Nonhuman Animals: Not, Necessarily, Saints or Sinners

Introduction

Higher-order thought (HOT) theories of consciousness assume that a mental state is conscious only if the subject has (or is disposed to have) a further higher-order thought, belief, or judgment that she is in said mental state (Rosenthral: 1986; Carruthers: 2000). A mental state being conscious, then, cannot be reduced to the mere having of mental states; rather, consciousness is said to arise only when one has a further higher-order belief or thought about that lower-order mental state of pain. In keeping with the criteria of such theories of consciousness, certain HOT theorists such as Gennaro (1993, 2009) and Lurz (2011) attempt to illustrate that nonhuman animals are conscious, even according to a HOT standard. Presumably, by doing so, the moral arena will be extended to nonhuman animals, who too, are said to be conscious according to even a HOT standard. Although animal ethicists would consider this a victory, what is commonly overlooked is a potentially alarming consequence: attributing higher-order thought to nonhuman animals seems to require that we hold them morally accountable for their actions. That is, by arguing that nonhuman animals are capable of higher-order thought, we run the risk of attributing moral *agency* to them.

Thus the concern is the following: if HOT theories of consciousness are correct, then the only way to ensure that nonhuman animals are afforded direct moral consideration is to demonstrate that they possess HOT. Yet, if nonhuman animals meet the criteria for having HOT, they could be said to be moral agents. In the following discussion, I will explore, and eventually challenge, this disquieting conclusion that having higher-order thought entails that nonhuman animals possess moral agency and are thus morally responsible for their actions. After rejecting the premise that possession of higher-order thought is sufficient for moral agency, I will ultimately

conclude that moral responsibility requires more than just the capacity for higher-order thought. Moral agency has two fundamental requirements, neither of which are entailed by the mere possession of HOT: (1) the ability to engage in mindreading, i.e. forming thoughts or beliefs about *another's* mental states (as opposed to having higher-order thoughts about one's own mental states), and (2) third-order intentionality, which concerns a belief about the rightness or wrongness of affecting another's mental states. Such a higher-order thought, as I call it "moral thought," requires that one be able to not only, for instance, desire to deceive another or produce a false belief in another, but also that one possess a further higher-order belief that such a desire to deceive is either right or wrong. This "moral thought" about the rightness or wrongness of a given desire cannot be demonstrated, with certainty, in even the most intelligent of fully developed nonhuman animals. Thus we can ensure the moral considerability of nonhuman animals under a HOT theory of consciousness without committing ourselves to the view that they are therefore moral agents.

What is consciousness?

Mental states such as beliefs, desires, perceptions, and sensations are either unconscious or conscious. For example, one may have a belief that "today is Thursday" without consciously entertaining it because her mind is preoccupied with some other matter, such as the consciously entertained belief that it is raining outside and her desire to find an umbrella. Pains and bodily sensations can also be unconscious: one can have a pain in her leg, even though the subject is preoccupied with some other matter and is not consciously attending to that pain.

A debate within consciousness concerns what it means for a *mental* state to be "phenomenally conscious." Phenomenal consciousness (p-consciousness) is defined by Block (1995) in terms of what it is like for the subject to have the conscious experiences she does. Carruthers points out

that p-consciousness is the property only *conscious* mental *states* possess: it is the "property that perceptions and bodily sensations possess when there is something that it is like for a creature to undergo those events, or when the events in question possess a subjective feel" (Carruthers:2011, 374). Thus, the central claim is that a mental state is conscious only if it has a phenomenology of inner feels—a "something it is like" aspect, as coined by Nagel (1974).

Two important approaches to phenomenal consciousness are first-order representational (FOR) theories and higher-order representational theories (HOR). The primary focus of both representational approaches is an attempt to explain *state* consciousness (rather than *creature* consciousness).[1]That is, the concern is not about the consciousness of a particular creature (such as whether or not Kimberly is conscious)—rather, the concern is about whether or not a *mental state* is conscious, such as my belief that today is Thursday.

As described by Lurz, "First-order representational (FOR) theories hold that mental states are conscious not because the subject is higher-order aware of having them but because the states themselves make the subject aware of the external environment" (Lurz: 2009, 9). Drestke (1995) and Tye (1995) explain consciousness in terms of world-directed or first-order intentional states: mental states such as perceptual experiences and bodily sensations are said to be conscious if they impact or are **poised** to impact one's belief-forming system. According to Carruthers (2005), if some form of first-order phenomenal consciousness is correct, then phenomenal consciousness will be widespread in the animal community. Nonhuman animals often form beliefs about their environment based upon their perceptual states and bodily sensations, thus they can be said to possess conscious perceptual states and experience bodily sensations under a FOR theory. Since a mental state can be phenomenally conscious, according to a FOR approach,

even when it is not represented by another higher-order mental state, higher order representations (higher-order perceptions *or* thoughts) are not necessary for phenomenal consciousness.

Higher-order representational (HOR) theories maintain that a mental state is conscious when there is a higher-order representation of the mental state. Within HOR theories of consciousness there are two dominant approaches: HOP (Higher-order perception) and HOT (higher-order thought). HOP theories (Armstrong: 1980; Lycan:1996), seek to demonstrate that consciousness is explained in terms of inner perception of mental states, which does not require the ability to conceptualize mental states. While HOP theories pose little threat to the claim of animal consciousness, HOT theories present a significant challenge to the claim that animals are conscious.

A closer look at HOT

HOT theorists attempt to explain intransitive state consciousness in terms of transitive creature consciousness. Transitive consciousness is described as consciousness *of* something. Since mental states are not conscious of anything, transitive consciousness applies to only creatures and is thus a form of creature consciousness. Rowlands (2011, 536) notes that the claim that intransitive state consciousness can be explained in terms of transitive creature consciousness entails two central claims: (1) a mental state M of creature C, is (intransitively) conscious if and only if C is (transitively) conscious of M, and (2) Creature C is (transitively) conscious of mental state M if and only if C has a thought to the effect that it has M. So, (1) a mental state possessed by an animal, such as pain, is (intransitively) conscious only if the animal is (transitively) conscious of the pain, and (2) a creature is (transitively) conscious of the pain only if the creature has a higher-order thought about the pain. Rowlands furthermore points out that according to a HOT theory: (1) intransitive state consciousness can be explained in terms of transitive creature

consciousness and (2) transitive creature consciousness can be explained in terms of a higher-order thought—a thought about a mental state. For the purpose of this paper we will focus on whether nonhuman animals have transitive creature conscious (and thus have mental states that are intransitively conscious) by evaluating nonhuman animal capacity for higher-order thought.

The Significance of Animal Consciousness

The distinction between conscious and unconscious mental states is of direct moral and practical importance to animal ethicists. As Carruthers (1992) points out, determining whether or not the mental states of animals are conscious will shape the animal ethics debate. Since only conscious mental states, and not unconscious mental states, have phenomenal properties or subjective feels, only creatures who possess conscious mental states can be said to be morally considerable, i.e. only conscious beings are *moral patients*.[2] Thus, the moral status of a being is fundamentally tied to the being's mental status: an entity must possess transitive creature consciousness (and thus intransitive state consciousness) in order for it to be morally relevant (Rollin, 1986) and (Rodd, 1990). Denying that nonhuman animals possess consciousness commits one to the view that animals do not have phenomenal feels or subjective experience (for example, experiences of pain and suffering), thus it would be asinine to fight for the abolition of cruel and inhumane practices such as factory farming or the exploitation of nonhuman animals in medical research. Without consciousness, animals cannot be said to be *sentient* and, as we all know, animal sentience is fundamental to any theory of animal ethics (Singer, 1990), (Francione, 2000), and (Rollin, 2006).[3]

Keeping this in mind, it would seem that animal ethicists should be prepared to illustrate that nonhuman animals have transitive creature consciousness even under the stringent requirements of HOT theories. That is, *if* it turns out that HOT theories are correct (or even if popular opinion

supports HOT without it actually being correct), animal ethicists must demonstrate the capacity for HOT in animals in order to ensure their moral considerability. Yet, seldom do animal ethicists illustrate the capacity for HOT in animals. Rather, animals are assumed to be conscious based on the fact that they have mental states such as pain or pleasure (Singer: 1990; Francione: 2000; Rollin: 2006). To such animal ethicists, the having of mental states is said to be sufficient for consciousness. This may very well be correct, yet without providing an account of animal minds that meets the requirements of HOT, such ethicists remain vulnerable to the challenges presented by HOT theorist, such as Carruthers, who argues that consciousness requires an intellectual, cognitive, or conceptual component, and since animals cannot think about their experiences, they can "have pains, [although] they do not feel pains" (Carruthers: 1992, 2). This line of thought is echoed by Dennett, who claims that many philosophers mistakenly assume that all pain is "experienced pain" (Dennett: 2008, 118).

In proceeding, note that nowhere in my paper do I claim that a HOT theory of consciousness is, in fact, the correct view of consciousness. Arguing for the correct theory of consciousness is outside the scope of my paper. Rather, my intent is to illustrate the following: (1) that nonhuman animals have HOT, which prepares animal ethicists against an anticipated claim of certain HOT theorists that nonhuman animals are not conscious. Furthermore, demonstrating HOT in nonhuman animals is helpful in securing their moral considerability under *any* theory of consciousness. If we can demonstrate that nonhuman animals have consciousness under a HOT account, then it is safe to claim that animal consciousness can be guaranteed in any other theory of consciousness, since HOT theories of consciousness require the greatest conceptual burden.

Nonhuman Animals and Higher Order Thought

Seager (2004) and Drestke (1995) point out that HOT theories of consciousness, in requiring the

capacity to think about and conceptualize one's own thoughts, impose a great burden of conceptual ability on consciousness. This is observed in Rosenthal's (1986) HOT account, which maintains that a mental state is not conscious unless one is aware of that state—where awareness entails that one has a thought about the first-order mental state. Thus, to be (transitively) *conscious of* something, or *aware of* something, is to be "in a mental state whose content pertains to that thing" (Rosenthal: 1986, 27).

HOT theories thus present two possible conclusions regarding animal consciousness: 1) the denial that nonhuman animals have transitive creature consciousness, or 2) the granting of a greater conceptual capacity to nonhuman animals than they are traditionally credited with (Seager, 2004). Carruthers (2000) and Davidson (1975) endorse the first line of thought by arguing that nonhuman animals are unable to meet the intellectual, cognitive, and conceptual standard of high-order thought theories. Others, as we will see, attempt to demonstrate HOT in nonhuman animals by pointing to their capacity for metacognition, mindreading, or even language.

Animals and Agency

The fundamental aim of animal ethicists is to ensure that the interests of nonhuman animals are considered when decisions are made that may affect them in positive or negative ways. As discussed earlier, if animals are granted moral consideration, they must be conscious. So, if a being has transitive creature consciousness only if it possesses higher-order thought, animal ethicists then must illustrate the capacity for higher-order thought in animals. Yet, if we ascribe higher-order thought or intentionality to nonhuman animals in an attempt to ensure their moral considerability, we do so at the risk of attributing moral *agency* to them, which might entail that nonhuman animals can be "morally evaluated—praised or blamed—for its motives and actions"

(Rowlands: 2011, 519). We would thus be justified in attributing notions such as guilty, morally blameworthy, violators of the moral law, and so forth to animals. Although it is possible for such moral notions to apply to certain nonhuman animals, a mistake would be to too rashly make the jump from HOT to moral agency. Thus, the following discussion should not be misconstrued as an attempt to preserve or take for granted the common intuition that moral agency should not be attributed to nonhuman animals. Rather, this discussion should be perceived as a call for caution when attempting to demonstrate animal consciousness in the realm of HOT theories. It is a gentle reminder to refrain from too readily attributing the most sophisticated cognitive capacities to nonhuman animals for the sake of ensuring their moral considerability. It is a warning that, in arguing for HOT in nonhuman animals, we may find ourselves dangerously tempted to demonstrate that animals possess the most sophisticated of cognitive capacities, beyond what is necessary for demonstrating HOT, thus attributing moral agency to them, when in fact, they might not be moral agents.

Solution

Before we begin, we must first consider what is required of moral agency. Moral agency requires, at the very least: (1) the capacity to form beliefs or thoughts about the mental states of others (this is described as "mindreading"), and (2) the ability to assess one's own beliefs, desires, or thoughts about the mental states of others as right or wrong.[4] In resisting the claim that HOT entails moral agency, I will: (1) illustrate that animals can have HOT without having the ability to mind read, thus denying that animals must have regard for the mental states of others if they have metacognition, (2) deny that having higher-order thoughts about the mental states of others entails the further capacity to evaluate such thoughts as right or wrong. Thus, it will be clear that even if nonhuman animals have higher-order thoughts about their own mental

states (metacognition) or the mental states of others (mindreading), neither entail that they have moral agency.

HOT, Metacognition, and Nonhuman Animals

Moral agency requires, at the very least, a capacity for "other-regard," which entails that one is able to attribute mental states such as beliefs, desires, sensations, perceptions to others. This is known as having a "theory of mind." If one cannot understand that others suffer, feel pain, experience happiness, and so forth, then she cannot be held responsible for affecting the mental states of others, since she is unaware *that* her actions affect others. In determining whether a HOT theory is committed to the conclusion that conscious beings have a theory of mind, we must first consider whether the having of higher-order thoughts about one's own mental states (metacognition) requires that one have higher-order thoughts about the mental states of others (mindreading).

A theory of mind, also known as mindreading, is defined by Lurz (2009, 282) as "the ability to predict, explain, or understand the behavior of other subjects by means of attributing mental states to them," which requires, at the very least, having higher-order thoughts about another's mental states. Carruthers (2000) maintains that metacognition entails mindreading: if nonhuman animals have higher-order thoughts about their own mental states, then they must necessarily be capable of having such thoughts about the mental states of others. This claim is often supported by an appeal to Evan's "generality constraint," which maintains that in order to have concepts, possessors of thought must be capable of combining the concepts they possess. So, if one has the concept of *F, G, a, b*, one must be able to combine the concepts and form the thoughts *Fa, Ga, Fb, Gb* (Evans: 1982, 100). Keeping this in mind, consider that an animal is capable of the

following three thoughts: *I walk, the fox walks, I am in pain.* It thus has the concept of *I, Fox, walk, and pain*. According to the generality constraint, the animal should be able to combine the concepts in the following way: *I walk, the fox walks, I am in pain,* and *the fox is in pain*. Thus the animal must be able to conceive of other subjects (such as foxes) as having different mental properties, such as "the fox is in pain."

Carruthers' mindreading requirement is contested by certain philosophers of mind who argue that Carruthers overstates the requirements of HOT. Gennaro (2009) and Ridge (2001) argue that having higher-order thought does not require that one be able to read other minds— one may very well have higher-order thoughts about one's own mental state without being capable of having a higher-order thought about the mental states of others. Having higher-order thought only requires the thinker to have an implicit "I-thought" which distinguishes the thinker from outer objects, but those outer objects "need not always include the mental state of other conscious beings" (Gennaro: 2004, 45-66). Such a view is further substantiated by Goldman (2006) who argues that self-attribution of mental states is prior to the capacity to attribute mental states to others. Although Gennaro, Ridge, and Goldman agree that mindreading is sufficient for higher-order thought in nonhuman animals, their claim is that it is not necessary for higher-order thought.

The claim that metacognition is possible in the absence of a mindreading capacity is apparent in self-confidence studies, such as the one conducted by Smith and Washburn (2005). In this study, monkeys learned to control a joystick to choose answers in discrimination tests about visual patterns on a computer screen. When they selected the correct answer, they received treats and when they chose incorrectly, they received dreaded timeouts. Unique to this study was a "pass" option, which a monkey could choose if the test was too difficult. When they selected the pass

option, they moved to the next test, which was more desirable than a timeout but less pleasurable than receiving the treat. The monkeys were said to demonstrate a capacity for metacognition when they selected the pass button—that is, they were said to be able to assess their own level of confidence and understand when they were uncertain. Understanding one's own uncertainty is an instance of metacognition or higher-order thought, yet nothing about this instance of metacognition requires that the monkey has a higher-order thought about another's mental state.

Furthermore, Lurz (2009) illustrates that nonhuman animals could have "subject-less" higher-order thoughts or concepts without even having the concept of the self, let alone a concept of other minds. He asks us to compare the conceiving of animals to our conceiving of rain and snow: just as we can be aware that it is raining without there being a thing or subject that is raining, a nonhuman animal can be aware that "it hurts" without having a concept of a subject who is in pain. Animals, thus, could very well conceive of their mental states as subject-less features placed at a time. Lurz (2009, 195) concludes that "the HOT theory allows for the presence of conscious states even in the absence of any (either self-attributing or other-attributing) conscious higher-order thought."

If higher-order thought does not require that one have thoughts about the mental states of others, it is not the case that animals with HOT necessarily have regard for others, which is required for moral agency. Thus, according to this view, having HOT by no means entails moral agency.

HOT, Mindreading, and Nonhuman Animals

A distinct solution to this discussion is to argue that having HOT about the mental states of others is necessary, but not sufficient for moral agency. That is, even if we grant mindreading capabilities to nonhuman animals and thus the ability to understand the mental states of others,

they still have not met the conditions for moral agency. This is because in order to act as a moral agent, one must also be able to understand the significance (the rightness or wrongness) of affecting another's mental state. This involves, what I call, *moral thought third-order intentionality,* which in turn requires two things: (1) third order intentionality, and (2) the ability to possess moral concepts, such as the concept of rightness and wrongness.

Intentionality refers to a representational character: the "about-ness" of a thought, belief, or desire. Thoughts, beliefs, and desires are intentional states because they are *about* something: one has a desire to drink water, a belief that it will rain, or a thought about a cat. First-order intentionality entails that a being has a belief, desire, or perception about something, such as a perception *of* the computer screen. According to HOT theory, one must have *at least* second-order intentional states in order to be conscious: a thought about another mental state, such as a thought about the perception of the computer screen.

Dennett (1987) points to the different levels of intentionality that can be ascribed to conscious beings by describing the study on vervet monkeys conducted by Dorothy Cheney and Richard Seyfarth. The vervet monkeys have four distinct alarm calls they signal, each of which indicate the presence of a specific type of predator and the appropriate action that needs to be taken. As an example, consider that a monkey issues a "leopard warning," which signals the other monkeys to scramble up a tree. Dennett argues that we can interpret the motivation of the monkey who signals the call in a number of ways: we could ascribe first-order intentionality by maintaining that the monkey made the call because he wanted the other monkeys to head up the trees. Or perhaps we could attribute second-order intentionality to the monkey who made the call by claiming that he desired to make others believe there is a leopard nearby. We could also say that

the monkey wanted the others to recognize that he wants them to head up the trees, which is an instance of third-order intentionality.

Let us now apply these considerations of intentionality to the question of moral agency. Lurz and DeGrazia both point to a number of studies on animal mindreading that are said to illustrate that apes, monkeys, and dolphins are capable of higher-order thoughts about the mental states of others (Lurz, 2011: 9). An example that is often pointed to in order to illustrate the capacity for mindreading in certain animals is deception. Intentional deceptive behavior in nonhuman animals, also known as the desire to produce a false belief, is said to be evidence of second-order intentionality. Deceptive behavior is said to be observed in plover birds who lure foxes towards them by pretending to have a broken wing in order to distract the foxes from attacking their nest of eggs (Gould, 1999). Likewise, a female baboon is said to demonstrate deceptive behavior when she pretends to forage in order to prevent the alpha male from discovering that she is engaging in a sexual act with a subordinate male. These examples are said to point to an animal's ability to attribute mental states to others and to form a higher-order belief, desire, or thought about another's mental state: plover birds are said to desire to produce a false belief in the fox and the female baboon is said to desire to produce a false belief in the alpha male.

Even when assuming that nonhuman animals possess HOT about the mental states of others, one is not committed to attributing moral agency to nonhuman animals. DeGrazia (1996, 172) draws an important distinction between being an agent and being a moral agent: those who perform intentional actions are classified as agents, while moral agency requires something more than just the performance of intentional actions. As he points out, nonhuman animals have desires, thoughts, and beliefs that explain their actions, which entails that these animals are agents, yet it does not mean that they are therefore moral agents. This is because moral agency demands more

than just having HOTs about another's mental state: moral agency requires, what I call, *moral thought third-order intentionality*, which requires that one not only, for instance, desire to deceive another or produce a false belief in another, but that one possess the further higher-order belief that such a desire to deceive is either right or wrong.

Moral Agency: Moral thought-third order intentionality

In supporting my thesis that nonhuman animals do not necessarily possess moral thought third-order intentionality, I will draw from Burmudez (2003), a HOT theorist who attributes HOT to nonhuman animals, yet maintains that metarepresentational thought (thinking about thinking) requires a complex, public language that is off-limits to nonhuman animals. Bermudez proceeds by drawing a distinction between having HOT about propositional mental states and having HOT about non-propositional mental states, such as bodily sensations and perceptual experiences. He maintains that animals, because they are unable to speak or interpret natural language, cannot possess mental-state concepts for propositional attitudes and thus cannot have HOT about their own or others' propositional attitudes, although he concedes that they can have HOT about non-propositional mental states, such as bodily sensations and perceptual experiences. In accepting Bermudez's account, we can conclude that although an animal can form a desire to produce pain or a false perception in another, it is incapable of forming HOT about its own desires, such as its desire to deceive or cause pain in another, and thus an animal cannot form the judgment that a certain desire is right or wrong.

We can also question the capacity for moral-thought third order intentionality in nonhuman animals by considering what sorts of concepts nonhuman animals are able to possess. Concepts, what are known as the building blocks of thoughts, are attributed to nonhuman animals in order

to illustrate their capacity for HOT. Yet, having HOT only requires the capacity to think in terms of *simple* concepts. The question, then, remains whether or not nonhuman animals can possess complex, moral concepts, such as the concepts of right or wrong.

Since having concepts requires that one recognize or discriminate different types of things, we must consider whether nonhuman animals can discriminate right actions from wrong actions (Allen 2009). Bekoff and Peirce (2009) point to the codes of conduct of certain species of animals that are said to demonstrate an understanding of right and wrong. As an example, they point to the rules concerning the training of cubs employed by coyotes. If cubs bite too hard, they are ostracised by the rest of the group and often end up having to leave entirely. Chimpanzees are also said to demonstrate a sense of justice by setting upon those in the group who deviate from the code. Yet, one need not necessarily have a concept of "right" or "wrong" in adhering to the code of conduct employed by these groups of animals: one can simply adhere to these rules because it is the norm of the group. That is, animals can distinguish an action that violates their group's code and threatens cooperative behavior from one that does not, yet this does not entail that animals understand these particular actions to be right or wrong.

Jean Piaget (1997) draws a distinction between unilateral and subjective morality that is useful in illustrating this point. Unilateral morality concerns labeling "badness" or "goodness" on the basis of whether an action is objectively rewarded or punished while subjective morality requires that one take a person's intentions into account when morally evaluating an action and that the agent recognizes that persons can be punished unfairly. It seems unproblematic to claim that nonhuman animals have unilateral morality. They, may, in a sense, have the concept of "bad" as an action that is punishable by its group, yet, until we are provided with evidence that nonhuman animals

take into consideration the intentions of the offender, we can only attribute animals with unilateral morality.

The coyote example can be used to demonstrate this point. In demanding the deviant cubs to leave the group for biting too hard, the other coyotes fail to consider the cub's intentions: perhaps the cub became over-enthused in the game, which is why it bit so hard. Rather, they seemed to react, based on the action itself, by "punishing" the behavior that threatened the group. This line of thought can also be used to explain so-called altruistic actions noted by Gould and Gould (1999, 150) : ''dolphins keep injured members of the group afloat, vampire bats share food with starving inhabitants of their colony, [and] elephants help form a defensive circle to protect the young of the herd.'' These apparent instances of moral behavior or "wild justice" can be explained more modestly, such as in terms of desire – a desire for cooperation or a desire to help others—or in terms of psychological tendencies and capacities for empathy, order, cooperation and so forth. That is, we can explain these behaviors independently of attributing moral thought third-order intentionality, which requires one to have HOTs about his propositional attitudes, such as morally evaluating his desires as right or wrong.

This line of thought is supported by Searle (2001), who argues that although nonhuman animals can engage in ends-mean reasoning, they cannot have desire-independent reasons for action. Keeping the "desire-independent action" thesis in mind, let us consider again the actions of the plover birds or the female baboons. In such scenarios, we should not be so quick to judge that the animals formed a thought about the rightness or wrongness of their desire to affect the other animal's mental state. Rather, it is plausible to suggest that the animals performed their actions out of a desire, such as the desire to avoid punishment or some other negative consequence like the pain the bird may feel from losing its eggs or the chastisement the baboon

may receive from the alpha male. Thus, even if we accept that nonhuman animals possess certain concepts necessary for thought, including concepts about the mental states of others, we still have no reason to assume that nonhuman animals employ moral concepts to evaluate their desires and beliefs. Rather, our evidence corroborates Searle's argument: nonhuman animals seem not to act independently from their desires.

We can thus conclude that nonhuman animals may be phenomenally conscious according to HOT theory since they have the capacity for higher-order thoughts about their own mental states and the mental states of others, yet they can still be said to lack the capacity to form HOT about their own propositional attitudes and thus cannot be said to be moral agents, since we have little evidence that they can attribute the concept of rightness or wrongness to their thoughts.

Conclusion

Even if nonhuman animals possess higher-order thought, they do not *necessarily* possess moral-thought third order intentionality, which is required for moral agency. That is, a "moral thought" or concept of the rightness or wrongness about a given desire has not been demonstrated in nonhuman animals, which thus requires us to suspend the judgment that nonhuman animals are morally responsible agents. As a consequence, nonhuman animals should be neither blamed nor *praised* for their actions, thus we should not only refrain from calling nonhuman animals "bad" or "evil," but we should also suspend our common tendency to classify certain nonhuman animals as "heroes" or "saints." That is, until we have further reason to support the claim that nonhuman animals possess complex moral concepts such as right or wrong.

Although this conclusion may seem obvious, we should stop and evaluate our tendency to characterize nonhuman animals in an anthropomorphic way in an attempt to ensure their moral

considerability. That is, in attempting to demonstrate that nonhuman animals possess consciousness under a HOT theory, we may be tempted to employ superfluous tactics. A paradigm example of this "good intentioned" anthropomorphism is the attempt of the Great Ape Project (GAP), led by Jane Goodall, to attribute legal rights to great apes and thus ensure that they are morally considered under the law based on the supposed fact that they meet the requirements of "personhood."

Although the protection of great apes from invasive medical research is a noteworthy goal of the GAP, what is overlooked is the potential consequence of such a view: if nonhuman animals are said to possess legal personhood and therefore legal rights due to their "human like" intellectual and cognitive capacities (higher-order thought and capacity for language), then it would seem that they should also be legally responsible for their actions according to the doctrine of *mens rea*. That is, if we grant legal rights to certain nonhuman animals based on their capacity for personhood, we might also commit ourselves to holding them accountable to the law and subjecting them to prison sentences if they attack, hurt, injure, or kill others.

Do we really want to, by maintaining that nonhuman animals have the capacity for language or complex concepts, concede that animals are morally responsible agents, thus opening the door to clichés, such as the claim that human beings are justified in eating meat or exploiting animals because they "deserve" such treatment since they themselves knowingly kill, hurt, and injure other animals? If we can illustrate the capacity for higher-order thought in nonhuman animals (beliefs and desires) without presupposing the capacity for language or sophisticated concepts it seems superfluous and even dangerous to focus on promoting the intelligence of certain nonhuman animals by pointing to their ability to form sophisticated concepts and use language.

Jumping to the conclusion that certain nonhuman animals are cognitively sophisticated is problematic on in a disparate way, as described by Francione (2002) who rightly challenges the methods employed by the Great Ape Project:

> Instead of having humans at the top and all nonhuman on the bottom, we "allow" a few animals that are "like us" to come on over to "our" side. That leaves the vast majority of the "other" animals still on the bottom and without even a hope of moving "up" because they lack human-like characteristics that make "special" those animals given admission into the preferred category. In other words, the campaign for ape personhood threatens to substitute one hierarchy for another, and I am concerned that we eradicate the notion of hierarchy altogether.

When applying Francione's insightful thoughts to HOT theories, we can conclude that animal ethicists should, even when attempting to secure the moral considerability for nonhuman animals, remain willing to accept that although nonhuman animals may have higher-order thought, their higher-order thought is of an unsophisticated nature before too quickly assuming that nonhuman animals possess human-like, sophisticated cognitive characteristics. That is, animal ethicists should pause and consider that it may very well be contrary and detrimental to the animal ethics vision to attribute sophisticated cognitive abilities to certain animals (apes and cetaceans) in order to demonstrate that animals are morally considerable. Likewise, it is contrary to the goal of animal ethicists to too quickly point to the so-called sophisticated cognitive capacities of certain animals in order to demonstrate animal consciousness under a HOT theory of consciousness. Unsophisticated higher-order thought can be attributed to *all* animals, and it does not render them any less conscious or worthy of moral consideration.

This is not to say that we should not investigate, out of respect and wonder for animals, their complex mental life. Yet, we need not use these observations to ground a theory of animal consciousness or to ensure their moral considerability. Consciousness (and thus moral consideration) demands less, even under a HOT theory of consciousness, and it would behoove

the animal ethicist to recognize this, lest they risk denying consciousness or moral consideration to other, less sophisticated nonhuman animals. Thus, rather than try to meet the anthropocentric demands of western morality that valorizes the rational and so-called humanly characteristics, animal ethicists should remain firm in pursuing an account of animal consciousness that does not aspire to demonstrate how much nonhuman animals are like human beings in their ability to use complex language or concepts.

In doing so, we should respect the possibility that nonhuman animals and human beings are indeed different in regard to their cognitive capacities, yet this difference does not entail the inferiority of nonhuman animals. It is only human beings who can, with their more sophisticated intellectual capacities, perform vicious, atrocious, cruel and deceptive actions such as mass genocide, killing, raping, stealing, and other heinous crimes. In the spirit of Nietzsche, who points out that "man is the cruelest animal," we should recognize that nonhuman animals possess limited cognitive capacities and are thus indeed unlike human beings, yet this intellectual or cognitive difference is one that we should perhaps, for once, embrace for the sake of all nonhuman animals. We should consider whether comparing nonhuman animals to human beings is insulting and offensive to animals, as no animal is or could be as cruel as man, who is "so artfully, so artistically cruel." I close by asking you to consider a quote by Fyodor Dostoyevsky: "Man, do not pride yourself on your superiority to the animals, for they are without sin, while you, with all your greatness, you defile the earth wherever you appear and leave an ignoble trail behind you – and that is true, alas, for almost every one of us" (Farrar, 2002).

[1] Consciousness can be attributed to either creatures (such as a specific animal or person) *or* mental states, such as my belief that today is Thursday.

[2] This line of thought is rejected by Burge, who argues that it is possible to have phenomenal states that are not conscious. See Burge's article: "Two Kinds of Consciousness," in *The Nature of Consciousness: Philosophical Debates*, edited by Block, Flanagan and Güzeldere, (Mit Press 1997: 427-433).

[3] Tom Regan, in *The Case for Animal Rights*, relies on a richer notion of what entitles a being to moral consideration. He invokes the concept of a subject-of-a-life, which entails that a being requires more than just sentience in order to be morally considerable. Yet, his account still presupposes that nonhuman animals are conscious, thus his account of Animal Rights is just as vulnerable to the challenges of HOT theories as Rollin, Singer, and Francione.

[4] This account of moral agency is derived from the rationalist approach found in J. C. Gibbs (*Moral development and reality: Beyond the theories of Kohlberg and Hoffman*), D. Keating (*Adolescent thinking*), L. Kohlberg (*Moral stages and moralization: The cognitive-developmental approach*), J. Piaget (*The moral judgment of the child)* , which requires a sort of moral reasoning or at least a moral assessment/judgment of a situation, belief, desire, and so forth. This account of rationality stands in opposition to sentimental, intuitionist camps, which emphasizes moral sentiments and intuitions. I take for granted a rationalist account of moral agency, and for the purpose of this paper, will bracket objections from the sentimental, intuitionist camp.

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