

## The Ethics of Whaling : Key Aspects of the Debate

著者 (英)	Jes Lynning Harfeld
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## **The Ethics of Whaling: Key Aspects of the Debate**

**Jes Lynning Harfeld**  
*Aalborg University, Denmark*

### **1. Introduction**

In this paper I will present the current status of the ethical debate about whaling. In reality such an endeavor is not possible within the limits of a single article. Thus, I will sketch out a number of leitmotifs that I believe to be central to the debate. Before I do this, however, I believe a very short introduction to academic ethics as such is warranted. In secular academia, philosophy is one of the few disciplines to take the idea of ethics in itself seriously. Anthropologists, sociologists, historians and even economists take ethics very seriously in descriptive ways. That is, these disciplines are interested in the ethical thinking of various human beings and take great pains to describe it precisely and perhaps develop theories about its causality or meaning in certain circumstances. However, very few disciplines other than secular academic philosophy take the internal structures of normative – prescriptive – ethical theory seriously and insist on investigating and developing them in and of themselves. Or as Simon Blackburn writes:

Philosophy is certainly not alone in its engagement with the ethical climate. But its reflections contain a distinctive ambition. The ambition is to understand the springs of motivation, reason, and feeling that move us. It is to understand the networks of rules or ‘norms’ that sustain our lives. The ambition is often one of finding system in the apparent jumble of principles and goals that we respect, or say we do. It is an enterprise of self-knowledge (Blackburn 2002: 5).

It is not enough for the philosopher – the ethicist – to ask what kind of beliefs about right and wrong, just and unjust, values and virtues are at play among individuals or groups of humans. The ethicist insists on asking whether or not these normative beliefs are correct. Are there any good arguments in place to defend or oppose certain normative beliefs? What good reasons do we have to support one type of action and abandon others? In short, from Aristotle to Peter Singer: What ought we to be and do?

The above is also part of the reason why it is so important to differentiate between the public debate on the one hand and the academic philosophical debate on the other. Although the two debates overlap in many instances, it is, as will be made clear below,

important to differentiate between them because of their different starting points and different goals. This differentiation will be the focus of the first section of the paper. The second section focuses on the distinction between different kinds of moral status and different kinds of justification for the moral status of animals. The third section gives a brief view of the current academic debate on animals in environmental ethics, while section four returns to delve deeper into the question of moral status and the subjective identities of whales and possible ethical ramifications. Section five addresses the arguments in the debate about indigenous subsistence whaling and the problems stemming from the collision of indigenous rights and animal ethics. In conclusion I argue that we must take two of philosophy's core aspects to heart in any future meaningful debate. We must structure the debate to aim at the truth (or the pursuit of truth) instead of winning the next argument. And we must take seriously the notion of ethics as something that can be discussed across cultures and species as a normative, not just a descriptive element. Finally, we must achieve much greater clarity and vigilance in our understanding and our use of the different key concepts in the debate.

## 2. Activists and Ethicists

One of the main points of confusion surrounding the debate on whaling ethics is caused by the failure to distinguish between activist agendas and academic agendas. This is an understandable confusion since a number of prominent academic voices have lent their name, expertise and credibility to activist courses and events. The reason for this cross-over is quite simply that the outcomes or suggested actions of activists and academic ethicists alike are sometimes the same. A ban on commercial whaling, for example, would be conceived as the preferred – or indeed the morally necessary – action from the viewpoint of Kantian animal ethicist Tom Regan (Regan 2011: 38) as well as that of the Sea Shepherd Conservation Society. There is, however, a fundamental difference between the possible reasoning of academic ethical conclusions and activist conclusions, respectively. The latter can and indeed does come from a number of different sources and can be shaped by literally any kind of belief. Supporters of NGOs that work to combat whaling can do so on grounds that are implausible or simply false. They can believe that all whales are threatened by extinction, or that whales are 'exactly like humans', or that God/gods command us to not hunt whales. They can also base their beliefs on wildly inconsistent views, e.g. that whaling should be stopped since it causes pain or harm, but not hold that pain and harm caused to industrial animal farming requires similar actions. Now many – perhaps most – whaling activists reason on the basis of beliefs that are neither epistemologically unsound nor inconsistent. Let us call it case-driven.

Academic philosophers working with ethics typically arrive at conclusions about practical solutions in human-animal interactions or even activism in a very roundabout way. You might call this the argument-driven or theory-driven process. Philosophers<sup>1)</sup> have as their main focus to investigate the structure, the arguments and the meanings of claims and theories. No amount of passion for animals makes a person start studying and pursuing a career in philosophy in order to apply the achieved knowledge to the

dilemmas of animal ethics.

This means that philosophers, working within the framework of academic philosophy and addressing animal ethics, segue from ethical theory and arguments to the case of animals. First and foremost, this then includes a focus on and allegiance to the theories and the strength and consistency of their internal structures and argumentative validity. The active and systematic academic pursuit of truth and knowledge is the essence of the argument-driven approach.

It would generally be viewed as an unsound philosophical practice and a general academic problem within the philosophical community if an animal ethicist were seen – in respect to her argument – to somehow put the case of activism ahead of the argument and theory. Using cherry-picking or straw-man arguments to support an idea or a certain end (a certain activist cause) would be tantamount to failure as a philosopher or ethicist.

Now within the limits of accepted academic philosophy there are still a great number of disputes on the topic of animal ethics in general and the ethics of whaling specifically. We will look at some of these disputes in the following.

### **3. Animals and Moral Status**

Traditionally, philosophical ethics has been tasked with explaining how we ought to act and why. Also fundamental to any such explanations, however, is the question of ‘who’ any ethical action is and can be aimed at. This is sometimes framed as the question about the identity of the ethical subject or the question of moral status. As an entity, being endowed with moral status means that you ought to be included in the ethical deliberations of others – typically framed as ethical agents. Having moral status does not necessarily mean that you have the same moral significance as other entities or beings, but it does mean that you fulfil the fundamental criteria for direct ethical relevance, i.e. people can act rightly or wrongly towards you ethically. In modern philosophical ethics, moral status is most commonly stipulated from one of two, sometimes overlapping, vantage points. The most famous of these was framed early on by the English utilitarian philosopher Jeremy Bentham (1748–1832), who stated of animals that: “The question is not, Can they reason? nor, Can they talk? but, Can they suffer?” (Bentham 1970: 283). From this starting point utilitarianism became – and still is – one of the strongest challengers of anthropocentrism, i.e. the idea that humans (*anthropos*) are the only or the main relevant beings with moral status. From the point of utilitarianism, it is the suffering that counts, not what kind (e.g., species) the sufferer is. In this view, to claim that suffering is only relevant in humans is an irrational bias on a par with racism or sexism – it is speciesism (Singer 2011: 66). In opposition to this suffering-based view stands the type of argument that derives from thinking that individual rights are the bedrock of moral status. Without opposing the relevance of suffering to ethics as such, rights-thinkers inspired by the deontology of Immanuel Kant have developed arguments in favor of understanding some type of personhood as the fundamental bedrock of moral status. In this view, animals (including humans) can be considered ethically relevant if and only if they can be categorized as what Tom Regan calls “subjects-of-a-life” (Regan

2004a: 243). This and similar rights approaches emphasize the individual's personhood and subjectivity. In general terms, they claim that a great number of non-human animals can be said to express attributes such as self-consciousness, experience of self in time and experience of preferences, and that these attributes are enough to render adequate a meaningful application of subject/person and the intrinsic value that follows such classification. As fiercely anti-speciesist as the utilitarians, rights theorists argue that humans cannot meaningfully hold that they are the only ethically relevant creature due to their status as *homo sapiens*. It is the attributes that go to make up personhood which lead (almost all) humans to have moral status. If this is the case, then these relevant attributes, when present in other species, grant non-human animals similar status.

The birth of modern animal ethics can be traced to the mid- to late 1970s and in particular perhaps the publication of Peter Singer's *Animal Liberation* (Singer 1976) which, although coming from a utilitarian theoretical framework, focuses mainly on arguing for the equal consideration of animals and humans. However, this same period also gave rise to what is currently known as 'environmental ethics', driven by what was seen as a new crisis in the human relationship with the living environment around us and exemplified in popular scientific literature such as the book *Silent Spring* by Rachel Carson (2002), first published in 1962.

To understand the debate about the ethical aspects of whaling it is important to discern between the two different approaches to the topic by (most) animal ethics and (most) environmental ethics. Within the framework of this paper we can describe this as discerning between a whale as type or as token. Linda Wetzel describes this type of discernment thus "[t]he distinction between a type and its tokens is an ontological one between a general sort of thing and its particular concrete instances" (Wetzel 2018). As a type the whale's importance (or primary importance) in an ethical sense is as part of a certain group/species or other holistic sphere. The normative primacy in type arguments is given to the group and the arguments are usually framed within environmental ethics, focusing on the sustainability of hunting. As a token the whale's importance (or primary importance) is in and of itself as an individual conscious being with value in and of itself. Thus, token arguments take on characteristics roughly similar to those of ethical arguments about human actions towards other humans. The focus here becomes different versions of ethics based on welfare and/or rights.

#### 4. Whaling in Environmental Ethics

One of the most enduring ideas to have been advanced during the dawn of environmental ethics is the idea later known as sustainability. Or in the words of one of the founding fathers of environmental ethics: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." (Leopold 1968). This type of thinking is expanded upon by people like J. Baird Callicott (1999) and Mark Sagoff (1988) who, although not individualistic thinkers, are anti-speciesist in their foundational starting point. This type of environmental ethics can incorporate a requirement, in certain circumstances, to lessen the pain of animals or

respect their individual rights. However, the fundamental concern in this approach is more accurately described as looking at types of totalities. In this respect it is what could be described as a holistic approach and/or an approach centring around the interactions and relations of beings and types of beings in the world. According to such a view, in a whaling context we would have to focus mainly on the intrinsic value of the different species (Rolston 1999) and their harmonious coexistence. This harmonious – or sustainable – coexistence includes humans in a non-preferential or upper-hierarchical role. Nevertheless, environmental ethics of this kind would not necessarily condemn whaling. Any whale hunt which is done with respect for the harmony and sustainability of nature would be sanctioned in this view. Not because as humans we have any sort of higher moral value than animals, but because it would be good for the environment – for Nature – of which we, as humans, are also part.

Such an analysis, of course, collides with the token-identity paradigm of animal ethics. Indeed, the schism between understanding the moral status of animals as connected to individuals or to more holistic or non-individual entities and phenomena has acted as a wedge between different sides in the academic philosophical debate for decades. This is famously explored in the environmental ethicist Mark Sagoff's article 'Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce' (1984), where he argues for the virtual incompatibility of the two theoretical foundations.

## 5. Moral Status and Personhood

As much as they disagree, both types of ethical theory acknowledge animals as having moral status of some sort – something which is not clear in the proceedings of IWC, for example, where, according to Robert Garner, they are anthropocentrically thought of as a natural resource on a par with inanimate resources (Garner 2011).

Garner and other animal rights and welfare theorists present a critique of the IWC's tendency to understand the whaling issue within the framework of an anthropocentric environmental ethics that focuses solely on conserving a certain resource for the sake of maintaining "a sustainable stock to allow hunting them to continue" (Garner 2011). The main criticism of seeing whaling through the lens of an entirely anthropocentric environmental ethics is that it disables the notion of the direct ethical relevance of and direct ethical duties towards whales. Whales, in this type of view, can meaningfully enter into ethical considerations, but only as long as their lives, welfare and rights are important for human beings. This sort of claim, especially where clearly sentient and probably highly intelligent animals such as whales are concerned, is virtually non-existent in contemporary ethics. From a secular ethical point of view there is simply no good reason why humans should be directly ethically relevant and whales should not. Now this certainly does not necessarily entail whales or other animals having the same importance or ethical worth as humans, but when debating, adjudicating and judging ethical dilemmas that involve whales it does necessarily entail always considering them as ethical subjects whose rights and welfare may be overruled but never disregarded.

The ethical arguments of animal ethics concerning whales usually include at least

one and often both of the following empirical premises: First of all, whales are considered to be sentient beings. The claim of this premise is that we have accumulated enough evidence from both scientific studies and anecdotal knowledge to infer that whales are creatures that experience things through their senses and have qualitative (emotional) mental states concerning these experiences. In the simplest form, this means that whales can experience pain and pleasure and perhaps a whole range of other feelings similar to land mammals. Animal scientists have found that “sheep are able to experience emotions such as fear, anger, rage, despair, boredom, disgust and happiness” (Veissier et al. 2009) and there is no reason to suspect that the more developed minds of whales could not exceed this. The second empirical premise is less universally accepted in science and philosophy. The claim of this premise is that the accumulated evidence not only points to sentience but also to personhood. Now, the concept of personhood is a much more complex concept than sentience. This and the difficulties in scientifically addressing the concept as a phenomenon in whales and other animals make this premise more difficult to defend. Indeed, the debate about what type of psychological attributes are necessary in order to occasion the existence of personhood is quite multifaceted. Some have traditionally argued that personhood was uniquely a quality of those with a capacity for a certain type of abstract or rational thinking process. This would usually exclude all animals but also children and some mentally disabled humans. This sort of view has been almost entirely surpassed by the establishment of self-consciousness as the foundation upon which personhood rests (Cavalieri 2012). Tom Regan, although a Kantian rationalist, is a proponent of an elaborate definition of self-consciousness underpinning personhood. He defines this through his famous idea about some animals, including humans, being “subjects-of-a-life” (Regan 2004a: 143). In his theory Regan defines a person (or subject-of-a-life) as that which is not merely alive and sentient.

To be a subject-of-a-life is to be an individual whose life is characterized by [having] desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else’s interest (Regan 2004a: 143).

Taking this type of definition as a starting point, we are then supported by a number of scientific discoveries in defining whales – or at least some whales – as persons.

An added point of ethical relevance to personhood in whales would be the fact that they are highly social, one might even say cultural, animals (Whitehead 2003). They are animals who know and care not only for their offspring and closest relatives but also for their fellow pod members and thus, due to the additional capability of expansive memory, could risk suffering due to the killing and loss of other whales. To some philosophers the idea of such community-based suffering inflicted by whaling even provokes arguments for characterizing whaling as a “genocidal practice” (Cavalieri 2012).

Although quite a lot of evidence suggests that whales' brains have developed to the same degree and qualitative complexity (Marino et al. 2003), we will always be stuck with the very real challenge of what philosophers call the problem of other minds. With our current scientific methods we are simply not yet capable of directly accessing the experiential states that other non-human animals have. These states are sometimes called "qualia" (Crane 2000) and are the way that it is for a being to be that being. However, this is also a problem we fundamentally have with other humans. If someone tells me that she is in pain, I have no way of directly accessing or assessing this experience. In humans, however, especially when it comes to rudimentary experiences such as pain, we typically have a very elaborate communication process to rely on. The person tells me that she is in pain. Nonetheless, I might never know whether she was lying or I misunderstood her. Qualia is not directly observable, thus the experiences of being oneself and all the other aspects of a life from within must be addressed as assumptions springing from our best knowledge of the observable facts available and our own experiences as subjects-of-a-life. There would be much wisdom in doing so with a fair margin and giving the beings in question the benefit of the doubt to some extent.

## 6. Subsistence Versus Commercial Whaling

Both type and token premises and arguments come into play when discussing what is perhaps the most divisive area of the ethics of whaling: the differences between commercial and (indigenous) subsistence whale hunting. We must become much clearer on the meaning of such concepts as 'commercial', 'indigenous' and 'subsistence' if we are to understand our relationship with the whales and try to answer what kinds of ethical implications this relationship includes.

One of the classic claims in this discussion is that a clear distinction exists between what constitutes commercial whaling and what constitutes subsistence whaling. This is both an empirical claim and a matter of conceptual definitions. Following this claim we often see a more or less well-defined moral claim that subsistence hunting is somehow ethically superior to or 'better' than commercial hunting (Regan 2004b: 113; Singer 2011: 122). Addressing the former claim, we might initially formulate a difference between the two approaches as the difference between (1) a type of whaling that aims (primarily) at producing a commodity to be sold on the open (or semi-open) market and (2) a type of whaling that aims at supplying the whale hunters and their immediate community with food, with or without making very little profit. Although not logically necessary, the concept and definition of subsistence hunting is invariably and intricately interconnected with hunting carried out by groups of people who are identified and self-identify as indigenous.<sup>2)</sup> The International Whaling Committee (IWC), for example, never uses the concept of subsistence – and differentiates it from commercial whaling – without emphasizing its embeddedness in the concept of indigenous or aboriginal:

From the outset, the IWC recognised that indigenous or aboriginal subsistence whaling is not the same as commercial whaling. Aboriginal whaling does not seek to maximise



catches or profit. It is categorised differently by the IWC and is not subject to the moratorium. The IWC recognises that its regulations have the potential to impact significantly on traditional cultures, and great care must be taken in discharging this responsibility (IWC 2019).

To the Arctic anthropologist Mark Nuttall, this correlation between subsistence and indigenous identity is not sufficient due to its lack of emphasis on the depth of the indigenous cultural identity and the subsistence hunting that is carried out in, for example, the Arctic.

In his understanding,

subsistence is a way of life bound up with the harvesting of renewable resources. Subsistence encapsulates an intricate web of human-environmental relations, irrespective of what kinds of technology are used, or whether the food that is produced is consumed by the hunters and his [sic] household directly, or whether it is shared, traded or sold beyond the local community (Nuttall 1998: 104).

This definition by Nuttall takes the concept of subsistence beyond the scope of the need-based definitions provided by the IWC and described by Savelle and Kishigami (2013). It also releases the concept of subsistence from being situated as an almost intrinsic opposition to commercialism. As soon as sale beyond the immediate community is introduced then at least this is a simple level of commercial action. It is a type of commercial action that still might not fit the idea of IWC's "maximise catches or profit", but commercial nonetheless. All this points to the fact that both the ontological (and definition) aspects and the moral aspects of the difference between subsistence and commercial whaling must be found in the difference between indigenous whaling and non-indigenous whaling.

I have written previously on the connotations and arguments underlying various views of this perceived difference (Harfeld 2017). The two main approaches to the claim that subsistence whale hunting (i.e., indigenous hunting) is morally superior or more defensible than non-indigenous whaling are based on (1) the idea of a special and morally significant link between nature and indigenous peoples and (2) the concept of indigenous rights. I will address the former first as I think it is the less defensible position of the two. The idea of the noble savage is deeply embedded in both the popular culture of the West – e.g. the Na'vi people of James Cameron's blockbuster movie *Avatar* – and in some of the rhetoric in the debate on indigenous hunting (Rowland 2004). At the core of the idea of the noble savage lies what could be described as an essentialist normative quality. By this I mean to point to the purported nobility of the uncivilized. This view supposes that their simplicity and purity (unadulterated by influences of urban-based civilizations) entail a basic human goodness, and in the context of the present theme a certain goodness towards nature and animals. As a concept the noble savage has been thoroughly dismantled empirically and discredited academically. However, a number of similarities crop up in the discussions about indigenous peoples

and indigenous hunting practices especially.

According to the Greenlandic theologian and politician Finn Lynge there is an intrinsic content to the hunting cultures of the Arctic that inhibits unethical actions (Lynge 1992: 25). He goes on to state that “[i]n genuine hunting cultures of the past, as well as in those still in existence, the ethical dimension is inherent in the respect that hunters show their prey” (Lynge 1992: 24). I believe this sort of argument to be both analytically flawed and quite detrimental to the respect for and rights of the indigenous peoples. It is analytically flawed because it relies, first of all, on an empirical premise (i.e. indigenous cultures’ and peoples’ innate goodness) that is highly implausible and unsupported by the evidence. Secondly, the notion is racist. It implies that belonging to a certain ethnicity or culture imbues one with essential attributes. Such ideas can be and have been used to justify a number of differential treatments and segregations.

Unlike the indigenous essentialist argument, the argument stemming from the concept of indigenous rights seems to work along generally more universally acceptable lines of thought. This approach starts from the premises of protective rights for imperilled or subjugated groups of people. The United Nations Declaration on the Rights of Indigenous Peoples (UN 2007) aims at protecting indigenous peoples in terms of past and present suffering and injustices. The historical subjugation of indigenous peoples and the suppression and sometimes eradication of their cultural traditions warrant an increased focus on their rights. However, such an increased focus on specific peoples’ specific rights is bound to clash not only with the more universal aspects of other human rights views, but also with rights views that go beyond the species boundary. Article 26.2 of the above-mentioned declaration specifies that “[i]ndigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership” (UN 2007); and both Lynge (1992: 5) and Nuttall (1990: 242) see almost any opposition to hunting of animals<sup>3</sup>) as a threat to indigenous rights and cultural survival. However, this then leads on to the question about the primacy of rights when rights collide. If certain indigenous norms and subsequent actions within the framework of UN indigenous rights collide with other human rights or with the rights of animals – or even the environment as such, what are we to do? Or to frame the question using Alasdair Cochrane’s words: “Must we pay any price for the sake of respecting the norms [and special rights] of communities” (Cochrane 2010: 86) – especially when these collide fundamentally with rights and interests of other humans and non-humans? Well, in some cases this certainly seems not to be the case. The cultural norms and actions (some of them indigenous) surrounding female genital mutilation, for example, are vehemently opposed through the UN’s interpretation of the rights of children. This shows us that even at the highest level of policy and political debate indigenous rights are not considered a trump card. At most, the special cultural and individual vulnerability of the indigenous peoples gives rise to a demand for specific and increased attention to their interests and rights. However, when Lynge and Nuttall criticize animal ethicists (and animal rights NGOs) they do seem to think that indigenous cultural survival always outweighs animal interests and rights in all aspects, and the interests and rights of those humans opposed to, for example, whaling. As I have shown elsewhere (Harfeld 2017),

this places far too much weight on an essentialist cultural identity understanding and, furthermore, considering the FGM case, it seems to be at least disproved as a general and universal theory. It is not that animal ethicists deny that we should pay specific and even increased attention to indigenous rights. Indeed, many of the theories that lead animal ethicists to conclusions in support of protecting animals also lead to conclusions about protecting and ensuring the welfare of humans in poverty and under oppression (Singer 2010). It is just that animal ethicists deny that indigenous – and indeed human – interests and rights are the only interests and rights with a bearing and heavy weighting in hunting and whaling issues.

## 7. Conclusion

What are we to make of the debate on animal ethics as it pertains to whaling? First of all, we must approach it and appreciate it as a genuine philosophical debate. By this I mean two things: First, to be a good debate in this framework it must have at its core the love (philo) of wisdom (sophía) or perhaps, in more modern parlance, the pursuit of truth. This differentiates it from the sophist pursuit of winning arguments and some of the purely goal-consumed types of activism. Second, it must mean taking normativity seriously. It means asking hard questions about what we ought to do and not settle for relativism or pure descriptive moral endeavors.

Furthermore, we must pay far more attention to the words and concepts being used in the debate or be willing to risk running afoul of one another in the debate. For example, both type and token premises and arguments are in play when discussing possibly the most divisive area of whaling ethics: the differences between commercial and (indigenous) subsistence whale hunting. We must develop much greater clarity around the meaning of such concepts as ‘commercial’, ‘indigenous’ and ‘subsistence’ if we are to understand our relationship with whales and try to address what kinds of ethical implications this relationship involves.

## Notes

- 1) Here I am talking mainly about what is sometimes referred to as ‘analytic philosophers’. Like many other fields, the field of philosophy is divided along lines of schools and traditions. Philosophers from certain types of ‘continental schools’ would not fit easily into my explanation here. However, the vast amount of ethicists working with animal ethics are at home in or close to the analytic tradition.
- 2) I will be using the term ‘indigenous’ throughout this paper although some quotes refer rather to ‘aboriginal’. In the context of the present paper I do not distinguish between the two words.
- 3) In the UN indigenous charter animals are, somewhat disconcertingly, covered by the term ‘resources’.

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