

ARTICLE

Punishing Moral Animals

Eli Shupe

Department of Philosophy and Humanities, The University of Texas at Arlington, Arlington, TX, USA
E-mail: eli.shupe@uta.edu

Abstract

There has been recent speculation that some (nonhuman) animals are moral agents. Using a retributivist framework, I argue that if some animals are moral agents, then there are circumstances in which some of them deserve punishment. But who is best situated to punish animal wrongdoers? This paper explores the idea that the answer to this question is humans.

Keywords: Moral agency; animal cognition; retributivism; philosophy of punishment; nonhuman animals; punishment; animal moral agency

1. Introduction

Arguments to the effect that humans bear moral duties toward nonhuman animals are commonplace. Figures as diverse as Peter Singer, Martha Nussbaum, and Jane Goodall have offered reasons to refrain from hunting, meat eating, and (some) animal experimentation. But what if some nonhuman animals are not just moral patients but agents as well, capable of moral actions in their own right? In recent years, some have speculated that they might be.¹ Yet consider the following: if there are indeed animals with the capacity to act morally, we might also think that many of them are morally responsible for their conduct.² But wheresoever moral responsibility goes, desert is sure to follow. Using a retributivist framework, I will first argue that if some animals are moral agents, then there are circumstances in which they deserve punishment.

- (1) ANIMAL MORAL AGENCY: Some animals are moral agents.
- (2) If some animals are moral agents, some animals are wrongdoers.
- (3) RETIBUTIVISM: Wrongdoers deserve punishment.

Therefore:

- (4) ANIMAL PUNISHMENT: Some animals deserve punishment.

¹Some examples of philosophical work on the question of whether animals are moral agents include Andrews and Gruen (2014); Bekoff and Pierce (2009); Clark (1984); Clement (2013); DeGrazia (1996; 1997); Dixon (2008); Fitzpatrick (2017); Gruen (2002); Korsgaard (2006); Monsó (2015); Musschenga (2013; 2015); Peterson (2011); Pluhar (1995); Reid (2010); Sapontzis (1987); Rowlands (2011; 2012; 2013); and Shapiro (2006).

²The kind of responsibility I have in mind is that which makes one blame- or praiseworthy for one's actions, in the moral sense.

This move from agency to responsibility has been underdiscussed in the existing literature on animal morality, and thus ANIMAL PUNISHMENT is independently worthy of discussion.³ But my main interest will be to explore one counterintuitive consequence of accepting ANIMAL PUNISHMENT, namely that it threatens to lead to the conclusion that humans ought to be the ones to punish these animal wrongdoers. To wit:

- (5) Animals are not competent to punish one another.
- (6) We have the jurisdiction to punish animals (from 5).

Therefore:

- (7) HUMAN PUNISHERS: We should punish animal wrongdoers.

For the believer in animal moral agency, this is a potential worry; for the skeptic, it is a potential reductio. Furthermore, it is a consequence that does not seem to have been anticipated by the bulk of philosophers who have considered the ramifications of animal morality, most of whom have focused on the emergence of the negative rather than the positive duties we might owe to animals should they turn out to be moral. If animals are moral actors, for example, we have further reason not eat them, experiment on them, or otherwise indenture them to our needs and desires. When positive duties are proposed as a result of animal morality, they are typically only the counterparts of the aforementioned negative duties, e.g., if we have a duty to refrain from animal experimentation, then perhaps we also have a duty to liberate those animals currently being experimented upon. One notable exception that explores a positive duty in its own right is work that touches on the question of whether we ought to confer the moral or even legal status of personhood on animals who demonstrate moral capacities (see, for example, DeGrazia 1997), but even those proposals are typically intended to serve the ultimate end of protecting animals from consumption, experimentation, and the like.

Unlike, say, the duty to liberate, a positive duty to punish moral animals is not the correlate of any negative duty we might bear toward them. And yet it clearly merits discussion. After all, if you were to acknowledge such a duty, your relationship to the animal kingdom would be radically transformed. Furthermore, if you want to claim that some animals *are* moral agents, but avoid HUMAN PUNISHERS' proposed duty to punish, then your views in other areas of philosophy may well have to give.

In section 2, I sketch why many now find it plausible that some nonhuman animals are moral actors, with some going so far as to endorse ANIMAL MORAL AGENCY. In section 3, I argue that even if we accept ANIMAL MORAL AGENCY and ANIMAL PUNISHMENT, moral animals are likely to be severely limited in their ability to morally evaluate one another—if they are even capable of moral evaluation at all. I argue that the severity of these deficits is such that impartial human observers would generally be more competent to see to matters of animal desert than the moral animals themselves. Building on those arguments, section 4 makes the case for HUMAN PUNISHERS, arguing that if there are animal moral agents, then many retributivists about punishment ought to recognize a strong reason to punish animal wrongdoers and perhaps even a duty to do so. Finally, section 5 responds to the objection that considerations from moral relativism tell against my conclusion, and sections 6 and 7 present what I think are stronger rebuttals on behalf of the retributivist who wants to accept ANIMAL MORAL AGENCY and ANIMAL PUNISHMENT but not HUMAN PUNISHERS.

³The only exception that I know of is Mark Rowlands' *Can Animals Be Moral?* (2012), which very briefly uses a potential retributivist duty to punish as a reductio the view that animals are truly moral agents (pp. 83–84).

2. The case for the moral animal

Often it can seem as if an animal's actions are guided by moral concerns. Some anecdotal examples of animals who appear to be acting morally are so old as to have their own literary traditions: reports of dolphins rescuing sailors from shipwrecks, for example, occur as early as Plutarch, and the trope of the loyal and heroic dog has been a cultural touchstone throughout much of human history, persisting from the Welsh fable of Gelert to Lassie of the silver screen. But the ubiquity of moral animals in popular culture is hardly a reason to take them to exist, otherwise we might find ourselves believing in witches, ghosts, and all other manner of folk superstitions. Furthermore, there are few rules considered more fundamental to the study of animal minds than Morgan's Canon, which warns that "in no case is an animal activity to be interpreted in terms of higher psychological processes if it can be fairly interpreted in terms of processes which stand lower in the scale of psychological evolution and development" (1894).

On the face of it, Morgan's Canon seems to tell against the hypothesis that there are moral animals in that whenever an animal appears to act morally, there are ways to explain that animal's behavior in terms of less sophisticated mental processes. To illustrate, imagine that you are visibly upset, and your beloved spaniel Brownie rests his head on your knee in a way that gives you comfort. One explanation of Brownie's behavior is that Brownie, sensitive creature that he is, recognizes your distress and intends to alleviate it. On this explanation, Brownie behaves morally. However, consider, as Morgan's Canon would have us do, the spectrum of alternate, lower-level explanations: perhaps Brownie, mindless brute that he is, acts purely on instinct (perhaps such behavior was adaptive at some point in his species' developmental history). Or perhaps he has been praised for similar actions in the past, and has thus learned to respond in this manner through operant conditioning. Or perhaps he more mindfully—but still amorally—takes you to be the leader of his "pack" and recognizes that you are an ineffective guardian in your current state; alleviating your distress, whether or not Brownie recognizes it as distress, is merely a way for him to restore you to the condition of a reliable leader and protector. What is it that has led some researchers to think that the moral explanation for animal behavior like Brownie's is often the best explanation, despite the psychological complexity of the processes involved?

2.a Empirical research

One important factor is that the last twenty years of research in comparative psychology have revealed that nonhuman animals are capable of more complex cognitive feats than previously thought, such as tool use, social learning, insightful problem-solving, long-term planning, deception, and even (debatably) theory of mind. As a result of such findings, comparative psychologists are increasingly willing to entertain hypotheses about animal behavior that in previous decades would have been dismissed as requiring too much cognitive complexity to be credible. Accordingly, researchers have directly investigated the question of whether animals can be moral, and some have taken their results to support an answer in the affirmative. Much of this work focuses on animals who act out of concern for others.⁴ For example, an early study by Masserman, Wechkin, and Terris (1964) set an influential precedent by showing that macaques preferred to go without food, sometimes for days on end, rather than accept it from a mechanism that administered a painful electroshock to a conspecific. A more recent (and less grisly) study showed that capuchins reliably choose to deliver desirable foods to capuchins in separate chambers, even when doing so predictably diminishes the desirability of their own reward (Lakshminarayanan and Santos 2008). There has also been a proliferation of work on whether animals are sensitive to considerations of justice or

⁴I describe but a handful of these studies here, but their subjects range from rodents to cetaceans, and curious readers can see Bartal, Decety, and Mason (2011); Church (1959); De Waal, Leimgruber, and Greenberg (2008); Masserman, Wechkin, and Terris (1964); Palagi and Norscia (2013); Preston and de Waal (2002a; 2002b); Schino and Aureli (2009); and Silk (2007).

fairness. A notable example is Brosnan and de Waal's 2003 study on inequity aversion in capuchins. Brosnan and de Waal showed that capuchins willingly perform tasks alongside a companion when both are rewarded with pieces of cucumber for their participation. However, if their companion is given a more coveted reward (grapes) while they continue to only receive cucumber, they will refuse to participate in further tasks (with some individuals going so far as to hurl their cucumbers back at the researcher). A similar aversion to inequity has also been found in chimpanzees, our nearer primate relatives (Brosnan, Schiff, and de Waal 2005).

In the realm of neuroscience, Panksepp (1998) and Berridge (2003) have both argued that the basic emotional repertoires of animals, and particularly primates, overlap greatly with our own, owing to shared brain structures (including the prefrontal cortex, cingulate cortex, and amygdala). There is evidence from neuroscience that many animal brains share markers associated with human moral capacities or sentiments. For sentimentalists and others who take morality to be grounded in affective states, such findings are particularly significant.

2.b Arguments from evolution

The empirical work outlined above dovetails nicely with an evolutionary understanding of the animal kingdom as a kingdom to which the morally capable *Homo sapiens* belongs rather than towers above. Indeed, considerations of evolutionary continuity naturally encourage an openness to the possibility that certain animals besides humans might in fact be moral actors. It is standard practice to explain the presence of a trait in a variety of populations by positing that the trait arose in a common ancestor of those populations. Humans and many other animals exhibit patterns of behavior consistent with responsiveness to moral reasons. We therefore have good reason to posit a single mechanism or capacity inherited from a common ancestor to explain why humans and animals share these patterns of behavior. Additionally, we have firsthand knowledge that humans, at least, are genuinely responding to moral reasons when they exhibit seemingly moral behaviors. So, there is a *prima facie* case that other species are responding to moral reasons, as well, especially those with whom we have a great deal of common ancestry, like primates.

Although the case for the presence of a moral capacity is strongest in species closely related to humans (since we know for a fact that humans are moral), it is also possible for species without that kinship to have independently developed the ability to respond to moral reasons via convergent evolution as a result of facing similar selection pressures. The development of a moral mechanism of the kind possessed by humans may well be the most adaptive response to those shared challenges.

A prominent advocate of evolutionary approaches to morality is primatologist and ethologist Frans de Waal, much of whose work is devoted to identifying precursors to human morality in the social behaviors of primates (de Waal 1996; 2009; Flack and de Waal 2000; Preston and de Waal 2002a). Adopting the framework of convergent evolution, De Waal has asserted that many animal species, not just our close primate cousins, exhibit the markers of a moral framework that closely resembles our own (1996).

2.c Parsimony

Furthermore, it may even be the case that the hypothesis that there are moral animals is the most *parsimonious* way to explain the phenomena discussed in this section. The adherent of Morgan's Canon would need to posit a great many diverse lower-level psychological processes to explain some of the experimental results discussed above, whereas, if we are willing to deviate from the Canon and attribute rudimentary moral cognition to animals, it is but a single capacity (albeit a sophisticated one) that shoulders the entirety of the explanatory burden. Positing one capacity with far greater explanatory power may well be preferable to positing many—each of which have lesser explanatory power—even if that one capacity *is* rather sophisticated.

2.d Enforcement of social norms

Finally, social animals often enforce various norms of conduct, even exercising punishment or *negative reciprocity*, as it is sometimes called in the literature (Clutton-Brock and Parker 1995). Canids socially ostracize or otherwise reprimand those who don't "play fair" when play fighting by refusing to wrestle with them in the future (Bekoff 2004); chimpanzees retaliate against food thieves (Jensen, Call, and Tomasello 2007); and marmosets who have watched humans make social exchanges accept food less frequently from those they've observed to be nonreciprocators (Kawai et al. 2014).

I take this to be the weakest of the reasons I've chosen to discuss in support of the thesis that animals are moral. Although such behaviors are evidence of normativity, perhaps, I do not take them to necessarily be evidence of *moral* normativity. But I have included it here because it has surprising currency not only among those who take animals to be moral, but among those who defend ANIMAL MORAL AGENCY's stronger claim that animals are moral agents. For example, *Wild Justice* (2009) by Mark Bekoff and Jessica Pierce is a recent book whose argument that animals are moral agents rests almost exclusively on animal enforcement of social norms.

Although much of the literature focuses on animals who seem to behave virtuously, it is critical to my argument that these putatively moral animals are capable of *immorality* as well. But here it should be noted that part of the reason that researchers have paid particular attention to virtuous behaviors among animals is that these behaviors *stand out* amidst the casual patterns of violence many of these species exhibit—the sort of "criminal deviance" that Jane Goodall described witnessing among the chimpanzees at Gombe (Goodall 1982). If the behavior of a chimpanzee, for example, seems genuinely altruistic, the thought goes, then it is all the more likely that it's an intentional behavior that is under that animal's agential control. However, once we grant that an animal is capable of intentional, morally valenced action, then, almost certainly, that moral valence swings both ways.

Discussions of immorallike behavior in animals can be found in Wrangham and Peterson (1996), Shapiro (2006), and Steinberg (2020). Shapiro, in particular, defends the move from immoral animal conduct to animal blameworthiness. Responding to an observation from Jane Goodall of a group of chimpanzees brutalizing another male, Shapiro likens such animal behaviors to "the pogroms or raids on neighboring villages so common in our history books," and writes that just as "few of us doubt that those humans who engage in gang violence or even more formalized pogroms are acting immorally," so too are the chimpanzees in Goodall's anecdote plausibly blameworthy (Shapiro 2006).

Note, however, that although some philosophers, like Shapiro, are happy to credit moral animals with moral agency, it is not the case that a moral animal is *necessarily* a moral agent. Indeed, many philosophers grant that animals act for moral reasons, but explicitly deny that such animals are moral agents. Mark Rowlands, for example, argues compellingly that such animals are "moral subjects" occupying a middle place between patients and agents in that they can act for moral reasons but are not morally responsible for their actions.⁵ My arguments in this paper are intended for those who adopt the stronger claim of ANIMAL MORAL AGENCY. Those who believe that animals are moral, but not moral agents or otherwise the kinds of creatures who can be praise- or blameworthy, will not accept ANIMAL PUNISHMENT and will therefore have no reason to endorse HUMAN PUNISHERS.

3. Animals and moral judgment

So far, I have established that the existence of the moral animal is a hypothesis that the scientific community considers a live option and has investigated accordingly, as well as one that many philosophers have been compelled to accept. I have also noted that some philosophers have gone so

⁵See Rowlands (2013) for a direct discussion of the difference between moral action and moral agency in nonhuman animals.

far as to defend ANIMAL MORAL AGENCY or similar views that have as a consequence that animals are in some substantive sense *responsible* for their moral (or immoral) actions. Now I shall argue that if moral animals do exist, whether they are agents or no, they are likely to be severely limited in their ability to morally evaluate one another—if they are even capable of doing so at all. My further claim is that the severity of these deficits is such that impartial human observers would generally be more competent to see to matters of animal desert than the moral animals themselves. This will prepare the way for my arguments in the following sections that if animal moral agents exist, then such human observers, due to their greater competence, have a strong reason and perhaps even an obligation to play this unusual role.

As human beings, we enjoy not only the capacity to act for moral reasons, but also the capacity to judge the actions of actions as moral or immoral. Although they are closely related, these are competencies that can come apart. In some respects, the latter capacity is more cognitively demanding. Judging others arguably requires a theory of mind that recognizes not only that another person is an entity that takes in the world from its own unique perspective—and to whom we might incur a moral obligation—but also that they are the kind of entity that can incur moral obligations of their own. In other words, returning to our example from section 1, even if we can make a good case for Brownie being a moral agent, we cannot assume without argument that he is also capable of judging the actions of his compatriots at the dog park. It may well be that Brownie and creatures like him are wholly incapable of moral evaluation. And if moral animals cannot morally evaluate, then they cannot hold one another to account.

This is a little too quick. Although we cannot assume all moral animals, or even animal moral agents, are moral evaluators as well, that is not to say that no argument *can* be made for that further achievement. Recall the enforcement of social norms among animals discussed in 2.d. As I discussed previously, I do not think such behaviors are incontrovertibly expressions of *moral* normativity, but let us set that objection aside for the time being. If we grant that animals who enforce social norms *are* holding each other to a standard of moral conduct, do we then preempt any argument that humans ought to also be in the business of punishing immoral animals? I think not. For given their cognitive limitations, even if we took animals enforcement of social norms as evidence that some animals are moral evaluators, such animals are nevertheless unlikely to be *effective* moral evaluators.

It is easy to see why this is the case. As I said above, the capacity to morally judge is more sophisticated than the capacity to morally act, probably even requiring at least a rudimentary theory of mind. Even if you are sympathetic to the notion of animal theory of mind, the further informational demands of moral evaluation are great. Often, for example, internal factors, such as an agent's intentions or beliefs about the situation, are relevant to whether we find them worthy of blame or praise. In our Brownie example, for instance, it made a difference whether Brownie comforted his upset owner because he simply wanted to soothe hem or whether he did so because he, more self-interestedly, wanted to make hem a more alert and capable leader. Many believe that only in the former case is Brownie genuinely praiseworthy. Accordingly, for an animal to judge the actions of another, they may well need to infer facts about that other's motives or epistemic situation. For creatures of limited intelligence, this will be a difficult task.

Indeed, there are some relevant factors that even very intelligent animals will have difficulty tracking. Consider, for instance, that false beliefs sometimes excuse one from being fully blameworthy for a given harm: if I had every reason to believe I was giving you medicine rather than poison, I am not culpable for poisoning you. Yet, to single out an animal thought to be among the most sophisticated social cognizers—chimpanzees—by all experimental indications, they are incapable of attributing false beliefs to others notwithstanding whatever other theory of mind abilities they might have (Call and Tomasello 1999; Call and Tomasello 2008; Hare, Call, and Tomasello 2001; Krachun et al. 2010). So, even if a chimpanzee *could* attribute blame, he would likely not be able to take false beliefs into account as a mitigating or exculpatory factor.

There are a range of other cognitive thresholds a competent moral assessor must meet. To name but a few, judgment often involves attending to the actions of others without distraction,

remembering past events and histories of behavior, differentiating unprovoked outbursts from those that are given cause. All of these demands present challenges to nonhuman animals, who typically fall short along one or other of these dimensions. Even if there were animals that are capable of some form of moral judgment, then they would almost certainly be deeply flawed evaluators. Indeed, they could arguably do no better than a human observer with even a rudimentary grasp of their species' behavioral repertoire. Even very young humans, for example, are adept at attributing false beliefs. Furthermore, generations of successful fieldwork in comparative cognition prove that human observers are well able to observe animal groups, differentiate their members, and systematize and ultimately interpret many of their behaviors. The notion that such researchers might be able to apply moral as well as psychological criteria to animal behaviors as well is, at least, not *prima facie* absurd.

These epistemic and cognitive limitations are far from the only reasons that humans might fare better than moral animals in identifying instances of animal wrongdoing, exculpatory or aggravating circumstances, and so forth. There are also significant practical constraints on the ability of animals to punish one another. Because punishers incur risk, we should expect the circumstances in which animals are *willing* to punish instances of wrongdoing to be limited, and empirical work confirms this prediction. Recall that the chimpanzee was cited above as an animal one might argue does mete out punishments within the group, at least where thievery is concerned. It seems, however, that chimpanzees do not mete out *third-party* punishments of this kind: although they will sometimes aggress against those whom they catch stealing their *own* food, Riedl et al. (2012) have shown that chimpanzees are unwilling to act when the stolen food belongs not to themselves but to another chimpanzee. Such punishments, then, are personal rather than impartial.

Furthermore, to continue on the subject of chimpanzees, even when their own food has been stolen, chimpanzees are significantly less likely to retaliate when the thief is a dominant individual, presumably because of the risk they would incur by doing so; whereas, when dominant individuals are the victims of food theft, they tend to retaliate swiftly (Riedl et al. 2012). This is not the only way animal punishment is likely to go awry where dominance hierarchies are concerned. Some species, such as mandrills (Schino and Sciarretta 2015) and Japanese macaques (Aureli et al. 1992), practice a form of redirected aggression whereby instead of punishing a more dominant individual for a perceived slight, the wronged subordinate attacks the wrongdoer's more vulnerable kin.

So, even if animals do sometimes have a disposition to punish, it remains the case that they won't consistently punish the appropriate offender, or will punish in an otherwise inappropriate manner. In such cases, an impartial human observer who is not at the mercy of an animal group's dominance hierarchies might well be better suited to punish its wrongdoers than are the animals themselves. Impartiality, to the extent that it can be achieved, has long been taken to be one of the most fundamental desiderata of adjudicative processes. Indeed, the putative impartiality of the human criminal justice system is considered one of the strongest justifications for its existence.

If animal moral agents do exist and, as I have suggested, humans are likely to often be in the best position to morally evaluate them, then would humans thus be obligated, or at least given strong reason, to punish animal wrongdoers? One might think we surely cannot be so obligated for, in many respects, the prospect of discharging such an obligation seems absurd. Ought we hold trials? The prospect calls to mind the darkly comic 1993 film *The Advocate*, in which Colin Firth plays a medieval public defender whose "client" is a pig accused of murder.⁶

Could we possibly have reason to fastidiously monitor the social world of animals, occasionally stepping in to, say, dethrone a particularly sadistic chimpanzee alpha or to save from retaliation a

⁶Such historical "animal trials" are a curious but well-documented phenomenon in European history, mostly occurring between the twelfth and eighteenth centuries. As one might expect, many of the trials were religious in nature and concerned with alleged instances demonic possession (Girgen 2003). Others, however, featured animals accused of less supernatural offenses, such as the criminal destruction of property (Girgen 2003; Srivastava 2007).

low-ranking member of his troop whom he mistakenly believes to have slighted him in some way? Let us call this position HUMAN PUNISHERS:

HUMAN PUNISHERS: We (i.e., humans) should punish animal wrongdoers.

4. Retributivism and animal punishment

In this section, I will show that if you hold that animals are moral agents and if you are a retributivist about punishment, then you have good (though not insurmountable) reason to accept HUMAN PUNISHERS.⁷

Retributivism is the view that punishing wrongdoers is intrinsically good regardless of any extrinsic benefit it confers, such as deterrence. On strong versions of the view, we are invested not only with the right but also the duty to punish wrongdoers. Depending on the extent to which animals are thought to attain standing as moral agents, then, we might expect strong retributivists to hold that humans are obligated to play the role of the world's policeman in the animal kingdom if they are (within reason) able to do so. Weaker forms of retributivism, which acknowledge a reason but not an obligation to punish the guilty, may sometimes escape incurring the obligation to punish animals, but can still be expected to concede that it is often permissible to do so depending on the circumstances and what other reasons are in play.

Just how many retributivists fall within the strong as opposed to the weak camp is a matter of some debate, but it is likely that a great deal of them do, perhaps even the majority. For example, if Michael Moore is right, there is a sense in which *all* forms of retributivism entail not merely a right to punish but also an obligation to do so. Moore writes:

Retributivism is a very straightforward theory of punishment: We are justified in punishing because and only because offenders deserve it. Moral responsibility ('desert') in such a view is not only necessary for justified punishment, it is sufficient. Such sufficiency of justification gives society more than merely a *right* to punish culpable offenders. ... For a retributivist, the moral responsibility of an offender also gives society the *duty* to punish. (2010)

Moore is certainly painting with a broad brush, and not all retributivists will assent to his characterization of their position. Still, many retributivists *do* explicitly endorse the form of reasoning Moore sets out and situate themselves in the strong retributivist camp. Take Immanuel Kant, for instance, who argues that

[e]ven if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted on his punishment; for otherwise the people can be regarded as collaborators in this public violation of justice. (1797)

Retributivism goes hand in hand with the view that there is a sense in which all instances of moral wrongdoing, both public and private, merit criminalization, though the question of whether we should in fact criminalize a given type of wrongdoing is informed by further considerations, both principled and pragmatic (Duff 2014). One might expect these further considerations, especially

⁷There are circumstances in which deterrence theorists, too, have good reason to accept some version of HUMAN PUNISHERS, but the reasons for this have to do not with whether animals are moral agents, but rather with whether and under what circumstances punishment can successfully shape animal behavior, and thus are not of interest for my purposes in this paper.

those of principle, to adjudicate against animal punishment and thus let the retributivist off the hook—but let us see how far we can go.

Perhaps the most obvious candidate reason that the retributivist might be able to refrain from dispensing animal punishments on principled grounds concerns jurisdiction. Even if animal punishment is a good, the retributivist might argue, surely humans do not have the jurisdiction to mete it out. This sounds very plausible on its face. With the possible exception of certain domesticated animals, human life proceeds largely at a remove from the lives of the animals who are candidates for punishment. Historically, we have not participated in animal systems of punishment and reward, nor have animals participated in ours. Thus, there is a sense in which alleged wrongdoing in the animal kingdom seems to be “none of our business”—it is regrettable, perhaps, but not something we have the authority to address, given that we are in no sense members of their communities. For a human interloper to hold an animal to account would be to overstep or interfere somehow, the intuition goes—similar to if extraterrestrials were to suddenly alight on Earth and attempt to try us for our own misdeeds.

This turns out to be a tricky response for the retributivist to retreat toward. This is because retributivists tend to take a straightforwardly instrumentalist approach to the question of *who* should punish wrongdoers, holding that punishment should be meted out however is most effective. Indeed, similar approaches are more or less conventional in the philosophy of punishment in general, and not just within the retributivist literature. As it manifests in the retributivist framework, however, the instrumentalist argument runs as follows. Given that the punishment of wrongdoers is a *prima facie* good, its value is not contingent on who realizes that good. Wrongdoers should therefore be punished by whoever is best positioned to punish them, i.e., whoever can deliver that punishment most effectively and efficiently. In civil society, this will often be the state, but it needn't be.

John Locke is perhaps the earliest philosopher to explicitly subscribe to this instrumentalist line of reasoning. When it comes to punishing wrongdoers, Locke (1689) held that “every man hath a right to punish the offender, and be executioner of the law of nature.” For Locke, whatever special authority and jurisdiction a state has to punish its subjects is grounded *only* in its ability to “restrain the violence and partiality of men,” i.e., to dispense proportionate punishment more reliably and with less bias than can individuals who independently hold each other accountable (1689). Andrew von Hirsch expresses a similar sentiment in *Doing Justice* (1976): “[T]here will be less social disruption,” he writes, “if offenders are punished by the state rather than left to private retaliation.”

Not only does this argument tend to favor state arbiters of punishment over their vigilante counterparts, it also tends to support the restriction of a state's jurisdiction to wrongdoings that occur within its own borders, again purely on instrumental grounds. For the instrumentalist, there is no *principled* reason why the government of the United States is entitled to mete out punishment to its own residents but not to those of the United Kingdom, Austria, or Morocco. Rather, there is only the pragmatic reason that, in our world of sovereign states, wrongdoers are typically punished more effectively and efficiently when countries “police their own.”

Of course, by their very nature, instrumentalist restrictions on jurisdiction are sound only insofar as things *do* go better when justice is dispensed officially by a state rather than informally by its citizens, or when it is dispensed autonomously within states rather than internationally. If a country were to fail to dispense justice to its people, for example, this might constitute a reason for some other state or group of states to take up that burden.⁸

Similarly, if a group of people existed outside the jurisdictional authority of any state and relied on a system of vigilante justice inferior to that which a state could provide, neighboring states might

⁸One can see this reasoning at work in the Rome Statute of the International Criminal Court: Article 17, which states that a case is inadmissible if it is already “being investigated or prosecuted by a State which has jurisdiction over it, *unless the State is unwilling or unable genuinely to carry out the investigation or prosecution*” (Rome Statute 1998; emphasis mine).

have sufficient moral reason to extend their jurisdictions to encompass members of that group. This, I argue, is the situation in the case of animals should they turn out to be moral agents. As I have discussed, even if some animals are moral agents, they are likely to be extremely limited in their ability to reliably call wrongdoers to account. Furthermore, animals are often brought low in their attempts to sanction one another by what Locke would call their innate “violence and partiality” (Locke 1689): the chimpanzees discussed earlier who punished only *subordinate* food thieves are but one example of this phenomenon. Humans have the advantage of not being embedded within the animal dominance hierarchies that make retribution difficult to exact against high-status individuals. Indeed, one can take as a proof of concept the ways in which humans benefit from official systems of law and order that are designed to curtail our own baser instincts.

Thus, if animals *are* moral agents deserving of punishment, those retributivists who are instrumentalists about jurisdiction (as most of them are) ought to recognize a duty to step in to punish animal wrongdoers when doing so is more likely than nonintervention to implement a principle of retributive justice. This is of course only a *prima facie* duty—there are a number of possible pragmatic reasons to leave animals to their own devices. However, if the only reasons not to punish moral animals are pragmatic, that is still an extremely interesting result since, presumably, those pragmatic reasons won’t always be decisive.

Are there other principled grounds besides that of jurisdiction on which the retributivist might resist incurring the obligation to punish animals? I will start by going over one tempting response which I do *not* think does the trick, namely what I call the *objection from relativism*, before turning to what I take to be better responses available to the retributivist who hoppers to accept ANIMAL MORAL AGENCY without the baggage of HUMAN PUNISHERS.

5. Can the relativist avoid animal punishment?

The objection to HUMAN PUNISHERS from relativism begins with the thought that the moral norms of animals may be very different from our own, and concludes with the claim that such differences would release us from any obligation to punish animal wrongdoers, and perhaps even prohibit us from doing so.

The first thing to note is that the objection from relativism is not an objection from *all* forms of relativism since some forms of the view do *not* pose a problem for HUMAN PUNISHERS.⁹ To illustrate: on one version of moral relativism, which John Tilley calls *Appraiser Relativism* (2000), the truth of a moral judgment depends upon the norms of the community to which the one making the judgment belongs.¹⁰ According to Appraiser Relativism, the sentence “Slavery is wrong” is true when uttered by someone in twenty-first-century America, but false when uttered in ancient Greece. If anything, Appraiser Relativism actually vindicates the notion that humans should punish animals they take to be immoral for the ones making such judgments are human and, according to human standards, we should indeed punish those who act as the animals in question have acted.

The objection from relativism is grounded not in Appraiser Relativism then, but rather in its contrast, *Agent Relativism* (Tilley 2000). According to Agent Relativism, the truth of moral judgments is grounded in the cultural norms not of the judge of an action but those of the agent who committed it (2000). If Agent Relativism is correct, then it is wrong for a person to impose the moral norms of her own community on those living in communities with differing norms for the two communities have equally valid yet irreconcilable systems. So, for example, perhaps we should not attempt to stop some society from torturing their criminals even if such punishments are unjust by our own society’s standards. Or, in the animal case, even if animals do turn out to be moral

⁹See Gowans (2004) for a helpful overview of the various versions of moral relativism.

¹⁰The name *Appraiser Relativism* and that of its counterpart *Agent Relativism* were adapted by John Tilley (2000) from David Lyons’s (1976) “appraiser’s-group” and “agent’s-group relativism.”

agents, then we humans ought not to punish them, for the animals' moral communities adhere to different moral norms than our own. This is the objection from relativism.

I will not attempt to argue against Agent Relativism on the truth of which the objection from relativism depends. For one, there is already work in the literature to this effect (Tilley 2000). But more importantly, I contend that the objection from relativism is flawed even if Agent Relativism is true.

There are two basic problems with the objection from relativism. First, the fact that we cannot punish immoral animals according to our own norms does not entail that we cannot punish them at all, for we may be able to identify some of the basic moral principles of their societies and then be fully licensed in bringing their wrongdoers to justice even if their notions of wrongdoing or justice don't quite line up with our own. In section 3, I briefly discussed some observable patterns of negative reciprocity in the animal kingdom—wolves who won't play with unfair players, chimpanzees who punish theft, etc. Even if we can't ascertain an animal community's *full* set of moral norms, it seems plausible that observable behaviors like these could help us piece together some proper subset of those norms. If this is right, then the arguments of my paper would still apply for breaches of norms belonging to that subset. Ergo, the believer in ANIMAL MORAL AGENCY who embraces Agent Relativism cannot fully shirk the arguments of this paper unless the moral norms of animals are truly so alien as to be fully beyond our discernment. Yet if the moral norms of animals are truly so alien as to be fully beyond our discernment, then the objection from relativism will *still* fail, as the second problem I raise will make clear.

The second problem with the objection from relativism is that it is self-undermining. Since the objection is intended to save the believer in animal morality from also incurring reason to punish bad animal actors, it takes as a premise the claim that some animals are moral. Section 2 of this paper outlined some reasons one might want to endorse this premise, yet all of those reasons are fundamentally grounded in the connection between animal behavior and human morality. For example, animals seem to punish behavior that is recognizably immoral—i.e., immoral by our own lights. Or, animals seem to endure pain in order to avoid causing harm to their peers, something that we take to be good. The assumption that these behaviors are evidence for animal morality is underwritten by the deeper assumption that if animals were moral, then their sense of morality would observably resemble our own. If the relativist accepts this deeper assumption, they can justify their belief in the existence of moral animals by referencing the literature reviewed in section 2, but if they want to go so far as to accept ANIMAL MORAL AGENCY on the basis of the same, they must then contend with the fact that there is animal conduct that, by their own lights, is worthy of punishment. If the relativist rejects this deeper assumption, they can avoid my arguments above, but at the cost of now having little clear evidence to justify their belief in the existence of moral animals. At best, they now defend only an exotic counterfactual: *if* there were moral animal agents (whose morality would fail to line up with our own in any observable sense), *then* humans ought not punish them. Since we have no reason to believe the antecedent of that conditional, the objection from relativism turns out to be of limited interest.

There are, however, more promising grounds on which the retributivist might mount a principled objection against incurring the obligation to punish animal moral agents exacted by HUMAN PUNISHERS.

6. Can cognitive shortcomings excuse animal moral agents from punishment?

One common proposal about moral responsibility is that an agent must possess certain *capacities* in order to be morally responsible (or at least in order to be liable for punishment should liability and moral responsibility come apart). (See, e.g., Wallace [1994] and Fischer [1999].) Which capacities are named as the relevant ones varies across accounts, but the capacity that is most often singled out is the capacity to respond to moral reasons in a way that is consistent (Wallace 1994; Fischer 1999). Someone who believes in the existence of animal moral agents but wants to avoid punishing them

might argue, then, that while some animals are genuine moral actors, they are too hit-or-miss when it comes to responding to moral reasons to lay claim to the consistency that is required to be fully possessed of the relevant capacity—whatever *agency* they possess, on this understanding, falls short of what is required for them to be liable for their actions.

I will grant the assumption that any capacity to respond to moral reasons that an animal might possess is likely to be a fairly local, contingent capacity. An animal that is motivated to prevent another animal from being hurt may not be motivated to prevent the same from being stolen from, or even painlessly killed; alternately, an animal that is motivated to prevent all of these things normally may fail to be so motivated when they are hungry or distracted. Furthermore, as discussed previously, animals might be more consistent at moderating their own behavior than sanctioning the behavior of others for various epistemic and pragmatic reasons.

But while I grant that animals' capacities for responding to moral reasons are plausibly local, I reject the premise that a global capacity to respond to moral reasons is necessary for punishment to be justified. When circumstances *do* permit the exercise of an animal's (local) moral capacity, it follows that animal should be held liable for failing to act as they ought (commensurate with their ability to have acted otherwise). This is in line with how we think about human agency and responsibility. A man with an impulse control disorder, for example, might be unable to consistently respond to reasons not to steal. Nonetheless, he may be able to consistently respond to reasons generated by the welfare of others, and, for that reason, he can be held responsible for striking a mall cop who catches him stealing even if he is in some sense not responsible for the theft itself. To the extent that we can single out a range of circumstances within which an animal moral agent is responsive to moral reasons (which is no small feat), then within that range one is licensed to punish the animal's performance accordingly. Thus, *if* we can meet the largely empirical burden of establishing these local spheres of moral competence in animal species, then we will still face situations where we have reason to punish.

So although an objection to animal moral responsibility on the basis of an animal's global moral inconsistencies cannot succeed on its own, it can make some traction in that as the range of cases where ANIMAL MORAL AGENCY obtains narrows, so too does the range of cases in which HUMAN PUNISHERS is potentially in effect.

What of animals' other shortcomings? Might we turn to them to argue that even animal moral agents operating fully within their local spheres of moral competence are not liable for their wrongdoing such that we ought to punish them? A retributivist might have more luck avoiding HUMAN PUNISHERS by invoking certain strategies that have been used to shield young children and the criminally insane from retributivist punishment. This strain of response is in keeping with the standard retributivist literature, which typically endorses a relatively high punishment liability threshold, one that children are often thought to be incapable of meeting because of low intelligence, irrationality, or poor impulse control. Yet insofar as an animal moral agent *is* a moral agent as regards some particular act of wrongdoing, then low intelligence, irrationality, or poor impulse control won't suffice to *fully* excuse their behavior. However, these factors can certainly be *mitigating*, perhaps even substantially so, and perhaps even enough to bring them below the liability threshold for punishment. This position is in parallel with that of those courts and legal scholars who have argued that diminished rationality only mitigates or partially excuses criminal culpability in the case of human offenders (e.g., *Atkins v. Virginia* 2002; Morse 2003; Steinberg and Scott 2003). But see also Cynthia Ward's provocative arguments that even children as young as six can sometimes meet the standard of *mens rea* when they act deliberately and with knowledge of the inflicted harm (2006). Depending on where the retributivist stands on these matters, this is a promising tactic for the retributivist looking to secure moral animal agents a more complete reprieve from punishment.

It should be stressed, however, that a retributivist who takes this approach walks a fine line in holding both that some animals are moral agents and these animals' diminished mental capacities excuse them from punishment.

The comparison to the status of children is illuminating here. Consider, for example, the active “children’s rights movement” of the 1970s and 1980s, which sought and won various legal victories on behalf of minors, such as the right to procure an abortion without parental consent. A major part of these activists’ strategy was to draw on work in psychology and the social sciences that showed adolescents were less impulsive and more rational than previously assumed. The successes these activists achieved by this strategy, however, had spiraling consequences, as the very same research was soon used to argue on behalf of stricter punishments for children, and even for the abolishment of a separate juvenile justice system.

As Elizabeth Cauffman and colleagues write (1999), the children’s rights movement’s appeal to the rational agency of the young proved a “double-edged sword,” for “[h]ow could adolescents be mature enough to make their own decisions about abortion, but not mature enough to face the consequences of committing armed robbery or using marijuana?”¹¹ Similarly, those who want to argue that animals can respond to moral reasons as agents but are not morally responsible may not be able to easily have their cake and eat it, too. Research suggesting animals are capable of genuine altruism or malice, especially when coupled with recent, more general work on animal rationality and decision-making, might just as easily be repurposed to argue that those animals are liable for the consequences of their actions.

Furthermore, although there are various conceptions of moral agency at large in the literature, a great deal of them are inextricably linked with moral responsibility. Take Mark Rowlands’ definition, for example, according to which “X is a moral agent if and only if X is (a) morally responsible for, and so can be (b) morally evaluated (praised or blamed, broadly understood) for, his or her motives and actions” (2013). On conceptions such as Rowlands’s, agency and moral responsibility really cannot come apart, and so the retributivist who holds (as Rowlands does not) that some animals are moral agents will still need to contend with the question of punishment.

For these reasons, although the considerations raised above may be of some help for retributivists who want to accept ANIMAL MORAL AGENCY but reject some of its less-savory consequences, I think it’s equally as likely that they will lead retributivists to rethink their commitment to ANIMAL MORAL AGENCY in the first place.

7. Punishment as communication

I shall now discuss one final way the retributivist might block HUMAN PUNISHERS on principled grounds while preserving a commitment to ANIMAL MORAL AGENCY. The retributivist can hold that the expressive or communicative character of punishment is what justifies its exercise. For example, according to one advocate of such a view, R. A. Duff, the hard treatment of punishment is “a material and forceful expression of the apology that [the wrongdoer] owes to those whom she wronged—to the direct victim of her crime, if there was one, and to the wider community whose values she flouted” (2003).¹² Punishment is a “reciprocal and rational” engagement with the offender, who “is expected (but not compelled) to understand that he committed a wrong for which the community now properly censures him” (Duff 2001).

In the case of animal wrongdoers, the difficulty with HUMAN PUNISHERS on this kind of communicative account is straightforward: we cannot reasonably expect an animal wrongdoer to understand that whatever hard treatment we might mete out is meant as censure. On a communicative retributivist view, an animal may well be capable of acting wrongly or rightly, and may well be

¹¹This historical background and the quotation from Cauffman, Woolard, and Reppucci are drawn from Ward (2006), where a longer discussion can be found on the interesting dilemmas faced by the children’s rights movement.

¹²Duff’s account is but one version of communicative retributivism; for other contemporary philosophers who defend some version of the view see von Hirsch (1993), Bennett (2008), and Markel (2011, 2012). See also Hegel who isn’t strictly speaking a communicative retributivist, but for whom an important function of punishment is to honor the offender by recognizing him as a rational being (de Bois-Pedain 2016; Hegel 1821).

responsible for their actions accordingly, but what matters for *punishment* is not just whether one is a responsible agent. Even if a moral animal could understand some part of this, their comprehension would certainly fall short of what is required for their punishment to constitute a genuinely reciprocal and rational engagement. Thus, for the communicative retributivist, ANIMAL PUNISHMENT cannot be justified, and thus HUMAN PUNISHERS need not follow from ANIMAL MORAL AGENCY.

This is a promising way forward for the retributivist, but, depending on one's views, may be bittersweet. As Joel Feinberg eloquently puts it, for many retributivists “the ultimate justifying purpose of punishment is to match off moral gravity and pain, to give each offender exactly that amount of pain the evil of his offense calls for, on the principle of justice that the wicked should suffer pain in exact proportion to their turpitude” (1965). A retributivist who concurs with this sentiment may find it uncomfortable or at least unfortunate that there should exist a great many wrongdoers whose turpitude must be left unanswered in virtue of their failures to satisfy the cognitive preconditions for communicative engagement.

8. Summing up

If the literature concerning the moral animal is to develop, we must increasingly discuss not only whether some animals are moral but also whether they are moral agents, and what it would mean for human beings if they were.

I hope to have shown that a commitment to the existence of animal moral agents comes at a cost for the retributivist about punishment. The retributivist who accepts that some animals are moral agents but prefers not to take up the mantle of punishing animal wrongdoers must, if they have not already, adopt a version of retributivism that allows them to avoid it, such as communicative retributivism. Alternately, perhaps the retributivist *will* take up the mantle, in which case they might suffer some minor derision, but will at least not need to reconcile themselves to the existence of blameworthy agents whom they cannot in principle punish—only ones whom they cannot (as yet) practically punish.

Acknowledgments. I owe a great deal to the unsurpassable Doug Husak, without whom this paper would never have been written. The others who influenced me during its long development are far too many to list here but, suffice it to say, I have been extraordinarily blessed by my mentors, colleagues, and friends—and, in the case of this paper, by my reviewers at this journal.

Eli Shupe is an assistant professor in the Department of Philosophy and Humanities at the University of Texas at Arlington. She works primarily on issues in ethics and the philosophy of mind.

References

- Andrews, Kristin, and Lori Gruen. 2014. “Empathy in Other Apes.” In *Empathy and Morality*, edited by Heidi L. Maibom. Oxford: Oxford University Press.
- Atkins v. Virginia. 2002. 260 Va. 375, 534S. E. 2d 312.
- Aureli, Filippo, Roberto Cozzolino, Carla Cordischi, and Stefano Scucchi. 1992. “Kin-Oriented Redirection among Japanese Macaques—An Expression of a Revenge System?” *Animal Behaviour* 44 (2): 283–91.
- Bartal, Inbal Ben-Ami, Jean Decety, and Peggy Mason. 2011. “Empathy and Pro-Social Behavior in Rats.” *Science* 334 (6061): 1427–30.
- Bekoff, Mark. 2004. “Wild Justice and Fair Play: Cooperation, Forgiveness, and Morality in Animals.” *Biology and Philosophy* 19 (4): 489–520.
- Bekoff, Mark, and Jessica Pierce. 2009. *Wild Justice: The Moral Lives of Animals*. Chicago: University of Chicago Press.
- Bennett, Christopher. 2008. *The Apology Ritual: A Philosophical Theory of Punishment*. Cambridge: Cambridge University Press.
- Berridge, Kent C. 2003. “Comparing the Emotional Brain of Humans and Other Animals.” In *Handbook of Affective Sciences*, edited by R. J. Davidson, K. R. Scherer, and H. H. Goldsmith, 25–51. New York: Oxford University Press.
- Brosnan, Sarah. F., and Frans B. M. De Waal. 2003. “Monkeys Reject Unequal Pay.” *Nature* 425 (6955): 297–99.

- Brosnan, Sarah F., Hillary C. Schiff, and Frans B. M. De Waal. 2005. "Tolerance for Inequity May Increase with Social Closeness in Chimpanzees." *Proceedings of the Royal Society B: Biological Sciences* 272 (1560): 253–58.
- Call, Josep, and Michael Tomasello. 1999. "A Nonverbal False Belief Task: The Performance of Children and Great Apes." *Child Development* 70 (2): 381–95.
- Call, Josep, and Michael Tomasello. 2008. "Does the Chimpanzee Have a Theory of Mind? 30 Years Later." *Trends in Cognitive Sciences* 12 (5): 187–92.
- Cauffman, Elizabeth, Jennifer Woolard, and N. Dickon Reppucci. 1999. "Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability." *Quinnipiac Law Review* 18: 403.
- Church, Russell M. 1959. "Emotional Reactions of Rats to the Pain of Others." *Journal of Comparative and Physiological Psychology* 52 (2): 132–34.
- Clark, Stephen R. L. 1984. *The Nature of the Beast: Are Animals Moral?* New York: Oxford University Press.
- Clement, Grace. 2013. "Animals and Moral Agency: The Recent Debate and Its Implications." *Journal of Animal Ethics* 3 (1): 1–14.
- Clutton-Brock, Tim H., and Geoffrey A. Parker. 1995. "Punishment in Animal Societies." *Nature* 373 (6511): 209–16.
- DeGrazia, David. 1996. *Taking Animals Seriously: Mental Life and Moral Status*. Cambridge: Cambridge University Press.
- DeGrazia, David. 1997. "Great Apes, Dolphins, and the Concept of Personhood." *Southern Journal of Philosophy* 35 (3): 301–20.
- De Waal, Frans B. M. 1996. *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*. Cambridge, MA: Harvard University Press.
- De Waal, Frans B. M., Kristin Leimgruber, and Amanda R. Greenberg. 2008. "Giving Is Self-Rewarding for Monkeys." *Proceedings of the National Academy of Sciences* 105 (36): 13685–89.
- De Waal, Frans B. M. 2009. *Primates and Philosophers: How Morality Evolved*. Princeton, NJ: Princeton University Press.
- Dixon, Beth A. 2008. *Animals, Emotion, and Morality: Marking the Boundary*. Amherst, NY: Prometheus Books.
- du Bois-Pedain, Antje. 2016. "Hegel and the Justification of Real-World Penal Sanctions." *Canadian Journal of Law and Jurisprudence* 29: 37–70.
- Duff, R. A. 2001. *Punishment, Communication, and Community*. Oxford: Oxford University Press.
- Duff, R. A. 2003. "Penance, Punishment and the Limits of Community." *Punishment and Society* 5 (3): 295–312.
- Duff, R. A. 2014. "Towards a Modest Legal Moralism." *Criminal Law and Philosophy* 8: 217–35.
- Feinberg, J. (1965). The expressive function of punishment. *The Monist*, 49(3), 397–423.
- Fischer, Joel M. 1999. "Recent Work on Moral Responsibility." *Ethics* 110 (1): 93–139.
- Fitzpatrick, Simon. 2017. "Animal Morality: What Is the Debate About?" *Biology and Philosophy* 32: 1151–83.
- Flack, Jessica C., and Frans B. M. De Waal. 2000. "'Any Animal Whatever': Darwinian Building Blocks of Morality in Monkeys and Apes." *Journal of Consciousness Studies* 7 (1–2): 1–29.
- Girgen, Jen. 2003. "The Historical and Contemporary Prosecution and Punishment of Animals." *Animal Law Review at Lewis and Clark Law School*.
- Goodall, Jane. 1982. "Order without Law." *Journal of Social and Biological Systems* 5 (4): 353–60.
- Gowans, Chris. 2004. "Moral Relativism." In *The Stanford Encyclopedia of Philosophy* (Spring), edited by Edward N. Zalta. <https://plato.stanford.edu/archives/spr2021/entries/moral-relativism/>.
- Gruen, Lori. 2002. "The Morals of Animal Minds." In *The Cognitive Animal: Empirical and Theoretical Perspectives on Animal Cognition*, edited by Marc Bekoff, Colin Allen, and Gordon M. Burghardt, 437–42. Cambridge, MA: MIT Press.
- Hare, Brian, Josep Call, and Michael Tomasello. 2001. "Do Chimpanzees Know What Conspecifics Know?" *Animal Behaviour* 61 (1): 139–51.
- Hegel, Georg Wilhelm Friedrich. 1821. *The Philosophy of Right*. Translated by T. Knox. London: Oxford University Press, 1942.
- Jensen, Keith, Josep Call, and Michael Tomasello. 2007. "Chimpanzees Are Vengeful but Not Spiteful." *Proceedings of the National Academy of Sciences* 104 (32): 13046–50.
- Kant, Immanuel. 1797. *The Metaphysics of Morals*. Translated by Mary Gregor. Cambridge: Cambridge University Press, 1991.
- Kawai, Nobuyuki, Miyuki Yasue, Taku Banno, and Noritaka Ichinohe. 2014. "Marmoset Monkeys Evaluate Third-Party Reciprocity." *Biology Letters* 10 (5): 20140058.
- Korsgaard, Christine M. 2006. "Morality and the Distinctiveness of Human Action." In *Primates and Philosophers: How Morality Evolved*, edited by Josiah Ober, 98–119. Princeton, NJ: Princeton University Press.
- Krachun, Carla, Malinda Carpenter, Josep Call, and Michael Tomasello. 2010. "A New Change-of-Contents False Belief Test: Children and Chimpanzees Compared." *International Journal of Comparative Psychology* 23 (2): 145–65.
- Lakshminarayanan, Venkat R., and Laurie R. Santos. 2008. "Capuchin Monkeys Are Sensitive to Others' Welfare." *Current Biology* 18 (21): R999–R1000.
- Locke, John. 1689. *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government*. Edited by Richard Cox. Hoboken, NJ: Wiley, 2014.
- Lyons, David. 1976. "Ethical Relativism and the Problem of Incoherence." *Ethics* 86 (2): 107–21.
- Markel, Dan. 2011. "What Might Retributive Justice Be?" In *Retributivism: Essays on Theory and Policy*, edited by Mark D. White, 49–72. New York: Oxford University Press.

- Markel, Dan. 2012. "Making Punishment Safe for Democracy: A Reply to Professors Bowers, Cahill and Duff." *Virginia Journal Criminal Law* 1(1): 205–63.
- Masserman, Jules H., Stanley Wechkin, and William Terris. 1964. "'Altruistic' Behavior in Rhesus Monkeys." *The American Journal of Psychiatry* 121 (6): 584–85.
- Monsó, Susana. 2015. "Empathy and Morality in Behaviour Readers." *Biology and Philosophy* 30: 671–90.
- Moore, Michael S. 2010. *Placing Blame: A General Theory of the Criminal Law*. Oxford: Oxford University Press.
- Morgan, Conwy Lloyd. 1894. *An Introduction to Comparative Psychology*. London: W. Scott.
- Morse, Stephen J. 2003. "Diminished Rationality, Diminished Responsibility." *Ohio State Journal of Criminal Law* 1 (1): 289–308.
- Musschenga, Bert. 2013. "Animal Morality and Human Morality." In *What Makes Us Moral? On the Capacities and Conditions for Being Moral*, edited by Bert Musschenga and Anton van Harskamp. Dordrecht: Springer.
- Musschenga, Albert W. 2015. "Moral Animals and Moral Responsibility." In *Les ateliers de l'éthique/The Ethics Forum* 10 (2): 38–59.
- Palagi, Elisabetta, and Ivan Norscia. 2013. "Bonobos Protect and Console Friends and Kin." *PLoS One* 8 (11): e79290.
- Panksepp, Jaak. 1998. *Affective Neuroscience: The Foundations of Human and Animal Emotions*. New York: Oxford University Press.
- Peterson, Dale. 2011. *The Moral Lives of Animals*. New York: Bloomsbury Press.
- Pluhar, Evelyn. 1995. *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals*. Durham, NC: Duke University Press.
- Preston, Stephanie D., and Frans B. M. De Waal. 2002a. "Empathy: Its Ultimate and Proximate Bases." *Behavioral and Brain Sciences* 25 (1): 1–20.
- Preston, Stephanie D., and Frans B. M. de Waal. 2002b. "The Communication of Emotions and the Possibility of Empathy in Animals." In *Altruistic Love: Science, Philosophy, and Religion in Dialogue*, edited by Stephen G. Post, Lynn G. Underwood, Jeffrey P. Schloss, and William B. Hurlbut, 284–308. Oxford: Oxford University Press.
- Reid, Mark D. 2010. "Moral Agency in Mammalia." *Between the Species* 13 (10): 1.
- Riedl, Katrin, Keith Jensen, Josep Call, and Michael Tomasello. 2012. "No Third-Party Punishment in Chimpanzees." *Proceedings of the National Academy of Sciences* 109 (37): 14824–29.
- Rome Statute of the International Criminal Court. 1998. UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.
- Rowlands, Mark. 2011. "Animals That Act for Moral Reasons." In *The Oxford Handbook of Animal Ethics*, edited by Linda Kalof, 519–46. New York: Oxford University Press.
- Rowlands, Mark. 2012. *Can Animals Be Moral?* Oxford: Oxford University Press.
- Rowlands, Mark. 2013. "Animals and Moral Motivation: A Response to Clement." *Journal of Animal Ethics* 3 (1): 15–24.
- Sapontzis, Steve F. 1987. *Morals, Reason, and Animals*. Philadelphia: Temple University Press.
- Schino, Gabriele, and Filippo Aureli. 2009. "Reciprocal Altruism in Primates: Partner Choice, Cognition, and Emotions." *Advances in the Study of Behavior* 39: 45–69.
- Schino, Gabriele, and Matteo Sciarretta. 2015. "Effects of Aggression on Interactions between Uninvolved Bystanders in Mandrills." *Animal Behaviour* 100: 16–21.
- Shapiro, Paul. 2006. "Moral Agency in Other Animals." *Theoretical Medicine and Bioethics* 27 (4): 357–73.
- Silk, Joan B. 2007. "Empathy, Sympathy, and Prosocial Preferences in Primates." In *Oxford Handbook of Evolutionary Psychology*, edited by Louise Barrett and Robin Dunbar, 115–26. New York: Oxford University Press.
- Srivastava, Anila. 2007. "Mean, Dangerous, and Uncontrollable Beasts: Mediaeval Animal Trials." *Mosaic: A Journal for the Interdisciplinary Study of Literature* 40 (1): 127.
- Steinberg, David. 2020. "Immoral-like Behavior in Animals." In *The Multidisciplinary Nature of Morality and Applied Ethics*, 37–44. Springer, CHAM.
- Steinberg, Laurence, and Elizabeth S. Scott. 2003. "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty." *American Psychologist* 58 (12): 1009.
- Tilley, John J. 2000. "Cultural Relativism." *Human Rights Quarterly* 22 (2): 501–47.
- Von Hirsch, Andrew. 1976. *Doing Justice: The Choice of Punishments*. New York: Hill and Wang.
- Von Hirsch, Andrew. 1993. *Censure and Sanctions*. Oxford: Oxford University Press.
- Wallace, R. Jay. 1994. *Responsibility and the Moral Sentiments*. Cambridge, MA: Harvard University Press.
- Ward, Cynthia V. 2006. "Punishing Children in the Criminal Law." *Notre Dame Law Review* 82 (1): 429.
- Wrangham, Richard, and Dale Peterson. 1996. *Demonic Males: Apes and the Origins of Human Violence*. Boston: Houghton Mifflin.