

Animal Rights: A Non-Consequentialist Approach

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Abstract/Introduction

It is a curious fact about mainstream discussions of animal rights that they are dominated by consequentialist defenses thereof, when consequentialism in general has been on the wane in other areas of moral philosophy. In this paper, I describe an alternative, non-consequentialist ethical framework (combining Kantian and virtue-ethical elements) and argue that it grants (conscious) animals more expansive rights than consequentialist proponents of animal rights typically grant. The cornerstone of this non-consequentialist framework is the thought that the virtuous agent is s/he who has the stable and dominating disposition to treat all conscious animals, including non-human conscious animals, as ends and not mere means.

1. The Consequentialist Case for Animal Rights

Perhaps the most influential case for animal rights (see, most notably, Singer 1975) is consequentialist in spirit and relies on two premises. The first is philosophical: the right moral action in every circumstance is that which maximizes pleasure and minimizes pain. The second premise is empirical: that many animals – certainly most animals we have dealings with in our everyday life, including animals used in

the food and clothing industries – can experience pleasure and pain. Let us state the relevant consequentialist thesis as follows:

(CT) In deciding what actions to perform, one ought always to attempt to maximize the pleasures and minimize the pains consequent upon one's actions.

For the purposes of a consequentialist defense of animal rights a weaker thesis – taking pain and pleasure to be sufficient conditions for moral relevance, say – may be enough. But (CT) will do for the sake of illustration.

As just formulated, this consequentialist case for animal rights is couched in terms of pain and pleasure. One often finds the case put in those terms, but sometimes it is also put in terms of suffering and joy (or enjoyment). There are two ways to understand the relationship between pain and suffering, pleasure and joy. One construes suffering as a deeper, more involved, perhaps more intellectual kind of pain, and correlatively joy as a deeper and more cognitive form of pleasure. The other focuses not on depth but length: suffering is a prolonged, systematic, and stable exposure to pain, joy a prolonged and stable kind of pleasure. In any case, it appears that suffering and joy can be *analyzed* in one way or another in terms of pain and pleasure. For this reason, I will focus henceforth on the latter. My contention is that the notions of pain and pleasure is ambiguous, and it would follow from this that so are the notions of suffering and joy.

The ambiguity can be appreciated through discussion of David Chalmers' (1996 Ch.1) claim that mental terms typically lead a 'double life' – they have a *psychological* life and a *phenomenological* life: they can be taken to denote mental states conceived of in terms of their psychological role, or mental states conceived of in terms of their phenomenal character. To conceive of a mental state in terms of its psychological role is to conceive of it as essentially the kind of state that has a certain functional role within the subject's overall psychology, that is, the kind of state that has certain typical causes and effects. These causes and effects can be restricted to sensory inputs, behavioral outputs, and other mental states, but can

also be taken more widely to include distal causes and effects in the subject's environment. To conceive of a mental state in terms of its phenomenal character is to conceive of it as essentially the kind of state that has a certain felt quality, the kind of state there is something it is like for the subject to be in.¹

The implication for pleasure and pain is clear. Mental states can be classified as pain either because (roughly) they are typically caused by harmful stimulation (e.g., tissue damage) and cause aversive reaction (e.g., cringing), or because they feel that particular unpleasant way – they *hurt*. Correspondingly, the term 'pain' can be used to denote either any mental state that typically is suitably caused by harmful stimulation and causative of aversive reaction or any state that feels that particular unpleasant way.²

The upshot is that we need a distinction between *psychological pain*, which is pain conceptualized through its mechanical or functional profile, and *phenomenological pain*, which is pain conceptualized through its experiential or phenomenal profile. Ditto for pleasure: there is *psychological pleasure*, which is a state playing the pleasure role, and *phenomenological pleasure*, which is a state experienced as pleasurable by the subject. The effect of this distinction is to render CT ambiguous. For CT now admits of three different interpretations, calling on us to minimize/maximize either (i) psychological pain/pleasure, (ii) phenomenological pain/pleasure, or (iii) both psychological and phenomenological pain/pleasure.

It seems clear that the second interpretation is greatly preferable to the first. Although the issue is not trivial, it is fairly obvious that, other things being equal, producing phenomenological pleasure in someone is commendable while producing phenomenological pain is criticizable. (The issue is not trivial because it is not obvious *why* this is the case; but it does seem obvious *that* it is the case.) By contrast, it is hard to see how producing psychological pleasure and pain are supposed to be commendable or criticizable. Suppose that, perhaps *per impossibile*, a race of zombies was discovered or created (and ascertained to be zombies) who were functionally indistinguishable from us, in the sense that the functional

organization of their psychology would be identical to ours. These zombies would have internal states with the same functional role as our pleasures and pains, but would never consciously experience pleasure or pain. In other words, they would undergo psychological pleasures and pains but not phenomenological pleasures and pains. On the face of it, there is no reason to think that causing these zombies the internal states corresponding to our pleasure would be worth the effort and investment, or that causing them the internal states corresponding to our pain experiences would be worth the effort of avoiding. If the zombies do not *experience* their pleasures and pains, but simply *host*, so to speak, internal states with the pleasure/pain functional profile, their internal states do not have any moral weight.

The point can be brought out in a different way. Consider that it is only when a pain is experienced that it hurts the person undergoing it – that it is only when a pain is experienced that the person is *pained by* the pain; and likewise, that only when a pleasure is experienced that it *pleases* its subject. If there are internal states that do not pain or please the persons undergoing them, but which deserve the names 'pain' and 'pleasure' for some other reason (e.g., due to their functional role), those states do not carry any moral weight. For it is the pains and pleasures *of persons, or subjects*, that interest us.³ From this perspective, the key moral difference between phenomenal pain/pleasure and psychological pain/pleasure is that only the former are inherently such as to pain/please their subject. A psychological pain is often associated, as a matter of contingent fact, with a phenomenal pain, and may to that extent can be said to pain its subject. But only phenomenal pain is such as to pain its subject in and of itself.

Notice now that since we found psychological pains and pleasures to be morally insignificant, it would seem that the second interpretation of CT is preferable not only over the first one, but also over the third one, that which recommends maximizing both phenomenological and psychological pleasure and minimizing both phenomenological and psychological pain. That is, the moral weight of CT is better captured through the following principle:

(CT+) In deciding what actions to perform, one ought always to attempt to maximize the phenomenological pleasures and minimize the phenomenological pains consequent upon one's actions.

I take this point to be in line with the standard consequentialist defense of animal rights, as can be seen by its common appeal to the notion of *sentience* (Singer 1975).⁴ The term 'sentience' is hard to associate with merely psychological or functional states; rather, it intimates a phenomenal, experienced state. Animals may indeed have rights insofar as they are sentient, but sentience is probably associated only with the capacity to be in internal states with a phenomenal character, an experiential dimension – not with the capacity to be in internal states with a functional role.

2. A Non-Consequentialist Framework

The immediate alternative to consequentialism is of course deontology, of which the Kantian variety is the best known. For my part, I find the second formulation of the categorical imperative, the 'humanity formula,' the most compelling: one should always act in such a way that one treats humanity, whether others' or one's own, as an end in itself and not merely as a means to some other end. Perhaps because this formulation of the categorical imperative, and Kant's moral philosophy as a whole, restrict moral worth to the sphere of humanity, Kantian defenses of animal rights are hard to come by. But it should be straightforward for a proponent of animal rights with Kantian predilections to modify Kant's dictum to encompass the sphere of the sentient or conscious. Let us call the following the *consciousness formula*:

(CF) One should always act in such a way that one treats conscious creatures as ends in themselves and not merely as means to other ends.

There are complicated questions surrounding whether Kant's own reasons for putting forward the categorical imperative can survive this modification. The answers are probably negative. But regardless of how that turns out, it is clear that (CF) is a coherent position, and can therefore be adopted by a non-consequentialist proponent of animal rights.

The case for (CF) is unlikely to be Kantian, then, but I think it should be clear what kind of case it would be, since it speaks to the combination of deontological and animal-rights sensibilities. This array of sensibilities is well captured in something like the following bit of reasoning: all conscious/sentient creatures have moral worth; one ought to treat creatures with moral worth as ends rather than as mere means; therefore, one ought to treat all conscious/sentient creatures as ends rather than as mere means.

The other commonly discussed alternative to consequentialism is virtue ethics, which focuses not on the moral status of individual acts but on those of agents and their stable dispositions to act. Interestingly, there is no reason this perspective could not be incorporated into the Kantian framework to form a moral dictum that would speak to both Kantian and virtue-ethical sensibilities. The resulting moral principle, upon which I propose to pin animal rights, is thus this:

(CF+) One ought to have the stable, dominating disposition to treat conscious creatures as ends in themselves and not merely as means to other ends.

Call this the *virtue-ethical consciousness formula*. I will not argue for it here – that is the proper target of a much larger project. But it is significant that this principle has never been explicitly articulated (to my knowledge) and yet carries quite a bit of intuitive appeal. What I propose to do in the remainder of this section is two things: first, elucidate and flesh out (CF+); second, point out a couple of ways in which it grants conscious animals more rights than consequentialism.

Start with the notion of a disposition to treat someone a certain way. The metaphysics of dispositions is a contentious area of research, but the first analysis to

come to mind is the so-called simple conditional analysis (Quine 1960): x has the disposition to exhibit manifestation M in circumstances C iff: if C were the case, x would exhibit M . Many philosophers today reject the simple conditional analysis, in favor of either a complicated conditional analysis (Lewis 1997), a non-conditional analysis (Fara 2005), or a primitivist account (Molnar 1999). At the same time, the simple conditional analysis has been defended recently as adequate after all (see, e.g., Choi 2008). We need not enter this fray here. Different accounts of disposition will result in different understandings of the disposition to treat conscious creatures as ends and not mere means. It is easiest, for purposes of exposition, to illustrate matters with the simple conditional analysis. According to it, a person has the disposition to treat conscious creatures as ends and not mere means iff the following conditional is true of her: in most circumstances, she would treat conscious creatures as ends and not mere means. So if we use the simple conditional analysis, what (CF+) demands from us that is that we treat conscious creatures as ends and not mere means in most circumstances.

Note that this conditional requires that the disposition manifest itself in *most* circumstances. This is what the qualifier 'stable and dominating' is supposed to capture: the greater the variety of types of circumstance in which the disposition is manifested, the stabler the disposition, and the greater the number of times the agent manifests the disposition in each type of circumstance, the more dominating the disposition.⁵ Clearly, on the whole the more stable and dominating the disposition, the more commendable the agent, given the kind of sensibilities catered to by (CF+). But it is an interesting question whether our ideal should be that the disposition be *totally* stable and dominating, that is, manifest itself in *every* circumstance. On the one hand, the *phronimos*, or the ideally virtuous agent, surely treats conscious creatures as ends in themselves *always and everywhere*. At the same time, it appears to be a psychologically contingent fact about sub-optimal moral agents such as us that absolute adherence to moral dicta tends to make us dour and intolerant: we run the danger, in our puritanism, of becoming deeply disappointed with humanity (for failing to live up to the moral standards we live up

to) and ultimately adopting a derisive and uncompassionate attitude towards our peers. To avoid these pitfalls, it may be wise for us to demand of ourselves something less than a perfectly stable and dominating disposition.⁶

The last clarification we ought to offer is of the phrase 'ends and not mere means.' Here too, the existing literature is vast and there is no need, nor hope, for us to make an original and plausible contribution to it here. It bears stressing, however, that not treating someone as a *mere* means does not entail not treating them as a means. If A treats B both as a means and as an end, A does not treat B as a mere means, in the sense that A does not treat B merely as a means. This is why asking someone for the time does not *necessarily* involve treating them as mere means, although it may, namely, if the agent does not treat the patient *also* as an end. This raises the thorny issue of what is involved in treating someone as an end (since it cannot be analyzed in terms of not treating them as a means, given that one can treat a person both as an end and as a means). Presumably, it involves the agent's keeping in mind, in her dealings with the patient, the right psychological attitude (respect, empathy, love, or what have you) toward the patient. For my part, I am tempted by the view that there is a *sui generis* phenomenology of treating someone as an end, and that the treating of someone as an end is to be analyzed in terms of the presence of this phenomenology. Another tempting view is that there is a special kind of affective state, which may be called with some qualification love, that is involved in this.⁷ Again, different positions on this matter will result in different versions of (CF+).

(CF+), so understood, diverges from (CT+) in its practical prescriptions in a number of ways. Perhaps the most striking of these is the fact that, if a conscious animal could be killed without causing pain to it (or anybody else), it is not clear that (CT+) would prohibit the killing. As a matter of fact, conscious animals raised today in the mainstream food industry typically lead miserable lives of ceaseless suffering. However, it is conceivable that some conscious creatures be brought up in quite pleasant circumstances, albeit for the purpose of eventual – but painless – slaughter. (Indeed, it is not implausible that this in fact takes place in some less

industrialized parts of the world.) The consequentialist defense of animal rights seems to me not to militate at all against such a practice. A dead animal does not experience pain, so as long as his or her death is painless, the killing of the animal does not contribute to the overall amount of pain in the world and is therefore at worst morally neutral. The virtue-ethical Kantian framework I have presented clearly does militate against this practice, however, since the relevant conscious creatures are treated as mere means, insofar as it is impossible to treat someone also as an end in killing them in order to fulfill one's own gastronomic desires.⁸

Similarly, consider the possibility of raising conscious animals, in a humane and painless way, for the purpose of consuming their products (e.g., milk). Traditional farming without commercial ambition often took this form. Again, it does not seem that (CT+) would militate against such a practice, but (CF+) certainly does.⁹ The more general point to appreciate here is that (CF+) and (CT+) must diverge, since whether an animal is treated as a mere means and whether it is pained are two different matters. Doubtless they overlap quite often in practice, but they are distinct nonetheless: an animal, even a human animal, can be pained without being treated as a mere means (as when we tell a friend a painful truth because it is the right thing to do), and can be treated as a mere means without being pained (as with the aforementioned well-treated cows). My claim is that in all these cases, it is treating the animal as a mere means, rather than paining the animal, that tracks moral wrongness as such.

These are different facets of the more general fact that (CF+) prohibits treating conscious animals as a resource for and by humans. This general fact, it seems to me, may well capture the moral sensibility that animates the case for animal rights. Yet there is nothing in the consequentialist approach to animal rights that speaks to this concern. By contrast, the virtue-ethical Kantian approach I have adopted, in giving all conscious animals intrinsic moral worth, ensures that conscious animals do not derive their worth from the value they have for humans. Within this approach, accepting the use of conscious animals for our own purposes under the condition that they are well-treated and are not suffering is akin to

defending humane slave owners on the grounds that they offered their slaves a comparatively pleasant life. Even if such slaves worked regular hours and were generously compensated, indeed worked less and were better compensated than they would be as free men and women, the very fact that they would be considered the possession of, and a resource for, their owner is what we would find so morally objectionable. By the same token, the very fact that some conscious creatures are treated as a resource for other conscious creatures, I contend, should raise in us moral indignation, indeed possibly the very same moral indignation. This is the deep motivation for defending animal rights.

3. The Question of Animal Consciousness

The non-consequentialist framework I have articulated leaves open what is perhaps the most important question from the standpoint of *practical* ethics: which animals should be treated as ends and not mere means? The reason this is left open is that the above non-consequentialist framework is silent on the question of which animals are conscious or sentient. The question is of course empirical, and so the role of the philosopher in answering it is limited. One role s/he can adopt, however, is methodological: to offer the general form of a procedure for generating a reliable conjecture concerning the extent of consciousness within the animal kingdom. The procedure I would like to propose is fairly straightforward: we should seek the neural correlates of consciousness/sentience in creatures that are unquestionably conscious, then attempt to establish which other creatures, if any, exhibit neural structures relevantly similar to these. Several clarifications are in order.

First, which animals are 'unquestionably' conscious depends on what we take 'unquestionably' to mean. I suggest that the best understanding of 'unquestionably' is as follows: it is unquestionably the case that p just in case any claim that $\sim p$ would not be taken seriously within the relevant community of inquiry (where this could

be operationalized in terms of publications in peer-reviewed journals, presentations in academic gatherings, or some such indicators). In the present case, then, a creature is unquestionably conscious just in case the claim that it is not conscious would not be taken seriously within the cognitive-scientific community. Since as a matter of fact even Daniel Povinelli's claim that chimpanzees are unconscious (see Povinelli et al. 1994) has been taken seriously, but no claim that normal adult humans are unconscious has ever been taken seriously, I suggest that we consider normal adult humans as our paradigmatically unquestionable instance of a conscious creature.¹⁰

Secondly, what makes a brain structure 'relevantly similar' to another is also problematic, especially in the context of cross-species comparison. Neuroanatomical comparison, in particular, may be neither reliable nor feasible. Better to focus on comparisons of structures as functionally individuated. Thus, one brain *region* may be different in terms of its spatial location from another and yet qualify as a similar brain *structure*, namely, if the two regions perform the same neural function.

Thirdly, the fact that a brain structure is relevantly similar to one that underlies consciousness does not *guarantee* that it too underlies consciousness, and likewise the fact that it is relevantly *dissimilar* to one that underlies consciousness does not guarantee that it does *not* underlie consciousness. However, such relations of relevant similarity and dissimilarity do offer defeasible evidence of underlying consciousness (or lack thereof), by supporting an inference to the best explanation to that effect. Such an inference makes its conclusion *probable*, though it does not guarantee its truth. Thus if brain structure S_1 underlies consciousness in creature C_1 , where C_1 is unquestionably conscious, and structure S_2 is relevantly similar to S_1 , then it is probable that S_2 underlies consciousness in C_2 ; and if S_2 is relevantly dissimilar to all brain structures of all unquestionably conscious creatures, then S_2 probably does not underlie consciousness in C_2 .¹¹

Incorporating these clarifications into our understanding of the empirical procedure I described leads to the following methodological principle:

(M1) For any brain structure S of a creature C , if there is a brain structure S^* of normal human adults, such that (i) S^* underlies consciousness in normal human adults and (ii) S is neurofunctionally similar to S^* , then (probably) S underlies consciousness in C ; and if there is no brain structure S^* that satisfies (i) and (ii), then S probably does not underlie consciousness in C .

With (M) in place, we can generate a list of (probable) conscious animals as soon as we establish two things: first, which brain structure(s) underlie consciousness in normal human adults, and second, which animals have brain structures neurofunctionally similar to those structures in the human brain. These are what we might call *purely empirical* questions.¹²

One final methodological-cum-ethical comment is called for, however. Scientific knowledge, being *a posteriori*, is uncertain: the appropriate credence in a scientific proposition – including regarding the neural correlates of consciousness – is always less than 1. This may inspire a protestation to the effect that even a low probability of consciousness in an animal should suffice to grant it animal rights, because the moral costs of error in this area are gigantic (see Singer 1975 for a similar consideration). This consideration can be cast as an objection to the inference from a claim of the form ‘animal A is probably unconscious’ to a claim of the form ‘animal A should not be granted rights.’ According to the objector, as long as there is a non-negligible probability that an animal is conscious, we should grant it the rights of conscious animals, because doing so guarantees that we would not be unwittingly committing moral horrors. In reaction, I want to embrace the spirit of the objection but reject its letter (at least on one reading of what the letter is). (Warning: my discussion will make use of certain toy examples that greatly oversimplify the matter, but this will help to see what I think is right about the spirit of the objection and where its letter may go wrong.)

First, however, we should keep in mind a distinction between two ways in which considerations of probability enter the picture. Suppose for the sake of

argument that a scientific consensus emerged that only mammals are conscious. Our credence in this scientific proposition would not reach 1 at that point. Suppose further that, being of a critical bent, and keeping in mind all the hidden social, methodological, and philosophical assumptions that go into constructing a consensus, our credence in the scientific consensus being strictly true is .55. It follows that our credence in any implication of the scientific consensus, including for animal rights, cannot exceed .55. This is one way in which a more attenuated picture is forced on us by consideration of probability. However, the objection before us pushes beyond this. The objector claims rather that if we have a credence of .05 that oysters are conscious, we ought to have credence of 1 that oysters ought to be treated as ends and not mere means.

Put this way, I think the objector's claim is too strong to be plausible. According to panexperientialists, everything in the universe has a degree of phenomenal consciousness, if only a very small one. Since their position is coherent, and some of the arguments for it are not altogether ludicrous (Chalmers 1996), I have .01 credence that vegetables are phenomenally conscious as well. Surely, however, I ought not to treat vegetables as ends in themselves on the grounds that panexperientialism is coherent and non-ludicrous. I take this to be a *reductio ad absurdum* of the strong claim that any non-negligible probability of consciousness entails treating as an end: the result of adopting that claim is to treat *everything* as an end.

It would, of course, be entirely arbitrary to declare that although a non-negligible probability of consciousness does not secure rights, a probability of .08, or .12, or some such figure, does. More generally, there is something wrong about the idea that there is a cut-off point beyond which credence in an animal's consciousness should entail a credence of 1 in the animal having the rights of conscious animals. A more sensible model would embrace a non-trivial function from credence in consciousness to credence in rights. The dogmatic model we have worked with thus far matched .12 credence in an animal's being conscious to .12 credence in it deserving the rights of conscious animals. The objector's model

matches .12 credence in the animal's being conscious to a credence of 1 in it deserving the rights. Neither is plausible. It is much more reasonable, it seems to me, to adopt a function that, say, matches .12 credence in consciousness to .4 credence in rights. Obviously, we cannot expect that there be objective facts about the 'correct' function. But I hope that this illustration makes clear what I think is correct about the spirit of the objection before us. What is correct about it is that the dogmatic function from credence in consciousness to credence in rights is wrongheaded: the moral cost of making a moral error is such that a more 'proactive' function should be embraced.

One way to think of the 'correct' function issue is in terms of the stability and dominance of one's disposition to treat animals as ends and not mere means. As noted above, the more stable and dominant her disposition, the more morally commendable the agent is (modulo the mentioned worries about puritanism). We can incorporate the considerations we have been discussing in the present section into this framework: *mutatis mutandis*, an agent who treats an animal in whose consciousness she has .12 credence as an end and not mere means 40% of time is more commendable than an agent who treats such an animal as an end 30% of the time and less commendable than one who treats it as an end 50% of the time. Likewise, an agent who treats an animal in whose consciousness she has .12 credence as an end and not mere means 40% of time is *mutatis mutandis* more commendable than an agent who treats an animal in whose consciousness she has .17 credence as an end and not mere means 40% of the time, and less commendable than one who treats in such a way an animal in whose consciousness she has .07 credence. This is because of variation in the stability and dominance of the key disposition in these various agents.

As warned above, this discussion makes free use of oversimplifying toy examples. The lived reality of moral conduct is not as clean-cut as the assignment of precise figures in the above discussion suggests. I have adopted this way of discussing the objection merely as an expository device, by way of showing what I think is right about the objection and what I think is wrong. It is right that the mere

probability that an animal is conscious should importantly boost its claim to having moral rights. It is wrong that any non-negligible probability secures those rights absolutely.

4. Conclusion

The history of moral progress is the history of widening the circle of recognized moral worth, whereby each group grants more 'others' the same rights they enjoy themselves. Certainly in the West we have witnessed this process in the form of dehumanizing less and less (first with respect to other ethnicities, then other races, and so on and so forth). Currently on the forefront of the Western agenda is the widening of the circle to people of different sexual orientation, and since history has nowhere to march but forward, this issue will most certainly be eventually settled in favor of equal rights across orientations. But where does the process end? Where is the point beyond which there is no need to progress? In short, what is the end of moral history? It seems to me that the circle of the conscious is the widest circle of moral worth, and moral history will come to an end when all conscious creatures will enjoy the equal right to be treated as ends in themselves and not merely as means.¹³

References

- Chalmers, D. J. 1996. *The Conscious Mind*. Oxford and New York: Oxford UP.
- Choi, S. 2008. "Dispositional Properties and Counterfactual Conditionals." *Mind* 117: 795-841.
- Churchland, P.S. 1984. *Matter and Consciousness*. Cambridge MA: MIT Press.
- Dretske, F. I. 1995. *Naturalizing the Mind*. Cambridge MA: MIT Press.
- Fara, M. 2005. "Dispositions and Habituals." *Noûs* 39: 43-82.
- Griffin, J. 1986. *Well-Being*. Oxford: Clarendon Press.

- Hempel, C.G. 1945. "Studies in the Logic of Confirmation." *Mind* 54: 1-26.
- Kriegel, U. 2009. *Subjective Consciousness: A Self-Representational Theory*. Oxford: Oxford UP.
- Lewis, D.K. 1997. "Finkish Dispositions." *Philosophical Quarterly* 47: 143–158.
- Molnar, G. 1999. "Are Dispositions Reducible?" *Philosophical Quarterly* 49: 1–17.
- Povinelli D.J., A.B. Rulf, and D.T. Bierschwale. 1994. "Absence of knowledge attribution and self-recognition in young chimpanzees (*Pan troglodytes*)." *Journal of Comparative Psychology* 108: 74–80.
- Quine, W.V.O. 1960. *Word and Object*. Cambridge MA: MIT Press.
- Shapiro, L. 2008. "How to Test for Multiple Realization." *Philosophy of Science* 75: 514-525.
- Singer, P. 1975. *Animal Liberation*. New York: Random House.
- Tiberius, V. 2008. *The Reflective Life: Living Wisely with Our Limits*. Oxford and New York: Oxford University Press.

¹ At the background is a general distinction between two conceptions of mind. The psychological conception of mind characterizes mental phenomena third-personally in terms of their causal relations to each other and to the environment; the phenomenological conception characterizes them first-personally in terms of their phenomenal or subjective feel. The former focuses on the *mechanical* dimension of mental life, the latter on its *experiential* dimension. Both dimensions are real and central to the nature of mind, so there is no substantive question here of which conception is 'more accurate' – both are important.

² These classification criteria not only are distinct, but also do not coextend. Suppose a subject experiences a toothache, but upon noticing a fire in the kitchen starts attending to the fire and is thus too distracted to experience the toothache, which unfortunately reappears as soon as the kitchen drama is over. Should we say that this subject had a single continuous toothache, which went unconscious at some point and was then consciously experienced again, or that the subject had two distinct pains, separated by a painless interval? The answer, of course, is that we should say both, but in different senses of 'pain.' In the *psychological* sense, there is only one pain. This is because there is unconscious pain – a mental state which is not experienced by its subject but which nonetheless plays the pain role in the subject's psychology. In the *phenomenological* sense, by contrast, there are two pains, and there is no such thing as non-experienced pain – as soon as the early pain is phenomenally extinguished, it goes out of existence, and a new one reemerges when the phenomenology of pain reappears later.

³ Sometimes the term 'person' is used to refer to any subject of conscious experience, or any subject of moral worth, whereas on other occasions it is used to refer only to human subjects, or subjects with relatively sophisticated inner life. I use it here in the former sense, and add 'or at least of subjects' for the benefit of those who insist on using it the latter way. This is just a terminological matter.

⁴ This is not to say that Singer is committed to the entire picture of the nature of pain and pleasure that we have developed thus far.

⁵ For a related distinction between a trait being broad and a trait being stable, see Tiberius 2008.

⁶ It is an intriguing question what this would imply in practice. One possibility is to force ourselves to treat conscious creatures as mere means on occasion. Just how often 'on occasion' should be ought to be determined by psychological research on the forming of the dour and intolerant attitude of which I spoke. It may well be that such research will discover that my observation is simply wrong (perhaps it is based on the wrong anecdotes), or that it can be avoided by simpler means. Whatever such research turns up would have to be integrated into the Kantian virtue-ethical stance I describe here.

⁷ These two views are, moreover, clearly compatible. Unfortunately, and somewhat surprisingly, there is relatively little work on the analysis of treating someone as an end, even among Kant scholars. Moreover, it would seem that Kant himself had little to offer on this matter, so that many interpretations are in principle open (see Griffin 1986). But the Kantian proponent of animal rights could just suggest here that whenever some consensus emerges regarding the correct analysis of this matter, it could be plugged into (CF+).

⁸ At the same time, note that (CF+), like (CT+), does not prohibit eating, say, cows altogether: a cow dead of natural causes, since it is no longer conscious, has no rights, and can be eaten. (This is, by the way, the current practice in Bhutan.)

⁹ Thus, if combined with the view that all animals are conscious, (CF+) would prescribe not only vegetarianism but veganism. For reasons explained earlier, I think it should only be combined with the claim that all *mammals* are conscious, and so veganism does not follow: we are most certainly justified in consuming honey, for instance, since bee brains most certainly do not engage in higher-order monitoring (and if I am right, the same holds also for the products of fish and chickens). (A qualification is necessary here, however. My claim is that using the products of these unconscious animals is not intrinsically wrong. But there may be ways in which it is instrumentally wrong. For example, gratuitous torturing of an unconscious animal that elicits in us the intuitive ascription of consciousness is sure to do harm to our character, and therefore such torturing is morally wrong, though only instrumentally. Perhaps the treatment of geese in the context of *foie gras* production is a good example: it is not intrinsically wrong, on my view, since geese are probably unconscious, but it is instrumentally wrong, in that it desensitizes us to what would be cruel treatment if geese were conscious.) At the same time, according to (CF+), commercial products involving the products of mammals are morally tainted one and all: leather jackets, shoes, and belts, fur coats, ivory sculptures, etc. are all to be avoided.

¹⁰ The term 'seriously' is problematic, inasmuch being taken seriously comes in degrees. Some philosophers – eliminativists – have argued that *nobody* is conscious, not even humans (Churchland 1984). This has always been a marginal view, however, in a way Povinelli's view has not. I recognize, however, that there may be an element of artificiality in deciding what we should take as unquestionable cases of consciousness. Perhaps all apes could be taken as unquestionably conscious.

¹¹ It might be objected that while the presence of the right brain structure clearly provides evidence for the presence of consciousness, the absence of the former does not provide evidence for the absence of the latter. As it is sometimes put, absence of evidence does not provide evidence of absence. My response to this is twofold. First, for reasons I cannot go into here, and which have to do with Hempel's (1945) diagnosis of the so-called Raven Paradox, I think that absence of evidence *is* evidence of absence, albeit in some circumstances comparatively weak evidence. Secondly, whether the absence of the right brain structure provides strong evidence for the absence of consciousness is crucially tied up with the question of whether consciousness is multiply realized across the animal kingdom. The question here is not the *philosophical* question of whether consciousness is multiply *realizable*, but the *empirical* question of whether it is really multiply *realized* in the actual world. Following a number of philosophers, while I am sympathetic to the philosophical claim of multiple

realizability, I find no evidence whatsoever for the actual multiple realizedness of any mental property including consciousness (see especially Shapiro 2008).

¹² Moreover, they are questions that the scientific community is at present very much unsure about. I have my own speculative views on this (Kriegel 2009 Ch.7), but I will not go into them here for want of space.

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