treat them and view them as agents, capable of directing their own behaviours and actions. In a similar way, animals can be more or less rational” (Thomas 2016: 17).

The importance of animal agency has been underlined, defining it in terms of “self-willed or initiated action which carries an expectation of efficacy” (Donaldson & Kymlicka 2016d: 179). In doing so, Donaldson and Kymlicka criticize conceptions of agency which are merely set up in order to include “adult rational humans” by pointing out recent developments and innovative manners of reflecting upon the subjective good of people with cognitive disabilities. Indeed, many of these insights can also inform our thoughts on animal agency.

What would it entail if we were to take animal agency seriously within the above-mentioned subjective account of well-being? As to thoughts on agency, it has been noted that one can distinguish between (a) micro-agency which involves “day-to-day choices within a pre-defined way of life”, and (b) macro-agency which enables “animals to explore different possible ways of life” (Donaldson & Kymlicka 2016c: 57). It is perfectly possible to develop a subjective account of well-being that takes these types of agency seriously. This possibility is hinted at – but not further explored – when they argue that “many animals have an interest in macro agency, and not just well-being defined as preference satisfaction or species-typical functioning (Donaldson & Kymlicka 2016b: 236). This interest in macro-agency could be an important part of a subjective understanding of well-being as developed in the present chapter. If animals are given the chance to explore and communicate their preferred way of

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<sup>42</sup> It is unclear whether pigs and dogs recognize themselves in mirrors. Great apes, cetaceans and various corvids do pass this self-awareness test, see Marino & Colvin 2015.

life by means of micro- and macro-agency, their choices may reflect justified satisfaction, an endorsement of their lives.

Empowering animal choice with regards to their subjective good contrasts with the objective-list conception of well-being. Donaldson and Kymlicka argue against falling back on objective list conceptions of well-being pertaining to individuals based on the argument that those individuals are not able to communicate their subjective states and desires as adult humans can. They identify this move in the work of the American philosopher Martha Nussbaum:

Recall that the original challenge raised by Nussbaum was that there are serious epistemic barriers in interpreting the subjective good of people who are not linguistic agents, and that where these barriers exist, we should rely instead on objective measures of the good life and on species-typical norms, rather than engage in the speculative and potentially self-serving task of trying to understand the subjectivity of these individuals. (Donaldson & Kymlicka 2016d: 191)

Donaldson and Kymlicka state that such an approach could seriously underestimate the ability of non-autonomous beings to communicate their subjective states and desires if given sufficient opportunity. Furthermore, Nussbaum possibly introduces assumptions pertaining to the flourishing of animals that steer towards essentialism, a potential bad thing if it goes against the interests of individual animals. Kasperbauer (2012: 995) goes as far as to claim that “any theory rooted in species norms or related concepts is doomed to fail” not least of all because “animals living outside of their natural habitat will form unique sets of preferences, requiring an individualized assessment of wants and needs”. Species-typical behaviors are contingent indications of well-being and can be replaced by careful attention for the subjective experience of animals (Kasperbauer 2012). Such an individual and contextualized approach to well-being may lead to surprising results. Certain behaviors or capacities that are non-species specific may well be beneficial. The benefits can be either direct (e.g., the thrills of playing a computer game or enjoying interaction with humans) or instrumental, when language enables individuals to communicate their wishes in great detail (Savage-Rumbaugh et al. 2007).

How do we establish a preferred way of life without falling foul to speculation and the self-serving conclusions ushering Nussbaum to opt for objective measures? Donaldson and Kymlicka (2016d) advocate the importance of varied perspectives on the subjective goods of animals which together provide a useful patchwork of knowledge. They distinguish expert, folk, and personal knowledge whereby

(a) expert knowledge involves the accumulated body of knowledge derived from various scientific disciplines engaged with the well-being of animals as well as ethology and animal welfare science in general, although much of the latter appears to be largely framed in terms of human interests (Haynes 2008; Donaldson & Kymlicka 2016a). This bias is problematic as it fails to present us with a scholarly account of the interests of animals themselves, especially considering that human interests may conflict with those of animals.

(b) folk knowledge emerges out of spending time with animals gradually building up a “frame of reference” pertaining to the behaviors of animals of a certain species (such as dogs, or even more specific, dogs of a certain breed). Such frames are not fine-tuned at an individual level.

(c) one develops personal knowledge regarding the individual preferences and behaviors of animals when taking care of animals in the role of a guardian. The singular experience could help track aspects of the individual good omitted from expert and folk knowledge, both of which are bound by all kinds of generalizations.<sup>43</sup> Together, these three sources of knowledge may contribute to sketch the contours of the subjective goods of non-autonomous individuals without the need to rely on an objective list account of well-being.

Agency provides animals with the capacity to make meaningful, individual choices concerning their subjective good. Well-being is not only restricted to any positive subjective experience witnessed at a given time, but also relates to how a subject has arrived at that experience. Whether or not animals have been presented with the chance to sufficiently employ their agency over time in order to determine their own subjective good should become a central question when evaluating well-being. Promoting micro- and especially macro-agency can reveal by means of individual endorsement the well-being of non-autonomous agents

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<sup>43</sup> Individual differences may of course also be studied from an expert perspective, see Ohl & Putman 2014.

A subjective understanding of animal well-being now outlined, the next task implies specifying the range of welfare interests which animals may hold. I will now discuss the following three basic interests: (a) the avoidance of suffering, (b) a continued life and (c) the freedom of opportunity to then assess the extent to which cognitive capacities, such as great apes display, are relevant to these interests.

## ***2.4 What is in the interests of animals?***

Whereas determining animal interests will inevitably trigger disagreement, for instance, concerning the range of welfare-interests, certain interests nonetheless appear to be quite evident. The avoidance of suffering is probably the least controversial interest of animals. Sentient beings in general share a strong interest in avoiding any suffering.

Species typical capacities can affect the ways one may suffer. Whereas adult humans may experience guilt and impending future punishment delivered by a deity, other animals with less rational capacities will not be able to endure such a kind of suffering (DeGrazia 2014). However, breaking a bone will induce pain in rational humans and dogs in relatively similar ways. For, they are all sentient beings and therefore feel and subjectively experience what happens to them (Cochrane 2012). This cross-species comparison also reveals the particular moral relevance of rational capacity with regard to suffering. Allowing for certain forms of suffering which beings with a lower rational capacity cannot experience, any less complicated instances of suffering (such as fracturing a bone) are experienced as unpleasant irrespective of one's cognitive complexity. Rationalizing the situation by anticipating adequate analgesia and medical treatment, hopefully resulting in good chances of a swift, full recovery may indeed even soften the blow and somewhat alleviate one's suffering. This mental ability of rationalization is unavailable to less cognitive complex sentient beings, which may thus suffer more from similar physical impairments (Singer 2011).

While the interest in avoiding suffering is compelling for sentient beings, the interest in a continued life of animals may prove less indisputable. It is intuitively noted, for example, that (painless) death harms persons more than it does animals (DeGrazia 2016a). Can this assessment be explained in terms of differences in interests? Do animals indeed take less interest in continued life? The existence as well as the strength of such an interest can be determined in various manners. For example, the harm of death may follow from the way it thwarts desires. We must then ascertain if animals pursue any desires that extend beyond their

immediate experience which can entail (a) the desire to go on living, (b) having several long-term desires that together impose a sufficient interest in continued life, (c) a present desire which satisfaction extends somewhat into the future (such as eating), and (d) resistance to death (Palmer 2010: 131). It remains unclear whether any animals in addition to humans pursue the specific desire to go on living, or (with the exception of specific highly intelligent animals) pursue sufficient desires which include mental time travel into the future. The same applies to young children and people with cognitive disabilities. Moreover, it is unlikely that the aforementioned (c) and (d) reflect a genuine desire as to a continued life (Palmer 2010: 132).

A desire-based account overlooks the arguable moral importance of any future goods of individuals regardless of their present set of desires and/or preferences. Painless death, as is suggested, continues to inflict harm because individuals are robbed from the opportunity to experience well-being from the present until the inevitable natural conclusion to their life. The infliction of suffering can harm animals as can missing out on valuable opportunities; they are deprived of their future goods, harmed by death. Imagine a healthy puppy, blessed with the prospects of an enjoyable life. It does not appear farfetched, intuitively, to claim that painless death harms the puppy (DeGrazia 2016a).

Does the harm done to the puppy equal the harm involved in the death of a healthy adult? One can attempt to argue that humans lead more valuable lives. If the goods humans lose are of more value than the goods of animals, death subsequently imposes a more significant harm to humans. However, it is not clear that animals have less to lose from a premature painless death based on their interests. DeGrazia identifies two possible strategies for distinguishing between the interests of humans and animals, which both fail to deliver him a satisfying answer. One could start from an experiential account of welfare-interests to then argue that the human experience is superior. Or, even add that resulting from a longer lifespan, humans are presented with more opportunities to achieve well-being. However, it is not clear whether a canine's enjoyment of subjective goods ranks lower than the way humans enjoy their goods. An inclination to rank the latter goods higher may result from human bias, as the satisfaction extracted from these different goods should be evaluated from a subjective viewpoint; satisfaction matters because someone enjoys it. As DeGrazia puts it himself, "there is no reason to believe that the subjective quality of life of a dog who is faring well is lower than

that of a person who is faring well” (DeGrazia 2016a: 3). A retreat to the argument of a longer lifespan does not appear all that convincing.

Does an objective account of prudential value explain the supposed differences in harm between human and animal death? Is the ability of humans to enjoy music, engage in conversation, love others, gather knowledge etc., qualitatively of greater value than everything animal well-being comprises? The first thing to observe here is: humans lack many capacities other animals have. As is observed, “it would be erroneous to assume that persons’ lives contain all the valuable features of dogs’ lives (e.g., certain sorts of enjoyment) plus some that are especially valuable (e.g., highly intellectual achievements). Dogs’ lives contain many sensory riches that our lives lack” (DeGrazia 2016a: 3). It further remains unclear, as DeGrazia points out, if observed from an objective list theory human well-being proves superior.

Therefore, quantitative explanations within an experiential notion of well-being as well as qualitative explanations within an objective notion of well-being fail to deliver a sound explanation regarding the differences pertaining to the harm of death. Perhaps our intuitions on this issue are mistaken.

Jeff McMahan (2002) proposes another possibility which is gaining traction among moral and political philosophers (Cochrane 2007; Palmer 2010; DeGrazia 2016a; Ladwig 2015). Rather than merely looking at an individual’s future goods, he suggests we should also take into account “the extent to which the individual at the time of death would have been psychologically connected to himself at those times in the future when the good things in his life would have occurred” (McMahan 2016: 70). On his time-relative interest account, a weak psychological connection between individuals and their future self does discount the harm of death. In his view, such discounting explains the intuition that discontinued life imposes more harm to a 20-year-old human compared to a fetus at the very onset of a pregnancy, whereas the harm would be equal for both a 20-year-old and a 40-year-old individual.

One may reject this intuition and argue that (a) the harm of death is about the total of future goods lost or that (b) death does not harm the individual. Let us now look into the implications of these other viewpoints for the claim that death harms humans more. Starting with (a), if we assume that future goods cannot be discounted assessing the harm of death,

consequently the intuition that death harms a person more cannot be substantiated: if one cannot discount any future goods by reference to the psychological unity, then this provides us with even stronger grounds to warrant the protection of interests of animals in a continued life, just as it would reject abortion as a result of the future goods being available to fetuses (McMahan 2016). Similarly, there is no dividing line between humans and animals with regard to the harm of death if death imposes no harm whatsoever to the individual itself. So, if we assume that death harms a person more, the time-relative account provides a plausible explanation of differentiating between the interests in continued life of humans and animals.

Discounting the harm of death by means of the level of psychological unity also implies that interests in continued life can differ between animals e.g., chickens and great apes. The latter creatures will reveal rather robust interests in continued life, whereas death will be significantly less harmful to a chicken. Although a sound reason is still required, when cutting a chicken's life short, death harms adult humans and other great apes more.

Do animals take an interest in freedom? Based on the preceding account, animal well-being involves the ability of individuals to explore and determine their preferred way of life, but this does not necessarily include an interest in freedom, as one may argue that any interest in freedom follows from the capacity of autonomy. Whenever humans are not (fully) autonomous, their freedom may be restricted in various ways. For, at this very moment, they do not take an intrinsic interest in freedom as such. Their interests in freedom at such an instance are instrumental, in the sense that restrictions of movement may cause suffering or frustration.<sup>44</sup> In fact, the impact on experiential welfare of restricting freedom provides us with a strong reason to not capture animals living in the wild, as they could suffer hugely in the process as well as its subsequent confinement (Cooke 2017).

In general, a certain level of paternalism is apparently acceptable when dealing with non-autonomous individuals. However, as is argued above, the absence of autonomy may be perfectly compatible with the presence of (a degree of) agency. And, even if the individuals lack autonomy, the acknowledgement of agency pushes back against an overly paternalistic attitude by uncovering ways in which individuals can make meaningful choices regarding

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<sup>44</sup> For a lengthy defence of this claim, see Cochrane 2009.

their own life.<sup>45</sup> Because agency is associated with cognitive capacities, certain animals are more capable of making such choices than others which entails that the interests taken in freedom and in functionings may differ as to the strength observed between animals.

Acknowledging agency not necessarily involves a hands-off approach, as one may provide conditions in which individuals can employ their agency. Indeed, animals living amongst humans encounter many ways in which they depend on human assistance as to realize a life in accordance with being justifiably satisfied. Training can provide a means for individuals to explore and develop their potential. This activity should, however, fall in line with the interests of the animals themselves as individuals, not merely the outcome of species-specifics or human interests. As such, an animal's interest in freedom is very much entangled with his/her interests in functionings. One of the most important issues pertaining to animal ethics is, as Kasperbauer (2012: 989) suggests, "what range of behaviors we think animals should express, given that we can control the environmental conditions for their expression". In line with the above discussion, an assessment of well-being has to pay attention to the opportunities presented to individual animals in order to deliver a complete evaluation.

We are faced with an epistemic challenge – different from the one raised in chapter 1 – to uncover what really is in the interest of animals, in order to establish which environmental conditions would be favorable. Testing their preferences is one way of executing this procedure, although it should be carried out in recognition of its shortcomings. As scholars engaged in the concept of animal welfare have discussed, preference testing is vulnerable to the effect of adaptive preferences (Fraser et al. 1997; Haynes 2008). By now, it should not come as a surprise that settling for relative happiness misses the mark. A great deal depends on the amount of effort and time spent in discovering the interests of animals, a procedure comparable in many ways to the assessment of the well-being of children. When one refrains from providing a range of opportunities where these are feasible and reasonable, it is inadequate to ascertain well-being because it is incomplete. Based on these interests and their level of agency, great apes have a moral right to freedom of opportunity, as will become apparent throughout chapter 3.

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<sup>45</sup> Donaldson and Kymlicka argue that animals also have autonomy. However, this capacity is not necessary because agency also provides a sufficient proviso. Moreover, the controversial understanding of autonomy involved here may push the conceptual boundaries too far, see Cooke 2017.



## ***2.5 Concluding remarks***

Sentient animals and their interests demand direct moral consideration. This stipulation requires an understanding of animal well-being: what specifically is in the interests of individual sentient animals? Starting from a subjective rather than an objective account of well-being, I advocate the importance of agency as a means for individual animals to determine their own subjective good. This view is based on the theory of well-being as presented by the Canadian philosopher Wayne Sumner, which involves the autonomous endorsement of one's life. My opinion deviates from Sumner's viewpoint in understanding "agreeable" in terms of active endorsement rather than mere passive enjoyment. Agency, in addition to autonomy, provides the ability to engage in endorsement. Whereas the majority or perhaps even all non-human animals lack autonomy, agency is present at various levels in different animal species to a degree that animals can be considered agents in a relevant sense. If compared to other experiential accounts of animal well-being, the account developed in this chapter differs in its emphasis on subjective endorsement of a way of life given a range of opportunities. In chapter 3, I will discuss how this relates specifically to recent interest-based theories of rights that do not acknowledge a right to liberty.

While sentience provides a threshold capacity for moral consideration and rather readily gives rise to the interests in the avoidance of suffering, psychological unity and agency are plausible factors that determine the strength of the interests in respectively continued life and freedom. This evaluation entails that great apes have strong interests in the avoidance of suffering as well as in continued life. Moreover, acknowledging their agency should lead us to recognize their interests in freedom of opportunity.

