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The Intrinsic Value of Liberty for Non-Human Animals

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Abstract

The prevalent views of animal liberty among animal advocates suggest that liberty is merely instrumentally valuable and invasive paternalism is justified. In contrast to this popular view, I argue that liberty is intrinsically good for animals. I suggest that animal well-being is best accommodated by an Objective List Theory and that liberty is an irreducible component of animal well-being. As such, I argue that it is good for animals to possess liberty even if possessing liberty does not contribute towards their subjective well-being, and even in some cases where it has a negative effect upon their subjective well-being. To establish this view I argue that if animals are agents, as I assume they are, then like humans they must be able to determine the course of their own lives (to some extent). Further, having the opportunity to self-determine one's life just is the very same thing as liberty, and having the opportunity to determine the course of one's life is intrinsically good. Thus liberty has intrinsic value for humans and animals. So, in addition to the instrumental harms of having one's liberty restricted, I claim that restricting animals' liberty *in principle* harms them because it undermines their capacity for self-determination and fails to acknowledge their authority as agents to make their own choices.

Keywords: Animals, Freedom, Intrinsic Value of Liberty, Self-Determination, Paternalism, Non-Autonomous Agency

Among animal advocates, it is a widely held belief that liberty has exclusively instrumental value for sentient non-human animals (henceforth merely 'animals'). Accounts that accept this premise suggest that liberty is good for animals, when (and only when) it confers some other good upon them. Whilst this is not unanimously accepted among animal defenders, there is a lack of convincing and well-developed arguments in favour of the alternative view that liberty is valuable in itself. In this paper I will attempt to fill this void by defending a novel view of the intrinsic value of liberty for animals.

I will argue that liberty is valuable for animals because possessing liberty just is the possession of opportunities to determine the course of one's life. Further, I will argue that this self-determination is good in itself, even if it doesn't result in positive subjective experiences and even in some cases where it results in negative subjective experiences. So, other things being equal, it is better that one possesses self-determination than not. Or, to put this another way, even if self-determination does not contribute to one's subjective well-being, it still contributes to one's well-being in a wider sense.[1] So I will suggest that animals are *pro tanto* harmed by the restriction of liberty *in itself*, over and above any instrumental harm they may suffer as a result of liberty restrictions.

In order to reach this conclusion I suggest that liberty is plausibly valuable for humans because it allows one to determine the course of one's own life. Further, if animals are agents too, they can also determine the course of their own lives. Thus, so long as there is no morally relevance difference between human and animal agency, liberty can be valuable for animals for the same reason in which it is valuable for humans: because possessing liberty means having the opportunity to determine the course of one's life. Finally, I will suggest that this means that animals,

[1] For the sake of clarity, I use the term 'subjective well-being' to refer to the subjective component of well-being, be it understood as preference satisfaction, happiness or in some other way. I reserve the term 'well-being' for the wider inclusive notion of what makes a life good, of which I suggest this subjective element and self-determination are constituents. I discuss this point in more detail below.

like humans, could plausibly be harmed by having their opportunities to engage in such determination restricted, even if their subjective well-being is not impacted.

Kinds of Liberty

Before going any further I will clarify the understanding of liberty relevant to my discussion. Liberty is often recognised as coming in two main strains: *negative liberty* and *positive liberty*. One may understand these notions to demarcate distinct (and incompatible) kinds of liberty or one may take them to be concepts used merely in order to ease philosophical discussion of liberty in different contexts i.e. liberty regarding mental states vs external objects. It does not matter for my purposes here which view one takes in this debate. I highlight this common distinction only to allow my reader to quickly grasp the relevant understanding of liberty used in my argument. [2]

Negative liberty is often summarised as 'the freedom to act without interference or obstruction from another agent' (Berlin 1969, p.122). If no external obstructions from other agents hinder one's course of action, then one has negative liberty (Taylor 2006, pp.143–44). For example, I am free to eat the cake in the fridge if I am not physically restrained and the fridge is not padlocked.[3] In contrast to this stands positive liberty. One has positive liberty when one is free to act in accordance with what one truly wants, or to act authentically in line with one's highest-order desires (Berlin 1969, pp.131,136). So whilst I might be free in the negative sense to eat the cake because I'm not physically restrained, and there is no padlock on the fridge, I will not be free in the positive sense to eat the cake, if I am under hypnosis or

[2] A third notion of liberty, '*republican liberty*' is related to the power relations that are present between agents. One is deprived of republican liberty when one is vulnerable to having one's interests interfered with, or one is 'dominated' by other agents (Skinner 2002, p.243; Pettit 2006, p.224). While what I say in this article is certainly relevant to the question of animals' interest in republican liberty, I do not have the space to explore these connections here. For a thorough discussion of animals' interest in republican liberty see: (Schmidt 2015; Giroux 2016).

[3] Following convention I shall refer to 'liberty' and 'freedom' interchangeably.

brainwashed not to eat the cake. In this paper I will focus solely on 'negative liberty' – the liberty relations that hold between agents and external obstructions. So when I speak of animals having their liberty restricted or being unfree I mean only that their negative liberty is restricted.[4]

Having one's negative liberty restricted does not always involve being physically confined. One may have one's liberty restricted by not being allowed access to a location or building, not being allowed to use a service or being denied employment opportunities. Hence the subject of the following discussion is not merely whether we harm animals when we confine them, but also for instance, whether we harm animals when we deny them access to certain buildings, the opportunity to choose when and where to exercise, the opportunity of sexual activity with others and the opportunity to choose what, when and where to eat. More succinctly, I am interested in whether animals are harmed by having their opportunities to choose restricted or removed.

As a final note, I should also state that although I am suggesting that liberty is valuable, I am not suggesting that it is *always* wrong to restrict others' liberty. Plausibly, it seems that one's liberty can permissibly be restricted under many conditions: when one becomes a danger to others, or as a form of punishment when one fails to abide by the law for example. So my aim is to show that liberty has intrinsic value and that we *pro tanto* ought not to restrict animals' liberty, even though it may still be *all things considered* right to restrict animals' liberty in certain circumstances.

The Orthodox View

[4] As a side note, the notion of positive liberty is not recognised to be applicable to animals since they are generally considered to be incapable of higher-order thought. As such, they have no higher order desires to act in line with, nor any higher order desires to be obstructed by their lower order desires. Thus they are unable to either possess or lack positive liberty.

The prevalent type of account of the value of liberty for animals is the instrumental account. This type of account takes liberty to be good for animals only when it confers some other good upon them. Usually this other good is some kind of subjective experience. So the Orthodox View regarding animal liberty can be stated as something like this: Liberty is good for one when it positively impacts upon one's subjective well-being. Clearly then, one's views regarding the most accurate account of well-being will play a significant role in determining one's preferred account of the value of liberty.

Most animal advocates accept a subjectivist theory of animal well-being. They endorse the view that the only thing that is intrinsically good for an animal is some subjective experiences or mental states. According to this view, whether an animal's life is good or bad, better or worse is determined solely by their subjective experiences/mental states. The two main subjective theories of animal well-being are the Hedonistic Theory and the Preference Satisfaction Theory. The Hedonistic Theory maintains that pleasure, or more accurately pleasant mental states more generally, are good for animals, and painful or unpleasant mental states are bad for animals. The Preference Satisfaction Theory on the other hand suggests that what is good for one is the satisfaction of (some relevant subset of) preferences and what is bad for one is the lack of satisfaction or frustration of these preferences.[5]

I will argue that liberty is not merely valuable because of its instrumental impact upon one's subjective well-being but that it is also good for one in a further sense, regardless of its impact upon one's subjective well-being. This is because possessing liberty is *the very same thing as* possessing opportunities for self-determination and possessing opportunities for self-determination is intrinsically good for one. Thus, in contrast to the Orthodox View I contend that animal well-being cannot be accounted for purely in terms of subjective experiences.

[5] I do not make any claims about how we determine the relevant subset of desires, the satisfaction of which, contribute towards one's well-being. However I discuss this issue in a little more detail below in relation to the Desire Account of the value of liberty

Instead, I suggest that animal well-being can best be accounted for by an Objective List Theory of well-being, according to which, that which is good for one is *not* determined solely by one's subjective experiences but also by the possession of some other objective goods. These goods directly contribute towards one's well-being because they are valuable in themselves. I make no claim regarding what goods are on this list other than subjective well-being (under some description) and opportunities for self-determination.

In the interest of being ecumenical I make no claims about how we ought to interpret subjective well-being. However, I will adopt the Preference Satisfaction Theory of subjective well-being throughout most of this article in order to assess the Desire Account of the value of liberty. I do this because the Preference Satisfaction Theory appears to be the typical understanding of animal well-being and because it naturally dovetails with the Desire Account due to the central role desires play in both these views. That being said, I do not think the problems I raise with the Desire Account can be circumvented merely by adopting an alternative theory of subjective well-being.

I'll now consider a prevalent instrumental value account of liberty for animals: the Desire Account. I will then argue that this account implies that we can exert significant control over animals' lives and restrict animals' liberty in some plausibly harmful ways. Because of this, I am unconvinced that such accounts can fully explain the value of liberty for animals.

The Desire Account is one of the most well-developed, and perhaps the most popular account of the value of liberty for animals.[6] Most theorists who take liberty to have value for animals endorse some form of this account.[7] According to the

[6] See Cochrane for a particularly clear defence of this account: (Cochrane 2009).

[7] The Perfectionist Account is the other popular account of animal liberty. The principle claim of this account is that liberty is good for animals where it allows them to engage in their natural functioning. However, because I cannot do justice to this account here, and to ensure that this paper does not become unwieldly, I will not discuss it here. For defences of this account see: (Rollin 1981, p.35; Nussbaum 2007, p.347; Taylor 2011).

Desire Account, liberty is good for animals when, and to the extent that, it allows them to pursue their desires. Likewise the restriction of liberty is bad for animals when, and to the extent that, it obstructs them from pursuing their desires. Pursuing desires is good for animals because through pursuing desires, animals (at least sometimes) satisfy them and satisfying desires has a positive impact upon animals' subjective well-being. Further, obstructing animals from pursuing desires is bad for animals because it hinders them from satisfying their desires, and thus deprives them of positive contributions to their subjective well-being. So, according to the Desire Account, it is not the possession of liberty *itself*, but the benefits that the possession of liberty permits, that is good for animals. Similarly, it is not the restrictions of liberty themselves, but the effects these restrictions cause, that harm animals.

This at least, is how the Desire Account is often presented. In fact the account cannot plausibly be this simplistic since desire satisfaction does not always contribute towards one's subjective well-being. Though satisfying a desire plausibly contributes to one's subjective well-being in the short-term, the overall effect on one's subjective well-being may be negative, for example, where satisfying a desire ensures that a more significant desire is frustrated. For instance, a dog may have a desire to eat as much food as he can, however, if this desire was satisfied every time it was pursued, his desire to engage in play, live without pain and many other important desires would be frustrated by the obesity and health-problems that arise the from the satisfaction of his desire to eat. The relentless pursuit of the desire to eat would certainly not positively contribute towards the dog's subjective well-being then.

Desires can also be misguided. For instance, I may desire to eat at the newly opened restaurant in town. However upon eating my meal I discover that it serves incredibly underwhelming food. As such, although my immediate desire to eat at the new restaurant is satisfied, my more significant desire to eat good food is

frustrated. Assuming that the negative impact of frustration of my desire to eat good food outweighs the positive impact of the satisfaction of my desire to eat at the restaurant, the satisfaction of my desire to eat at the new restaurant actually diminishes my well-being overall.

Not all desire satisfaction contributes towards one's subjective well-being then. Most plausibly, liberty is valuable on the Desire Account where it allows one to pursue desires which, when satisfied, contribute towards one's overall subjective well-being. So perhaps liberty is good where it allows one to pursue the satisfaction of rational and informed desires. Or, perhaps it is valuable where it allows one to pursue some objectively important desires, e.g. desires for food or water. I will take no stand on which of these sets of conditions, if either, most accurately picks out the group of desires which, when satisfied contribute to one's subjective well-being. However, if the satisfaction of some sub-set of desires contributes towards one's subjective well-being, then being free to pursue these desires would plausibly be good. This being so, liberty cannot be good because it grants one opportunities to satisfy *just any* desires. In light of this, a charitable reconstruction of the central claim of the Desire Account states that liberty is a good for an animal because it grants them the opportunities to pursue *subjective well-being-promoting desires*.

Paternalism and the Desire Account

It is undoubtedly *pro tanto* good for animals to be free to pursue subjective well-being-promoting desires. However being free to pursue *only* these desires seems like a rather limited degree of freedom. Nonetheless, any account that claims that freedom is good for animals only in so far as it contributes towards their subjective well-being, implies that moral agents can permissibly restrict animals' actions in just this way. For instance, where the satisfaction of a desire has an overall neutral contribution towards an animal's subjective well-being, they need not be free

to pursue this desire. Consider my dog Enzo has a desire to eat grass every day during his walk and that eating grass occasionally causes him mild digestive discomfort. Let us assume that Enzo also has a desire to be free of digestive discomfort (or some similar desire). Further, let's stipulate that over the course of his life, the positive contribution to Enzo's subjective well-being from satisfying his desire to eat grass is exactly equal to the negative impact upon his subjective well-being caused by the frustration of his desire to be free of digestive discomfort. In such a case, since satisfying his desire to eat grass does not contribute towards his subjective well-being overall, it seems I can permissibly obstruct him from pursing this desire on the Desire Account, without any further justification.

Furthermore, if the satisfaction of an animal's desire not only fails to contribute towards their subjective well-being, but actually diminishes their subjective well-being, then not only can we obstruct them from pursuing this desire, but it seems that we are actually *obligated* to obstruct them from pursuing these desire (assuming we have an obligation to minimise harm). Thus if the frustration of Enzo's desire to be free of digestive discomfort negatively impacted his subjective well-being to a greater extent than the satisfaction of his desire to eat grass positively impacted his subjective well-being, I ought to prevent him from pursuing his desire to eat grass. This would be the case even if the negative impact on his subjective well-being was very minor.

In fact, the Desire Account not only allows us to obstruct animals from acting in ways that have a neutral or negative effect upon their subjective well-being, but allows us to deprive them of choice altogether. Liberty is valuable on this account, not because it allows the pursuit of subjective well-being-promoting desires *per se*, but because it allows *the satisfaction* of subjective well-being-promoting desires. This means that so long as one's subjective well-being-promoting desires are satisfied, one need not be free to actually engage in the pursuit of these desires oneself. Thus a life in which the satisfaction of an animal's desires was ensured at all times would be

no more objectionable on this account than one in which the same animal has the freedom to pursue the satisfaction of these desires herself, through her own actions.

Imagine a horse (let's call her 'Florence') living on a nature reserve with an extremely attentive ranger. The ranger is so doting on his companion that Florence has a regimented routine to ensure all of her subjective well-being-promoting desires are regularly satisfied. Every minute of her life is planned out according to a schedule to ensure a maximum practical level of subjective well-being is attained each day. By stipulation she has a high standard of subjective well-being, however her liberty is limited in an obvious way: she has no opportunity to exercise choice. At no point does she choose or decide anything. Though Florence's desires are routinely satisfied, the ranger removes her opportunity to express her agency. She cannot choose between alternative methods for satisfying her desires. She cannot choose how or when to satisfy her desires, or even *if* to satisfy her desires, nor are her desires satisfied through her own actions. Though the ranger satisfies Florence's desires, she herself does not play an active role in satisfying them, the satisfaction of her desires is a state of affairs that is brought about *for her*, by the ranger. Though Florence's desires are satisfied, her freedom is still limited because she is not free to choose how, when or even if, to bring about desire satisfaction herself.

To put this another way, we might say that because Florence has always lived in such limited freedom, she may not have any determined view of how she wants to satisfy her desires. Let's assume she has desires for food, exercise and social interaction. Living in the wild she would naturally form more fine-grained desires to satisfy these general desires. She wouldn't just desire exercise but she would desire to swim in *that* lake, to run through *this* meadow. She also wouldn't just have a desire for food. She would form a desire for particular kinds of plants. She wouldn't just desire company, she would desire the company of *this* horse, but not *that* horse, etc. She might also desire a run now, but something to eat later. These desires couldn't be met by a ranger because they are desires Florence hasn't yet formed. So

through having her current desires satisfied for her by the ranger, she has her opportunity to form and pursue different, more fine-grained desires, obstructed.

Not only is this restriction of liberty permissible on the Desire Account though, it seems that if such an attentive ranger were able to make better choices regarding Florence's subjective well-being than Florence could herself, the ranger would be obligated to impose these restrictions on Florence in order to give her the best life possible (assuming we endorse a subjectivist account of animal well-being).

Many think that these kinds of paternalistic liberty restrictions are benign in the case of animals.[8] In fact, I suspect that some whole-heartedly believe such restrictions to be morally required, at least with regard to one's companion animals. Cochrane's words perhaps sum up the standard response to these concerns: 'Lacking [autonomous agency]…animals are not necessarily harmed when they have their freedom curtailed and are prevented from leading their own chosen lives.'(Cochrane, 2012, p.11).[9] I am deeply concerned by this conclusion. It is obviously wrong to exert such paternalism over autonomous humans, however such rampant paternalism is also generally considered wrong in the case of neuro-atypical humans lacking autonomy, such as those with severe intellectual disabilities.

Consider the following example in a residential care setting: A support worker is caring for a severely autistic individual 'James'. James enjoys playing games and has a strong preference for the game Jenga. Sometimes instead of satisfying his desire to play Jenga, James decides to pursue his desire to sit alone. He gains minimal desire satisfaction from sitting alone but sometimes he chooses to do it nonetheless. In fact, sometimes he is adamant about choosing to sit alone over

[8] As Killoren and Streiffer note: we ordinarily think there is something seriously wrong about confining or owning humans, even if they are treated exceptionally well, however we tend not to think that this is the case regarding animals (Killoren and Streiffer, 2018, p.4). Regan is one of the few to explicitly recognise the harm of this specific kind of paternalism regarding animals: (Regan 1983, p.92).

[9] Cochrane also discusses this view here: (Cochrane 2009, p.666).

playing Jenga even though (let's stipulate) there is significantly more desire satisfaction to be had for him by playing Jenga.

Now imagine that James also has a strong desire to do what he is told. He does not have this desire because he fears the repercussions of what will happen otherwise, but because this is a rule that has been instilled in him from a young age. James' support worker wants to ensure that James' subjective well-being is maximised and is acutely aware of James' desires. As such, she manages to get James to stop sitting alone and engage in a game of Jenga by telling him that he has to play Jenga. The support worker's actions do not negatively impact upon James' subjective-well-being, in fact they positively contribute to James' subjective well-being. However it is impermissible to insist that James engages in playing Jenga even though results in him having a higher level of overall subjective well-being. This is clear manipulation and interferes with James' choice. James should be free to make his own decisions about what to do with his time, even if he does not make 'the best' choices (although as I suggest later there should be *some* limits on the freedom of individuals like James in order to protect them from significant harm).

Also consider a situation similar to the attentive ranger case but replace the horse with a severely intellectually disabled human, and the ranger with a support worker committed to maximising this individual's subjective well-being. This support worker ensures that all of the disabled individual's desires are routinely satisfied. It seems that the support worker's actions, whilst well-intended are unacceptable. Plausibly the disabled individual should be free to choose how and when to satisfy their desires, through their own actions, rather than having the satisfaction of their desires brought about and forced upon them by their support worker. Or, to put it another way, they should be free to form and pursue more fine-grained desires regarding the satisfaction of their more general desires. Though the disabled person's subjective well-being is not negatively impacted by the actions of the support worker, they are still harmed by the support worker's actions. It

seems that they would have a better life (other things being equal) if they were free to pursue their desires in their own way, in their own time, through their own actions. This remains true even if they chose to engage in the same activities and follow the same routine that the support worker would enforce.

These views appear to have wide support from both current theory and practice surrounding the treatment and care of neuro-atypical humans. It is standard practice in the care sector for support workers, carers and nurses to try to maximise the amount of control that their patients and service users have over their lives and their care packages.[10] Moreover, here in the UK, this position is enshrined in law through the Mental Capacity Act 2005. The Mental Capacity Act states that an individual that lacks the capacity to make important decisions about the course of their life, such as whether to accept medical treatment for example, still has the legal right to make choices in other areas of their life.[11] One can only deprive an individual lacking mental capacity of their legal right to liberty, where doing so is necessary to ensure their continued existence or prevent them from suffering significant harm (Anon, n.d., sec. 4B). And even if one lacks mental capacity, one has the legal right to make choices that do not result in positive contributions towards one's subjective well-being. What is more, when paternalistic intervention is appropriate, one must take the individual's views into account as much as possible and attempt to minimise the effect of such invention upon the agent's well-being by using the least restrictive means available.

So, if we cannot exert severe paternalistic control over humans' lives, how can we justify controlling animals in this way? In order to answer this question, I will put forward a plausible explanation of the value of liberty for humans: The Self-Determination Account. I will argue that this account can explain how liberty is valuable for both neuro-typical humans capable of autonomy and neuro-atypical

[10] Donaldson and Kymlicka give a good overview of some of the applied philosophical work in disability studies that supports this claim (Donaldson and Kymlicka 2013, pp.105–108).
[11] *The Mental Capacity Act 2005*, http://www.legislation.gov.uk/ukpga/2005/9.

humans who lack the capacity for autonomy. I will then argue that this account also provides a plausible explanation for why liberty has the same kind of value for animals. Therefore, much like humans, animals should be free to make their own choices (even where this does not increase their subjective well-being). As such, animals are *pro tanto* harmed when we restrict their liberty in the ways outlined throughout this section.[12]

The Self-Determination Account

An appealing account of the value of liberty for humans is the Self-Determination Account. The principal claim of the Self-Determination account is that liberty is valuable in itself because in possessing liberty one is capable of determining the course of one's own life. I take it that this claim is widely shared among philosophers and the general public alike, though it is not often explicitly claimed. As there does not seem to be a robust and thorough defence of this position I here draw on various theorists' views to elucidate this view.[13]

According to the Self-Determination Account, through possessing liberty, we are able to live the life we want to lead, and determine our own path, making our lives our own (Young 1982, p.43; Harris 2003, p.11). When in possession of liberty we get to be the one who 'calls the shots' and this is a good thing even if through doing so we diminish our subjective well-being (Mill 1918; Duus-Otterström 2011, p.266). Further, because we are capable of determining our own lives, we have a certain kind of authority over our own choices (Darwall 2006, p.267). I and I alone am able to decide on 'the shape, content, and nature of [my] own life' (Duus-Otterström 2011, p.266). This value is perhaps easier to grasp when we look at what is wrong with restricting someone's liberty. The Self-Determination Account suggests that when

[12] Although I take it that much like the case of neuro-atypical humans, paternalism regarding animals is justified in some circumstances. I will discuss these circumstances below.
[13] I take the name from Duus Otterström's discussion of the account: (Duus-Otterström 2011, p.265).

we restrict another's liberty, we do not accord them the appropriate level of respect that they are owed as agents capable of making choices about their own life. Further, we fail to recognise the authority they have over their own choices and the direction of their lives (Darwall 2006, p.268). Through disrespecting agents in this way, we harm them.

Some have argued that having liberty, even if one uses it to make poor choices, is pleasant or contributes to one's subjective well-being in some way (Young, 1982, p.39; Duus-Otterström, 2011, p.262). Some have also argued that this is the case regarding animals specifically (Regan, 1983, p.91; Rowlands, 2002, p.153; Thomas, 2016, pp.90–91). This may well be true if it is pleasant to be free or one has a desire to be free to pursue one's desires for instance.[14] However the kind of value liberty has on the Self-Determination Account does not depend on any such claim. On the Self-Determination Account, liberty is good for one even if it does not result in any contribution to one's subjective well-being.

So regardless of whether being deprived of liberty has a negative impact on one's subjective experience, or even could have a negative impact upon subjective experience, the Self-Determination Account suggests that being deprived of liberty harms one in a non-experiential way. As such, this account can explain why liberty is valuable, even when the possession of liberty does not result in one having a higher standard of subjective well-being than one would have otherwise. In contrast to instrumental accounts of the value of liberty, the Self-Determination Account states

[14] An anonymous referee has noted that it may be that all agents have a desire to be free to pursue their desires unobstructed, or that they are free to engage in action unrestricted. I am sceptical that all sentient animals are capable of possessing such desires as they seem to require higher order, or at least abstract, thought. However, even if animals are capable of possessing such desires and the satisfaction of these desires contributed towards their well-being, this would only make liberty contingently and instrumentally valuable for animals. The account I defend here suggests that liberty has value for animals in virtue of the type of beings they are: agents, regardless of the content of their desires. So it can demonstrate the necessary and intrinsic value of liberty for animals. In any case, I take that these are not competing explanations as one could endorse both this account and the account I defend here, and accept that they are attempts to explain two different kinds of value that liberty has for animals.

that the possession of liberty is good in itself. As such, endorsing the Self-Determination Account commits one to an Objective List Theory of well-being according to which liberty is an irreducible component of a good life and matters in its own right. So liberty has value for one irrespective of its contribution towards one's subjective well-being because the value of liberty is not reducible to its positive impact upon our subjective experience.

One may be concerned that at best the Self-Determination Account only establishes that liberty is instrumentally valuable when it grants one the opportunity for self-determination and not that liberty is intrinsically valuable itself. This concern is unwarranted however. Unlike instrumental accounts, the Self-Determination Account does not take liberty to be valuable merely as means to secure some other good. On the Self-Determination Account, liberty is valuable because of what liberty in itself grants us, aside from any instrumental goods which often (or always) come along with it. Self-determination should not be understood to be some further good which liberty allows us to access. Self-determination and liberty are tightly tied up together. One could not possess liberty without possessing the opportunity for self-determination and likewise, one could not possess an opportunity for self-determination without possessing liberty as they amount to precisely the same thing. Liberty is valuable on this account because to possess liberty *just is* to possess the opportunity to determine the course of one's own life. Thus on the Self-Determination Account, liberty is valuable for its own sake rather than merely instrumentally valuable in light of the further goods it enables us to access.

I think this account convincingly supports commonly held intuitions about the value of liberty for humans. For instance, it can explain why enslaving a human is a *pro tanto* harm even when they may have a experientially good life. Similarly it can explain what is wrong with manipulating someone even if they would never, and could never, find out. Through enslaving a human or manipulating people we undermine their authority as agents and obstruct them from determining the course

of their own lives. So even if their subjective well-being is not impacted, and even if they have an experientially good life, such actions still harm them.

Non-Autonomous Humans and Liberty

The Self-Determination Account is usually used to defend the value of liberty for normal adult humans. However I think that the Self-Determination Account can also explain why liberty is intrinsically valuable for neuro-atypical humans who lack the capacity for autonomy. My argument for this claim centres on our understanding of the concept of self-determination.

Self-determination is ordinarily thought to be closely linked to the notion of autonomy, understood as the ability to reflect upon, and revise one's desires, in line with some higher-order values or goals.[15] So, 'determining one's own life' is taken to mean 'determining one's own life according to one's conception of the good life, one's will or one's ultimate values' (Young 1982, p.43; Frey 1987, p.61; Harris 2003, p.11; Darwall 2006, p.267; Cochrane, 2009 p.665; Duus-Otterström 2011, p.266; Cochrane 2012, p.11). Young poetically captures the heart of this position when he states that: 'To be content or happy is desirable, but autonomously to have been its architect and builder is better.'(Young, 1982, p.39) Whilst I accept that using the capacity for autonomy is one way in which one can determine the course of one's life, I do not think that using the capacity of autonomy is *the only way* in which one can determine the course of one's own life. I will argue that mere agency is sufficient for determining one's own life and as such liberty can be intrinsically valuable for agents that lack the capacity for autonomy.

[15] Donaldson and Kymlicka, Regan and Thomas are exceptions here. However Donaldson and Kymlicka provide no sustained argument for this position and Regan and Thomas take the value of liberty to be reducible to subjective well-being (Regan 1983, p.91; Donaldson and Kymlicka 2013, pp.108–112; Thomas 2016, pp.90–91).

Consider the case of a person who completely lacks a life plan: they have no thought-out conception of a good life and they have no (or at least have no awareness of any) higher order will. Every day they get up and do what strikes them at that given moment; most of the time this is watching television or going to see their friends. This individual is perfectly capable of autonomy. If they wanted to, they could form a life plan or conception of a good life and start to bring their first-order desires in to line with this plan. However they never do so, in fact, they never even consider doing so. They have no life plan and they never reflect upon their choices. Further, let us say that they have always acted in this way.

If exerting self-determination over one's life means strictly determining the course of one's life in line with one's own conception of the good life or one's will, etc. then this individual does not determine the course of their own life. As such their liberty to choose cannot be valuable on the Self-Determination Account. However it is deeply intuitive that this individual ought to be *pro tanto* free to make their own choices. The standard rejoinder here states: one need not actually *exercise* autonomy over one's life in order to engage in self-determination. What is necessary for self-determination is merely the possession of the capacity for autonomy. If one possesses the capacity for autonomy, when one makes choices one is determining the course of one's own life, even if one does not form a life plan or reflect upon one's choices. This is because one has the option of doing otherwise. One has chosen not to make a life plan, something only an autonomous agent can do. Thus, so long as one has the *capacity* for autonomy, regardless of whether one exercises this capacity, liberty is valuable for one. I have significant doubts about this reply; consider another example.

A second person similarly lacks a life plan and a thought-out conception of a good life. Every day they get up and do whatever strikes them at that given moment; most of the time this is watching television or going to see their friends. However this individual has significant intellectual disabilities and lacks a capacity for

autonomy. Hence, they are unable to form any higher-order desires or a conception of a good life. Nonetheless, they can make many everyday choices and, with the help of support workers, friends and family, they can make many more.

It seems odd to suggest that the person with the capacity for autonomy determines the course of her life but that the non-autonomous person does not and cannot.[16] Both individuals make choices regarding the course of their day and reach the same outcome. What's more, when the person with the capacity for autonomy makes choices, these are not the kind of reflective, and higher order choices that are paradigmatic of an autonomous person. These choices are much more like the choices that the non-autonomous person makes: unreflective and spontaneous. They are not consciously considering whether to make a life plan for instance, they are merely acting on their first order desires. In the case of the autonomous person though, we are happy to recognise these choices as a form of self-determination.

One might contend that in fact when agents capable of autonomy make unreflective choices they are not engaging in self-determination. One can only be said to self-determine one's life when one consciously reflects upon the available options before acting. As such, though the agent who possesses autonomy has the capacity to self-determine, they are not exercising it when they unreflectively decide not to act autonomously. However, liberty could still be intrinsically valuable for them as they should be free to start exercising their capacity for self-determination at will.

I think that this response defends an implausibly restrictive understanding of self-determination. If we reserve self-determination only for truly reflective choices then many of us could be said to rarely engage in self-determination. In fact, some of us could never be said to engage in self-determination. Moreover, it seems odd to accept that an individual determines the course of their own life when they make

[16] I focus on intellectually disabled persons rather than say children or senile persons to avoid the added complications regarding potentiality for, or previous possession of, the capacity for autonomy.

reflective decisions but they do not determine the course of their life when they unreflectively decide not to make reflective decisions. Choosing not to reflect upon one's decisions intuitively seems as important to the direction of one's life as any reflective decisions one may make.[17]

As such, it is not clear why the mere capacity for autonomy should make liberty valuable. If exercising autonomy is not a pre-requisite for determining the course of one's own life, it does not seem that possessing the capacity for autonomy should be either (other things being equal). Plausibly in the example above, both persons determine the course of their respective lives on the basis of mere first-order desires. If this is the case, then liberty has value for non-autonomous humans for the same reason it has value for autonomous humans: because it allows them to determine the course of their own lives.

Justified Paternalism

The fact that liberty could have the same kind of value for autonomous and non-autonomous humans does not mean that these two groups of individuals should necessarily possess liberty *to the same extent*. It seems to me that the extent of one's liberty to choose should be limited by one's capacities to understand the implications of one's choices. Thus, in addition to the standard ways in which we may permissibly restrict one's liberty (for the safety of others for example) we can also restrict the liberty of non-autonomous agents to engage in actions that have a devastating effect upon their own subjective well-being.

Non-autonomous agents lack the requisite intellectual capacities to grasp some of the implications of their choices and to determine whether an action is worth the risk of suffering significant negative impact upon their subjective well-being. Hence, it seems that we should restrict them from engaging in actions

[17] Thanks to an anonymous reviewer for pushing me to consider this point.

that will cause them significant harm. This is much like how we do not allow adults under the influence of drugs to make decisions that will cause them significant harm (even though they possess the capacity for autonomy). Because they are not currently capable of acting autonomously and cannot appropriately grasp the consequences of their action, or appropriately weigh up these consequences against inaction, we limit their available decisions.

So, non-autonomous humans could permissibly be restricted from inflicting significant harm upon themselves.[18] Nonetheless, this does not mean that we are justified in interfering with their choices more generally, merely because they appear to us to be 'poor or unwise' decisions.[19] This view is in line with the Mental Capacity Act 2005. As noted earlier, this legislation protects non-autonomous humans' freedom to make choices regarding their own lives. Importantly, whilst it informs us that we cannot interfere with the choices of individuals lacking autonomy merely because we take them to be irrational or unwise, we can, and should, interfere with their choices to stop an individual causing themselves significant harm (Anon, n.d., sec. 4B).

Architects and Builders

So far I have shown that the freedom to choose has value for non-autonomous humans because it allows them to self-determine their own lives. If this is correct, self-determination does not require autonomy. However if autonomy is not necessary, what are the minimum requirements for possessing the capacity for

[18] I take it that a fully autonomous person, acting autonomously, can permissibly inflict significant harm upon themselves and end their own life (however one need not accept this view in order to accept my argument here).

[19] I will not elaborate upon the distinction between a poor choice and a significant harm, neither do I pretend that there is a straightforward boundary here. It is sufficient for my purposes that we can distinguish some cases where agents should be free to make their own choices from others in which we would be justified in acting paternalistically. Pragmatically I suggest that there should be a presumption *against* interfering with non-autonomous agents' choices unless we have reason to believe that they will inflict significant harm upon themselves.

self-determination? I suggest that self-determination merely requires the capacity for agency. In order to try to demonstrate this, I will return to Young's analogy of the architect and builder.

Young claims that being the builder and architect of one's happiness is better than merely having one's happiness provided for one. It is pertinent that Young refers to being the builder *and* the architect here. In a building project the architect holds the majority of creative control. They set the overall goals of the project; they draw out the plans and they design how the building will look. We play the role of the architect in our own lives when we exercise our autonomy and form a conception of the kind of life we want to live, in doing so we exercise ultimate creative control over our lives. However the role of the builder involves following the plans given to them by the architect and physically creating the building project. We take on the role of builders in our lives when we make the smaller scale choices. For instance, we do this when we choose to skip dessert because we have already had a sugary snack at lunchtime and our life plan involves staying healthy. Thus we fulfil both the role of architect and builder in determining our lives.

Mere agents, lacking the capacity for autonomy, cannot be the architects of their own life. However they can (and do) play the role of builders. They make smaller scale choices and, in doing so, construct a life. This may seem insignificant at first sight, however one should not be dismissive about the value of this role. Builders do not slavishly follow the plans of architects, they must make various decisions themselves that will affect the outcome of the project. Though there is value in being the architect and builder of your own happiness, there is also value in being a mere builder. Indeed it seems that we probably spend less time as architects than we realise. Many of us, perhaps even most of us, do not clearly plan our lives but merely make choices based upon the opportunities presented to us.

Though some of us may take on the role of builders more often than we take on the role of architects, one may think that it seems a step too far to suggest that

non-autonomous agents act as builders without *ever* acting as architects. Builders are seemingly useless without architects! It does not make sense to think of mere agents working towards some conception of a good life because without the capacity for autonomy they lack a plan to follow. However, this is a mistake. Consider a builder constructing a building without an architect. They do not draw plans or design the building in advance but merely consider their next step as they build. They do not conceptualise the overall project but complete the project through making each smaller choice in turn, placing a brick here and a lintel there. Everyday they simply continue construction on the project without an idea of the finished building. Perhaps looking back at what they have done to inform their next decision. Through this method they manage to construct a building without any overarching plan for the project. Building in this way is certainly haphazard compared to forming a plan prior to construction. Nonetheless, it is certainly possible to create a building in this way, and this is what matters.

In just this way I take it non-autonomous agents exercise self-determination over their lives. They do not exercise self-determination *to the same extent* as autonomous agents, they can only choose between acting on various first order desires as well as when and how to pursue these desires. Hence, we can permissibly restrict them from engaging in actions that could cause them significant harm. Nonetheless, through making choices on a case by case basis, without any formal conception of a good life, non-autonomous agents determine the direction of their life. Therefore, liberty has value for them in the same kind of way it has value for autonomous agents.

Animals and Self-Determination

If the Self-Determination Account can explain the intrinsic value of liberty for non-autonomous humans then it seems to me that it can also account for the intrinsic

value of liberty for animals. It seems that it can plausibly demonstrate why it is harmful to restrict an animal from engaging in action which would have a neutral or negative impact upon their subjective well-being, and why they ought to be free to pursue their desires in their own way through their own means. It is widely accepted that animals are not autonomous, however there is growing support for the view that animals are agents (Bermudez, 2008; Steward, 2009; Glock, 2009; Rowlands, 2012; Donaldson and Kymlicka, 2013; Thomas, 2016; Sebo, 2017; Delon, 2018; Korsgaard, 2018). This should not be too difficult to accept: even though animals cannot plausibly make choices at the level of complexity that humans can, they do seemingly make choices such as when to eat, when and where to sleep, where to go, who to fight with, who to socialise with and who to avoid.

Assuming that animals are agents in the sense that they can at least make basic choices such as these, then animals, like non-autonomous human agents, could plausibly determine the course of their own lives through the same piecemeal process.[20] If this is the case, then liberty must have value for animals in the same way it does for humans. One can only resist this conclusion if one can cite some morally relevant difference between humans and animals, which can account for a difference in treatment, despite a similarity in capacities. To accept that liberty has value for non-autonomous humans in light of their capacity for self-determination, and reject that liberty has value for animals in light of their capacity for self-determination, without citing any morally relevant difference, would be inconsistent and speciesist.

One possible parry to my argument here is to argue that self-determination does in fact require the exercise of autonomy, and that liberty does not have value for non-autonomous humans or animals other than where it is instrumentally valuable. However liberty has value for *most* members of our society because it

[20] I defend the claim that animals are agents at length in: (Wilcox, 2020). However, here I will merely take it as given.

allows them to determine the course of their own lives and as such, all members of our society are treated as if liberty is valuable for them in this sense. So, even though liberty is not valuable for non-autonomous humans in virtue of allowing them to determine the course of their own lives, they are entitled to be treated as if liberty is valuable for them in this sense, because of their membership to society. Animals on the other hand, lacking membership to our society, are not treated as if liberty is valuable for them in the same way. Therefore, non-autonomous humans are given a greater degree of liberty than animals even though neither group of individuals can determine the course of their own lives.

The problem with this kind of defence is that even if animals are not members of our society, it does not seem to be true that liberty is owed to non-autonomous humans merely because of their extrinsic relations to us. We would not think it any more acceptable to restrict the liberty of a nomadic non-autonomous human than a non-autonomous human in a local care home (other things being equal). It does not appear to be a mere courtesy that we grant non-autonomous humans the liberty to make choices about their life. It appears to be something we are morally required to do, in virtue of the kind of beings that they are: agents - beings that are capable of making choices. I think it is more plausible, and more intuitive, that it is good in itself that non-autonomous agents (human or animal) have liberty, and good because it gives them the ability to determine their own lives. If this is correct then, we *pro tanto* harm animals through obstructing them from making mistakes, poor choices or when we satisfy their desires for them, even if we do not experientially harm them. We harm them when we engage in these actions because we fail to recognise the authority they have as agents to exert control over the direction of their own lives.

If the Self-Determination account is applicable to animals then this would imply a highly revisionary account of our moral obligations towards animals. Not only are we *pro tanto* obligated to feed our companion animals but also allow them to choose what, when and where to eat. Not only are we *pro tanto* obligated to ensure

that we offer our dogs adequate opportunity for exercise but also allow them to choose when, where and how to exercise.[21] Not only are *pro tanto* obligated to make these kinds of choices but we are also obligated to allow them to make 'mistakes'. More generally this account informs us that we have a *pro tanto* obligation to provide opportunities for self-determination for animals in our care. With regard to 'wild' animals, the Self-Determination Account suggests that for the most part we ought not to interfere with animals' lives. So we should not enforce paternalism where they fail to choose the best nesting sites, or where they choose to graze on the less nutritious of available food sources. Conversely however, it also suggests that we may have *pro tanto* obligations to intervene when wild animals are about to engage in actions that would cause them significant harm, for instance, failing to flee a forest fire or drinking from a poisoned water source.[22]

This argument also entails that animals do not have merely a subjective well-being. As such, this view opens the door to the idea that an animal's well-being may be impacted by actions that do not affect their subjective experience and that their well-being is best accounted for by an Objective List Theory. Needless to say, this view will be highly unattractive to consequentialists in light of their commitment to a subjective theory of well-being. However, it is also in tension with the almost ubiquitous view in ethics that even if human well-being is best understood by an Objective List Theory, animal well-being is not.

Killoren and Streiffer recognise this as a feature of what they call 'the Hybrid View.' this view suggests that moral agents' actions towards animals and humans ought to be governed by different kinds of moral principles (Killoren and Streiffer, 2018, p.2). However as Killoren and Striffer themselves recognise, the Hybrid View

[21] Donaldson and Kymlicka discuss how to address the practicalities of allowing animals to make such choices and interpreting their decisions here: (Donaldson and Kymlicka, 2013, pp.108–112).

[22] The question of what obligations we owe toward wild animals is an especially complex one in which there are many competing arguments to consider. Here I am merely suggesting that the Self-Determination Account provides us with a *pro tanto* reason not to interfere with wild animals in certain situations (which may well be outweighed by a competing reason).

cannot be sustained if there is no morally relevant distinction between humans and non-human animals upon which to found the difference in treatment of these two groups (Killoren and Streiffer, 2018, p.20). Moreover, with regard to my argument here, even if there is some morally relevant difference between humans and animals, if there is no morally relevant difference between humans and animals *capacities' of self-determination* we should accept that animal well-being can be accounted for by an Objective List Theory.

So, whilst the argument within this paper is in tension with some a widely held views among moral philosophers (and the general public alike), this should not be taken as a drawback of the view. Instead I suggest that the argument in this paper should motivate us to re-evaluate our entrenched views regarding the principles that guide our treatment of animals and our conception of their well-being.

Conclusion

Through this paper I have argued against the claim that animals' liberty is only instrumentally valuable. I have put forward the view that it is good for animals to possess liberty even where an animal's subjective well-being is unaffected or even diminished (so long as they are not significantly harmed). I have argued that liberty just is being able to engage in self-determination. However I have not argued that self-determination contributes towards animals' subjective well-being. Instead I have suggested that animal well-being is best accounted for by an Objective List Theory and that self-determination and subjective well-being (under some description) appear on this list. As such liberty itself is an irreducible component of animals' well-being. Furthermore, if self-determination is good for animals then we *pro tanto* harm animals when we deprive them of liberty because we undermine their authority as agents to determine the course of their own lives.

So this account suggests that we ought to interfere less with animals' lives than instrumental accounts suppose. For those with companion animals this means that their companions ought to be allowed and encouraged to make more choices, for instance, to choose when and where to go for walk, to choose when and what to eat, where to sleep and when to play. Further, they should be allowed to pursue actions that appear to us to have a neutral or minor negative impact upon their subjective well-being, such as eating grass or tail-chasing. With regard to 'wild' animals it seems that we cannot justify paternalistic intervention except where we can avert them inflicting significant harm upon themselves. Whilst these differences in treatment may seem relatively minor, the shift in our conception of animals' well-being, and the value this account suggests liberty has for them, is a radical departure from the prevalent views regarding animals.

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