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The Capabilities Approach and Animal Entitlements

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[–] Abstract and Keywords

This article begins with a sketch of current knowledge about animal thinking. It inquires into what this knowledge suggests for ethics and for public policy. It finds that it challenges what has been the most influential approach to the ethics of animal treatment, namely classical utilitarianism. After rejecting this theory, it proposes a theoretical approach that has two non-utilitarian elements as centerpieces. First, the approach has a Kantian element—a fundamental ethical starting point that we must respect each individual sentient being as an end in itself. Second, the approach has a neo-Aristotelian, capabilities-theory element: the Aristotelian idea that each creature has a characteristic set of capabilities, or capacities for functioning, distinctive of that species, and that those more rudimentary capacities need support from the material and social environment if the animal is to flourish in its characteristic way.

Keywords: animal thinking, public policy, ethics, animal treatment, classical utilitarianism, neo-Aristotelian, Kantian element

1. Animal Thinking and Ethics

HAPPY is an adult female Asian elephant who lives in the Bronx Zoo, one of the most humane of American zoos in providing large animals with a rich diverse natural habitat and a wide range of social interactions. Like adult females in the wild (though, as I shall later say, there are very few Asian elephants in the wild today, and whether there is such a thing as “the wild” is subject to doubt), she lives in a group with other adult females who enjoy one another's company and share rich social relationships. During several days this past fall, researchers Joshua Plotnik, Frans de Waal, and Diana Reiss set up a large mirror in the enclosed area shared by these three females as the nighttime “home” from which they roam outward during the day. All three females immediately took quite an interest in the mirror. They walked back and forth in front of it, and then walked up to it. All showed a marked interest in facing the mirror with open mouths, apparently studying their own oral cavities and poking their teeth. (Elephants lose at least four sets of teeth during a lifetime, and they are thus often in a state of dental discomfort.) In one case, Maxine put her trunk into her mouth, in front of the mirror, using it to touch parts of her teeth and mouth; she later used her trunk to pull her ear forward so that the inside of her ear cavity could be seen in the mirror. Maxine, Patty, and Happy also explored the back (p. 229) of the mirror with their trunks to see whether there was something over on the other side of it, quickly ascertaining that there wasn't.

On the second day, a visible large X mark was applied to the right side of each elephant's head, and an invisible sham mark was applied to the other side of the head, to forestall the possibility that the tactile sensation of applying the mark would account for the experimental result. The mark was visible only in the mirror. Maxine and Patty did nothing unusual; by that time they had become somewhat bored with the mirror. But Happy, still engaged, went up to the mirror and studied the reflection of her own head. Repeatedly she took her own trunk and scrubbed the mark with it, as if she were perfectly aware that what she saw in the mirror was a part of her own head, and she wanted to wipe away the unusual mark.¹ On the basis of this experiment, de Waal and his fellow researchers conclude that

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the Asian elephant is capable of forming a conception of the self; until now, this level of complexity has been found only in apes and humans, though there is one ambiguous experiment with dolphins.

We have long been learning that the elephant society is highly complex. Elephants exhibit complex forms of social organization, in which child care is shared among a group of cooperative females. Elephants also have rituals of mourning when a child or an adult member of the group dies, and appear to feel grief. Even when they come upon the corpse of a fellow species member that has been dead for a long time, they explore the body or bones for signs of the individual who has inhabited them.² All of this we have increasingly understood through the work of researchers working both in the field and in the better research zoos.

We might think, well, so now we know that there are a few species that have complex forms of social behavior, based on complex forms of cognition. These cases, however, are exceptional, and should not affect our assessment of the standard case. We have also, however, been learning recently about unexpected complexity in animal thinking in quite another region of the animal kingdom, a part of it that we're accustomed to think of as "lower." In June 2006, *Science* published an article entitled "Social Modulation of Pain as Evidence for Empathy in Mice" by a research team at McGill University in Montreal led by Jeffrey Mogil.³ This experiment involves the deliberate infliction of mild pain, and is thus ethically problematic. Nonetheless, I ask you to forgive me for describing what we learn from it. The scientists gave a painful injection to some mice, which induced squealing and writhing. (It was a weak solution of acetic acid, so it had no long-term harmful effects.) Also in the cage at the time were other mice who were not injected. The experiment had many variants and complexities, but to cut to the chase, if the non-pained mice were paired with mice with whom they had previously lived, they showed signs of being upset. If the non-pained mice had not previously lived with the pained mice, they did not show the same signs of emotional distress. On this basis, the experimenters conclude that the lives of mice involve social complexity: familiarity with particular other mice prepares the way for a type of emotional contagion that is at least the precursor to empathy.

Human beings have gone through many phases in understanding the complexity of animal lives and animal thinking. The ancient Greeks and Romans believed (p. 230) that there were large areas of commonality between humans and animals. Most of the ancient philosophical schools (with the exception of Stoicism) attributed to animals complex forms of cognition and a wide range of emotions; some of them used their observation of these complexities to argue against cruel practices and also against meat-eating.⁴

Nor was this simply a specialized movement of elite intellectuals. There was widespread public awareness of the complexity of animal lives and of the implications this complexity had for human treatment of animals. When Pompey the Great introduced elephants into the gladiatorial games, there was a public outcry, described by Cicero, who notes that the people who saw elephants in the ring had no doubt that there were commonalities between them and the human species.⁵ Large sections of the ancient Greco-Roman world were vegetarian. Meanwhile, in India, the Buddhist emperor Ashoka, in the third century B.C., made a long list of animals that should not be killed and wrote that he himself was attempting, with increasing success, to live a vegetarian life.⁶ This tradition continues: India is one of the world leaders in legal protection for animals, and close to 50 percent of Indians are vegetarians.⁷ Europe and North America have lagged behind, partly because we have lost the vivid awareness of the complexity of animal lives and animal thinking that people in other times and places have had, and partly because we have an ethical sensibility that is weakly and inconsistently developed in this area.

Why is the complexity of animal cognition important, and what does it mean for ethical thought and for action? That is the question I shall attempt to answer in this paper. First, I shall offer a very brief sketch of some of the high points in our current knowledge of animal thinking—including social and emotional aspects of cognition. Then I shall ask what this means for ethics and for public policy. I shall argue that the facts about animal lives, as we now know them, cause serious trouble for the most influential approach to the ethics of animal treatment in the modern Euro-American debate, classical Utilitarianism. Important though the ethical work of Utilitarians on this problem has been, the approach is oversimple and offers inadequate guidance for ethical thought and practice. I shall then argue that, although Kant's own approach to the ethics of animal treatment is not terribly promising, a type of Kantian approach with Aristotelian elements, recently developed by Christine Korsgaard, does much better and can offer an adequate basis for the ethical treatment of animals. Although I shall give some reasons why I myself prefer a rather closely related type of neo-Aristotelian approach containing Kantian elements, I do not think that they knock out Korsgaard's Kantian approach, and the two slightly different hybrid approaches can be allies in the ethical pursuit

of good treatment for animals.

All this concerns ethics. When we turn to political principles, the argumentative terrain changes, since we will need to find arguments that citizens from a wide range of different comprehensive ethical approaches can share, and we will need to be certain that the arguments respect them and their conscientious commitments. We will only do this, as John Rawls argued, if we find arguments that avoid making commitments on some of the most divisive ethical and epistemological questions. For this task, I shall argue, Korsgaard's ethical approach as currently stated will not (p. 231) do, since its very strong insistence on the fact that humans are the only sources of value in the world is not a position that all reasonable citizens can share. (Korsgaard does not suggest that they could, and she never proposes her view as a political doctrine.) Nor would a comprehensive neo-Aristotelianism be adequate for political purposes, if it asserted, as I think it should, that value exists in the world independently of human legislation and that the lives of animals are valuable in this independent way. (That is a part of the view that I have never developed in writing on the subject, since I, unlike Korsgaard, have focused on defending a political rather than a comprehensive ethical doctrine.) Once again, realism about value is a metaphysical and epistemological view about which reasonable citizens can disagree.

What we need for political purposes, then, I shall argue, agreeing with John Rawls, is a stripped-down view that does not make claims on this and other divisive issues. For our political purposes in thinking about animal entitlements, either a stripped-down version of Korsgaard's Kantian view or a stripped-down neo-Aristotelianism of the sort that I have tried to develop can provide a good basis for reasonable principles, and, indeed, the two will converge to a large degree, since the metaphysical commitments that divide them will have been removed.⁸ I shall argue that the view I describe can become, over time, the object of an overlapping consensus among citizens who differ on many other aspects of life. And, finally, I shall argue that even an ethical Utilitarian can accept political principles based on neo-Kantian or (related) neo-Aristotelian insights. (This is important, because Utilitarianism is among the reasonable comprehensive doctrines that will need to sign on to the political "overlapping consensus," even if there seem to me to be very good reasons to think that it's not the best ethical doctrine.)

2. Animal Thinking: Some Major Findings

The study of animal cognition is a vast network of research programs, each focused on particular cognitive capacities. As biologist Marc Hauser, one of the most careful and enterprising such researchers, comments, the abstract category "thinking" is not really all that useful in approaching animals: we need to ask "about mental phenomena that are more precisely specified, phenomena such as an animal's capacity to use tools, to solve problems using symbols, to find its way home, to understand its own beliefs and those that others hold, and to learn by imitation."⁹ Each of these more precise questions, in turn, must be posed in the context of a detailed understanding of the animal's form of life as it has evolved within a particular set of environmental conditions and challenges. Only by such a detailed study of what the animal is "up against" can we avoid making errors of anthropomorphization.¹⁰ The best work, therefore, is done by researchers who spend a long time with a (p. 232) particular species, studying it in its natural habitat as much as is possible. (Obviously some tests, such as the mirror test, need a controlled situation and cannot be done in "the wild."¹¹)

There is so much excellent work here, on birds and mammals of all sorts, that it would be foolish to pretend to summarize. Instead, a few select high points can be mentioned.

1. Tool Use. It took some time for researchers to become convinced that even chimpanzees were tool-users; Jane Goodall's painstaking observations both established beyond doubt that this was so and set research going on a whole set of questions about species of varying sorts. With Marc Hauser, we may define a tool as "an inanimate object that one uses or modifies in some way to cause a change in the environment, thereby facilitating one's achievement of the target goal."¹² (Thus using a part of one's own body to achieve a goal does not count as tool use.) Using this definition, we can now say with confidence that a wide range of creatures use tools, including crows, vultures, monkeys and apes of many types. Much of this use takes place in food contexts, but some occurs, as well, in social contexts, for example grooming. (Apes groom one another's teeth using a range of tools.) Monkeys prove quite flexible in recognizing the potential usefulness of a tool-like object placed in their environment, in their ability to distinguish between function-relevant and irrelevant characteristics of tools of a variety of kinds, and also in their ability to modify the object to make it

more useful.

2. Causal Thinking. There are many ways in which nonhuman animals manifest an understanding of causal connections, but one of the most interesting has recently been demonstrated by a Harvard research team working with rhesus monkeys. The team showed that these monkeys, like humans, generate causal hypotheses “from single, novel events” together with their general knowledge of the physical world, rather than only through repeated experiences of a particular type of connection.¹³

3. Spatial Thinking. Animals, of course, manage to find their way from one point to another, navigating through tremendous environmental complexities. Their spatial mastery in many respects exceeds that of humans. What researchers have tried to ask is to what extent each species’ behavior gives evidence that they are working with something like a representation of the spatial world as they find their way around. Not only primates but also birds, rats, and some types of insects appear to have rather complex abilities to form some type of “cognitive map.” Chimpanzees may even be able to read and use spatial models made by humans.¹⁴

4. Perspectival Thinking. Some animals have the ability to distinguish between the way they see a situation and the way another person on the scene will see it. This ability, crucial in deceiving others, is found in chimpanzees,¹⁵ and the new experimental evidence about elephants and the mirror suggests that we will find this ability in elephants as well. Dolphins are another species that (p. 233) may have this ability. Obviously, this cognitive ability is a crucial precursor of empathy—the ability to inhabit the experiential perspective of another—and also, of sympathy or compassion, emotional pain at the hardship or pain of another.¹⁶

5. Emotion. Emotions involve cognition, so they are appropriately included in this discussion.¹⁷ More or less all animals experience fear, and many experience anger of some type. Other emotions require a more specialized repertory of thoughts and are thus less widely distributed. Animals who are capable of perspectival thinking are capable of at least some type of compassion or sympathy; some animals appear to experience grief; shame can be observed in animals who have a conception of their proper role in a system of social rules. At least a rudimentary conception of guilt can be seen in animals who try to conceal an inappropriate act and who exhibit pain on its discovery.¹⁸

6. Social Cognition. Social cognition is a huge category, since much of the life of animals of many species is lived in interaction with other species members. There are hundreds of research programs in this area, focusing on dozens of more specific abilities.¹⁹ Each such project aims at first describing in detail the social interactions characteristic of the species and then, within these patterns, isolating more specific phenomena: for example, rule-following and rule-violation; the awareness of hierarchy and group order; punishment for deviations; the acculturation of the young; reciprocity and some type of altruism.²⁰ We can certainly conclude that animals of many types exhibit at least some of these forms of complex cognitive ability, and, in general, are aware of an orderly group life with a division of labor, characteristic ways of doing things, and ways that deviate and are occasions for stigma. Particularly significant is widespread evidence of reciprocal altruism: animals follow complex rules about giving and giving back, favoring those who give by giving to them in return.

Since I have focused on elephants and will focus on them again at the end of this article let me give some examples of what we have learned about this remarkable species, which has been extensively studied. In general, creatures with larger bodies tend to have what are called slower life spans, meaning that life stages unfold more gradually and that the whole life span lasts longer. Slow life span is highly correlated with the ability to develop and exhibit complex forms of intelligence, and elephants are among the most long-lived of the nonhuman mammals, often living to sixty or so.²¹ All three elephant species exhibit very similar patterns, so I shall not distinguish them in what follows.

Elephants form female-dominated groups consisting of adult females and both male and female young; these groups typically have one leading matriarch, usually the oldest female. All adult members of the group share child-rearing tasks, and the older females help younger females learn how to raise a young child. The matriarch takes the lead in moving the group from place to place, and also in initiating complicated communications about movement and food. (Meanwhile, bull elephants form their own hierarchical society, which lives apart from the females, plays no role (p. 234) in rearing the young, and has in general been less well studied.) A wide range of elephant calls has been analyzed, and we now know that these calls are a highly complex long-distance communication system, based on low-frequency sound, that not only enables each group, female and male, to stay together though widely dispersed for foraging, but also enables males and females to locate one another for

mating.²² “That such a system has evolved,” writes Katy Payne of the mating call system, “is particularly striking in light of the fact that a female elephant typically spends only one period of two to five days every four or five years in estrus.” Meanwhile, within the female group, young elephants are initiated into a wide range of appropriate behaviors, disciplined gently for being too rambunctious, and, in general, shown how to function as a member of the group.²³

These are generalizations; but it is also important to note that elephant society is highly individualized; elephants have different personalities and tastes, and the presence of these individual differences is acknowledged by the group.

Particularly striking is the fact that elephants appear to have some understanding of death and to respond to death with something that seems to be at least akin to grief.²⁴ Here is a description by Cynthia Moss of the reaction of other elephants in Amboseli National Park to the death of a young female by a poacher's bullet (this sort of behavior has by now been widely observed in all three species):

Teresia and Trista became frantic and knelt down and tried to lift her up. They worked their tusks under her back and under her head. At one point they succeeded in lifting her into a sitting position but her body flopped back down. Her family tried everything to rouse her, kicking and tusking her, and Tallulah even went off and collected a trunkful of grass and tried to stuff it into her mouth.²⁵

The elephants then sprinkled earth over the corpse, eventually covering it completely before moving off. When elephants come upon the bones of elephants, even bones old and dry, they examine them carefully, something they don't do with the bones of other species, as if they are trying to recognize the individual who has inhabited them.

One thing that this new research surely ought to do is to awaken our ethical concern for animals, if we have previously been inclined to treat them as mere objects for our use or as automata devoid of experience. Once concern is awakened, however, we still need to ask what general theoretical approach to the ethics of animal treatment is likely to prove the best guide.

3. Utilitarianism: Strengths and Problems

The philosophical school that has, until now, made the largest contribution to thinking about the ethical treatment of animals is classical Utilitarianism. Both Jeremy Bentham and John Stuart Mill were passionately interested in the lives of animals, and both thought that human treatment of animals was ethically (p. 235) unacceptable. Bentham—noting that Hinduism and Islam are ahead of Christianity in their recognition of ethical duties to animals—famously predicted that a day would come when species difference would seem to all as ethically irrelevant, in the context of bad treatment, as race was by then beginning to be agreed to be:

The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized that the number of the legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? ... The Question is not, Can they reason? Nor, Can they talk? But, Can they suffer?²⁶

Mill, noting that this passage, written in 1780, anticipates many valuable legal developments that make at least a beginning of protecting animals from cruelty, responds in similar terms to Whewell's dismissive statements concerning duties to animals. Whewell argues that it is “not a tolerable doctrine” that we would sacrifice human pleasure to produce pleasure for “cats, dogs, and hogs.” Mill responds: “It is ‘to most persons’ in the Slave States of America not a tolerable doctrine that we may sacrifice any portion of the happiness of white men for the sake of a greater amount of happiness to black men.” He adds a comparison to feudalism.²⁷ At his death, Mill left a considerable portion of his estate to the Society for the Prevention of Cruelty to Animals.

Both Bentham and Mill felt not only that large conclusions for our treatment of animals followed from their Utilitarian principles, but also that the ability of those principles to generate acceptable conclusions in this area was a point in

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favor of those principles—by contrast, for example, with the principles of vulgar Christianity (represented in Whewell's hostile reaction to Bentham), which made species difference all-important. For both Bentham and Mill, Utilitarianism, with its commitment to treat all sufferings and pleasures of all sentient beings on a par, had made decisive progress beyond popular ethics in just the way that abolitionist views were then making progress beyond popular racist views. Seeing how the view enabled one to cut through unargued prejudice, and to treat subordinated beings with due concern, one saw a strong reason, they thought, in the view's favor.

There is no doubt that Utilitarian thought has made valuable and courageous contributions in this area, and that it still does so today, in the work of preference-Utilitarian Peter Singer, one of the leading voices against cruelty to animals. I now want to argue, however, that Utilitarianism cannot meet the challenge of animal complexity, as we currently understand it. (It has related problems with human complexity).²⁸

Utilitarianism can be usefully analyzed, as Bernard Williams and Amartya Sen have analyzed it, as having three parts.²⁹ The first is consequentialism: the best choice is defined as the one that promotes the best overall consequences. The second is “sum-ranking,” a principle of aggregation: we get the account of consequences by (p. 236) adding up all the utilities of all the creatures involved. Third, the theory invokes some specific theory of the good: pleasure in the case of Bentham and Mill, the satisfaction of preferences in the case of Peter Singer. Looking at animals, Utilitarians begin from the understanding that they, like human beings, feel pleasure and pain, and they argue that the calculus of overall pleasure cannot consistently exclude them. The right choices will be those that produce the largest aggregate balance of pleasure over pain—or, in Singer's case, the largest net balance of satisfaction over dissatisfaction.

The Utilitarian approach has the merit of focusing attention on something of great ethical importance: suffering. Humans cause animals tremendous suffering, and much of it is not necessary for any urgent human purpose. Animals would suffer a great deal without human intervention, but there is no doubt that much of animal suffering in today's world is caused, directly or indirectly, by human activity. So the focus on animal suffering is valuable, and these philosophers deserve respect for the courage with which they put this issue on the agenda of their nations.

Five problems, however, can be seen, if we hold this theory up against the complex cognitive and social lives of animals. The first point is that pleasure and pain, the touchstones of Utilitarianism, are actually disputed concepts. Bentham simply assumes that pleasure is a single homogeneous type of sensation, varying only in intensity and duration. But is he correct? Is the pleasure of drinking orange juice, for example, the same sort of sensation as the pleasure of listening to a Mahler symphony? Philosophers working on this question, from Greek antiquity to the present day, have, on the whole, denied this, insisting that pleasures vary in quality, not just quantity. Moreover, Mill himself insists on this point in *Utilitarianism*. A second point on which Mill insists—along with many other philosophers, past and present—is that pleasure is a type of awareness very closely linked to activity, so that it may be impossible to separate it conceptually from the activities that are involved in it.³⁰ We do not need to resolve all these issues in order to realize that they arise in animal lives as well as human lives, once these lives are seen with sufficient complexity. Happy's pleasure seeing herself in the mirror seems unlikely to be the very same sensation as her pleasure when she eats some nice bananas or hugs her small baby elephant with her trunk.

Pleasures, second, are actually not the only things relevant to animal lives. These lives consist of complex forms of activity, and many of the valuable things in those lives are not forms of pleasure. Happy's self-recognition in the mirror, and the mourning of elephants for their dead, are not pleasures; the latter may even be deeply painful. Nonetheless, such meaningful elements in animal lives should, we intuitively feel, be fostered and not eclipsed—for example, eclipsed by raising animals in isolation so that they don't have contact with fellow group members and so are unable to mourn. Animals want much more than pleasure and the absence of pain: free movement, social interactions of many types, the ability to grieve or love. By leaving out all this, Utilitarianism gives us a weak, dangerously incomplete way of assessing our ethical choices.

Third, animals, like human beings, can adjust to what they know: they can exhibit what economists call “adaptive preferences.”³¹ Women who are brought up (p. 237) to think that a good woman does not get very much education may not feel deprived if they don't get an education, so Utilitarian theory would conclude that education is not valuable for them. This means that the theory is often the ally of an unjust set of background conditions. Much the same sort of thing can be said about animal preferences. If animals are given a very confined life, without any access to social networks characteristic of their species, they may not actually feel pain at the absence of that

which they haven't experienced, but this does not mean that there is not an absence or that it should not be taken seriously. By refusing to recognize value where there is not pleasure or pain, Utilitarianism has a hard time criticizing bad ways of treating animals that have so skewed their possibilities that they don't even hope for the alternative.

Fourth, a familiar point in criticism of Utilitarian theories of human life, Utilitarianism's way of aggregating consequences doesn't treat each individual life as an end; it allows some lives to be used as mere means for the ends of others. If it should turn out that the pleasures of humans who exploit animals for their use are great and numerous, this might possibly justify giving at least some animals very miserable lives.

Finally, all Utilitarian views are highly vulnerable in respect of the numbers. If the goal is to produce the largest total pleasure or satisfaction, then it will be justified, in the terms of the theory, to bring into existence large numbers of animals whose lives are extremely miserable, and way below what would be a rich life for an animal of that sort, just so long as the life is barely above the level of being not worth living at all.

4. Two Strong Theoretical Alternatives

Seeing these problems helps us think: it informs us, I believe, that we need a theoretical approach in ethics that can do two things. First, the approach must have what I would call a Kantian element: that is, it must have as a fundamental ethical starting point a view that we must respect each individual sentient being as an end in itself, not a mere means to the ends of others. (I'm simply helping myself to an extension of Kant's approach to human beings at this point, not offering any story about how one might use Kant's own actual views to generate obligations to animals.) Second, the approach must have what I would call a neo-Aristotelian element, the ability to recognize and accommodate a wide range of different forms of life with their complicated activities and strivings after flourishing. I've suggested in writing about this that for this part of the view we can turn to a version of the Aristotelian idea that each creature has a characteristic set of capabilities, or capacities for functioning, distinctive of that species, and that those more rudimentary capacities need support from the material and social environment if the animal is to flourish in its characteristic way. But of course that observation only goes somewhere in ethics if we (p. 238) combine it with the Kantian part, the idea that we owe respect to each sentient creature considered as an end. Putting these two parts together, we should find a way to argue that what we owe to each animal, what treating an animal as an end would require, is, first, not to obstruct the creature's attempt to flourish by violence or cruelty, and, second, to support animal efforts to flourish in positive ways (an analogue of Kantian duties of beneficence.)

In the case of humans, as Kant and Aristotle would agree, our beneficence is rightly constrained by concerns about autonomy and paternalism: rather than pushing people into what we take to be a flourishing life, we ought to support, instead, ample space for choice and self-determination. In the case of animals, by contrast, although we should always be sensitive to considerations of choice, to the extent that we believe an animal capable of choice among alternatives, for the most part we must and should exercise informed paternalistic judgments concerning the good of the creature, and our duties of beneficence will be correspondingly more comprehensive, as they are in the case of human children.³²

There are two recent ethical approaches that both contain these two elements. One is Christine Korsgaard's Kantian view, developed in her recent Tanner Lectures, "Fellow Creatures: Kantian Ethics and Our Duties to Animals."³³ Another is the extended version of the neo-Aristotelian capabilities approach that I have described in *Frontiers of Justice*.

Kant's own views on animals are not very promising. He holds that only humans are capable of moral rationality and autonomous choice, and that only beings who are capable of autonomy can be ends in themselves. Animals, then, are available to be used as means to human ends. Kant thinks that we do have some duties with regard to animals, but these, on closer inspection, turn out to be indirect duties to human beings. In particular, Kant holds that treating animals cruelly forms habits of cruelty that humans will then very likely exercise toward other human beings. This, rather than any reason having to do with respect for animals themselves, is his reason for imposing a range of restrictions on the human use of animals.

Korsgaard's view is subtle and difficult to summarize, but let me try to state its essential insight. For Korsgaard as for Kant, we humans are the only creatures who can be obligated and *have* duties, on account of our possession

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of the capacity for ethical reflection and choice. Korsgaard, however, sees that this fact does not imply that we are the only creatures who can be the objects of duties, creatures to whom duties are owed. She also puts this point another way. There are, she argues, two different senses in which a being can be an “end in itself”: (a) by being a source of legitimate normative claims, or (b) by being a creature who can give the force of law to its claims. Kant assumes that these two ways in which something can be an end in itself pick out the same class of beings, namely all and only human beings. Korsgaard points out that a being may be an end in itself in the first sense while lacking the capacity for ethical legislation crucial for the second sense.

Korsgaard's conception of animal nature is Aristotelian: she sees animals, including the animal nature of human beings, as self-maintaining systems who (p. 239) pursue a good and who matter to themselves. She gives a fine account of the way in which we may see animals as in that sense intelligent—as having a sense of self and a picture of their own good, and thus as having interests whose fulfillment matters to them. We human beings are like that too, she argues, and if we are honest we will see that our lives are in that sense not different from other animal lives.

Now when a human being legislates, she does so, according to Kant and Korsgaard, in virtue of a moral capacity that no other animal has. This does not mean, however, that all human legislation is *for* and *about* the autonomous will. Much of ethics has to do with the interests and pursuits characteristic of our animal nature. When we do make laws for ourselves with regard to the (legitimate) fulfillment of our needs, desires, and other projects issuing from our animal nature, it is simply inconsistent, and bad faith, Korsgaard argues, to fail to include within the domain of these laws the other beings who are similar to us in these respects. Just as a maxim cannot pass Kant's test if it singles out a group of humans, or a single human, for special treatment and omits other humans similarly situated, so too it cannot truly pass Kant's test if it cuts the animal part of human life from the animal lives of our fellow creatures.

I have saved until last a part of Korsgaard's conception that lies at its very heart. We humans are the creators of value. Value does not exist in the world to be discovered or seen; it comes into being through the work of our autonomous wills. Our ends are not good in themselves; they are good only relative to our own interests. We take our interest in something “to confer a kind of value upon it,” making it worthy of choice.³⁴ That, in turn, means that we are according a kind of value to ourselves, including not only our rational nature but also our animal nature. Animals matter because of their kinship to (the animal nature of) a creature who matters, and that creature matters because it has conferred value on itself.

Korsgaard's conception of duties to animals has what I demanded: a Kantian part and an Aristotelian part. It says that we should treat animals as ends in themselves, beings whose ends matter in themselves, not just as instruments of human ends. And it also conceives of animal lives as rich self-maintaining systems involving complex varieties of intelligence. So far so good. Now I shall describe the way in which my own conception articulates the relationship between the Kantian and the Aristotelian. Then, more tentatively, we can ask what reasons there may be in favor of choosing one rather than the other.

Because my view has been advanced as a political doctrine rather than a comprehensive ethical doctrine, I have not developed the view's metaphysical/epistemological side. In keeping with my espousal of a Rawlsian “political liberalism,” I have expressed the relevant idea of intrinsic value in a nonmetaphysical and intuitive way. However, were I to flesh out the view as a comprehensive ethical view, I would insist that the lives of animals have intrinsic value. This value is independent of human choice and legislation, and it is there to be seen. If humans had never come into being, the lives of other animals would still be valuable. We humans are, fortunately, attuned to value, so we are capable of seeing what Aristotle's students saw, that there is something wonderful and awe-inspiring in the orderly systems (p. 240) characteristic of natural end-pursuing creatures. To this sense of awe, I suggested in *Frontiers of Justice* that we must add an ethical sense of attunement to dignity. What is wonderful about an animal life is its active pursuit of ends, so our wonder and awe before such a life is quite different from our response to the Grand Canyon or the Pacific Ocean: it is a response to the worth or dignity of an active being who is striving to attain its good. Wonder and awe before the dignity of such a life would be inappropriately aestheticizing, would fail to recognize what, precisely, is wonderful about the creature, if it simply said “Ooh!” “Aah!” and saw no implications for the ethics of animal treatment. If we have appropriate wonder before an animal life, wonder that homes in on what the creature actually is, a self-maintaining active being, pursuing a set of goals, then that appropriate wonder, I argue, entails an ethical concern that the functions of life not be impeded, that the life as a

whole not be squashed and impoverished.

Let me put this point another way. When I have wonder at the Grand Canyon, it would seem that I have appropriate wonder, wonder that is appropriately trained on the relevant characteristics of the object, only if I form some concern for the maintenance of the beauty and majesty of that ecosystem; even here, then, wonder has practical consequences. If I say, "How wonderful the Grand Canyon is," and then throw trash around, I am involved in a contradiction: my actions show that at some level I really do not think that the Grand Canyon is very wonderful. With animals, all this is true, but also much more. Animals, because they are active sentient beings pursuing a system of goals, can be impeded in their pursuit by human interference. In *Frontiers of Justice*, I argued that it is this quality of active, striving agency that makes animals not only objects of wonder but also subjects of justice.³⁵ The way we wonder at the complexity of animals, if it is appropriate, really trained on what they are, includes a recognition that they are active, striving beings, and thus subjects of justice. The right sort of wonder (not pretending that an animal is like a fine chair or carpet, but seeing it for what it is) leads in that sense directly to an ethically attuned awareness of its striving.

With that intuitive picture as my starting point, I then go on in *Frontiers of Justice* to argue that our ethically attuned awareness of the value of animal striving suggests that we ought to promote for all animals a life rich in opportunities for functioning and lacking many of the impediments that we humans typically put in the way of animals' flourishing. Since my views on the content of our duties lie very close to Korsgaard's, I need not enumerate them here.

What might lead one to choose one of these views of our duties to animals rather than another? It is obvious that some people find realism about value implausible, and others find the idea that all value is a human creation implausible. The choice between the two views on this score must await the much fuller development of arguments for and against realism. Here Korsgaard has gone a lot further than I have, since I have deliberately avoided defending realism, given that I am trying to advance the capabilities view as a non-metaphysical political view. There would be a great deal of work for me to do were I to try to work out the view as an ethical doctrine comparable to Korsgaard's in its detail and completeness. The Aristotelian (p. 241) approach to value does involve a large measure of reliance on intuitions, as Korsgaard justly argues in *The Sources of Normativity*.³⁶ It will not satisfy all people. By contrast, the Kantian account of normativity is intricate and philosophically rich; it does not seem to rest on such a fragile empirical foundation.

On the other hand, I think that the Aristotelian view has at least some advantages, albeit subtle and not decisive. Korsgaard does not exactly make the value of animals derivative from the value of human beings. Instead, her picture is that when we ascribe value to ourselves, we ascribe value to a species of a genus, and then it is bad faith, having once done that, to deny that the other species of that genus, insofar as they are similar, possess that same action-guiding value. However, there still seems to be a strange indirectness about the route to animal value. It is only because we have similar animal natures ourselves, and confer value on that nature, that we are also bound in consistency to confer value on animal lives. Had we had a very different nature, let's say that of an android, we would have no reason to value animal lives. And, so far as I can see, the rational beings recognized by Kant who are not animal (angels, God) have no reason to value the lives of animals. For me this is just too indirect: animals matter because of what *they* are, not because of kinship to ourselves. Even if there were no such kinship, they would still matter for what they are, and their striving would be worthy of support. For Korsgaard, it's in effect an accident that animals matter: we just happen to be pretty much like them. But I think that the value of animal lives ought to come from within those lives; even if one doesn't think of value as eternal and immutable, one still might grant that it comes in many varieties in the world, and each distinctive sort is valuable because of the sort it is, not because of its likeness to ourselves.

So, while I agree with Korsgaard that we are the only creatures who have duties, and while I think that she has argued in a way that puts the Kantian view in its best form, and, indeed, in a very attractive form, I still feel that there's something backhanded about the route to animal value, and that it would be good to acknowledge that this value is there whether or not these creatures resemble us. (Whether one could acknowledge that without relying on intuitions as the source of normativity is a further question that I shall not try to answer here; clearly, I am less worried about reliance on intuition than Korsgaard is, or else I would not be willing to venture ahead at this point.)

There is another point of interesting difference, pertinent to our concern with animal thinking. Korsgaard, as I said,

makes a very compelling case for recognizing in animals a range of types of awareness; even those who can't pass the mirror test are held to have a point of view on the world, and ends that matter to them. All this seems to me just right. So, while one might have expected that a Kantian view would draw a too-sharp line between the human and the animal, that seems not to be true of Korsgaard's view. In another way, though, I wonder whether there is not after all a bit too much line-drawing.

Korsgaard rightly says that we are the only truly moral animals, the only ones that have a full-fledged capacity to stand back from our ends, test them, and consider (p. 242) whether to adopt them. She does, however, say of children and people with mental disabilities that they too are rational beings in the ethical sense, it's just that they reason badly.³⁷ If she once makes that move, I do not see how she can avoid extending at least a part of ethical rationality to animals. Animals, as we saw, are aware of their place in a social group. Many of them have the capacity for a type of reciprocity, and some, at least, seem to be capable of positional thinking, thus understanding the impact of their actions on others. At least some varieties of shame and even guilt figure in some of these animal lives in ways related to their awareness of the rules that govern social interactions. So it seems that what animals most conspicuously lack is the capacity for *universal* ethical legislation, but that there's a part of ethical capacity that at least some of them have already. By splitting humans from all the others, as the only rational legislators, Korsgaard seems to have drawn a line that is not that sharp in reality.

Korsgaard will surely say at this point, as she does early in her lectures, that if the definition of rational being turns out to fit some nonhuman creatures, all very well and good, she is only focusing on our obligations to those whom it doesn't fit.³⁸ But I'm not altogether happy with that reply. It seems that we need to understand our moral capacities as well as we can, making use of all the scientific information that is available. Information about animals is very helpful to us, in showing us how the capacities we have, which we might have thought transcendent and quasi-divine, are a further development of some natural capacities that we share with the animals. In understanding ourselves that way, we also attain a fuller understanding of how what Korsgaard calls our animal nature is related to our moral nature: our moral nature is actually one part of our animal nature, not something apart from it. Our moral nature is born, develops, ages, and so forth, just like the rest of our capacities, and, like them, it has an evolutionary origin in "lower" animal capacities. I feel that Korsgaard has pushed Kant to the limit in giving her extremely sensitive and appealing picture of how Kant and Aristotle may cooperate, but there is really no way, without departing from Kant rather radically, to acknowledge that our moral capacities are themselves animal capacities, part and parcel of an animal nature. I think that any conception that doesn't acknowledge this is in ethical peril, courting a danger of self-splitting and self-contempt (so often linked with contempt for women, for people with disabilities, for anything that reminds us too keenly of the animal side of ourselves).³⁹ Although Korsgaard heads off this peril sagely wherever it manifests itself, she still doesn't altogether get rid of it; it is still lurking, in the very idea that we are somehow, in being moral, above the world of nature.

Those, then, are my reasons for tentatively preferring my own conception to Korsgaard's as a basis for the ethics of animal treatment. Nobody could doubt, however, that hers is considerably more finished than mine with respect to its metaphysical/epistemological side, which I've deliberately left uncultivated; nor should anyone doubt that her view provides a very good basis for thinking about our duties toward animals.

(p. 243) 5. Political Principles: An Overlapping Consensus?

Now let us turn to political principles. Here, as I've said, agreeing with Rawls,⁴⁰ we want to be abstemious, not making controversial metaphysical or epistemological claims. We are seeking an overlapping consensus among citizens who hold a wide range of reasonable comprehensive doctrines—including comprehensive Korsgaardianism and neo-Aristotelianism, but also including Buddhism, Hinduism, Christianity, and much else. So, we do not say that the human being was created on the seventh day of creation, or that humans will be reincarnated into animal bodies. By the same token, we do not say, with Kant, that human beings are the sole creators of value or, with Aristotle, that human beings discover a value that exists independently.

At this point, then, the major difference between Korsgaard's view and my imagined comprehensive neo-Aristotelianism has been bracketed. There are subtle differences that may remain, concerning the relationship between ethical rationality and other aspects of animals' good. It is difficult to say whether these differences really do remain: the idea that we are the creators of value goes very deep in Korsgaard's view, and colors every aspect

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of it, so it is very difficult to know exactly what her view would look like when recast in the form of a political doctrine appropriate to grounding a form of political liberalism in Rawls' sense. Certainly there would remain the idea that every sentient being⁴¹ has a good, consisting of a range of (non-commensurable) activities that are the activation of its major natural capacities, and that each animal is entitled to pursue that good. There would also remain (or so I believe) the sense that this good exacts something from human beings who are capable of choice: we have duties to protect and promote the good of animals. In these two respects, the imagined Korsgaardian view overlaps pretty completely with my neo-Aristotelian view, which borrowed the Kantian notion of dignity to ground ethical duties to the forms of life that wonder already singled out as salient. The emphasis on capacity and activity, the emphasis on a plurality of interrelated activities, the emphasis on ethical duty—all of this seems shared terrain between the two approaches.

In this case, then, we may not even need to talk, as Rawls did, of the overlapping consensus as consisting of a family of liberal political doctrines.⁴² We may be able to agree on a single political doctrine.⁴³ If Korsgaard judges it important on balance to endorse a Kantian over a neo-Aristotelian political doctrine (Rawls' view, for example, over mine), the reasons for this difference would not come, I believe, from this particular area of the political doctrine, where Korsgaard has rightly seen the importance of invoking Aristotelian ideas.

The core idea of the political conception is the one I have already mentioned in talking about the ethical conception: animals have characteristic forms of dignity that deserve respect and give rise to a variety of duties to preserve and protect animal opportunities for functioning. With this starting point, I then go on to envisage the general shape of a constitution for a minimally just multispecies world.

(p. 244) The political conception I have articulated seems like one that will be able to achieve an overlapping consensus among neo-Aristotelians and Korsgaardian Kantians. I conjecture that many other reasonable comprehensive doctrines will also support it: Buddhism, Hinduism, and, with time and persuasion, many varieties of Judaism, Christianity, and Islam.

What, however, of Utilitarianism? I have argued strenuously against accepting Utilitarianism as a comprehensive ethical doctrine concerning animal treatment, but I do not think that we should, without extremely strong reasons (such as have not yet been presented) conclude that Utilitarianism is not among the reasonable comprehensive doctrines that should be part of any political consensus. Since, however, the political principles I advocate are grounded in Kantian and Aristotelian ideas that are not as such part of Utilitarianism, it might seem that Utilitarians will have difficulty accepting that political conception. John Rawls argued that Utilitarians could form part of an overlapping consensus supporting his own political doctrine,⁴⁴ and yet not all readers of that argument have been convinced by it. So we must ask ourselves: what reasons do we have to think that Utilitarians concerned with the ethical treatment of animals will accept the principles I have proposed?

The first point to be made here is that most of the points to which I've objected in Utilitarianism are already noted by John Stuart Mill, who proposed a variety of Utilitarianism in which qualitative distinctions among diverse life activities plays a central role, and in which activity is understood to be valuable in its own right, not simply as a means to pleasant sensations. Mill's utilitarian view, notoriously, is rather Aristotelian; his arguments against simple Benthamism are so cogent that anyone who ponders them is likely to be strongly swayed in that direction. A Mill-style Utilitarianism can easily sign on to the overlapping consensus I have proposed.

Even were a Utilitarian to refuse to accept Mill's reformulations, another route of accommodation awaits us. Henry Sidgwick, while insisting that the correct ethical principle was the unmodified Utilitarian principle, also thought that this principle would not be a good one for most people to apply: better results, from the point of view of that principle itself, would be obtained by encouraging most people to follow a more conventional ethical code based on non-commensurable principles of virtue and vice. Now Sidgwick also thought that for this reason some top government officials should operate, meanwhile, with the correct principle, but his conception of government has been widely criticized for its undemocratic character and its insistence that we ought to conceal from most people the grounds of the political choices that govern their lives. If a modern Utilitarian believes, with Sidgwick, that most people should not try to use the Utilitarian principle, but also believes, unlike Sidgwick, that political principles should be based on ideas that can be publicly stated and that all citizens can understand and accept, then such a Utilitarian, while continuing to prefer the Utilitarian principle to others as the source of a comprehensive ethical view, will gladly accept my Aristotelian view for political purposes.

Much more would need to be done to show that, and how, each of the major reasonable comprehensive doctrines could support the political consensus proposed (p. 245) here. At this point, however, I believe we may conclude that there are no evidently overwhelming obstacles to that agreement. The transition from our current immoral situation to an ethical/political *modus vivendi*, and from that *modus vivendi* to a constitutional consensus, and, one may hope, from a constitutional consensus to a genuine overlapping consensus, is a development we may seek and foster without feeling that in so doing we are working in vain.

6. Practical Consequences

In *Frontiers of Justice*, I proposed a rather detailed account of animal entitlements, giving an idea of how the capabilities view would be extended to deal with the lives of animals. Here, in keeping with my starting point, I want to narrow the focus and indicate how this view (or a related view) would take account of the new research on animal thinking. I shall focus on the two species with which I began, elephants and mice. So: what does our emphasis on diverse life-forms, and our new awareness of the complexity of these life-forms, suggest in these two cases?

I have said that elephant minds are highly complex. Elephants have capacities for self-recognition, for elaborate forms of social cooperation, for some sort of awareness of the death of an individual. They are, then, not simply sites of pleasant or painful sensation: they are complexly thinking and functioning organisms with an elaborate form of life.

Now to their situation. Elephants are highly endangered. Because an adult elephant needs to eat about 200–250 pounds of vegetation per day to stay healthy, elephants have to cover a lot of territory, and there can't be too many elephants in one territory. South Asia and Africa, where most elephants live, have rapidly growing human populations, and this growth has diminished the space where elephants can roam free. When they get too close to human habitations, moreover, things do not go well: groups of young males, particularly, mix badly with human villages. Added to these problems is the terrible problem of poaching: hundreds of elephants are killed every year for the ivory market, despite domestic laws and international agreements against this practice. In 1930, there were between five and ten million African elephants and somewhere around a million Asian elephants. Today, there are probably only about 35,000 to 40,000 Asian elephants left in the wild, and only about 600,000 African elephants.

Needless to say, all the major ethical approaches agree that gratuitous killing of elephants for sport or for luxury items like ivory is utterly wrong, and that laws against this should be vigorously enforced. In the light of our new understanding of elephant society, however, we have broader and deeper reasons for opposing this killing, seeing the way in which it tears apart the complex network of the group, threatening the upbringing of young elephant calves. Utilitarians will have grave difficulty making these facts matter as they should.

(p. 246) Beyond this point, if we were Utilitarians, we might think that all we need to do is not to inflict pain on elephants. Many zoos manage something like this. But if we adopt my more complex approach, we will think that what we should support is something much more complicated, a whole form of life that includes love, grief, self-recognition, and much more. This makes our practical task very complicated. It means that we must think much harder than we have so far about the habitat of elephants in the wild, trying to protect large tracts of land indefinitely for this purpose.

Should we permit elephants to be confined in zoos at all? This is a very difficult question. No zoo can supply elephants with the grazing space their typical form of life requires. Especially in Africa, elephants have lived in large open tracts of land for millennia; and there is some genuine hope that good policies will make that way of life possible into the future. In Africa, then, policy should focus on protecting a habitat within which elephants can live lives characteristic of their kind. This would include aggressive efforts to stop poaching, and it would also very likely include efforts to limit elephant population size through contraception, something that is increasingly being understood to be part of the solution to human-animal conflicts.

The case of Asian elephants, however, seems different. Asian elephants are a distinct species. They have become far more endangered than are African elephants, in part because the governments involved (India, Sri Lanka, Thailand) are overwhelmingly focused on questions of human survival and morbidity, and consider that the very creation of animal sanctuaries—which usually deprives some very poor rural people of their livelihood gathering

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firewood and leaves in the forest—is not a top priority. Thus the solution that seems best for African elephants is just not possible for Asian elephants: that train left the station long ago.

There is another difference between Asian and African elephants that may be significant. Asian elephants have been working in symbiosis with humans to a greater extent than have African elephants; a large proportion of those who survive are working animals, or sacred animals at temples, and so on. We don't have evidence of real domestication—that is of the evolution of a life-form in response to a symbiotic relationship—as we do in the case of dogs and horses. Elephants, being highly intelligent, can learn to work alongside humans, but it would be an exaggeration to say that they really live *with* humans in the way that dogs do. And yet, the most familiar form of life for elephants in Asia is a symbiotic form. Thus what we are contemplating when we think of Asian elephants in zoos is the substitution of one symbiotic form of life for another.

A good zoo, one that provides large open tracts of land for Asian elephants, can give them a better life, in terms of the characteristic life-form of that species, than they are likely to get anywhere in Asia today or at any time in the foreseeable future. Moreover, some excellent zoos, such as those in the Bronx, St. Louis, and San Diego, do a very good job with breeding programs, which are absolutely crucial if this species of elephant is not to become extinct. My approach, however, insists that the usual way elephants are kept in zoos is horrendous: one or two females in a tiny enclosure, in which they have more or less no room for movement or foraging, and (p. 247) no opportunity for the group life characteristic of their kind. We need to think very carefully about the needs of elephants in confinement for wide space, motion, and, above all, for complex social networks characteristic of elephant life. I would say that at minimum an elephant herd in a zoo ought to include four females with their young, and that such elephants should have a hundred acres of land around them. If people want to see them, clever devices can be found, such as the bridge in San Diego that permits visitors to walk high above the elephant habitat and see down into their land, or the complicated curvilinear path in St. Louis that brings spectators up close to various different parts of a large amoeba-shaped elephant habitat.

The same sort of thing holds across the board, so let me end by talking about mice. The level of complexity of a sentient creature does not, I believe, make one species “higher” and one species “lower,” meaning that it's more permissible to inflict damage on one than on another. *Each* form of life demands respect, nor should we respect lives simply because they look somehow like our own. Level of complexity does, however, affect what can be a damage for a creature.⁴⁵ For a mouse not to have the freedom of religion is not as damaging for a mouse as it is for a human. However, new research on mice shows that even here the Utilitarian approach, regarding them simply as sites of pleasure and pain, would be incomplete. Social bonds and the ability to recognize individuals play a role in their lives too. So when we think how we should treat them, we have to think of all that.

Research mice have usually been treated as mere objects, too “low” to be respected, too simple for their lives to be considered worth carefully supporting. At best there has been an awareness of the importance of sparing mice unnecessary pain. However, the new research suggests that for mice as for larger research animals, quality of life means much more than the mere absence of pain: it means access to social relationships, the ability to live with familiar others over time, and the ability to form communities based on these recognitions.

Once again, then, in this case, the capabilities approach proves an improvement, both over a Benthamite Utilitarianism and over common-sense views, setting our political debate into a framework that focuses on each animal's entitlement to the conditions of a flourishing life characteristic of its kind. In *Frontiers of Justice*, I argue that this suggests an absolute ban on all killings of animals for sport, vanity, and unnecessary research. I also argue that most current research has a tragic aspect, in that wrongs are being inflicted on animals even when the conditions of research have been designed to be as humane as possible.⁴⁶ Even when the research in question is important for human and/or animal health, noticing this tragic aspect, this clash between right and right, should lead us to work as hard as possible toward research models that do not inflict harm on animals—models based on computer simulation, for example.

Each type of animal has its own cognitive complexity; each type has a story including at least some emotions or preparations for emotion, some forms of social cognition, often very complex, and complex forms of interactivity. We should learn a great deal more about these complexities, and we should test our ethical views to see whether they are adequate to them. We should then try to imagine ways of (p. 248) human life that respect these many complex forms of animal activity, and that support those lives—all of which are currently being damaged, almost

beyond rescue, by our interference and our greed.

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Notes:

(1.) Joshua M. Plotnik, Frans B. M. de Waal, and Diana Reiss, "Self-recognition in an Asian Elephant," *Proceedings of the National Academy of Sciences of the United States* (October 30, 2006), available at http://www.emory.edu/LIVING_LINKS/pdf_attachments/PlotniketalPNAS.pdf (accessed August 10, 2009). The reference number given on the title page is doi:10.1073/pnas.0608062103. By clicking on the link for "supplementary material," one can see the film version.

(2.) Good discussions of these matters can be found in Cynthia Moss, *Elephant Memories: Thirteen Years in the Life of an Elephant Family*, 2nd ed. (Chicago: University of Chicago Press, 2000) and Katy Payne, "Sources of Social Complexity in the Three Elephant Species," in *Animal Social Complexity: Intelligence, Culture, and Individualized Societies*, ed. Frans B. M. de Waal and Peter L. Tyack (Cambridge, Mass.: Harvard University Press, 2000), pp. 57–86. The latter book also contains valuable articles on many other species.

(3.) Dale J. Langford, Sara E. Crager, Zarrar Shehzad, Shad B. Smith, Susana G. Sotocinal, Jeremy S. Levenstadt, Mona Lisa Chanda, Daniel J. Levitin, and Jeffrey S. Mogil, "Social Modulation of Pain as Evidence for Empathy in

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Mice," *Science* 312 (2006): 1967–70.

(4.) See Richard Sorabji, *Animal Minds and Human Morals: The Origins of the Western Debate* (Ithaca, N.Y.: Cornell University Press, 1993).

(5.) The incident is discussed in Pliny, *Naturalis Historia* 8.7.20–21; Cicero, *Ad familiares* 7.1.3; see also Dio Cassius, *Roman History* 39, 38, 2–4.

(6.) See D. N. Jha, *The Myth of the Holy Cow* (London: Verso, 2002).

(7.) For an impressive court judgment, holding that animals are entitled to a life in accordance with dignity as protected by Article 21 of the Constitution of India, see *Nair v. Union of India*, No. 155/1999, at para. 13 (Kerala High Court, June 6, 2000). The case involved circus animals who were being ill treated and made to perform undignified tricks. The conclusion of the judgment is as follows:

In conclusion, we hold that circus animals ... are housed in cramped cages, subjected to fear, hunger, pain, not to mention the undignified way of life they have to live, with no respite and the impugned notification has been issued in conformity with the ... values of human life, philosophy of the Constitution Though not homo sapiens, they are also beings entitled to dignified existence and humane treatment sans cruelty and torture Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights If humans are entitled to fundamental rights, why not animals?

(8.) In my *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: Harvard University Press, 2006), I argue that the neo-Aristotelian “capabilities approach” answers some political questions better than John Rawls’ type of political Kantian view, “justice as fairness,” but I do not claim that it does better overall, and, of course, I do not argue that my view does better than Korsgaard's, since she has not yet proposed a political doctrine.

(9.) Marc D. Hauser, *Wild Minds: What Animals Really Think* (New York: Henry Holt, 2001), p. xviii.

(10.) Hauser, *Wild Minds*, pp. xiii–xx. There are complex debates in this area, in particular between Hauser and de Waal; Hauser holds that many of de Waal's conclusions about similarities between animals and humans are infected by illicit anthropomorphism, whereas de Waal holds that the similarities are real and supported by masses of evidence. On some of the contested points about elephants, my sense is that de Waal has the better of the argument, and his project has over the years involved experts in many different species, whereas Hauser's close empirical work concerns monkeys only. In the light of Hauser's conviction for serious ethical violations in the conduct of his research, his findings must be regarded with skepticism until the extent of these violations has become clear.

(11.) These scare quotes reflect my belief that there is no part of the Earth that is not profoundly shaped by human activity, including the large tracts of land that appear to be wild.

(12.) Hauser, *Wild Minds*, pp. 33–34.

(13.) Marc Hauser and Bailey Spaulding, “Wild Rhesus Monkeys Generate Causal Inference about Possible and Impossible Physical Transformations in the Absence of Experience,” *Proceedings of the National Academy of Sciences of the United States of America* 103 (2006): 7181–85.

(14.) Hauser, *Wild Minds*, chap. 4.

(15.) See Frans B. M. de Waal, *Good Natured: The Origins of Right and Wrong in Humans and Other Animals* (Cambridge, Mass.: Harvard University Press, 1996), pp. 71–78.

(16.) On empathy and compassion, see also Frans B. M. de Waal, *Primates and Philosophers: How Morality Evolved* (Princeton, N.J.: Princeton University Press, 2006), pp. 21–33.

(17.) See my *Upheavals of Thought: The Intelligence of Emotions* (New York: Cambridge University Press, 2001), especially chapter 2 on animal emotions; nothing I say here depends on the more controversial aspects of my

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view. All the major views acknowledge that emotions contain at least some cognitive components; usually they acknowledge, as well, that the cognitive components in emotion are important in defining the emotion type in question, and in distinguishing one emotion from other emotions.

(18.) See de Waal, *Good Natured*.

(19.) For an excellent recent summary, see de Waal and Tyack, *Animal Social Complexity* (above, n. 2).

(20.) See de Waal, *Good Natured*; de Waal and Tyack, *Animal Social Complexity*; Hauser, *Wild Minds*.

(21.) See Payne, "Sources of Social Complexity in the Three Elephant Species," pp. 57–86.

(22.) See Payne, "Sources," p. 76.

(23.) Some of this can be seen in the nice video *Kandula: An Elephant Story* (produced by the National Zoo in Washington D.C. and Rocket Pictures for the Discovery Channel, 2003), concerning the first five years of a young male Asian elephant by that name.

(24.) I put things this way so as to avoid having to adjudicate the debate between Hauser and de Waal, which lack of expertise makes it difficult for me to resolve, and also in order to avoid arguing for a precise definition of grief, which I do have ideas about (see my *Upheavals of Thought*, chap. 1), but don't want to get into in the context of the present argument.

(25.) Moss, *Elephant Memories*, p. 73.

(26.) Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1996), p. 283. For a fascinating recent set of findings, see Marc D. Hauser, M. Keith Chen, Frances Chen, and Emmeline Chuang, "Give Unto Others: Genetically Unrelated Cotton-Top Tamarin Monkeys Preferentially Give Food to Those Who Altruistically Give Food Back," *Proceedings of the Royal Society, London* 270 (2003): 2363–70.

(27.) John Stuart Mill, "Whewell on Moral Philosophy," in *Utilitarianism and Other Essays* by John Stuart Mill and Jeremy Bentham (London: Penguin Classics, 1987), p. 252.

(28.) Here I am summarizing some of the arguments of my *Frontiers of Justice*.

(29.) See Amartya Sen and Bernard Williams, Introduction to *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 1–22.

(30.) See my discussion in "Mill between Bentham and Aristotle," *Daedalus* 133 (2004): 60–68.

(31.) I discuss the question of adaptive preferences in *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000).

(32.) On paternalism, see my *Frontiers of Justice*, pp. 372–80.

(33.) Christine Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals," in *The Tanner Lectures on Human Values*, ed. Grethe B. Petereson, vol. 25/26 (Salt Lake City: University of Utah Press, 2004), pp. 79–110.

(34.) Korsgaard, "Fellow Creatures," p. 93.

(35.) I am grateful to a fine paper by Jeremy Bendik-Keymer, "Problems with the Ecological Extension of Dignity" (presented at the Human Development and Capability Association Annual Meeting, New York, September 18–20, 2007), for helpful reflections on the relationship between wonder and justice in my conception.

(36.) Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996).

(37.) Korsgaard, "Fellow Creatures," p. 82.

(38.) Korsgaard, "Fellow Creatures," p. 82.

(39.) See the reflections on this question in my *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton,

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N.J.: Princeton University Press, 2004), and, more recently, in my “Compassion, Human and Animal,” forthcoming in a festschrift for Jonathan Glover, ed. Jeffrey McMahan (New York: Oxford University Press).

(40.) John Rawls, *Political Liberalism*, exp. paper ed. (New York: Columbia University Press, 1996).

(41.) Korsgaard actually doesn't draw a sharp line between the animal kingdom and the rest of nature, and she considers it an open question whether plants have entitlements connected with their good. My own sensibilities are more Utilitarian than Korsgaard's: I think that sentience is a minimum necessary condition of ethical considerability, but I admit that I do not have a good argument for this position. I do not pursue that difference here.

(42.) See John Rawls, “The Idea of Public Reason Revisited,” in his *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 129–80.

(43.) Here I speak only of the relationship between my view and Korsgaard's; whether, when we add the contributions of Hinduism, Christianity, and all the other reasonable comprehensive doctrines, we would have a single political doctrine in this area is far less clear; on the whole question of whether we can achieve an overlapping consensus in this area, see my *Frontiers of Justice*, pp. 388–92.

(44.) Rawls, *Political Liberalism*, pp. 169–71.

(45.) See my *Frontiers of Justice*, pp. 358–62.

(46.) See my *Frontiers of Justice*, pp. 401–5.

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