

Animal ethics: the capabilities approach

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Abstract

This paper argues that beliefs about human nature are central for animal ethics as beliefs about animal nature ground human treatment of animals. It shows that what constitutes animal nature is a contested question, and that animals have long been considered inferior to humans in Western thought. In Judaeo-Christian ethics, God gave humans dominion over animals. This exacerbated the long-established prejudice in Western culture in favour of rationality as the defining characteristic of human beings. Rene Descartes was influential in arguing that animals were but machines that moved and made sounds but had no feelings. In such a context it was easy to portray animals as quasi-clockwork animated robots — ‘furry clocks’. Jeremy Bentham first advocated the direct inclusion of animals in our ethical thinking, introducing the concept of sentience, or the capacity to feel pleasure and pain, as the central criterion. Peter Singer’s work is in this tradition. He also popularised the notion of speciesism — a bias in favour of one’s own species. Now, Martha Nussbaum has introduced a new approach, the capabilities approach, a Quality of Life approach which lists ten capabilities, nine of which apply to animals as part of their nature. It applies to the whole range of animals (and throughout this paper the term ‘animals’ refers to sentient animals unless otherwise specified) — companion animals, farm production animals, animals in zoos, rodeos, museums and laboratories. Her work is the main focus of this paper. It is argued, therefore, that the capabilities approach contributes to understanding the relation of notions of animal nature to animal welfare, and what a good life for animals entails.

Keywords: animal ethics, animal welfare, capabilities, John Stuart Mill, Martha Nussbaum, nature

Introduction

This paper argues that beliefs about animal nature are central to, and in fact drive, issues of animal ethics. It problematises the concepts of nature and ‘the natural’, and their ready use as a shortcut to the good, by discussing John Stuart Mill’s essay, *Nature* (1979). It then traces some key conceptual developments in animal ethics, and argues that Martha Nussbaum’s capabilities approach is the most promising and practical of current alternatives. Because of its breadth of concern and specificity of recommendations, it can make a vital contribution to animal welfare.

Prior to demonstrating this conclusion, and outlining the capabilities approach, there is a question that has to be addressed and one which is all too often tacitly presumed in such discussions: what is nature and the natural, and can it be used as a shortcut to the good?

No one raises these key questions more clearly than John Stuart Mill in his important and under-rated essay, *Nature*, discussed in Tulloch (1989). The essay was written in the period between the publication of his two great works, *Political Economy* (1982) and *On Liberty* (1977).

Mill’s essay, *Nature*

In *Nature*, Mill takes issue with the many people who argue that women have a fixed nature, and who make assumptions about what they are and what they ought to do. He is

attempting to purge nature and the natural from “the penumbra of meanings they have acquired”.

He starts by posing the question: what is meant by the ‘nature’ of particular objects, and answers:

Evidently the ensemble or aggregate of its powers or properties; the modes in which it acts upon other things... and the modes in which other things act upon it; to which, in the case of a sentient being, must be added its own capacities of feeling or being conscious. The Nature of the thing means all this: means its entire capacity of exhibiting phenomena... As the nature of a given thing is the aggregate of the powers and properties of all things... Nature, then, in this its simplest acceptance, is a collective name for all facts, actual and possible (p 374).

Yet, as Mill points out, this conflicts with the sense in which Nature is opposed to Art, and natural to artificial: in the first sense of the word, Art is as much nature as anything else. This leads him to postulate two senses:

It thus appears that we must recognise at least two principal meanings of the word nature. In one sense, it means all the powers existing in either the inner or the outer world, and everything which takes place by means of those powers. In another sense, it means not everything which happens, but only what takes place without the agency, or without the voluntary and intentional agency of man (p 375).

The question then arises, in which of these senses, if either, is it being taken, when used to convey, “ideas of commendation, approval, and even moral obligation”? It has in fact conveyed these ideas since ancient times — since the Stoics, the Epicureans, and the Roman jurists. That supposed standard is, says Mill, “the predominant ingredient in the vein of thought and feeling which was opened by nature”. As he points out:

That any mode of thinking, feeling, or acting is ‘according to nature’ is usually accepted as a strong argument for its goodness... The word unnatural has not ceased to be one of the most vituperative epithets in the language (p 377).

Mill concludes that a third sense of nature is not involved in this commending usage, as those who invoke Nature as a standard do not intend a merely verbal proposition, but consider they are giving some information as to what the standard of action really is: “They think that the word nature affords some external criterion of what we should do”.

Mill’s purpose in this essay is to examine this claim, and assess whether or not appealing to ‘the natural’ gives some practical guidance:

To inquire into the truth of the doctrines which make Nature a test of right and wrong, good and evil, or which in any mode or degree attach merit or approval to following, imitating, or obeying Nature (pp 337–338).

If we mean Nature in the first sense — all which is — there is no need of such a recommendation, since nobody can possibly help recognising what is. Mill points out, however, that all conduct is not grounded in knowledge of laws of nature, though it may be in conformity with them. He suggests that the useless precept to follow nature be changed into a precept to study it: this constitutes the first principle of all intelligent action. The ‘follow nature’ advocates, such as Rousseau, clearly mean more than this, and treat it “not as simply prudential, but as an ethical maxim”. Right action must mean more than intelligent action, however.

The second sense of Nature, distinguishing it from Art, cannot help here, for “the very aim of action is to alter and improve nature in the other meaning”.

If action at all could be justified, it would only be when in direct obedience to instincts, since these might perhaps be accounted part of the spontaneous order of nature: but to do anything with forethought and purpose, would be a violation of that perfect order. If the artificial is not better than the natural, to what end are all the arts of life? To dig, to plough, to build, to wear clothes, are direct infringements of the injunction to follow nature. [...] All praise of Civilisation, or Art, or Contrivance, is so much dispraise of nature (p 381; my italics).

Mill’s apparent acceptance of the natural-artificial distinction may appear problematic. In my view, however, he is merely deploying a distinction that is commonly made. His target is the underlying treatment of nature as a model. There still exists “a vague notion that... the general scheme of nature is a model for us to imitate”; feelings of this sort “are ready to break out whenever custom is silent”.

Mill proceeds to demolish the grounds of this response. He points out the recklessness of nature and the fact that “nearly all the things which men are hanged or imprisoned for doing to one another, are Nature’s everyday performances” — a fact that no Australian needs reminding of after the horrific bushfires in Victoria and floods in Queensland in February in 2009.

Nature, thus, cannot be, overall, a model: we must consider separately, on other grounds, what it is good to do, for how else can we distinguish which things that nature does are appropriate models? If *one* thing, why not *all*? If not *all*, why *anything*? Mill is thus cutting the ground away from those who invoke the notion of nature selectively, and his arguments can be applied to those who advocate breast-feeding, natural childbirth, and existing family roles on the grounds of their ‘naturalness’, as well as those who condemn advances in science and reproductive technology and bioethics as ‘unnatural’.

Mill has so far been arguing against “the favourable prejudgement” associated with the word ‘nature’ and he has so far confined himself to the sense in which it stands for allegedly innate facts of our mental and moral constitution, the contrast here being between inherent and acquired. In “another and more lax sense”, behaviour may be called natural when it is *not studied*, “as when a person is said to move or speak with natural grace”; in yet another, natural “applied to feelings or conduct” means only that they are *typical* of human beings. The only sense in which Mill takes ‘nature’ or ‘natural’ to be a term of praise regarding a human being is where *absence of affectation* is meant, and a better term for this, he believes, would be *sincerity*.

Nature is here simply a term of praise for the person’s ordinary disposition, and if he is praised it is not for being natural, but for being naturally good (p 400).

Conformity to Nature, Mill firmly concludes, has “no connection whatever” with right or wrong; it is ethically neutral.

Mill then considers the contrary term, ‘unnatural’: that a thing is unnatural is no argument for its being blameable, since criminal actions are no more unnatural to man than virtues. Nor should we extenuate a culpable act because it was natural. Most people, says Mill:

Measure the degree of guilt by the strength of their antipathy; and hence differences of opinion, and even differences of taste, have been objects of as intense moral abhorrence as the most atrocious crimes (p 401).

So, ‘Nature’, ‘natural’ and ‘unnatural’ do not provide easy answers.

Several points arise out of this discussion. Firstly, it seems the strongest case can be made out for interpreting ‘natural’ as instinctive, or as physiologically based. Fast twitch muscles, for example, aid sprinting speed. Breast-feeding requires hormonal preparation, and is not unique to humans. What of being right-handed or left-handed? Optimistic or pessimistic? A morning person or not? We know physiological explanations go back a long way, to classical theories of the four humours, that made us bilious, melancholy, choleric, or sanguine. And phrenology based personality on

head size and configuration of bumps. But, even these physiological examples are not all straightforward, and are variable and may be superseded.

Secondly, as Mill points out, a lot of behaviour that we want to commend arises out of victory over instinctive behaviour. A prime example of this is the action of John Landy in the 1950s, attempting to become the first man to break the four-minute mile. An opponent, Ron Clarke, (now Mayor of the Gold Coast City Council, Queensland, Australia) fell right in front of him. Landy hurdled Clarke, but stopped and doubled back and helped him to his feet. He then continued the race, and won it, but failed to break the magic mark — which was subsequently broken by the UK's Roger Bannister.

This act has been justly lauded as epitomising sportsmanship. Was it instinctive, or victory over instinct? Its rarity and fame would suggest the latter. Yet Landy is probably more famous and more respected for this action than had he ignored Clarke and gone on to win the race and break the record. This is indicated by the fact that 50 years later he was Governor of Victoria, Australia and was appointed Chair of the Bushfire Appeal Committee, after the devastating bushfires that ravaged Victoria in February 2009. Quite simply, he is the most respected man in Victoria — and one of the most respected in Australia.

Thirdly, the naturalness of behaviour in the instinctive sense does not guarantee it should be promoted. Martha Nussbaum gives the example of a tiger, for which a gazelle is prey. There is no use in saying we should just let tigers flourish in their own way, given that human activity has so affected the possibilities for tigers to flourish. An intelligent paternalism is required of us. Should zoo staff give a tiger a tender gazelle to chew on, to satisfy its predatory nature? The Bronx Zoo has found that it can give a tiger a large ball on a rope, the resistance and weight of which symbolises the gazelle. The tiger seems satisfied with this.

Fourthly, in relation to genetic modification, it has been controversial in terms of crops and even more so regarding animals, where it arose in the context of animal husbandry. It has become highly controversial since the cloning of Dolly the sheep in Edinburgh, UK and, later, Snuppy the dog in Singapore. What of transgenic animals? What of xenotransplantation which so challenges the animal-human barrier? What of the use of DNA to resurrect endangered or extinct species? What of its use in horse breeding? Would it be ethical, even if it was possible, to clone Phar Lap or Sea Biscuit?

Given the recent news from the UK (Bionews 17/02/09) has revealed that babies' genomes are to be mapped at birth by 2019, do we now supplement that Shakespearean question does our fate lie "in our stars or in ourselves"? with the question "in our genes or in ourselves"? Are our genes our selves?

It is apparent that the goalposts are going to shift again and again, and that decisions are going to have to be made. Mill's essay will help us make them.

To sum up this section, then, Mill argues against the "favourable prejudgment" associated with the word 'nature', and points out that nature is ethically neutral — as destructive as it is benign — and, hence, no basis for prescription. Moreover, the very question 'what is natural?' cannot yield a

shortcut decision procedure, for the answer to that is ever changing — knives? Spectacles? Antibiotics? Ventilators? Genetic modification? Xenotransplantation? — and a variable matter of choice.

Mill's conception of a worthwhile human life is not variable, however. As famously enunciated in *On Liberty*, he emphasises individuality, creativity, and self-determination, and he regards as distinctive human endowments the faculties of perception, discriminative feeling, mental activity, and moral choice. In a micro-macro parallelism between progressive individual and progressive society, these faculties can only be developed in a society which espouses and practises freedom in its legal, political, and social institutions and practices.

Let us now return to my initial assertion that beliefs about animal nature ground humane treatment of animals.

Animal ethics

Animals have long been considered inferior to humans, and different in kind, not merely in degree — though this firm boundary was problematised by Darwin in 1859. In Judaeo-Christian ethics, God gave humans dominion over animals — moderated by injunctions towards kindness. The medieval notion of the great Chain of Being, with man at the apex, expressed this. The philosopher, Kant argued that animals were not rational or autonomous, and so their lives were not ends in themselves. The corollary was that they could appropriately be treated as means to our ends — and the only reason for being kind to them is to train our disposition for kindness. Animals could thus be relegated to beings of secondary concern — if concern at all — for want of a soul, of rationality (construed in a particular, narrow way), of autonomy, or of language.

The Christian notion was thus, at best, one of human stewardship and, at worst, human dominion over the rest of nature, including animals. This exacerbated the long-established prejudice in Western culture in favour of rationality as the defining and unique characteristic of human beings.

In the Enlightenment, Rene Descartes (1901, 1927) (and the Cartesians) argued that like clocks or robots, animals were but machines that moved and made sounds but had no feelings. In such a context it was easy to portray animals as quasi-clockwork animated robots — 'furry clocks'. Such a conception rationalised vivisection, for creatures with no consciousness could feel no pain.

Sentience

Jeremy Bentham, the founder of utilitarianism, was the first major figure in Western ethics to advocate, in 1789, the direct inclusion of animals in our ethical thinking. As he memorably argued:

What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal than an infant of a day or a week, or even a month old. But suppose they were otherwise, what would it avail? The question is not Can they reason? nor Can they talk? But Can they suffer?

In this way, Bentham addressed the issue of the boundary between human and animal and introduced the concept of sentience — or the capacity to feel pleasure and pain — as the central criterion of issues of animal ethics. This was the driving force behind the POCTA — prevention of cruelty to animals — tradition of legislation which still prevails today. It is an animal welfare framework, evident in the RSPCA (Royal Society for the Prevention of Cruelty to Animals) and the work of some animal activists.

Peter Singer's work (1975, 1979, 1994, 2005) is grounded in this Benthamite tradition, and he further argues that the difference between humans and animals is one of degree, not of kind, ie not absolute, and that the boundary is quite porous.

Circles of compassion

As early as the 2nd century AD, the Stoic philosopher, Hierocles, created a vivid metaphor for extending the boundaries of our moral concern. Imagine, he argued, that each of us lives in a series of concentric circles, the nearest being our own body, and the furthest being the entire universe. The task of moral development is to move the outer circles progressively to the centre, so that one's relatives become like oneself, strangers like relatives, and so on. Singer adopts this metaphor, and argues for explicitly extending the circle of one's concern beyond the boundary of one's own species, to include animals and, ultimately, further, to the whole environment. Why we should do this is meant to be intuitively obvious; at least, learning to see it so is the path of enlightenment in some religions. Humans appear to have built-in resistance, however.

Speciesism

Speciesism was the second great driving idea in animal ethics after sentience. It was a term coined by Richard Ryder (1970) and popularised by Singer. It means a prejudice or attitude of bias in favour of members of one's own species against those of members of another species. Speciesism obviously picks up on the unfavourable connotations of racism and sexism, and the movements to extend equal consideration to all.

The task to change deep-seated, unreflective notions of the species barrier is the task we face now, and it is perhaps the hardest of all, because the attitudes are so entrenched, and the economic incentives to persist with cost-cutting, production-line, inhumane treatment of animals are so great. Pope Benedict XVI (2005) has condemned the "industrial use of creatures, so that geese are fed in such a way as to produce as large a liver as possible, or hens live so packed together that they become just caricatures of birds". It is in this context that the argument to expand our circle of compassion appeals to considerations of animal welfare, but also makes a transition to animal rights, as sentient beings who deserve quality of life.

Singer's position was powerful and convincing to me for a long time, since I heard him speak in the 1970s on 'Speciesism', and certainly the concept of sentience is central, as is the opposition to cruelty which is its corollary. But the focus is primarily negative, with an indirect appeal

to empathetic identification with those animals most like us, and appealing to quality of life — whether human or animal — needs specification if it is to be more than vague.

It is for that reason that the capabilities approach now seems an even better theoretical approach, which is more broad-ranging and specific, and grounds positive guidance for action. It is advocated by Martha Nussbaum and Amartya Sen, Nobel prize-winning economist, who pioneered a Quality of Life approach to human capabilities in the context of aid and human development, tied to the UN Declaration of Human Rights.

The capabilities approach

The capabilities approach was first articulated in *The Quality of Life*, published in 1993, based on their research in a World Institute for Development Economics Research (WIDER) study for the UN University. The book comprises papers from a 1988 conference in Helsinki, which they organised for WIDER where, for eight years, Nussbaum spent a month in the summer in residence. Up until that point she had thought little about problems of global justice or feminist philosophy. Her time there transformed her work. Aristotle's insistence on the importance of individual perception of concrete circumstances, she felt, had a contribution to make to a field that is "frequently so preoccupied with formal modelling and abstract theorising that it fails to come to grips with the daily reality of poor people's lives".

WIDER's mandate is to engage in interdisciplinary research, and the conference brought together economists and philosophers around the question what is meant by 'quality of life' and what is required in terms of social policy for improving it.

A crude measure of *per capita* income is generally taken as indicative of human welfare, which begs important questions, such as the distribution of wealth and income, and the need to assess a number of distinct areas of human life. At the micro level, the notion of maximising an individual's utility underlies much of conventional demand theory. But this raises two questions: is utility measurable, and is it the right thing to be measuring when we are interested in assessing the quality of human lives? Nussbaum and Sen suggest we should instead measure people's capabilities, what they are able to do and to be in a variety of areas of life. Further, capability, not actual functioning, should be the goal of public policy. A conception of the human being — the nature and capabilities of the human being — is centrally involved here.

Martha Nussbaum and the capabilities approach

Nussbaum developed the capabilities approach further in *Women, Culture and Development* (1995), with Jonathan Glover. It was the successor to *The Quality of Life*, and whereas that had mapped out debates on fundamental issues, this later book emphasised the practical importance of basic philosophical work by relating their arguments to Martha Chen's field study of women's rights to work in India and Bangladesh. Then came *Sex and Social Justice* (1999), and *Women and Human Development: The*

Capabilities Approach (2000), where Nussbaum makes another pass over this terrain, in the context of the predicament of poor women in India, and international development. She defends the capabilities as universal objective norms, rejecting cultural relativism and the charge that all universals are bound to be insensitive to regional and cultural specificity. That's an important argument to make, and especially necessary at this time, when cultural or customary tradition may be put up as defence to unacceptable practices, and is important to bear in mind when she discusses animals. This was initially in her mammoth book, *Upheavals of Thought* (2001), arguing for the intelligence of the emotions as a discriminative response to issues of value and importance.

Before dealing with that extension to animals, it is worth considering her background, as it permeates her approach. Nussbaum is Professor of Law and Ethics at Chicago University, and is a classicist and moral philosopher, who has been influential in the non-postmodern pockets of literature departments, and the turn to virtue ethics and applied ethics, and more recently, animal ethics.

She was in Australia for a seminar on her work at the Humanities Research Centre at the Australian National University in 1999, and again to present the Tanner Lectures on Human Values at ANU in 2002. The title of the three-lecture series was 'Beyond the social contract: towards global justice', and the three lectures were on 'Capabilities and the mentally disabled', 'Human capabilities across national boundaries', and 'Justice for non-human animals'.

In her book, *Cultivating Humanity* (1997), she quotes Seneca's *On Anger*:

Soon we shall breathe our last. Meanwhile, while we live, while we are among human beings, let us cultivate our humanity.

She argues for a particular norm of citizenship, world citizenship, and for a society where deep intellectual and political differences are discussed with a Socratic civility and commitment to reason. She draws on the Socratic notion of the examined life, Aristotle's notion of reflective citizenship, and Greek and Stoic versions of liberal education, and points out that multicultural education is no new fad, citing Socrates and Herodotus, and Aristotle instructing his students to gather information about 153 forms of political organisation, encompassing the entire known world, and to write up historical and constitutional descriptions of these reports. Aristotle's philosophy is essentially cross-cultural. However, it was Diogenes the Cynic (404–323 BC) who coined the term 'citizen of the world' — ie cosmopolitan.

Nussbaum probes what this might mean today, in an age of cultural diversity and increasing internationalisation. She is critical of her own education at Harvard for what it excluded, and notes that only the demand for inclusion seems motivated by a political agenda.

She believes three capacities are needed — the capacity for critical examination of oneself and one's traditions (the Socratic examined life); the ability to see ourselves as

human beings, bound to other human beings by ties of recognition and concern; and narrative imagination (or empathy). People need the arts because they'll be called on to vote. They also need sensitivity and judgement.

Her perspective is the Socratic, and Millian, one that education is an essential part of every human being's self-realisation. Her case for the cultivation of humanity and for a new liberal education embodies a view of democracy:

In order to foster a democracy that is reflective, and deliberative, rather than simply a marketplace of competing interest groups, a democracy that genuinely takes thought for the common good, we must produce citizens who have the capacity to reason about their beliefs.

She points out that (again like Mill) Socrates' case for democracy cannot easily be separated from his concept of what democratic choice is, and his respect for the moral faculties that are involved in these choices. That is why education is so urgently required in a democracy (we're spending only 1% of our gross domestic product on it).

She regards democracy as the best available form of government, though not above criticism, and her particular form of citizenship — the world citizen — contrasts with the identity-politics view of the citizen body as a marketplace of identity-based groups jockeying for power.

While Aristotle taught and thought in a context of Athenian city-state democracy and Mill in a 19th century nation-state democracy, Nussbaum is very much writing and thinking in this age of globalisation, of 'democratic deficit', where liberal emphases on openness, free speech, freedom of expression can present a soft underbelly for hostile takeover (or mere social disruption) by a group that does not play by those rules or share that framework — an age of rendition and the Patriot Act in the US and disputes about immigration visas and the Cronulla riots in Australia.

As Peter Singer points out in *How Are We To Live? Ethics in an Age of Self-Interest* (1993; p 13):

For the first time we are living in a world that has only one dominant model for developed societies.

ie the liberal democratic free enterprise model.

This model seems to have hit a big bump in the road. It cannot just continue to roll along, and increasingly, old models won't do.

Nussbaum and animal ethics

In the field of animal ethics too, old models will not do. So what does the capabilities approach, as extended by Nussbaum, have to offer? It appeals for animal welfare based on rights derived from their capabilities — which are outlined. The approach lists ten capabilities, nine of which also apply to animals. (Animals in this context refers to sentient animals unless otherwise specified). It stresses how much more has to be considered and provided for than is implied by sentience and covers the whole range of animals, including in zoos, rodeos, museums, and laboratories. It involves a radical paradigm shift in outlook, and has huge practical implications. It's observable, and it's easy to identify where the shortcomings fall. It is, in my view, the most current and the most exciting development in animal ethics.

In the Tanner Lectures in Canberra (2002), as well as in *Animal Rights* with Cass Sunstein (2004), Martha Nussbaum addresses ethics for non-human animals. She argues that the capabilities approach is the best basis, theoretically and practically. She also argues for extending the focus beyond traditional appeals to compassion and humanity to considerations of justice for non-human animals.

The Tanner Lecture is preceded by three epigrams: one from John Rawls, one from Aristotle, and one from the Nair case considered by the Hindu Kerala High Court in 2000. This case affirmed animals as ‘beings entitled to dignified existence’. Nussbaum derives from this entitlements to adequate opportunities for nutrition and physical activity; freedom FROM pain, squalor, cruelty and fear; freedom TO act in ways characteristic of the species, opportunities for interacting, and to enjoy light and air in tranquillity.

This may to some echo the Five Freedoms — freedom from hunger and thirst; from discomfort; from pain, injury, disease; from fear; and to perform normal behaviour — which has been influential and a valuable guide to policy since their formulation in 1965. Nussbaum’s approach goes further, however.

Nussbaum goes on to argue that cruel and oppressive treatment of animals raises issues of justice rather than merely of compassion and humanity. Like the notion of humanity, compassion involves the thought that a being is suffering significantly, and is not to blame for the suffering. Compassion thus omits the essential element of blame for wrongdoing, according to Nussbaum, and even if we add that duties of compassion involve the view that it is wrong to cause animals suffering, this falls short, in Nussbaum’s view, of saying that mistreatment of animals is not just morally wrong, but morally wrong in a special way, raising questions of justice.

Nussbaum argues that when we call an act unjust, we mean that the being injured has an entitlement not to be treated that way. What she seeks is to include animals in the sphere of justice — which is the sphere of basic entitlements. Saying mistreatment of animals is unjust means not only that it is wrong of us to treat them that way, but also that they have a right, a moral entitlement, not to be treated that way.

It should be acknowledged that while rights and responsibilities are generally reciprocal, here the relation is only one-directional. The relationship is asymmetrical, because they have rights and we have responsibilities to acknowledge their entitlements and provide for those rights. This might seem paradoxical because they are not our equals, any more than children are our equals, though they have the potential to be. The relevant basis for comparison is that the capabilities approach sees animals as agents seeking a flourishing existence, and damages done to them as unjust; this Nussbaum sees as one of its greatest strengths.

Nussbaum argues that utilitarians, by contrast, in practice favour animals with complex forms of consciousness, though she quotes Peter Singer’s observation that “species membership may point to things that are morally important”, and hence a being’s form of life sets the conditions under which it can suffer harm.

She also holds utilitarians vulnerable on the question of numbers, pointing out that the meat industry brings countless animals into the world which would otherwise have not existed. She quotes John Coetzee’s (2003) fictional character Elizabeth Costello’s revulsion at this:

Ours is an enterprise without end, self-regenerating, bringing rabbits, rats, poultry, livestock, ceaselessly into the world for the purpose of killing them.

By contrast, for Peter Singer, the production of new animals is not in itself a bad thing, provided the animals which die do so painlessly. Nussbaum criticises the latent replaceability she finds in this view.

The Aristotelian conception at the heart of the capabilities approach places human morality and human rationality within human animality, and holds that human animality has dignity, as do different types of animal life.

Nussbaum is reluctant to follow the great taxonomiser, Aristotle, in saying that there is a natural ranking of forms of life. Her formulation is that more complex forms of life have more and more complex capabilities which can be thwarted, so they can suffer more and different types of harm. Species membership is not irrelevant. What is relevant to the harm of pain is sentience — a threshold condition which is relevant to pleasure and pain, and seems much more akin to a precondition for capability.

It is in the penultimate section of the Tanner lecture — ‘Toward basic political principles: the capabilities list’ — that the strength of the capabilities approach really emerges, for the plausibility of her practical and policy prescriptions feeds back into the theoretical persuasiveness of her argument.

Nussbaum lists 10 capabilities

Life

This entails that animals are entitled to continue their life, whether or not they take a conscious interest in it. This puts pressure on, for example, the meat industry to reform its harmful practices, as well as problematising killing for sport (hunting and fishing) and for fur.

Bodily health

This is the second entitlement and where animals are under human control and entails laws banning cruel treatment and neglect, confinement and ill treatment of animals in meat and fur industries; forbidding harsh or cruel treatment for working animals, including circus animals, and regulating zoos, aquaria and parks, as well as mandating adequate nutrition and space. Nussbaum points to the anomaly that animals in the food industry are not protected as companion animals are in Australia and recommends that this anomaly be eliminated.

Bodily integrity

This is the third entitlement and it would prevent the declawing of cats and other mutilations, such as tail-docking, that make the animal more beautiful to humans. It would not ban forms of training that are part of the characteristic capability profile, such as training horses or border collies.

Senses, imagination and thought

Entitlement four entails access to sources of pleasure, such as free movement in an environment to please the senses and which offers a range of characteristic activities.

Emotions

Nussbaum argues (for entitlement five) that all animals experience fear, and many experience anger, resentment, gratitude, grief, envy, and joy, while a small number can experience compassion. Hence, they are entitled to lives where it is open to them to have attachments to others, and not have these attachments warped by isolation or fear. While this is understandable in relation to companion animals, it is all too often overlooked in relation to zoo and farm animals and research animals.

Practical reason

Entitlement six is “a key architectonic entitlement in the case of human beings’ and has ‘no precise analogues in the case of non-human animals’”. However, we should consider the extent to which the being has a capacity to frame goals, and support it if this is present, as well as providing plenty of opportunity for movement and variety of activities.

Affiliation

For entitlement seven, Nussbaum argues that animals are entitled to form attachments, and to relations with humans that are rewarding rather than tyrannical, as well as to live in ‘a world public culture that respects them and treats them as dignified beings’.

Other species

Entitlement eight calls for the formation of an “interdependent world in which all species will enjoy co-operation and mutually supportive relations with one another”. This idealistic entitlement calls, in Nussbaum’s words, “for the gradual supplementation of the natural by the just”.

Play

This is important in the lives of many mammals and birds and may be in other species also. It entails adequate space, light and sensory stimulation, and the presence of other species members.

Control over one’s environment

This has two aspects in the case of humans — political and natural. For non-human animals, it entails being respected and treated justly even if a human guardian must go to court, as with children, to vindicate those entitlements. The analogue of human property rights is respect for the territorial integrity of their habitat, domestic or wild, and the analogue of work rights is the rights of labouring animals to dignified and respectful labour conditions.

Only Practical Reason does not fit smoothly with animals, and much of what it requires can be derived from the criteria for flourishing. However, even excluding it, if the other nine of these ten capabilities were taken seriously, it would transform the common conception of how much needs to be provided as basic conditions for animals — not just life, health, and the maintenance of bodily integrity,

but opportunities to experience the senses, imagination and thought, emotions, affiliation, relations with other species, play, and control over the animal’s environment. Yet it is hard to think of a single instance where these capabilities are currently allowed for.

Nussbaum recognises these rights need international co-operation, via accords, such as the UN Declaration of Human Rights, as well as the ineliminability of conflict between human and animal interests. Some bad treatment of animals, she argues, can be eliminated without serious loss of human well-being. In the use of animals for food, for example, she suggests setting the threshold on focusing on good treatment during life, and painless killing. In the use of animals for research, she argues much can be done to improve the lives of research animals, without stopping useful research. It is unnecessary and unacceptable for primates used in research to live in squalid, lonely conditions. Nussbaum advocates asking whether the research is really necessary; focusing on the use of less complexly sentient animals; improving the conditions of research animals, including terminal palliative care; removing psychological brutality; choosing topics cautiously so no animal is harmed for a frivolous reason; and making a constant effort to develop experimental methods (such as computer simulation) that do not have bad consequences. The strategy of the 3Rs — Replace, Refine, Reduce — has some affinity to Nussbaum’s approach here.

As earlier emphasised, Nussbaum comes from a justice perspective, fitting the issue into a global justice approach. It is important to stress, finally, that the list of ten capabilities is not presented as a hierarchy; rather, all spring from the conception of flourishing. It does seem to me, though, that life is presupposed, as is, arguably, health and perhaps bodily integrity, if capabilities four-to-ten are to be exercised.

This capabilities approach is to me the approach that has most to recommend it in terms of simplicity, scope, power, and precision of recommendations. This takes it further than an approach which focuses only on reducing suffering. And though Nussbaum accepts the continuing use of animals, the capabilities impose constraints on how they should be used, and gives criteria to appeal to, in criticising practices. Moreover, and importantly, it meets the Millian test outlined earlier, because it does not make shortcut appeals to what is natural, but spells out in detail what are the capabilities that constitute flourishing, why each is important, and what observing them would imply in policy and practical terms.

Conclusion

In terms of animal welfare, my conclusion is that the capabilities approach has the greatest capacity of current ethical theories to protect and enhance the well-being of animals in a nuanced way that takes account of differing needs of different species and categories of animals. It is an account of animal ethics that takes appropriate account of differing animal natures and circumstances, and hence gives clear guidance as to what constitutes animal welfare and what constitutes the good life for all animals.

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