

# The Political Status of Nonhuman Animals

by

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Department of Philosophy  
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## Abstract

In this dissertation, I make the case that other animals are political subjects and I offer new proposals for how we should understand the political statuses of different groups of animals. In part one I make the case that other animals should be seen as having full political standing. First, I argue that all conscious individuals have certain basic moral rights and I defend this position against various objections. Once we recognize these rights, I argue that protecting and upholding them requires extending to all conscious animals full political standing, which involves legal rights, legal standing, and some form of institutionalized political representation. In part two of my dissertation, I argue that adequately understanding our collective obligations to different groups of animals (wild, liminal, and domesticated) requires that we think about these groups as having different political statuses. I argue that political categories commonly used in the human case are a poor fit for the interests and unique relations humans have with different groups of animals. For wild and liminal animals, I argue that we need new political

statuses that uniquely capture their interests and our relation to them. I argue that domesticated animals should be seen as our fellow citizens but that their citizenship differs in some important ways from paradigmatic human beings. I close with two important chapters that push discussion of animals in the political sphere to new areas. I consider how the citizenship of domesticated animals relates to that of humans and to claims of equality, and I defend the view that in some public policy areas the state is justified in giving limited priority to humans, while in others it is not. In the concluding chapter, I put forward detailed proposals for how human states might represent the interests of other animals in our political institutions.

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# 1 Introduction

Political philosophy and political theory have been virtually silent on the topic of nonhuman animals and their place in the political sphere. These fields have had so little to say on the topic that if an extraterrestrial intelligence's only knowledge of life on earth came from reading political philosophy and political theory, they might very well conclude that human beings are the only conscious beings who live on this planet. Simply put, until very recently,<sup>1</sup> nonhuman animals have not been on the radar of political theorists. This absence of any significant discussion of nonhuman animals in political theory is striking for a couple of reasons.

First, the absence of any sustained discussion of nonhuman animals by political theorists has occurred despite the burgeoning field of animal ethics. In the last 40 years, following work by notable philosophers such as Peter Singer and Tom Regan, there has been an explosion of work on the moral status of other animals, the nature and extent of the obligations humans have to other animals, and our moral relations with them. As a result, a topic that might have been quickly dismissed or even laughed at not too long ago is now nearly universally considered an important ethical issue by those who work in the field of ethics. Many would go so far as to argue that any normative ethical theory that does not account for direct and substantial obligations to nonhuman animals is not worth taking seriously. And on some specific issues, we find nearly a consensus of those working in ethics: that the suffering of animals matters morally and that factory farming is morally wrong.

Nevertheless, despite these developments, and despite the dramatic shift that has taken place in philosophical ethics regarding the seriousness of our treatment of and relations with other animals, little has made it down the halls from the ethicists to the political philosophers and political theorists. Few political philosophers have considered any of this work's implications for

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<sup>1</sup> Notable exceptions include Donaldson and Kymlicka (2011), Garner (2013), and Nussbaum (2006).

how they approach political theory. When it comes to theories of social justice, for example, the orthodoxy among political theorists holds that all, and only, human beings are the subjects of justice. Strikingly, there has been very little consideration of how our legal and political institutions ought to be changed to better protect nonhuman animals and to consider and promote their interests. If political theorists consider other animals at all, it is usually only as a passing reference, most often to clarify that nonhuman animals fall 'outside the sphere of social justice,' but that we nevertheless have moral obligations to other animals.<sup>2</sup>

The absence of any detailed consideration of nonhuman animals in political theory is also surprising given the rise of the animal protection movement. Political theory has failed to keep pace with current, real-world legal and political developments on this topic. In the last 20 years, remarkable strides have been made to enshrine greater protections for nonhuman animals into law. While in many ways the progress made can be seen as relatively minor in terms of the extent of the protections it affords nonhuman animals, it nonetheless represents an important shift in how animals are viewed under the law.

In the European Union and in many states in the U.S., laws have been passed banning some of the most egregious and harmful practices on factory farms (such as the confinement of hens in battery cages and sows in gestation crates).<sup>3</sup> In recent years, many cities and states have banned the sale of certain animal products (like foie gras). Israel, the EU, and India have passed laws banning testing on animals for cosmetics. Alongside this progress, there has been a push in several different countries to grant legal personhood and legal rights for some nonhuman animals (such as the great apes and dolphins). Recently an orangutan in Argentina was legally recognized as a nonhuman person, successfully won a habeas corpus case, and was moved from a Buenos Aires zoo to an animal sanctuary.<sup>4</sup> Alongside these developments, there is a

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<sup>2</sup> See Barry (1999), p. 95; Rawls (1971), p.512.

<sup>3</sup> See Schaffner (2011) for a helpful overview of the current state of animals and the law.

<sup>4</sup> Almudena (2014, December 3).

growing recognition that the status of legal property is a poor fit for many animals, and in need of update in many areas of law, including family law, trust, and criminal law. Concern over how other animals are treated is, in many states, a widely shared public value, and we have good reason to believe that efforts to expand legal protection for other animals will continue.

Despite the animal protection movement's notable successes, however, the overall prospects for the lives of nonhuman animals on this planet are not good. As the human population grows, humans are using other animals on an unprecedented scale. Every year, humans kill approximately 60 billion land animals for food. Estimates suggest the number of aquatic animals killed yearly for food is in the trillions. And both numbers are projected to increase dramatically in the years to come. The vast majority of these animals (mostly chickens) are raised in ways that cause them significant suffering and that harm them in a variety of ways: most live their lives in severe confinement where they are made to suffer painful body mutilations without anesthesia all the while being denied the conditions needed to exercise and live out their most basic and natural behaviors. At the same time, human expansion has drastically decreased wild animal populations. And the prospects both for individual wild animals and for biodiversity look grim in the face of climate change and a rapidly expanding human population.<sup>5</sup>

We are situated at an interesting and important time for theorizing about the place of animals in the legal and political sphere. Globally, the situation for nonhuman animals is likely to get significantly worse before it gets better, as growth in developing nations like China and India brings an increasing appetite for meat and other animal products. At the same time, however, there are increasing inroads being made by different animals into the legal and political sphere: different ways in which animals are starting to be considered in our legal and political institutions, and where challenges are being raised about how they are currently understood

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<sup>5</sup> See Kolbert (2014).

within the political realm. These changes are happening in different ways: from companion animals such as cats and dogs, who are increasingly viewed as family members and as part of the communities in which they live, to more cognitively sophisticated animals such as the great apes and dolphins, whose use in harmful, non-therapeutic research or confinement in captivity for purposes of human entertainment is increasingly challenged.

My dissertation aims to show that political theory can no longer ignore the place of other animals in the political sphere. I argue that we need to radically rethink how other animals exist in, and relate to, our legal and political institutions and that we must begin to think of other animals in explicitly political terms. Why think this? One central reason concerns our obligations to other animals. Over the last 40 years, very strong arguments have been put forward defending the claim that conscious, nonhuman animals have certain basic moral rights (such as a right not to be made to suffer and a right not to be killed by moral agents). In Chapter 2, I defend the claim that all conscious, nonhuman animals have certain basic moral rights. I argue that there is no way to consistently and plausibly defend the basic moral rights of all conscious humans without extending these rights to nonhuman animals. Attempts to avert this conclusion, I argue, have not been persuasive.

Recognizing the rights of nonhuman animals, I argue, has important implications regarding their place in our legal and political institutions. Respecting the rights of other animals requires that humans must end many of the ways we harm them: humans ought to stop raising and killing animals for food, for their fur and skin, and for many other reasons. These implications are mostly straightforward, and many working in animal ethics have argued that we ought to abolish many of these harmful practices.

Crucially, however, ending animal-use industries that violate the rights of animals is not all that is required once we recognize the rights of other animals. In Chapter 3, I argue that we must rethink how animals fit in and relate to our legal and political institutions. If humans are to

actually protect and uphold the rights of nonhuman animals, we must grant them what I call “full political standing” - a form of legal and political recognition that grants them legal rights that protect their basic moral rights, legal standing so that others may bring suits on their behalf, and some form of institutionalized political representation that protects and upholds their interests.

The first part of my dissertation is meant to get the “foot in the door” when it comes to recognizing other animals as political subjects, whose rights and interests matter to our legal and political institutions. But we should not stop there. The second half of my dissertation turns to the political status of different groups of animals. I argue that the only way we can adequately understand, and fulfill, our collective obligations to other animals is if we begin to think of these animals in explicitly political terms. Animal *ethics* only takes us so far. We can think of our positive obligations to other animals on an individual level. But these questions, I argue, are ultimately best understood as political questions that concern what obligations the state has to different groups of animals.

In this respect, my approach takes a similar track to the group-differentiated approach put forward by Donaldson and Kymlicka in *Zoopolis*. Donaldson and Kymlicka apply the concepts of citizenship theory to three different groups of animals: wild animals, liminal animals, and domesticated animals. I argue that they have correctly identified the best way to group and considered the political status of different animals.

However, I part ways with Donaldson and Kymlicka when it comes to how we conceptualize and understand the political status of these animals. Donaldson and Kymlicka attempt to extend the same political categories used in the human case to nonhuman animals. Domesticated animals, they argue, should be understood as our equal, co-citizens, capable of engaging in forms of political participation. Wild animals should be understood as living in their own sovereign communities, with rights to non-interference. And liminal animals – the animals, like squirrels,

ducks, and coyotes who live in and around human settlements but are not under our direct care – should be understood as denizens.

By contrast, I argue that many of the political categories we utilize in the case of humans are a poor fit for the unique interests of other animals and the unique relations we have with them. Applying political categories that we use in the human case to these animals stretches these concepts too far, in ways that are not especially helpful or illuminating. Instead, I suggest that the challenge posed to political theorizing is to come up with new ways to conceptualize the political status of these different animals.

In Chapter 5, I do this for wild and liminal animals. For wild animals, I propose a Protected Territory Model and I argue this model best captures our obligations to these animals. I defend this view against, on one hand, Donaldson and Kymlicka's Sovereignty Model and, on the other hand, a Laissez-faire approach that denies we have positive obligations to wild animals. Liminal animals, I argue, should be understood as Protected Residents in the cities and settlements in which they live. This approach, I argue, can capture our collective obligations to these animals, without the conceptual baggage carried by a Denizenship approach. Liminal animals face a variety of human-caused harms in the cities and urban areas they live in. The state has an obligation to reduce these harms, while recognizing they have a right to reside in these urban areas.

In the next two chapters I turn my focus to domesticated animals. In Chapter 6, I argue that domesticated animals should be understood as our fellow citizens, who have a right to reside in the states in which they live, the right for their good to inform the public good, and a claim on the distribution of a state's resources. Domesticated animals have been made members of our shared, human-animal societies, and membership is the basis of a moral claim to citizenship. We recognize this in the case of all human beings who are members of a state, regardless of linguistic or intellectual aptitude, and there are no legitimate reasons not to extend citizenship

to domesticated animals as well. Nevertheless, domesticated animals challenge us to clarify and distinguish different ways in which citizenship is enacted. Citizenship is not “one-size-fits-all.” I argue that we must distinguish Citizenship-as-Membership from Citizenship-as-Responsible-Political-Agency. Domesticated animals are citizens of our states, even though they are not capable of fulfilling political responsibilities or being political agents.

In Chapter 7, I focus on two remaining questions not addressed in the previous discussion. First, I consider what practical implications citizenship has for domesticated animals. Although I believe a citizenship approach only provides a framework for addressing these questions, I attempt to fill out this approach by noting some of its most likely implications. Here I consider what demands recognizing domesticated animals as citizens might generate on issues such as legal protection, guardianship, public spaces and mobility rights, and medical care.

The second question I consider concerns how the citizenship of domesticated animals relates to that of humans. I argue that the relationship between the citizenship of humans and that of nonhuman animals cannot be answered simply with appeals to equal value or equal co-citizenship. One of the challenges of incorporating the interests of other animals into the *polis* is that these animals have unique capacities and unique interests that differ in important ways from those of humans.

I argue that while we can and should affirm the equal *value* of nonhuman animals, this affirmation does not always translate into the same *priority* when it comes to public policy. Here I suggest that we can make progress on this issue by addressing the comparative claims of humans and animals in terms of three categories: (1) policy issues where animals and humans have roughly equal interests, (2) policy issues where humans and animals have altogether different interests, and (3) policy areas where humans and animals have similar interests but where some individuals can experience greater harms. If it is the case, as I believe, that most humans are harmed more by death than other animals, this difference is relevant for how we

ought to approach certain public policy issues. I explore what implications this has for certain policy areas.

In Chapter 8, I defend and expand upon the claim that nonhuman animals are owed various forms of political representation, and I consider what forms this representation might take. Here I argue that there are distinct and overlapping reasons why other animals should be represented in our government and legislative bodies. Political representation is needed to uphold and protect the rights of conscious animals, but also is needed to incorporate the interests of domesticated animals into our broader conception of the public good and into various areas of political decision-making. I argue that other animals should be represented in various unelected government bodies, to inform decision-makers, but also in a state's legislature. And I defend the view that special, designated representatives should be reserved in a state's legislature to represent nonhuman animals. These Animal Representatives would run in distinct political parties focused on nonhuman animals and would be elected by the public. Finally, I defend this proposal against a variety of objections.



## 2 The Moral Rights of Animals

In Part One of my dissertation, I defend the claim that other animals deserve to be included in our thinking and theorizing about our legal and political institutions, arguing specifically that they deserve what I have called “full political standing.” This chapter lays the moral foundation for that claim. I argue that other animals have certain basic moral rights – including a right not to be killed and a right not to be made to suffer by moral agents. In Chapter 3, I build on the arguments presented here and argue that these moral rights have implications for how other animals ought to exist in, and relate to, our legal and political institutions. Respecting the basic moral rights of animals requires, at minimum, that we grant other animals full political standing.

### 2.1 The Case for Animal Rights

Rights can be understood as entitlements, or legitimate claims, to certain protections or to certain goods. One important feature of rights is that they entail obligations. If an individual has a right not to be made to suffer, for example, then moral agents are obligated not to make that individual suffer. Importantly, this right cannot be legitimately infringed, simply because doing so would benefit others or promote the greatest good.

The best foundation for securing full political standing for other animals rests on their possessing basic moral rights.<sup>6</sup> The arguments presented in this chapter, in favor of the rights of other animals, have been aptly defended elsewhere.<sup>7</sup> Here I present the best

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<sup>6</sup> However, this is far from the only foundation for securing the full political standing of other animals or for the positions I defend in Part II of my dissertation. These positions are consistent with other views that recognize significant moral obligations to other animals.

<sup>7</sup> Cavalieri (2001), Cochrane (2012), Donaldson and Kymlicka (2011), Regan (2004a).

arguments that other animals have certain basic moral rights (including a right to life and a right not to be made to suffer).<sup>8</sup> I then will show why common objections to animals having these rights fail.

### 2.1.1 Conscious Individuality and Moral Rights

One of the strongest arguments for animal rights begins by examining the rights of human beings. While rights remain philosophically controversial, most accept that all human beings have certain basic rights, including a right to life, a right not to be made to suffer, and a right to not have their movement unjustly restricted. Young or old, rich or poor, tall or short, smart or not-so-smart, all of us have these basic moral rights.

*Nearly* all human beings, that is. The mere fact that an individual is a member of the species *homo sapiens* is not sufficient for that being to have rights. It is controversial, for example, whether embryos, or early-term, non-conscious fetuses have a right to life. And it is controversial, as well, whether anencephalic infants (who lack conscious experience of the world) have rights. The same can be said about humans in a ‘vegetative state,’ where an individual’s body is still alive, but they no longer have, and never will regain, the capacity for conscious, experiential awareness of the world around them.

These cases aside, it is relatively uncontroversial that all conscious human beings, who have already been born, have basic moral rights. These moral rights are codified in law and recognized in every liberal democracy today. What explains, or makes it the case, that all conscious (and already born) human beings have basic moral rights?

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<sup>8</sup> By “basic” I do not mean to suggest that these rights are unexplainable. Rather, I take it that these rights are some of the most crucial or important for any individual, and that respect, on the part of others, of one’s basic rights is something akin to a pre-requisite for living a good life. It is this meaning of “basic” that I am using.

The most plausible answer to this question, I believe, is the fact that all of these human beings are conscious individuals. All conscious human beings are individuals with a subjective experience of the world.<sup>9</sup> As individuals, what happens to them matters for them, even if a particular individual does not have the capacity to reflect on this fact or articulate it to others. Individuals experience the world and have an experiential well-being. Their life can fare well or ill for them.

Once we recognize what grounds basic moral rights in the human case, however, it should become clear that these basic rights extend to other animals. Like all conscious human beings, animals are also individuals who experience the world “from the inside” and whose lives matter for them. Like humans, they have vital interests in freedom from suffering, continued existence, and freedom of movement. Like humans, then, we ought to recognize that they have basic rights not to be made to suffer by human beings, to life, and to freedom of movement (that is, to not be constrained unjustly).

On my view, being a conscious individual is sufficient for the possession of certain important moral rights, including the right not to be made to suffer, the right not to be killed, and the right not to have one’s movement unjustly restricted. Conscious experience of the world is necessary because without it an entity cannot have the interests that these rights protect. Plants and non-sentient animals lack these interests and thus are not the bearers of these rights. Being a conscious individual is sufficient for the possession of these moral rights, however, because having an interest in not suffering, in not being killed, and in not having one’s movement unjustly restricted requires no more than that one is a conscious individual. All embodied, conscious individuals have significant interests in these things and we ought to recognize them as bearers of rights that protect these interests.<sup>10</sup>

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<sup>9</sup> Donaldson and Kymlicka (2011), p.24.

<sup>10</sup> Alasdair Cochrane defends a similar animal rights position, where rights protect significant interests that can confer corresponding duties on others. See Cochrane (2012), Chapter 2.

### 2.1.2 The Argument from Human Diversity

The most common alternative basis for grounding the rights of human beings appeals to personhood, rather than just consciousness, as the basis of moral rights. On this view, conscious experience of the world merits moral consideration but is not enough to ground moral rights. Consciousness is necessary for the possession of these rights, but it is not sufficient. To possess moral rights, one must have the more complex and sophisticated cognitive capacities involved in personhood.

The most important problem confronting this account of the basis of our moral rights has been noted by many animal-rights theorists. Whatever capacity or capacities are thought to be required for personhood (such as rationality, moral agency, the use of complex language, or reflective self-awareness), it will not be the case that *all* human beings have these capacities for the duration of their lives, and many humans will *never* have these capacities.<sup>11</sup> However, if we think that all conscious and born human beings do have basic moral rights, then it appears personhood cannot adequately ground the rights of all human beings. Moreover, animal ethicists' crucial insight is that there is no legitimate way to account for the basic rights of all (born and conscious) human beings while denying the claim that other animals share many of the same rights. Pick any capacity that is said to be required for an individual to possess personhood (rationality, say, or moral agency). For any capacity that is chosen, it is either the case that not all human beings, at all times of their lives, possess this capacity, or it will be the case that many nonhuman animals share this capacity. There are no clear, dividing lines separating the mental lives of all human beings from all nonhuman animals.

This argument, or series of arguments, has unfortunately most often been referred to as

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<sup>11</sup> See Cavalieri (2001), Dombrowski (1997), Donaldson and Kymlicka (2011), and Regan (2004a).

‘The Argument from Marginal Cases.’ This is both a demeaning and misleading name.<sup>12</sup> It is not the case that only a small percentage of human beings (the poorly named “marginal cases”) lack certain cognitive capacities thought to be required for personhood. Individuals with congenital severe intellectual disabilities do lack these capacities for the duration of their lives. But *all human beings* lack them when we are born and in our infancy, some of us will lack them at various points of severe illness during our lives, and many of us will lose them as we near the end of our lives.<sup>13</sup> A more apt name for this argument would be ‘The Argument from Human Diversity.’

Recognizing the force of The Argument from Human Diversity, there is no way to secure the basic moral rights of all human beings while denying that other animals possess these rights as well. The only secure and legitimate basis on which we can ground basic moral rights for all human beings is the capacity an individual has for conscious experience. However, once this is granted, we must also recognize that other animals, who are also conscious individuals, share the same basic moral rights.

## **2.2 Arguments Against Animal Rights**

### **2.2.1 Attempts to Secure Rights for All Humans While Excluding Animals**

Many have been reluctant to accept The Argument from Human Diversity. Instead of holding that basic rights are held by all conscious individuals, they have attempted to find a way to ground basic moral rights for all human beings, while denying them for all other animals. These arguments fail to secure their desired conclusion.

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<sup>12</sup> Donaldson and Kymlicka (2011), p. 27; Shafer-Landau (2015), p. 131.

<sup>13</sup> Donaldson and Kymlicka (2011), p.27.

One example of this approach attempts to ground human rights in personhood, or some other allegedly distinctively human capacity, and extends human rights to those who permanently lack the capacities of personhood by an appeal to membership in the human species. Carl Cohen has made an argument along these lines.<sup>14</sup> For Cohen, the reason all human beings have rights (and no other animals have rights) rests on the fact that all humans are 'of a kind' capable of exercising or responding to moral claims. As he writes,

The capacity for moral judgment that distinguishes humans from animals is not a test to be administered to human beings one by one. Persons who are unable, because of some disability, to perform the full moral functions natural to human beings are certainly not for that reason ejected from the moral community. The issue is one of kind.<sup>15</sup>

On Cohen's view, paradigmatic human beings have moral rights because of their moral agency, understood as the capacity to make moral judgments. Although some human beings lack moral agency for the duration of their lives, they have moral rights because they are 'of a kind' capable of being moral agents.

Cohen's argument has been roundly debunked by other philosophers.<sup>16</sup> Several problems confront his argument. First, it is not clear what understanding of "kind" Cohen has in mind, and his writings on the topic have not made this clear. Perhaps by "kind" Cohen means, "of the species 'homo sapiens.'" However, if this is his position, it faces a host of different problems.

The first problem is that appealing to membership in the human species as a trait that

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<sup>14</sup> Cohen (2010).

<sup>15</sup> Cohen (2010), p. 294.

<sup>16</sup> See Nobis (2004) for a detailed criticism of Cohen's argument. See also Norcross (2004), p.240-241.

confers moral rights appears morally arbitrary. If the rights of paradigmatic human beings are grounded in their moral agency, why do these rights only extend to beings who are of the same species as the moral agents? Human moral agents, after all, belong to a seemingly infinite number of “kinds”. To name a few relevant examples, in addition to being *homo sapiens*, we are also primates, mammals, beings who stand on two legs, creatures covered with hair, creatures that live on land, animals, and organisms. Why do the rights possessed by moral agents not extend to these beings, who also happen to be members of the same “kind” as moral agents? Cohen can give no compelling, non-arbitrary answer as to why moral rights ought to be extended to all members of our own species, even when they lack the property he believes is required for having moral rights, but not to members of other species who are also ‘of the same kind’ as human beings.

Cohen’s “kind” argument also extends rights too far. ‘Being human’ is ambiguous, and can be understood in many ways.<sup>17</sup> Not only are babies, infants, and individuals who have severe cognitive disabilities members of the species *homo sapiens*, but so are embryos, early fetuses, permanently non-conscious human beings, and human cells. If an entity has basic moral rights (including a right to life) simply because it is a member of the human species, then it seems Cohen is committed to saying all of these entities have rights, simply because they are of the kind human being. This is not plausible. Embryos, early fetuses, permanently non-conscious human beings, and human cells are not conscious, and lack the interests in not suffering, in continued existence, and in freedom of movement that conscious beings have. If we are to accept that some of these entities have basic moral rights, we need reasons that support this claim. Lacking these reasons, we ought to reject Cohen’s claim that species membership confers basic moral rights because it has such implausible implications.

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<sup>17</sup> Nobis (2004), p. 50.

The last problem confronting Cohen's argument is one that confronts many attempts to include all human beings in the community of rights-holders while excluding animals: the problem of contextual relevance.<sup>18</sup> It is not clear, on Cohen's view, why all human beings have the *particular* rights they do. On his view an individual's having important interests is not sufficient to have moral rights that entail obligations on others. The fact that other animals have an interest in not suffering (or an interest in freedom of movement) is not enough to ground a right to not being made to suffer by human beings (or not being unjustly confined). On Cohen's view, to possess a right an individual must be a moral agent or "of a kind" that is capable of moral agency. But it is unclear why this is important or relevant to the possession of a right. If two individuals share the same interest in not suffering, it is not clear why the fact that one is "of a kind" or species that is capable of moral agency matters to the possession of a right.

When thinking about rights, the interests protected by that right and the capacities related to that right should bear some relation to the right in question. But on Cohen's view, this is not always the case. Cohen's view fails to offer an adequate explanation of which rights are possessed by human individuals that are not moral agents. On his view, these individuals possess all of the rights held by moral agents since they are of this kind, even if these individuals lack the relevant capacities for these rights to even be in their interest.

Human beings with very severe intellectual disabilities, who are unable to make decisions for themselves and live without the constant care of others, do not have the same interest in autonomy, for example, as more paradigmatic human beings. However, Cohen appears committed to the claim that these individuals have the same rights to autonomous decision making, or non-interference on the part of others, that paradigmatic human beings have, since they are of the 'kind' human being, and membership in this kind confers all the same

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<sup>18</sup> See Cavalieri (2001), p.32.



rights possessed by paradigmatic members.

Cohen could attempt to avoid this conclusion by holding that membership in the “kind” human being only confers rights to human beings who have the requisite interest these rights are intended to protect. On this view, severely intellectually disabled human beings would have a right not to be made to suffer, and a right to life, but no rights associated with full autonomy. This response, however, appears entirely *ad hoc*. On this response, it is unclear why being of the right kind is relevant to having the rights in question. In particular, it is unclear just what explanatory work membership in the kind “homo sapiens” is doing, as the rights held by an individual are determined by the specific interests they have rather than their membership in the species “homo sapiens.”

Another attempt to secure rights for all humans but no nonhumans appeals to the potential of humans. Sophia Wong, for example, argues that human beings with severe cognitive disabilities have the “species potential” for the “two moral powers” (a sense of “the good” and moral agency) that she believes are required for inclusion in the “sphere of justice.” Although Wong’s focus is on those beings who belong in the sphere of justice, we can interpret this claim as involving, at the very least, the protection of basic rights, including a right to life and a right not to be made to suffer. Wong believes she can defend the claim that species membership is relevant to inclusion in the “sphere of justice.” In her words,

The important and morally relevant difference [between human beings and animals] is that the human being is a member of a species that has evolved to have certain capacities, and possesses cortical structures that we all share as human beings. When a certain individual’s species-potential has gone awry or been thwarted by circumstances, he is still a being who is ‘wired for language’ but cannot speak, a being whose capacities have been limited. By contrast, a nonhuman animal belongs to a species that has not yet evolved to

use human language or participate in human societies, and therefore its level of cognitive functioning is entirely appropriate to its species, rather than a deficiency that requires attention.<sup>19</sup>

In this passage, Wong appeals to an individual's species *potential*, yet two distinct claims are being made. First, all human beings have moral rights (or, in her language, are included in the sphere of justice) because they belong to a species that *normally* has the potential to develop the two moral powers. Second, Wong also appeals to the tragic nature of the fate of individuals who have not developed the two moral powers. Her suggestion is that because something has gone wrong, because they are "deficient" in some respect, individuals with severe cognitive abilities also belong in the sphere of justice.

There are several problems with both of Wong's claim. One initial problem is her assumption that justice is primarily about remedying deficiencies (a controversial claim and one that has many problems, as critiques of luck egalitarianism have often noted).<sup>20</sup> But beyond this, the approach taken by Wong faces the same set of problems facing Cohen. Her approach would also extend moral rights too far, and would seem to include embryos, early fetuses, anencephalic infants, and human cells. All of these entities are members of a species with the species-potential for the two moral powers.

More fundamentally, however, it is not clear why merely having a potential for a given capacity confers the rights that are thought to follow from the actual possession of that capacity.<sup>21</sup> An individual's potential might be relevant to how we understand their present interests, but it does not appear to confer rights when the relevant interest to that right is not yet present. Having the potential to one day drive does not mean one, currently, has a

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<sup>19</sup> Wong (2009), p.143.

<sup>20</sup> See Anderson (1999).

<sup>21</sup> See Rowlands (2002), p.47-48.

right to drive. Having the potential to one day vote does not mean that one currently should have a right to vote. Further, it is not true that all human beings have the potential to have the two moral powers. A lot, of course, will depend on how we understand possibility in this context. But for those individuals for whom the cause of their severe, cognitive disability is genetic, it is unclear how we can plausibly maintain that they – the genetic individual that they are – ever had the potential to have the two moral powers.

Rather than focusing on innate capacities held by an individual, some have argued that we should appeal to the relations human beings have with one another. Eva Kittay argues that human beings who lack the cognitive capacities of personhood have rights – and ought to be considered moral persons – not because of the capacities they have as individuals, but because of the social relations they have with other human beings.

For Kittay, a social relation refers to “a place in a matrix of relationships embedded in social practices through which the relations acquire meanings. It is by virtue of the meanings that the relationships acquire in social practices that duties are delineated, ways we enter and exit relationships are determined, emotional responses are deemed appropriate, and so forth.”<sup>22</sup> According to Kittay, our social relations play a constitutive role in our identities and confer both moral status and moral duties.<sup>23</sup> On Kittay’s view, human beings with very severe cognitive disabilities have basic moral rights, not because of the intrinsic capacities they possess but because they are someone’s son or daughter, sister or brother. In short, they are members of human families and the social relations that constitute family membership are, for Kittay, so significant that they can confer rights to these individuals.

There are two different ways we can understand this sort of argument. On one interpretation, individuals with severe cognitive disabilities (as well as babies, temporarily

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<sup>22</sup> Kittay (2005), p. 111.

<sup>23</sup> Kittay (2005), p.111.

incapacitated individuals, and the elderly who have lost the capacities of personhood) have basic moral rights because they are *recognized* as members of our families. On this view, it is the subjective attitudes we have towards these individuals that confers rights on them. Because we view them as family members, they have a right not to be killed, a right not to be made to suffer, and so on.

This approach faces one obvious problem. While it might be true that many (perhaps most) humans today view individuals with severe cognitive disabilities as family members, this has not always been the case.<sup>24</sup> We do not have to look that far back in history to find examples where these individuals were not viewed as proper or legitimate family members. On this view, then, in families and societies where these individuals are not viewed as proper or full family members, they would not possess basic moral rights. Further, it is not clear that this approach should exclude all nonhuman animals. Many humans now describe their companion animals as “part of their family,”<sup>25</sup> and this recognition, on the interpretation we are considering, would appear to confer rights on these individuals.

On another interpretation, the *biological relations* that human persons have with individuals with severe cognitive disabilities are the reason that these individuals have rights. Because these individuals are someone’s biological son or daughter, or sister or brother, they have certain basic moral rights.

Like earlier approaches, this approach seems to include too many human beings. Early fetuses are someone’s son or daughter, so it would seem they would also have a right to life. Beyond this, however, this approach appears arbitrary and influenced by a bias in favor of our own species. Like previous approaches, it also faces the problem of contextual

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<sup>24</sup> Mullin (2011), p.296.

<sup>25</sup> In the United States, around 95% of families who have pets describe their pets as members of their families. See Harris Poll (2015).

relevance. Why is being someone's son or daughter *relevant* for having a right not to be made to suffer, say, or a right to life, or any particular rights that these individuals are said to have? What about this particular relation is morally relevant? All of this is unclear, and the relational rights account has nothing illuminating to say here.

Further, the account allows bias based solely on these biological relations in a way that is problematic. Imagine an alien species, for example, whose members share the exact same capacities as a human individual with severe cognitive disabilities. On the relational rights view, the human would have rights because he or she is someone's son or daughter, but the aliens would not. It is hard to see why this position is compelling. Individuals who share the same cognitive capacities, who experience the world in exactly the same way, and who have the same interests should not be denied the same basic moral rights.

### 2.2.2 Denying Rights to Non-Persons

Thus far I have assumed that human beings who lack certain cognitive capacities do, in fact, have basic moral rights. Some philosophers have been willing to deny this claim. R.G. Frey argues that individuals with severe cognitive disabilities have less moral status than paradigmatic adult human beings, and that in some circumstances it may be permissible to engage in experimentation on these individuals to find cures or treatments for human illnesses and diseases.<sup>26</sup> Frey's position is quite extreme, but it is worth asking what can be said in response to the view that human beings who are not persons lack basic moral rights.

The first problem is, again, that of contextual relevance. It is not at all clear why personhood should be seen as a prerequisite for certain, basic moral rights. All conscious individuals clearly have an important interest in not suffering, and an interest in continued existence.

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<sup>26</sup> See Frey (1996), p.209-211; and Frey (1985), p.115-116.

Those who would suggest that additional capacities are needed for a right not to suffer and a right to life face the burden of explaining why these capacities are relevant to these rights.

I think this problem suggests that something is fundamentally wrong with the position Frey adopts. However, aside from a few philosophers, most of us do not doubt that individuals with severe cognitive disabilities have moral rights. We know it would be wrong to subject them to harmful, non-therapeutic medical experiments or to raise and kill them for food. Yet I suspect that, beyond some of the points I have previously made, not much can be said to convince a proponent of Frey's position, via rational argument, that these individuals have rights. We might suggest they actually get to know and meet these individuals. Confronting their individuality, seeing *that* and *how* their life matters to them and discovering the unique personalities of individuals who do not qualify as "persons," is likely the only thing that would convince a skeptic, if anything would.

## **2.3 Other Objections to Animal Rights**

Before I consider some specific objections to the view that conscious individuality is sufficient for the possession of certain basic moral rights, it is worth considering a few more objections that are often made against the claim that other nonhuman animals have moral rights.

### **2.3.1 The Will Theory of Rights**

One objection to the claim that nonhuman animals possess basic moral rights holds that this distorts the distinct moral purpose of rights and extends rights claims too far. On the Will Theory of Rights, only autonomous individuals (capable of formulating their own goals and

ends and rationally pursuing them) can have rights. On this view, if an individual has a right, then she can either claim that right or choose to waive that right. This feature of rights – the fact that individuals can choose to claim their rights or forego them – is often thought to be what distinguishes rights from obligations. On this view, since animals lack this capacity, they are not legitimate bearers of rights.

The Will Theory of Rights, however, is an inadequate account of the basic rights that I have argued conscious individuals possess. First, this account leaves out many vulnerable individuals who nearly all of us think are bearers of certain basic rights: babies, infants, young children, individuals with severe cognitive disabilities, etc. These individuals do not have the ability to claim or forgo their rights, yet we have good reasons to think they have a right not to be made to suffer and a right to life. There are also some rights – such as a right not to be tortured and a right not to be enslaved – that cannot be waived and that seem to challenge the ability of the Will Theory of Rights to adequately explain *all* moral rights.

Even if one thinks that the Will Theory of Rights captures a distinct purpose of some moral rights, it would be a mistake to see this account as a competitor to understanding certain rights in terms of interests. On the Interest Theory of Rights, the distinct purpose of moral rights is the protection of significant interests (whether or not one has the capacity to claim or waive this right). However, it seems quite plausible that when we use the word “rights,” in some contexts, the function of a right is best captured by the Will Theory of Rights. The right of a boss to fire an employee, for example, might be best accounted for on the Will Theory of Rights. But it does not follow from this that every use or employment of the word “right” will be best accounted for on this account of rights. Given the messiness and ambiguities of human language, it would be a mistake to assume that theoretical unity is necessarily a virtue when it comes to all discourse concerning rights.

Thus, someone who accepts the Will Theory of Rights can, quite plausibly, hold that it is the

best account of some of our rights, or the best way to understand certain moral rights held by autonomous humans, yet still recognize that it would be a mistake to deny other rights (for both humans and nonhumans) – to not suffer and to not be killed – because these individuals lack the capacities required for autonomy. Perhaps they would prefer we do not call these entitlements “rights,” since, on the view of some, it distorts the distinct moral purpose of rights. If this is the case, we can easily translate what we mean by talk of basic moral rights into the language of obligations, or claims, or constraints, as long as it is understood that these obligations or claims are not always overridden by duties to promote the best consequences.

### 2.3.2 Lifeboat Cases

Another argument against animal rights appeals to common intuitions many people have about how we ought to act in certain extreme ‘lifeboat cases.’<sup>27</sup> If four adult human beings were on a lifeboat with a dog, for example, and the boat would sink unless one individual was thrown overboard, most hold that it would not only be permissible to throw the dog overboard but that this decision is what morality requires. Explaining why this judgment is correct is harder than some might think.<sup>28</sup> However, the most plausible answer would suggest that the dog is harmed less by death and that in such emergency situations where everyone will die if no one is sacrificed it is permissible to take into consideration who is harmed more by different courses of action. However, some have concluded that if it is permissible in a lifeboat situation to throw the dog overboard, then dogs (and, by

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<sup>27</sup> See Regan (2004a), p.285-286.

<sup>28</sup> Part of the problem is that it is not entirely clear what moral factors are most salient in lifeboat cases. Should we be concerned most with what would produce the most net happiness, or what would prevent the greatest harm to the individuals directly involved, or the amount of expected life of the members on the lifeboat, or the amount and quality of life of those on the lifeboat, or the moral character and desert of those on the lifeboat?



extension, other animals) do not really have a right to life.

This conclusion is mistaken. We can run the same argument above, but instead insert different human beings in place of the dog that is thrown overboard. Imagine that on the boat are four young adult human beings and one very old human, or four normal adult humans and a serial killer, or four teenagers and an adult with a terminal illness, or four paradigmatic adult human beings and an individual with very severe cognitive disability, and so on. We can consider many different lifeboat cases in which the individual we should throw overboard will be controversial to some, yet obvious to others.

The lesson from this potential controversy should be clear: just as we do not think the answers we come to for humans in lifeboat cases suggest that they do not have basic moral rights to life or to not suffer outside of the lifeboat, so too we should not think that lifeboat cases suggest other animals do not have these rights as well. Outside of their narrowly specified confines, lifeboat cases are not much help for figuring out our moral obligations and moral rights.

### 2.3.3 Is Conscious Individuality Sufficient for Basic Moral Rights?

One worry with the position that I have outlined concerns what is required to be a conscious individual. We might wonder what exactly it means to be a conscious individual and whether all entities that have some level of consciousness are, in fact, conscious *individuals* or *selves*.

For many animals, it is not hard to see *that* they are conscious individuals, nor do we lack some intuitive sense of *what* this means. We have little reason to doubt this for dogs or cats, cows or chicken, pigs or goats. We recognize in these cases that there is 'someone

home,' a distinct individual with whom we are interacting, with their own perspective on the world and their own desires and preferences.

We might wonder, however, if simply being conscious is *sufficient* to be a conscious individual. To see this, consider the mythical goldfish with a three second memory. Although there is no evidence for thinking this popular understanding of the memory of goldfish is true, we can imagine a goldfish whose memory lasted a mere three seconds. If this were the case, and if the attention span of this fish, including both its memory of the past and anticipation of the future only lasted three seconds, we might doubt that this creature is a genuine individual. What might explain this doubt?

The answer, I believe, stems from the fact that this mythical goldfish lacks any real connection to its past and any real anticipation of the future. With the extreme limitations on its memory, it is hard to see how this goldfish could be described as an individual with a distinct and enduring perspective on the world. Instead, we might just have conscious experience followed by conscious experience, with no real *conscious individual* experiencing the world.

Mere conscious experience of the world does not appear to be sufficient for being a conscious individual. What, then, is the threshold for being a conscious individual? I think it is quite possible that being a conscious individual has vague boundaries and that there is no definitive mark separating conscious individuals from merely conscious beings. It may be the case that for some beings there just is no answer to this question. I do think that some memory and some anticipation of the future are basic requirements of being a genuine individual. In the absence of this, it is hard to see how there could be *anyone* who is experiencing the world. However, I do not think that a being's memory of the past must extend all that far back, nor does that being's anticipation of the future need to extend all that far into the future, for it to be a conscious individual. Rather, it seems the sort of

cognitive requirements necessary for being a conscious individual do not extend any further than those required to have desires, something that most conscious animals appear quite likely to have.<sup>29</sup> A fish, for example, that desires food has *some* anticipation of that food and thus some awareness that it will exist in the future to consume the food source.

What we do know, however, is that many of the animals human beings intentionally harm – for food, entertainment, and other purposes – are conscious individuals. This is certainly true for all vertebrates and many invertebrates (such as octopi). Fish, to give just one example, have significant memories and are capable of complex forms of cognition.<sup>30</sup> There are no good reasons to deny, when it comes to fish, that there is a distinct individual who is experiencing the world.

However, just as it is often difficult to know whether some animals, such as insects, have any conscious experience, it is also difficult to know whether they are conscious individuals. There will probably always be some borderline cases where it is unclear whether a given creature is conscious. In these cases, I think we ought to give the creature the benefit of the doubt that it is conscious and that it is a conscious individual unless there is strong countervailing evidence that the memory and anticipation of that creature are extremely and narrowly circumscribed, to the point that it is doubtful a genuine individual exists.

#### 2.3.4 Is Conscious Individuality Too Low a Threshold for A Right to Life?

Another objection to the view I have put forward holds that a right to life requires capacities beyond those required to be a conscious individual. I have suggested that being a conscious

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<sup>29</sup> The cognitive requirements for selfhood, if it is not already clear, are less demanding than those laid out by Tom Regan for an individual to count as a ‘subject-of-a-life.’

<sup>30</sup> See Balcombe (2016).

individual requires not simply the capacity for consciousness but also very basic forms of memory and anticipation. Nevertheless, some have argued that a right to life requires much more than this. The basic idea here is that a right to life requires that a being have an interest in continued existence, which in turn would require more sophisticated cognitive capacities.

On one variation of this view, an individual only has an interest in continued existence, and consequently can only have a right to life, if he or she has goals, projects, or desires that extend into the future.<sup>31</sup> Since these future-oriented goals and desires are cut off or thwarted by death, these individuals are harmed when they die. A more demanding variation of this view, however, suggests that something more than just goals, projects, or desires is required to have an interest in continued existence and a right to life. According to Tooley, “a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states. This in turn presupposes both that one has the concept of such a continuing entity and that one believes that one is oneself such an entity. So an entity that lacks such a consciousness of itself as a continuing subject of mental states does not have a right to life.”<sup>32</sup> On this view, for an individual to have a sufficiently strong interest in continued existence, and thus a right to life, they must have a reflective sense of self-awareness, including the ability to reflect on their own existence and abstractly conceive of their self existing in the past and future.

The first view outlined above does not necessarily rule out all animals as beings who have an interest in continued existence. Of course, much will depend on where the specific

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<sup>31</sup> Although Singer does not claim individuals have a right to life, he defends a view similar to the one I have presented. Singer argues that it is worse to kill beings who are rational, self-conscious, and aware of themselves as distinct entities with a past and a future. However, he suggests that many nonhuman animals meet this criterion. See Singer (2011), Chapter 5.

<sup>32</sup> See Tooley (1972), p.49.

threshold is set: a lot depends on just how far one's goals, desires, or projects must extend into the future to be harmed by death. If we only hold that they extend into the future *in some way*, then it seems most animals will qualify as beings who are harmed by death. However, it seems arbitrary to specify some point in the future to which one's goals or projects or desires must extend, in order for one to be harmed by death. And, further, the more we demand on this front, the more certain human beings, and all human beings at various points in their lives, will be ruled out.

The second view regarding the requirements for a right to life faces a similar problem. While it is probably true that most (but not all) nonhuman animals do not have a reflective understanding of themselves existing in the future, this is also true of many human beings. If this understanding is required to have an interest in continued existence, and consequently to have a right to life, then many human beings would not have a right to life. Yet this contradicts very strongly held intuitions about the rights these individuals have.

Finally, the view that other animals are not harmed by death, or do not have an interest in continued existence, faces one further problem. Elisabeth Harman has pointed out that views which deny that death harms other animals face problems when confronted by cases where medical intervention is needed to prevent an animal from dying but where that intervention will cause the animal some pain.<sup>33</sup> Consider a cat who needs surgery that will cause significant pain for a few weeks but allow her to live several additional, pleasurable years. If the cat has no interest in continued existence and if death does not harm her in any way, then it is hard to see why opting for the surgery would be morally permissible. Views that deny animals have a strong interest in continued existence thus appear unable to explain our common intuitions about what would be in an animal's overall interest, particularly in the context of considering painful medical procedures that will extend an

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<sup>33</sup> Harman (2011).

animal's life.

Given these problems, I believe we should reject these accounts of what is required to have an interest in continued existence and, on this basis, what is required to have a right to life, in favor of a different account. Death harms humans and animals alike because it deprives us of a future that contains the possibility of valuable and enjoyable experiences.<sup>34</sup> On this account, all conscious individuals are harmed by death because, in death, each individual is forever cut off from his or her future and from any possibility of having enjoyable and valuable experiences.<sup>35</sup> Unlike the previously examined positions, only this view can explain why all conscious human beings have a right to life. But there are no good reasons to think this right does not also extend to nonhuman animals as well.

### 2.3.5 Rights and Thresholds

One other important question to address is whether and when the rights of other animals can be justifiably infringed. Are there any circumstances in which the rights of other animals do not outweigh other moral considerations, making it permissible to harm or kill other animals?

In *Zoopolis*, Donaldson and Kymlicka claim that the rights held by humans and other animals are *inviolable* and cannot be overridden to promote the greater good. Using this term, however, might be more misleading than it is helpful, since Donaldson and Kymlicka do not claim that there are no circumstances where the rights of other animals (and humans!) cannot be legitimately overridden. Cases of self-defense and the defense of others are good

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<sup>34</sup> See Rowlands (2002) and Hooley and Nobis (2016).

<sup>35</sup> In some circumstances, however, death may benefit humans and other animals when, because of terminal illnesses or untreatable medical conditions, their future life would contain more pain and suffering than enjoyable experiences.

examples of situations where the rights of other animals and humans do not always hold.

On Donaldson and Kymlicka's view, the rights of other animals are (nearly) inviolable in the "circumstances of justice," but they do not hold outside of these circumstances. As they put it, "humans only owe justice to each other when they are in fact able to respect each other's rights without jeopardizing their own existence."<sup>36</sup> If living conditions are so bad that individuals cannot respect the rights of others without jeopardizing their own existence, then they are not in the circumstances of justice. The same point applies to our relationships with other animals: humans only owe justice to animals when they can respect their basic rights without jeopardizing their own existence.

While I think what Donaldson and Kymlicka have to say about the circumstances of justice is not all that far from the truth, the way they put the point is somewhat misleading. Even outside of the circumstances of justice, for example, we still have obligations to other animals and, arguably, they still possess certain rights. It might be permissible for a community whose survival depends on killing some animals for basic sustenance and who do not presently have the option of leaving this situation to do so. However, this does not mean animals have no rights in these circumstances. Even if it is permissible to kill animals to survive, these communities have an obligation not to kill more animals than is needed to meet their needs, and they have an obligation to minimize, as much as possible, the suffering they inflict on other animals. When we are living in a situation where our survival is at stake, things that are normally not permissible may become permissible, but not all rights are thrown out. Talking of the 'circumstances of justice' can obscure this fact.

A moderate rights view is more plausible than the view that individuals have inviolable rights. On this view, moral rights cannot be justifiably infringed simply to bring about good

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<sup>36</sup> Donaldson and Kymlicka (2011), p.41.

consequences. However, rights have thresholds. The moderate rights position holds that, at a certain point, enough can be at stake that an individual's right may be justifiably infringed. The moderate rights view offers the most plausible understanding of an individual's right to their property and of an individual's right to freedom of movement. As Joel Feinberg notes, if you are backpacking in the wilderness when an unanticipated blizzard strikes, threatening your life, you would be justified in breaking into a locked cabin, eating the food, and burning the furniture to stay warm.<sup>37</sup> In this case, the fact that your life is at stake allows you to justifiably infringe the cabin owner's property rights. Similarly, it is easy to imagine situations where an individual's right to freedom of movement can be justifiably infringed because they have contracted a highly contagious and deadly infectious disease. In this sort of case, the state is justified in restricting their freedom of movement.

I accept a moderate rights view for both humans and animals. I cannot offer a full defense of this view here. However, it is worth noting a few specific claims that bear on the rest of this chapter. First, on any plausible moderate rights view, the threshold that must be met to justify the infringement of a right will vary depending upon the right in question. The thresholds for justifiably infringing an individual's right to property, for example, or a right not to have your hair cut, will be lower than the threshold for infringing an individual's right not to be made to suffer or a right to life. Second, how much must be at stake, for any right's threshold, is determined, in part, by the amount of harm that an infringement of that right causes the rights bearer.<sup>38</sup>

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<sup>37</sup> Feinberg (1980), p.230.

<sup>38</sup> See Brennan (1995).



### 2.3.6 Medical Experimentation

If in some circumstances the rights of other animals can be justifiably infringed, this raises the question of whether certain forms of harmful, non-therapeutic medical experimentation – as well as the use of animals for organs, tissue, and other body parts – can be justified.

Humans experiment on other animals for a variety of purposes. However, here I will confine my consideration to the use of animals in *harmful, non-therapeutic medical* experimentation, in which the goal is to find a cure or treatment for a human illness that is either terminal or causes significant suffering. This case is often seen as the hardest for a proponent of animal rights. But this is in part because humans experiment on animals for a variety of purposes that appear much harder to justify, including cases where the benefit to human beings is either trivial or alternatives to animal experimentation exist.

The first thing to note is that there is almost unanimous consensus that it is wrong to use non-consenting humans in harmful, non-therapeutic medical experimentation. We all rightly object to the horrors of the Tuskegee Syphilis Study and to the way that human subjects were used, in this case and in others, without their knowledge, without their consent, and against what was in *their* health interests. Our objection to such experiments is not dispensed by the fact that they are designed to gain knowledge about a particular disease, with the hopes of helping others.

But what is important, and crucial, is that we hold that it is not morally acceptable to use non-consenting human subjects in harmful, non-therapeutic medical experimentation, *even if* that human being has less sophisticated cognitive capacities.<sup>39</sup> Nearly all of us think it

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<sup>39</sup> The relevant class of experiments here are harmful ones. I do not think any experimentation involving children, individuals with severe cognitive disabilities, or other humans or animals who cannot consent is

would be wrong to subject individuals with severe cognitive disabilities to painful or harmful experiments, in order to find a cure for a strain of cancer, or some other terminal illness. And we are right to think this. This is true despite the fact that human beings would make far superior test subjects than nonhuman animals for finding cures to human diseases and illnesses (and that less suffering would therefore need to be inflicted to achieve good consequences). It would be wrong to use these individuals in these ways, treating them as tools for our own benefit.

But as we have already seen, there are no plausible justifications for maintaining that these human individuals have a right to life and a right not to be made to suffer – and that these rights cannot be justifiably infringed in the case of harmful, non-therapeutic medical experimentation – while also maintaining that other animals do not possess these rights. The basis of their moral rights, I have argued, is their conscious individuality. Given this, we are not justified in treating nonhuman individuals as tools for knowledge and harmful, non-therapeutic medical experimentation on animals should end.

Even if there are extreme circumstances where the rights of other animals to life or to not be made to suffer may be justifiably infringed – when the circumstances of justice do not hold, say, or when the survival of certain human communities is only possible if some animals are killed – these exceptions do not justify the vast majority of ways human beings currently harm other animals, whether for food, entertainment, or medical knowledge.

### 2.3.7 Rights and Personhood

There is one important position left to consider. This position grants that conscious

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morally wrong. Experiments to gain knowledge, for example, that do not harm humans or animals can be morally permissible.

individuality is all that is required for certain rights, like the right to life and the right not to suffer. However, beyond this, it claims that persons have a greater moral status than “non-persons” and that this claim has important implications for when the rights of non-persons can be overridden. To give just a couple of examples, if this position is true, we might think that it opens up cases where humans could justifiably use nonhuman animals for harmful medical experimentation (if there were good reasons to think many human persons could be saved), or where animals could be killed to prevent greater harm to other animals or to other humans (while we would deny that this is permissible in the case of persons).

What exactly makes someone a person is a matter of considerable controversy.

Nevertheless, it is not particularly important, for the purposes of the objection I am considering, what specific account of personhood one thinks is true. On most accounts of personhood, there is an important difference between individuals who are persons and individuals who are merely conscious individuals. Persons are often thought to be beings who are rational, self-aware, autonomous, moral agents, aware of the past and future, and capable of using language. There are disputes, of course, over which capacities comprise or constitute personhood. Yet it is generally agreed that persons are individuals that possess some of these psychological characteristics.<sup>40</sup>

The claim that persons have a higher moral status than non-persons can be understood in a variety of ways. On one view, this claim holds that the interests of persons matter more, morally, than the interests of non-persons. We can understand this claim as denying the

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<sup>40</sup> In recent years, there has been some debate about whether any nonhuman animals are persons. And some have argued that animals such as the great apes, dolphins, elephants, and ravens should be considered nonhuman persons. We can ignore these debates here. The objection we are considering claims that persons have a special moral status, greater than that of non-persons, and that persons possess more stringent rights than non-persons. If this view is correct, and if some nonhuman animals are persons, then they would also possess more stringent rights.

Principle of Equal Consideration. According to the Principle of Equal Consideration, “To grant equal consideration to two beings A and B is to not discount or disregard B’s interests just because B is not like A, or because B’s interests are less valuable than A’s interests.”<sup>41</sup> On this view, then, the interests of persons would count for more than the interests of non-persons. The interest of a human person in not suffering, for example, would matter or count more in our moral deliberations than the interest a non-person has in not suffering, even when these two individuals experience the same amount of suffering.

However, there are other ways we might understand the claim that persons have a greater moral status than non-persons. Perhaps the rights held by persons are more *stringent* than the rights held by non-persons. Understood in this way, we might think that some of the rights of persons can be justifiably infringed only when much greater harm is prevented than the amount of preventable harm that would be required to justifiably infringe the rights of non-persons. On this view, the threshold for justifiably infringing the rights of persons is higher than that for non-person (at least for some rights). So while it would be morally wrong to infringe the rights of human persons and use them against their will for harmful, non-therapeutic medical experimentation, the same claim may not always hold for non-persons. There might be some situations where, to prevent a great deal of harm to human persons, harmful medical experimentations on nonhuman animals would be permissible and we would be justified in infringing their rights.

One final way we might understand the claim that persons have a greater moral status than non-persons concerns our obligations to benefit individuals. We might think that we have greater, or perhaps more extensive, obligations to benefit persons than we do to benefit non-persons. I will return to this view in the second part of my dissertation, when I consider, in much more detail, what sorts of positive obligations we have to different

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<sup>41</sup> Rossi (2010), p.259.

groups of animals (wild, domestic, and liminal). However, for now we can ignore this position. For the immediate conclusion I am attempting to secure concerns the basic rights of nonhuman animals and the claim that these rights necessitate granting animals full political standing. And this conclusion is consistent with the view that we have stronger or more extensive obligations to benefit human persons.

None of these different interpretations of the claim that persons have a greater moral status than non-persons undermine my argument that other animals deserve “full political standing.” What they might challenge, however, is the scope of the legal rights that certain animals are owed. For example, the claim that persons have more stringent rights than non-persons might suggest that, at least in some circumstances, the rights of non-persons may be overridden (for medical experimentation, say, or to prevent greater harm to others) despite the fact that it would be wrong to infringe the rights of persons in the same circumstances.

Many find the claim that persons have a greater moral status than non-persons intuitively compelling.<sup>42</sup> Part of its allure, I believe, stems from a confusion about the implication denying this view would have for certain problem cases. Recall the lifeboat cases we considered earlier. We might think that if persons and non-persons have the same moral status, then in a lifeboat scenario (where three humans and a dog are on a lifeboat, and only three can survive) we have no reason to prefer saving the humans over the dog. If all four individuals have the same moral status, then it seems each has the same claim to space on the lifeboat and an equal right not to be thrown over.

This view, however, is mistaken. We can grant that the humans and dog share the same moral status, while still holding that it is permissible (perhaps even obligatory) to give

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<sup>42</sup> Kagan (2016).

preference to the three humans onboard. One could argue, for example, that most human beings are harmed more by death than dogs and that in emergency situations like these – where everyone will be harmed if no action is taken – it can be permissible to take into account who is harmed more by different courses of action. As a result, we can maintain that dogs and humans have an equal moral status (and that both possess moral rights), while also holding that, in lifeboat cases, we would be justified in giving preference to the human persons over the dog because by doing so we prevent greater harm.<sup>43</sup>

What can be said in response to the claim that persons have significantly more stringent rights than non-persons? I think two important objections can be raised against the view that persons have more stringent rights than non-persons, and that in some cases, this justifies harming non-persons to prevent greater harm.

The first response deals with the practical implications of this view. Even if we think persons do possess rights that are more stringent than non-persons, this is consistent with holding that the rights of non-persons cannot be justifiably infringed in the vast majority of cases, in much the same way that the rights of persons cannot be overridden in the entirety of potential cases. We might hold, for example, that it would be wrong to use non-persons in harmful medical experiments that do not benefit them, even if it would be worse to use persons in these ways.

Nearly everyone already recognizes this in the case of human beings. On the most

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<sup>43</sup> Some may wish to interpret moral status in a way such that if we have reasons, in the lifeboat cases, to save human persons, then this suggests persons do, in fact, have a greater moral status than non-persons. Ultimately I think moral status is a (sometimes) convenient shorthand, so what really matters is not how this term is used, but what sorts of obligations various beings are thought to have. Nevertheless, I think that using moral status in this way can be confusing. Most often, I believe, moral status is used in a way that is most closely connected to the Principle of Equal Consideration. Many who think of moral status in degrees, I take it, assume that beings with higher moral status matter more, and that their interests count for more. As we will see, I think we have good reasons to reject this position.

prominent and plausible accounts of personhood, some human beings do not qualify as persons, such as babies, young infants, individuals with very severe cognitive disabilities, and individuals with severe dementia. Yet it is near-universally recognized that it would be wrong to subject these individuals to harmful, non-therapeutic medical experimentation to, say, find a cure for cancer or develop drugs that will prevent severe suffering to human persons. These individuals have a right not to be made to undergo harmful experimentation to benefit others; they are not tools that we can use for our purposes. If we go this route, however, then it seems we have no plausible reasons to deny that harmful, non-therapeutic experimentation on conscious, nonhuman animals is also wrong. Even if persons have more stringent rights than non-persons, this does not change the fact that harming non-persons in these ways is not justified and violates their basic rights.

One attempt to forestall the last approach noted above appeals not to the rights of human non-persons but to the effects that harming these individuals would have, or could have, on other persons. Such an appeal would hold that the rights of human non-persons are not so stringent that they could not be overridden in some circumstances to prevent serious harm to persons. However, because of other factors – including the stress and harm that using these individuals would have on their family, friends, and society – it is impermissible to use them in various ways noted above. However, because in many circumstances the use of nonhuman, non-persons appear unlikely to cause distress and harm to others, we might think that in some circumstances we can justifiably use these individuals in harmful, nontherapeutic experiments when those experiments are very likely to prevent substantial suffering and harm to human persons.

This explanation offers a shaky basis for the prohibition of experimentation on human beings that are not thought to be persons. On this view, whether experimenting on these individuals is justified depends on the attitudes other individuals take towards them. Such

attitudes can and do change. It would be wrong to experiment on these individuals in harmful ways even if we lived in a society that did not value their lives.

The upshot of all of this is that even if we think persons enjoy a special moral status that makes their rights more stringent than the rights of non-persons, consideration of human beings who would not qualify as persons suggests this view would not alter the conclusions that, earlier, I argued follow from the basic rights all conscious individuals hold. We recognize that the basic rights of all human beings protect them from things like harmful, non-therapeutic medical experimentation – whether they are persons or not – and the most plausible reason, I have argued, stems from the rights that individuals possess as conscious individuals. Recognizing this, we ought to recognize that these rights are held by nonhumans as well.

## **2.4 Implications of the Moral Rights of Animals**

As we have seen, there are very good reasons to recognize the basic moral rights of other animals and no convincing arguments to deny these rights. Respect for the basic moral rights of other animals requires substantial changes to current ways human beings treat these individuals. As Tom Regan has noted, the rights of animals do not demand larger cages, they demand empty cages.<sup>44</sup> Human beings must bring to an end nearly all forms of animal agriculture; an end to the use of animals for their skins, fur, and feathers for clothing; an end to non-therapeutic animal testing and experimentation; and an end to many other exploitative practices that use animals for sport and entertainment. However, as we will see in the next chapter, the rights of other animals have implications that extend beyond just abolishing these practices. When we recognize the basic rights of other animals,

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<sup>44</sup> Regan (2004b).



we must begin to radically rethink how we see other animals fitting in to, and in relation to, our legal and political institutions.

## 2.5 Obligations Not to Harm Animals

The best foundation, or justification, for the claim that other animals deserve full political standing rests on the fact that they possess basic moral rights (including a right not to be made to suffer and a right not to be killed). However, we can secure the full political standing of other animals without making arguments that appeal to their rights. Views that recognize humans have significant obligations to other animals (not to kill them, make them suffer, and so on) can also justify the view that animals deserve full political standing.

In recent years, some philosophers have argued that we do not need to appeal to concepts like rights, or equality, or the equal consideration of interests, to successfully argue that we ought to end many of the ways humans use and harm other animals.<sup>45</sup> The arguments I will make here follow this approach: they do not appeal to moral rights and take an agnostic stance on their existence.<sup>46</sup>

One way of making this style of argument centers on obligations we have not to knowingly harm other animals. Nearly everyone recognizes that we have at least some obligations not to knowingly harm other animals without sufficient justification. We recognize that it would be wrong to commit horrific acts, like setting a cat on fire, because we enjoyed the way the flames burned on the cat's fur, or to kick pigeons because we liked the noise they made when we did this, or to make dogs fight for fun and to watch them fight for enjoyment, and

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<sup>45</sup> See DeGrazia (2009), Engel (2000), Hooley and Nobis (2016), and Zamir (2007),

<sup>46</sup> It might turn out that these arguments suggest a rights view is the most plausible or that they are consistent with the conclusions of a rights-based argument, however, what sets these arguments apart from the rights position I have already outlined is that they make no appeal to moral rights.

so on. These sorts of beliefs enjoy a wide consensus.

Yet there is no way we can adequately explain why it is wrong to harm other animals in these ways, unless we recognize that we have *an obligation* not to knowingly harm them. Attempts to explain why this sort of behavior is wrong that make no appeal to our obligations to other animals, but instead argue indirectly, with an appeal to our character or obligations we have to ourselves, fail for a variety of reasons: indirect explanations are unable to explain why it would be wrong to harm animals for trivial purposes if it had no effect on our character, the wrongness of an action depends not on the harm but on an empirical connection between the harm and our moral character, and indirect explanations offer rather poor explanations of what is genuinely wrong with harming other animals<sup>47</sup> It is wrong to knowingly harm other animals without sufficient justification because of moral obligations we have to them.

In various cases where humans harm other animals for enjoyment, we seem to recognize that whatever pleasure or enjoyment or fun an individual might get from doing these things to animals is trivial and insignificant compared to the harm they inflict on them. The enjoyment someone gets from watching dogs fight, for example, does not justify the harms that are inflicted on these animals. And this calls into question a wide variety of practices whereby human beings harm other animals for food, for entertainment, and for the knowledge gained by experiments on animals for cosmetic goods and cleaning products.

In all of these cases, human beings engage in practices that inflict a variety of serious harms on other animals. Animals raised for food, to give just one example, live in close confinement for the duration of their lives. As a result of their confinement, they suffer a variety of different harms, including painful physical injuries and diseases, immobilization,

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<sup>47</sup> See DeGrazia (1996), p.42-43.

boredom, various forms of psychological distress, and death. All of these harms are inflicted on animals. But farmed animals are also harmed by being *deprived* of many goods crucial to their well-being. In failing to give these animals certain basic goods – notably, the space and resources needed to carry out natural behaviors, to socialize with fellow animals, and to live good lives - we seriously harm them. We deny these animals the conditions needed for basic natural, and social behavior and to live lives that are good for them.

It is hard to see how these harms can be justified, even if we remain agnostic on the question of whether or not other animals have moral rights. For one, it is not clear how the pleasure or enjoyment human beings get from eating the flesh of animals or their by-products is different, in any morally relevant way, from the pleasure someone gets watching dogs fight or the flames burn on the fur of a cat. In both cases, one does not engage in an activity *because* they like seeing an animal suffer. The individuals in my examples are not sadists: instead, they show indifference to the suffering of animals because they get pleasure, in some way, from the activity. In both cases, then, the animals in question are seriously harmed and the pleasures produced are trivial – they are not required in any way for living a flourishing life.

At least for those living in developed countries, no human being needs to eat the flesh or by-products of animals in order to live a healthy and flourishing life. Just like the use of animals in forms of entertainment many condemn, the pleasure and benefits we get from using animals for food are trivial. We can eat other foods and participate in other activities that do not involve or require the serious and systematic harm of other animals. The same points can be made with respect to using animals in other forms of entertainment (circuses, rodeos, dog racing, horse racing, etc.) where they are seriously harmed. In these and other cases, the serious harms that are inflicted on other animals are not justified by the enjoyment some human beings get from using animals in these ways.

### 2.5.1 Experimenting on Animals

The only area where humans might be reasonably thought to be justified in using animals in harmful or fatal ways is in non-therapeutic experiments that are likely to lead to cures or medicines that would aid humans with terminal or debilitating diseases. As we have seen, one way to argue against using animals in these ways appeals to moral rights. What can be said against these sorts of animal experimentation without such an appeal? One way to approach the issue is to consider common alleged justifications for using other animals in these sorts of experiments and show that they fail to secure their conclusion.

### 2.5.2 Against the Superiority Argument

A common alleged justification of animal experimentation appeals to human superiority. Many have thought that if they can show that human beings are morally superior to other animals - that they have a higher moral status than other animals - then this would justify harming other animals, as long as the experiment is reasonably expected to yield a cure or improvement for serious illnesses that afflict human beings.

Defenses of harmful animal experimentation often make this appeal to human superiority.

We are a species unique in our cognitive abilities: to use just a few examples, we create beautiful sculptures, write on philosophical issues, and devise just laws. These laws, as well as tradition handed down from long ago, bind us together in a moral community. Yet we are autonomous beings living in that community. Only we, of all species on Earth, can be held accountable for our deeds, judged guilty in a court of law. We are burdened in a way that no

other species is, even to the extent of caring for other species. These responsibilities make us special in my view and warrant special consideration and compassion. I think it follows that we owe it to our fellow man to alleviate the pain and misery of disease through biomedical research.<sup>48</sup>

However, this idea, that a ‘higher’ or superior moral status or value justifies *actively harming others* is problematic and has been recently called in to question.<sup>49</sup> Zamir puts this point well:

[M]y having an inferior value relative to some other being, even if such inferiority can be established, does not justify anyone in *doing* anything to me. And we tend to miss this because we confuse it with the similar case, which is justified, of aiding the being that we value more, but not doing anything detrimental to the being that we value less. This argument relies on a purely formal structure: B’s inferiority relative to A does not justify anyone in harming B in order to benefit A. Nothing in the argument depends on the inferior entity being human. There is, then, no way of limiting this reasoning to humans.<sup>50</sup>

As Zamir correctly notes, even if (most) human beings are morally superior to other animals (and some humans), or matter more morally, this does not justify us in actively harming other beings to benefit us. We might have stronger reasons to aid and benefit beings who are “morally superior” or have a greater moral status, as Zamir suggests, but any moral superiority does not justify or excuse actively harming beings to benefit ourselves.

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<sup>48</sup> Morrison (2003), p. 106.

<sup>49</sup> See Zamir (2007), p. 64-65.

<sup>50</sup> Zamir (2007), p.65.

We can see the force of this argument by way of a helpful thought experiment. Imagine earth is occupied by a group of Super Advanced Aliens who are superior to human beings in a variety of respects: they far exceed our meager powers of rationality, they are more intelligent than our most sophisticated and advanced computers, they have telepathic language abilities we cannot comprehend, and they exhibit moral fortitude that far exceeds us weak-willed humans.<sup>51</sup> If these aliens colonized earth and decided to use humans in painful experiments, harming and killing us to find cures to diseases that afflicted them, we would rightly deny that they are justified in doing this. But if we are to claim this, as we should, then we must reject the claim that being superior in various respects justifies actively harming the inferior.

### 2.5.3 Against the Consequentialist Argument

Another argument in favor of animal experimentation is a consequentialist argument. Some believe that harmful experiments on other animals can be justified if they will lead, or are likely to lead, to cures, drugs, or improved treatments that will reduce the suffering of human beings and thus, overall, promote the best consequences.

For this argument to work, it must account for the suffering and harms that the animals are made to experience. Only if we give equal consideration to their similar interests, while also assuming that these experiments will lead, or are likely to lead, to the best overall consequences, will the consequentialist argument have a chance of working.

That, at least, is the general outline of the consequentialist argument for animal experimentation, and it faces several significant problems. First, it is worth noting that most

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<sup>51</sup> This sort of thought experiment is common in the animal ethics literature. See, for example, Donaldson and Kymlicka (2011), p.27-28.

reject this argument, and the consequentialism it rests on, in the case of human beings. We hold this even though human beings would make far better test subjects for medical research than nonhuman animals. We do not think it matters whether experimenting on some unconsenting human beings, for example, would lead to an overall reduction in suffering and promote the best consequences.

But if we reject consequentialism in the case of *all* human beings, then we need some compelling reason why consequentialism fails for human beings but is the acceptable way to approach our moral relations with other animals. No compelling reason has been given, and as our discussion of the issue of human diversity pointed out, there is no plausible way to morally separate all human beings from all other animals. The consequentialist argument in favor of animal experimentation, then, fails.

## **2.6 Conclusion**

Even without an appeal to basic, negative rights, we ought to recognize that we have obligations not to harm other animals for food, entertainment, or even the knowledge and benefits to humans that might result from harmful, non-therapeutic medical experimentation on animals. These conclusions can be reached on the basis of our obligations not to harm other creatures without sufficient justification, and they are consistent with the claim that many human beings have a higher moral status than other animals.

Whether it is on the basis of arguments that animals have basic moral rights, or on the basis of claims about obligations we have not to harm nonhuman animals without sufficient justification, we reach the conclusion that human beings ought to end the ways we harm animals for food, entertainment, clothing, and medical and scientific knowledge.

However, these arguments have implications that extend far beyond these specific implications. As we will see, upholding and respecting the basic rights of other animals – or fulfilling our obligations not to harm them – requires that we substantially rethink how they relate to and exist within our legal and political institutions.



### 3 Political Inclusion for Nonhuman Animals

In this chapter, I defend the claim that animals deserve what I have termed “full political standing.” In Chapter 2, I argued that other animals have certain basic moral rights and that once we recognize these rights, humans ought to abolish harmful practices that exploit nonhuman animals (such as raising and killing animals for food, using animals for their skin and fur, and using animals in harmful, non-therapeutic medical experimentation). This is usually where arguments made by defenders of animal rights end. One of this chapter’s goals is to show that our thinking and theorizing cannot end here. I argue that to collectively fulfill our obligations to other animals, and to effectively uphold and protect their moral rights, we must grant other animals full political standing. Upholding the rights of other animals requires, in other words, substantial changes to the ways other animals are understood within, and in relation to, our legal and political institutions. These changes go far beyond the current property paradigm that dominates nearly all liberal democracies today. Only when the full political standing of other animals is recognized will it be possible to uphold our obligations to them.

After laying out my case for the claim that other animals should have full political standing, I consider a variety of objections to extending this form of political inclusion to animals. None of these objections challenge the arguments made in Chapter 2 defending the moral rights of animals. Instead, they object to my claim that other animals deserve greater inclusion in our legal and political institutions. Many of these objections, I believe, help to explain why many political theorists have not considered the place of nonhuman animals in our legal and political institutions and why they have viewed other animals as falling outside their area of study.

### 3.1 What is Political Standing?

The concept of political standing is meant to mirror, in certain respects, the concept of moral standing. Moral standing functions as a convenient shorthand.<sup>52</sup> To say that an individual has moral standing is, on my view, just to say that an individual's interests matter morally, that moral agents ought to take those interests into account in their moral deliberations, and that moral agents have some direct moral obligations to that individual. To possess moral standing, then, is simply to be part of the moral community – to be the sort of individual that matters morally. Humans and other animals, as conscious beings with interests, have moral standing; rocks and chairs do not.

The notion of political standing is meant to function in a similar way. To say that an individual has political standing is, on my view, a shorthand way of saying that his or her interests deserve some inclusion in the political realm. Political standing, then, connotes an individual's inclusion in the political sphere. There are, of course, many different dimensions or ways we can evaluate political inclusion, as well as different degrees or forms this inclusion might take. However, in this chapter, I will consider political standing in terms of three components that I believe to be most central to political inclusion: legal rights and protection, legal standing, and political representation of one's rights and interests.

In what follows, I will argue that other animals ought to be recognized as having full political standing, which involves the following:

1. *Legal rights and protection.* At the very least, an individual that has political standing is not the property of others but rather is owed legal protection for their rights (including a right to life and a right not to be made to suffer) and their most basic interests.

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<sup>52</sup> Here I follow DeGrazia (1996).

2. *Legal standing.* An individual with political standing should have the legal standing to enforce and uphold these legal rights and protections in court and to have cases brought on their behalf (either by themselves or by legal representatives).
3. *Political representation for their rights and interests.* An individual with political standing should have some form of *effective* political representation to ensure that their rights are upheld and that their interests are considered in political deliberations affecting their rights and interests.

Political standing admits of varying degrees. Put another way, there are varying degrees and ways in which individuals can be included in our legal and political institutions. Moreover, as will become clearer later, it would be a mistake to think that at present no animals have any political standing. Some animals do have some legal protection, and at least in this respect, their interests are included in the political realm. However, the legal protections some animals have are rather meager and the animals humans most often harm (i.e. farmed animals, animals used in experimentation) often have little to no meaningful legal protection. In any case, the real debate is about just how far the legal and political inclusion of other animals ought to extend. I will argue that animals deserve full political standing: the entire package of legal rights, legal standing, and political representation is needed if we are to adequately protect and uphold the rights of other animals.

In the second part of my dissertation, I will have much more to say about how, precisely, we ought to think about how different groups of animals should exist in and relate to our political communities. Given this later focus, one might wonder what purpose or function is served by the concept of political standing. Why argue here that all animals deserve full political standing, if later I plan to offer a more fine-grained analysis? Why begin with such general considerations, if the goal ultimately is to consider the complexity of the relations humans have with different types of animals and to discern the implications this ought to have for their political status?

My argument proceeds in this order for two primary reasons. First, we are in the early stages of any sort of sustained and systematic thinking regarding the moral status of other animals and how they ought to relate to our political institutions. Given the early nature of our exploration into these questions, it is likely that many will disagree about how we should best understand the *precise* nature of the political status of other animals and of different groups of animals. As a result, the arguments I offer in part two of my dissertation, where I put forward new proposals for understanding the political status of different groups of animals, are likely to be much more controversial than what I have thus far argued. Even those who agree that animals have substantial moral rights and that other animals deserve greater inclusion in our political communities might disagree with my formulation of what forms this inclusion ought to take.

By beginning with the general question of political standing, I attempt to achieve a modest consensus about what, at minimum, all conscious animals are owed in terms of inclusion in our political communities. I argue that all conscious animals deserve full political standing. One interesting feature of this approach is that animals should be seen as political subjects in virtue of who they are, and not primarily because of the relationships they have with, and to, human beings.<sup>53</sup> The need for much greater political inclusion of these animals originates in the fact that they are conscious beings who possess basic moral rights. The concept of full political standing, then, articulates a few central ways that other animals must be included in our legal and political institutions, if we are going to protect and uphold these rights. Recognizing other animals as having full political standing does not tell us all that we need to know about how animals ought to fit into our political communities. But it is a first step, and it indicates some of

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<sup>53</sup> In this respect, my approach appears to differ from Donaldson and Kymlicka. In *Zoopolis*, they argue that the need to conceptualize other groups of animals in political terms stems from the relationships we have to and with these animals. Our relationships with and to other animals are, on their view, best understood in political terms. While I agree that these relationships are important for how we view the nature of the political status of other animals, there is an important sense in which the need to think of other animals as political subjects (as beings deserving of 'full political standing') is prior to these relationships, and stems, ultimately, from the fact that they are conscious beings who possess certain basic, moral rights.

the ways any minimally adequate political theory must incorporate other animals.

A second reason for beginning my argument with the language of political standing and the understanding that there are degrees of political standing is that this approach allows us to think about the inclusion of other animals in our legal and political institutions without some of the baggage that might accompany other political concepts (citizenship, sovereignty, etc.). Many political theorists, I believe, are reluctant to think about the inclusion of other animals because many of political theory's central concepts presume that political subjects are linguistic agents who can participate in the *polis* in certain ways.<sup>54</sup> By appealing to the new three-part framework of political standing, we can begin this discussion while avoiding the associations and baggage that other political concepts often carry. Political standing tells us what beings matter for thinking about our political communities and whose interests must be included in our deliberations about these matters.

### **3.2 Arguing for Full Political Standing**

The central argument I wish to put forward holds that recognizing the full political standing of other animals is required to fulfill and uphold our obligations to protect and respect their basic moral rights. We will be able to respect and uphold these rights only if we recognize other animals in these ways and change our legal and political institutions accordingly. To begin to see why this new form of political recognition is important, it can be helpful to consider the current property status that animals have within our political communities and to note why this legal status is inconsistent with both their moral rights and our obligations.

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<sup>54</sup> Donaldson and Kymlicka (2017).

### 3.2.1 Animal Property: A Brief Overview

In every liberal democracy on earth today (and, indeed, in every nation-state), animals are considered legal property.<sup>55</sup> Under the law, animals are classified not as legal persons but as things that can be owned, bought, sold, and used by individuals and corporate bodies.<sup>56</sup>

A common way of understanding the property status of other animals is that the owner of the property is entitled to a bundle of rights. This bundle includes “the right to possess the property, to use the property, to exclude others from the property, and to dispose of the property by sale or by gift” (Schaffner, 21). However, while a property owner generally has exclusive rights to do with the property as he or she wishes, there can be and often are certain legal restrictions on what can be done to one’s property. For example, what one can legally do to an animal that is considered property is sometimes circumscribed and restricted by the state. Many countries have animal cruelty laws that prohibit abuse and neglect towards companion animals. And, increasingly, many states are adopting laws that prohibit some of the more egregious forms of confinement and bodily mutilation that are standard industry practices when it comes to how animals raised for food are treated.

However, even in places where animals have greater legal protections, such as the European Union, they are still considered property under the law. This classification has important implications for how they exist in and can interact with the legal and political institutions of the state in which they reside. As Francione notes, one consequence of treating nonhuman animals as property is that they are excluded from the category of individuals who can raise legal claims.<sup>57</sup> And because they are denied legal standing and cannot bring forward legal claims on

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<sup>55</sup> Francione, (1995), p.13.

<sup>56</sup> Even in places like New Zealand, and the European Union, where animal welfare legislation bans the use of great apes in non-therapeutic experimentation, these creatures are still considered legal property. And although their property status is restricted and subject to various protections and regulations, these individuals do not have legal standing. See Taylor (2001) and Roberts (2008).

<sup>57</sup> Francione (1995), p.12.

their own behalf, guardians and other humans are unable to legitimately bring claims on their behalf, even when laws meant to protect them are not being upheld or when neglect and abuse have caused damage to them. The injury to an individual, which is often needed to have standing to bring forward legal claims, excludes the injuries suffered by animals, who are deemed the property of others.

The denial of legal standing is just one problematic feature of viewing other animals as human property.<sup>58</sup> However, it gets at a core feature of treating other animals as property. For when animals are treated as property, they are denied an important and basic form of membership in our legal and political communities. Their interests take a back seat to the interests of their owners, and they are denied the central components of political membership that come with having full political standing.

### 3.2.2 Legal Rights and Legal Standing

In contrast to most property regimes, granting other animals full political standing would require that we recognize their need for legal rights and legal standing. Upholding the basic moral rights of other animals requires that our legal institutions recognize these rights under the law.

The case for legal rights of animals is relatively straightforward, as most of the heavy lifting has already been done in Chapter 2. If animals do have the basic moral rights I have outlined above (including a right to life and a right not to be made to suffer by humans), then to collectively ensure that these rights are upheld requires that we extend to other animals legal rights that protect them from being killed, made to suffer, and unjustly confined by human beings. We

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<sup>58</sup>Some proponents of animal rights have argued that a property regime is not inherently detrimental to the interests of other animals. Whether other aspects of the property status of nonhuman animals - such as the legality of selling and purchasing nonhuman animals - are legitimate is a topic I consider in Chapter 7.

recognize this requirement readily in the case of human beings, whose basic moral rights we enshrine in law. Granting other animals legal rights and legal standing is similarly entailed by our recognizing their basic moral rights.

The argument in favor of extending legal rights to nonhuman animals runs parallel to the argument I made for the basic moral rights of nonhuman animals. We recognize that all born and conscious human beings, regardless of cognitive abilities, deserve legal rights that protect their most basic moral rights. There is no consistent and justifiable way we can hold this position while denying that other animals deserve legal rights protecting their basic moral rights. Just as legal rights are needed to protect the most basic rights of all human beings, so too they are needed to protect the most basic rights of other animals.

The need for legal rights to protect the basic moral rights of other animals can also be supported by appealing to a variety of practical considerations. Obviously, the obligations we have to other animals are violated on a regular basis. To uphold these obligations, therefore, we must put them into law and use various methods of enforcement and deterrence (including policing and prosecuting violations of these rights) to mitigate or prevent such violations. Just as legal rights are needed in the human case, in part to deter the violation of certain basic human rights, so too legal rights are needed to protect the basic rights of nonhuman animals.

In addition to legal rights, however, other animals also should be granted legal standing. Legal standing for nonhuman animals will look different than the legal standing of many human beings because nonhuman animals cannot bring legal claims on their own. Instead, as with cases involving children or individuals with severe cognitive disabilities, other individuals would be responsible for bringing claims on behalf of animals. Securing the legal standing of animals in such a way would involve a few different components. In a legal system that afforded legal standing to other animals, legal action could be undertaken on an animal's behalf, for example by legal guardians, caretakers, private and public organizations, or even private citizens. In



determining whether legal relief should be granted, the court would take injury to the animal into account, and the relief would run to the benefit of the animal or animals on whose behalf the legal claim was being advanced.<sup>59</sup>

Already in some legal jurisdictions, human beings do have some standing to protect animals in the courts. Cass Sunstein notes that this is the case for citizens in the U.S., who do, in a few different circumstances, have the standing to bring suits to federal courts regarding laws that protect animals. Such suits originate, for example, when individuals seek information about animal welfare that, under the law, must be disclosed to the public; “when the government’s failure to protect animals inflicts a competitive injury on the human plaintiff”; and when a human being visits or works with animals that are threatened with illness, death, or other harm (and can claim that they are personally injured by the harm to the animal).<sup>60</sup>

In these cases, however, it is human beings that have standing before the courts, and the question of whether or not an individual has been injured – and thus has standing to bring a suit – concerns whether or not a *human being* has been injured. Granting legal standing to other animals, by contrast, would allow humans to bring suits *on behalf of other animals* when *an animal* has been injured and when there is a clear violation of the law that is not being upheld.

Granting other animals legal standing would serve several important purposes. First, granting other animals legal standing would provide an important mechanism for enforcing and protecting the already existing legal rights of other animals.<sup>61</sup> Today, many of the animal welfare laws that are on the books are unenforced and ignored. These laws range from

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<sup>59</sup> See Chris Stone (1972), p.458

<sup>60</sup> Sunstein (2005), p.259.

<sup>61</sup> For an interesting article on the issue of legal standing for other animals, with a more practical focus on how this might be advanced in the United States, see Sunstein (1999).

regulations on how an animal may be slaughtered to minimally acceptable conditions of care. Allowing others to sue on behalf of animals when there is evidence that such regulations and conditions are not being enforced would provide one way of addressing this problem and would provide private individuals some means to supplement public enforcement of the law.<sup>62</sup> Indeed, ensuring that the existing legal rights of animals are meaningful and not simply words on paper requires that they can be effectively enforced. Legal standing is a crucial component in that enforcement.

A second reason to grant other animals legal standing is to provide redress for specific harms and injuries they may have suffered, when compensation is appropriate to help remedy the harms inflicted upon them. We recognize the importance that these civil suits can play in redressing wrongs committed against humans and they should play a similar role for nonhuman animals. For example, if a dog is injured by a reckless driver, some financial compensation might be deemed appropriate to help compensate for the harms done to the dog, including the provision of medical care and the costs of rehabilitation.

Finally, allowing other animals to have suits brought on their behalf would provide greater *public awareness* of the ways animals are often harmed and exploited by human beings. In addition to ensuring enforcement and compensation under current laws, increasing public awareness of the ways animals are harmed and injured could lead to changes to the legal protections afforded to other animals or, when they are deficient, to the mechanisms in place to ensure their enforcement. Legal standing, then, can have a remedial effect on the law: bringing attention to areas where changes are required in the law or changes in the methods of enforcement, regulation, or monitoring that are needed to uphold it.

The importance of legal standing for other animals has increasingly gained acceptance among

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<sup>62</sup> Sunstein (2005), p.261.

legal scholars who think and write about animals. In her important dissent in *Reece v Edmonton*, Justice Catherine Fraser (the Court of Appeal of Alberta) notes an important thread of unity that can be found among the wide variety of proposals for reform put forward by academics and legal theorists: “Despite substantial differences in these various reform proposals, it is noteworthy that all agree on one critical point. If animals are to be protected in any meaningful way, they, or their advocates, must be accorded some form of legal standing at law.”<sup>63</sup> Legal standing, I believe, is a basic requirement for any sort of meaningful legal protection. Thus, legal standing must be granted to nonhuman animals so that we can protect and uphold their basic moral rights.

### 3.2.3 Political Representation

Adequately upholding and protecting the basic rights of nonhuman animals requires more than simply granting animals legal rights and legal standing. The last part of the full political standing of other animals, as I have outlined it, involves political representation of the rights and interests of nonhuman animals.

Once we recognize the basic moral rights of other animals, we must recognize the need for various ways of *institutionalizing* political representation so that the interests and rights of other animals will be considered and protected.<sup>64</sup> I will have more to say about the various forms this political representation can and should take in part two of my dissertation.<sup>65</sup>

However, various options for institutionalizing political representation for other animals include: appointing a federal Ombudsmen dedicated to issues of animal welfare and animal

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<sup>63</sup> *Reece v Edmonton* (2011), p.21

<sup>64</sup> The issue of whether other animals deserve some form of political representation has not received much scholarly attention. See Dobson (1996) and Donaldson and Kymlicka (2011).

<sup>65</sup> See Chapter 8.

rights; guaranteeing seats in federal legislative bodies devoted to the interests of animals; electing Animal Representatives to serve on city planning and zoning boards; and creating cabinet members or a government department charged with ensuring that the interests of other animals are understood, represented, and protected. Regardless of which steps are taken and in what order, my central claim is that full political standing requires various forms of institutionalized political representation capable of representing the rights and interests of nonhuman animals.

One initial objection to the idea that other animals should be afforded some type of *institutionalized* political representation claims that it would be unnecessary or redundant. We might think that when political representation for other animals has become politically possible, it will no longer be necessary or required. In all likelihood, many of the sorts of reforms I am suggesting are not close to being politically feasible in the near term, except perhaps for specific types of nonhuman animals.<sup>66</sup> If this is the case, we might think that these reforms will only become politically feasible when a large majority of a state's human citizens come to recognize and affirm the basic moral rights of other animals and to vote with these views in mind. We might assume, in short, that these more enlightened human citizens would bring the interests of animals into the voting booth, electing representatives who will be attentive to the interests and rights of other animals. Perhaps institutionalized forms of political representation would be redundant or unnecessary.

Here one could draw an analogy to the political representation of children. While children and minors certainly have legal rights and legal standing, they are not allowed to vote and, in most

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<sup>66</sup> For some animals, such as the great apes, elephants, cetaceans (such as whales and dolphins), and companion animals like cats and dogs, the extension of legal rights and legal standing may happen soon. Indeed, in 2015 an Argentinian appeals court held that Sandra, a 29-year-old orangutan, is a legal person, and that her confinement in a Buenos Aires zoo constituted an unlawful deprivation of her freedom. Similar cases concerning primates living in confinement have also been raised in the U.S.

liberal democracies, are not the beneficiaries of any special, institutionalized form of political representation.<sup>67</sup> And yet we might think that this does not compromise their “full political standing.” When I outlined the requirements for the political representation component of full political standing, I was careful to note that an individual should have “some form of effective political representation to ensure that their rights are upheld and that their interests are considered in political deliberations affecting their rights and interests.” What is required, I believe, is *effective* political representation of one’s rights and interests. Put another way, the political system must be set up in such a way that the rights and interests of these individuals are represented adequately, if not directly or entirely, in the legislature and other political bodies.

In the case of children and minors, many think that the parents, guardians, and caretakers of these individuals do adequately represent their interests and their basic rights when they step into the ballot box. One could argue that if special, institutionalized forms of political representation are not needed for children, whose parents effectively bring their interests to the political sphere, then the same is true (or might one day be true) for other animals.

Several problems confront this objection to affording other animals some form of institutionalized political representation. First, there are problems with both conflicting interests and with the degree of separation between nonhuman animals and their representatives. It would be both unreasonable and ineffective to expect regular human citizens to represent the interests of animals adequately when they vote. Likewise, it would be untenable to elect legislators who are not tasked with focusing exclusively on animals and then expect them to attend adequately to the rights and interests of other animals. Individual citizens simply do not have the knowledge required to adequately represent the interests of so

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<sup>67</sup> For a discussion of some different examples of political representation of children, see Wall and Dar (2011), p.376-379.

many different types of animals when they step into the voting booth. Not only would it be impossible for them to effectively know the interests and needs of so many different animals, but it is unreasonable to expect these citizens to be informed of the unexpected problems, changing circumstances, and many other variables that would be required to adequately represent the rights and interests of other animals. Similarly, we have good reason to think many humans would be prone to bias towards other animals, unlikely to give their interests adequate consideration.

The analogy to the political representation of children is also flawed. While children are not usually afforded some form of institutionalized political representation, they are usually safeguarded by a variety of governmental organizations that exist to protect some of their most fundamental rights (often, for example, by a government body devoted to their protection from domestic abuse). And, unlike almost all animals, parents are generally well-suited and equipped to know the needs of their child and are very likely to bring that understanding to the ballot box (although the extent to which they effectively do this, as we will see, is not so clear). This is not true, however, when it comes to the knowledge most citizens have of other animals and their interests. Here, most citizens will not possess adequate knowledge of other animals, of the circumstances in which these animals live in, and of the relevant laws and policies that affect and shape their most basic rights and interests. Their incentive to gain knowledge in these areas is also not as great as it is in the case of children.

Finally, it is not clear that the rights and interests of children are, in fact, adequately represented by the votes of their parents and guardians. Elizabeth Cohen has presented strong arguments against this claim.<sup>68</sup> Cohen argues that when it comes to political representation, children still fall under the coverture model that used to exist for married women. Under

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<sup>68</sup> See Cohen (2005) and Wall and Dar (2011).

coverture, the legal and political identity of a married woman was folded into that of her husband.<sup>69</sup> As Cott notes, “a wife could not use legal avenues such as lawsuits or contracts, own assets or execute legal documents without her husband’s collaboration...the husband became the political as well as the legal representative of his wife, disenfranchising her. He became the one *full* citizen in the household.”<sup>70</sup> A similar model, Cohen suggests, persists when it comes to the political representation of children: parents are expected to represent children at the ballot box through the vote they already possess.

Cohen argues this method of representing the interests of children has many pitfalls. For one, while parents are expected to vote with their child’s interest in mind, many do not vote, effectively leaving their child’s interest unrepresented. Along with this, each parent only has one vote, regardless of how many children their vote represents. And children without parents or legal guardians have no political representation at all. But beyond these problems, Cohen suggests that the interests (or perceived interests) of parents can come into conflict with the interests of their children. School improvement, for example, may require greater funding, while some parents may oppose the increased taxes needed to generate added revenue. Cohen also notes that in many areas the interests of children have often been overlooked or ignored, in ways that suggest they are not being represented adequately. We see this, she thinks, in the scheduling of school hours to fit the schedule of adults (rather than the developmental needs of children), in the ways that the testing for safety of chemicals and pharmaceuticals are generally geared towards adults, as well school lunch programs that put the interests of agricultural producers – when the government buys ‘surplus’ goods – ahead of the nutritional needs of children.<sup>71</sup> Given these and other problems, Cohen thinks the interests of children are not effectively represented through the votes of their parents and guardians and she suggests that

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<sup>69</sup> Cohen (2005), p.228.

<sup>70</sup> Cott (2000), p.11-12.

<sup>71</sup> Cohen (2005), p.230-231.

some other form of institutionalized, political representation is needed to adequately represent children and their interests in the political sphere.

Many of the problems that Cohen notes loom even larger when it comes to the representation of other animals. Conflicts of interest (or perceived conflicts of interest) between human citizens and nonhuman animals appear even more likely to occur in the case of animals than in the case of children. Potential conflicts of interest – as well as bias and other forms of discrimination – will confront any form of political representation for other animals that requires human representatives. Nonetheless, a failure to institutionalize various forms of political representation for other animals only exacerbates this problem. In the absence of some institutional voice for animals, policy threatens to be dictated largely by industries that use and harm animals.

Here we can draw an analogy to the way many liberal democracies have created Ministries of the Environment and mandated environmental impact reports for things like new development projects. Such steps institutionalize a degree of political representation for environmental interests. One of the central motivations for having a Ministry of the Environment is to help protect the environment by bringing expertise and knowledge to issues that concern it. The threat of these agencies and ministries being co-opted by corporations that profit or stand to gain from environmental degradation is, of course, always present. Nevertheless, having an institutional voice on behalf of environmental interests can go some way in countering the political influence of corporations and providing necessary knowledge, expertise, and representation. Even if it is not perfect, some institutional representation for the environment is better than no institutional voice at all.

These same dynamics underscore the need for institutionalizing political representation on behalf of nonhuman animals. It is likely true that many of the legal and political reforms I have argued for will become politically possible only when a large enough majority of a state's



citizens have come to recognize the basic rights and interests of other animals. And even when such a majority comes into existence, many human beings likely still will reject these rights, holding on to various prejudices and biases towards other animals. Furthermore, human citizens who would attempt to vote with the interest of animals in mind are not well situated to adequately represent the rights and interests of other animals. Finding ways to institutionalize various forms of political representation for other animals is therefore necessary to protect and uphold their basic rights.

### **3.3 Objections to Granting Animals Full Political Standing**

Many people working in political theory and political philosophy have thought it obvious, for a variety of reasons, that other animals fall outside of their subject matter. Given this fact, it is worth addressing a variety of initial objections to the claim that other animals deserve full political standing before I go on to present more detailed claims about the political status of different groups of animals and our political relations with them.

Unfortunately, few political theorists have given much attention to how other animals ought to relate to and exist in the political sphere. As a result, the exclusion of other animals from political consideration has typically been stated in terms of an exclusion from the “sphere of social justice.” The orthodox view among political philosophers and theorists is that animals fall outside this sphere. Before looking at why many theorists think this is the case, I will begin by explaining how inclusion in the sphere of social justice relates to political standing. After doing this, I turn to objections against my argument that other animals deserve full political standing.

When political philosophers and theorists have considered other animals in their work, it is

most often to claim that other animals fall outside of the “sphere of justice.”<sup>72</sup> Unfortunately, it is not always clear what this is supposed to mean or what practical consequences might follow from being excluded from the sphere of justice. As we will see, the claim can be interpreted to mean different things, some consistent with granting other animals full political standing and others not. Before evaluating objections to granting other animals full political standing, it is worth explaining how I understand the basic features of claims regarding social justice.

The word “justice” is used in a variety of ways, which causes confusion and leads individuals to talk past one another.<sup>73</sup> For example, some theories of justice include within their scope claims about our personal interactions with others and what fairness requires in these interactions. This type of approach can be contrasted with theories of *social justice*. Here the focus is not on our personal interactions with others but instead with the structure of a state’s social, economic, and political institutions.

My focus is on theories of *social justice*. According to Rawls, the primary subject of social justice concerns ‘the basic structure of society’ or “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”<sup>74</sup> By “major social institutions,’ Rawls has in mind a state’s constitution, as well as its economic and social arrangements. Rawls’s focus is on the basic structure “because its effects are so profound and present from the start.”<sup>75</sup>

Rawls describes justice as the first virtue of social institutions, but he (like most other political

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<sup>72</sup> A good example of this is Rawls quick dismissal of animals from considerations of justice. See Rawls (1971), p. 512. See also Barry (1999), p. 95.

<sup>73</sup> In part because of this confusion, I have decided to focus my argument on how other animals exist in, and relate to, our political communities and legal and political institutions. This choice avoids the confusion that talk of social justice can sometimes engender, while having the advantage of going straight to questions of legal standing, institutional representation, and other political concerns.

<sup>74</sup> Rawls (1971), p.7.

<sup>75</sup> Rawls (1971), p.7

theorists) does not think that social justice captures all of morality. He makes this point clearly in his discussion of other animals, when he notes that “[a] conception of justice is but one part of a moral view.”<sup>76</sup> So while Rawls thinks that duties of justice do not apply to our duties to animals, he believes that we have “duties of compassion and humanity” towards other animals. I agree with Rawls that a theory of social justice primarily concerns the basic structure of society. Theories of social justice must attempt to outline the limits of state power and will, among other things, outline the rules and obligations individuals can be legitimately forced to comply with by the state.<sup>77</sup> Given these basic features of theories of social justice, what would be the practical implications of excluding animals from the sphere of social justice, and how would this exclusion influence our understanding of their existence in, and relation to, our legal and political institutions?

Surprisingly, while many philosophers are quick to dismiss other animals from a theory of social justice, few explain what are the practical consequences of this exclusion. This failure to specify the practical implications of an exclusion from the sphere of social justice has potentially dangerous ramifications.

An example can help to illustrate this problem. In “Cognitive Disability, Misfortune, and Justice,” Jeff McMahan makes an argument that individuals with severe cognitive disabilities are not owed special compensation as a matter of justice. However, midway through the essay McMahan’s terminology changes and he claims that these individuals fall outside the sphere of justice. McMahan makes similar claims in other essays, and yet he fails to explain what practical import, if any, this exclusion has. Does falling outside the ‘sphere of justice’ mean, for example, that individuals with severe cognitive disabilities should not be provided with a publicly financed education? Does it mean that the costs associated with their development and care

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<sup>76</sup> Rawls (1971), p.512.

<sup>77</sup> See Cochrane (2012), p.13, and Garner (2013), p.8

should be borne solely by the families they live in (as, sadly, often is the case), rather than the public at large and the state? Does it mean that individuals with severe cognitive disabilities still are entitled to these goods, but that their claims are less urgent or have less priority because they fall outside the sphere of justice? Or does none of this follow? Are there other moral obligations we have to these individuals, obligations perhaps in some way distinct from obligations of justice, which would account for and ground these entitlements?

As these questions illustrate, if we are going to claim that an individual falls outside the sphere of justice, we ought to explain the practical consequences this has for how that individual relates to the community and polity in which they reside. There are, I believe, two different ways we might understand the practical import of excluding animals from the sphere of social justice. On the one hand, if we think that the sphere of social justice exhausts the scope of where the state can intervene in citizens' lives, then the exclusion of animals from the sphere of justice would have severe ramifications for other animals. Arguably, this exclusion would be incompatible with most of the rather minimal ways animals are currently protected under the law. Regulations restricting how farmed animals may be treated, for example, and that concern the animal's welfare (and not merely public health or environmental concerns) would seem to conflict with this position.

This position is quite extreme and appears incompatible with the rise of animal welfare laws designed to prevent some of the more egregious and serious forms of harm that are inflicted on animals (as well as with many of the ways the state legitimately intervenes in the lives of humans!). If animals are excluded from the sphere of social justice, and this sphere exhausts the legitimate scope of where the state can intervene in the lives of its citizens, then it appears this position is unable to allow for these sorts of meager protections that we already find in many countries, and which enjoy a wide public consensus. That consideration alone is reason enough to reject this position.

A much less extreme and, I think, more plausible position understands a theory of social justice to be just one part (but of course a central part) of a broader account of *political morality*. On this position, a theory of social justice accounts for some of the most central and urgent obligations and responsibilities that a state must meet for its citizens and residents, but it does not exhaust them all nor does it account for all the ways the state might legitimately intervene in their lives. Thus, one might hold that, while our obligations to other animals are not a matter of social justice, they are nevertheless important, and believe that the changes needed to grant other animals full political standing are justified. Laws that protect the rights of other animals from being killed or made to suffer by humans can be justified, on this view, even if these laws are not strictly required as a matter of justice. Denying that animals fall within the sphere of social justice, then, does not necessitate that we deny them full political standing, for this may just concern other aspects of a broader, political morality.

Nevertheless, while I do think this is a position open for one to take, it is not compelling. As others have noted, denying that our obligations to other animals fall within the sphere of social justice appears to deny that these obligations are particularly urgent or pressing.<sup>78</sup> In the case of human beings, for example, we seem to include their most basic rights (to life, bodily integrity, etc.) as some of the most urgent claims there are and treat them as if they fall clearly within the sphere of justice. However, if possessing these basic rights is sufficient to fall within the sphere of justice, there appear to be no legitimate, non-speciesist reasons for denying the same to animals. Denying that our obligations to other animals fall within the domain of justice would suggest that these are obligations of charity, or compassion, and not pressing moral obligations to other animals.<sup>79</sup> Animals, therefore, should be seen as subjects of social justice.

In any case, while I do think that other animals are subjects of justice, my focus in the rest of

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<sup>78</sup>See Garner (2013), 48.

<sup>79</sup>See Garner (2013), 2.

this chapter and the rest of my dissertation will be on much more specific claims about the political status of other animals. Discussions about whether animals fall within the sphere of social justice are less important than specific claims about how our legal and political institutions ought to be revised to protect and uphold the rights of other animals. In the remaining part of this chapter, then, I consider a variety of objections to the claim that other animals deserve full political standing. Unlike in the previous chapter, these objections do not challenge the rights of other animals, but instead argue that we have good reasons for not granting other animals greater political standing and inclusion in the political sphere.

### 3.3.1 The Political Sphere as the Realm of Equality

One argument for denying other animals full political standing and for viewing other animals as falling outside of our political communities derives from the view that inclusion in the political sphere is limited to moral equals.

Brian Barry suggests that the concept of justice cannot be used intelligibly outside the context of relations between human beings since “justice and injustice can be predicated only of relations among creatures who are regarded as moral equals in the sense that they weigh equally in the moral scales”.<sup>80</sup> This view concerning the sphere of justice is quite common.<sup>81</sup> Ronald Dworkin and Will Kymlicka have even suggested that every plausible political theory shares the same ultimate value of equality, in the sense that they attempt to offer the most plausible account of what it means to treat people “as equals.”<sup>82</sup> This sense of equality is more fundamental and basic than particular notions of equality put forward by egalitarians of

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<sup>80</sup> Barry (1999), p. 95.

<sup>81</sup> Campbell (1988), p.11, and Charles Taylor (1985), p.36, express similar doubts about the sphere of social justice applying to nonhuman animals.

<sup>82</sup> Kymlicka (2002), p.3-4; Dworkin (1977), p.180, and Dworkin (1983), p.24.

different stripes. And it is shared, they think, by nearly all political theorists, whether they are leftists who believe in equality of income or resources, or libertarians who think treating people “as equals” requires recognizing equal rights over one’s labor and property.

Dworkin and Kymlicka’s claims are of course open to controversy.<sup>83</sup> Nevertheless, whether it applies to all or even most work in modern political philosophy, they have identified an important thread that runs through a great deal of work in political theory. As Kymlicka notes, political theorists of all stripes take for granted certain claims about equality: few, for example, would hold that some people are not entitled to equal consideration from the government or that certain kinds of people just matter less. Whether a basic and fundamental sense of equality – understood as equal treatment – is the *ultimate* value most political theories appeal to, equality clearly is a crucial value in modern political theory and one that many political theorists see as being at the heart of their subject matter.

This fact, I believe, helps to explain why few political philosophers have had much to say about how other animals ought to fit in, and relate to, our political institutions and political communities. Because these theorists have assumed that the subjects of the political sphere are moral equals, and since it is often assumed that other animals have a lower moral status than human animals and are not our “moral equals,” nonhuman animals have been excluded from the political realm and from the sort of work that is done in political theory.

But why has it appeared so obvious to so many that the political realm is limited to a community of equals? One possible explanation is that for many political theorists, other animals just are not on the “moral radar” as beings whose interests matter and whose suffering or well-being should concern us. After all, much of the exploitation of other animals by humans

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<sup>83</sup> Thomas Nagel also suggests a similar approach for interpreting different political theories. According to Nagel, we can look at different political theories as disputes about “*how* people should be treated equally, not whether they should be.” See Nagel (1979), p.111.

does occur out of sight. Beyond our companion animals, few of us interact with other animals daily and it is relatively easy to live our lives without confronting the myriad of ways that we harm and kill other animals. Likewise, the ways humans indirectly harm many wild animals are not immediately obvious. The “behind-closed-door” nature of so much animal suffering might also explain why political theorists have failed to consider the extent to which the state exerts incredible control and influence over the lives of animals.

Even for political theorists who are personally aware of these issues, other animals might not appear to be particularly *political* subjects. This is especially the case when we think of wild and liminal animals. A variety of factors contribute to this: with harmful treatment of domesticated animals hidden from view, we often tend to think of cities and settlements as distinctively human-occupied spaces. We forget about the many animals that live with, among, and around us, and we ignore or remain unaware of the many ways humans directly and indirectly harm wild animals. Taken together, I think these elements help to explain why animals are not even considered as potential subjects of the polis.

If animals are not on the radar as potential political subjects, then it is not hard to see why the claim that the political sphere concerns moral equals would be appealing. This sort of language affirms human equality and denies the various forms of prejudices that hold different groups of people have a lesser moral status. When other animals are not being considered, affirming that the political community is a community of moral equals appears to include everyone, affirming the equal dignity of all.

In the second part of my dissertation, I will consider the membership of domesticated animals in our political communities and how their membership relates to claims about moral equality.<sup>84</sup> I will argue that it is mistaken to engage in the sort of moral-status ranking, in which

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<sup>84</sup> See Chapter 7.2.



paradigmatic human beings have “full moral status” while other animals have different degrees of lesser moral status. Such hierarchical ranking obscures the obligations we have to other individuals and is prone to creating significant confusions. But for now, we can ignore this larger question of how claims of equality relate to other animals. For *even if* one thinks that other animals have a lower moral status than all or most human beings, or that humans are morally superior or more valuable than other animals, this belief does not provide sufficient reasons to deny other animals full political standing. Lower moral standing does not entail no political standing or even the denial of full political standing.

It is worth pointing out that here we have moved beyond objections to the claim that other animals have certain basic moral rights. Instead, what we are considering in this chapter are objections which claim that *even if* animals have certain basic moral rights, they should be denied full political standing. And there appears to be little rational support for the objection that inclusion in the political sphere and, by extension, political standing is limited only to “moral equals.”

It is not clear what reasons can be offered in support of this objection. One might think that, if other animals are not our moral equals, then a greater *priority* should be given to the claims of human beings and to steps that would *benefit* human beings. Yet all of this is consistent with granting other animals full political standing to protect and uphold their basic (and most fundamental) moral rights. It is unclear why animals having a lower moral standing should mean that their basic moral rights should not be protected by the state or that their interests should not be represented, in some way, in the political arena.

Importantly, we already recognize that different constituents and different issues may deserve more or less priority when it comes to the functions of the state. Upholding the basic security and right to life of a state’s citizens might be more central, or pressing, than universal access to education, or access to parks and natural spaces, but this ranking of priorities does not mean

that the latter functions are not important. Granting other animals political standing, then, is consistent with the position that there are more pressing or crucial functions of the state.

Lastly, it is important to point out that other animals are already recognized as having some political standing. Other animals are already included, in very minimal and (most often) inconsistent ways, within the political sphere of most states.<sup>85</sup> Nearly all modern liberal democracies, for example, have anti-cruelty laws on the books that recognize, to some extent, an obligation on the part of human beings not to cause “unnecessary” suffering to animals. And, increasingly, the direction most liberal democracies are taking is to extend greater legal protections when it comes to other animals. Admittedly, these changes are coming slowly, are often filled with loopholes that allow many activities and practices that harm and kill other animals. Nevertheless, we have seen a push for greater protections and regulations for animals in agriculture, for example in the E.U., India, and Israel. Several U.S. states have been some of the most egregious common practices of factory farming, and many states have banned or severely curtailed non-therapeutic medical experimentation on the great apes.

But if the political sphere is limited only to moral equals, and we understand this claim as entailing no legal or political recognition of other animals, then political theory cannot point to any legitimate basis for these extremely modest protections for other animals, which already have very widespread public support. If, on the other hand, we think these laws are legitimate, then we are left with no compelling reason why we should not extend full political standing to other animals, whether or not they are our “moral equals.”

### 3.3.2 Reciprocity and Moral Agency

Another reason one might deny full political standing to other animals comes from a different

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<sup>85</sup> See O’Sullivan (2011)

view of what is required for membership or inclusion in a political community. According to some, membership in the political sphere requires that a subject can engage in mutually beneficial reciprocal relations or, in a similar but slightly different vein, that the subject is a moral agent. This view is often articulated in terms of a requirement for citizenship, or membership in the sphere of social justice. John Rawls, for example, holds that the basis of human equality and, therefore, the requirements for inclusion in the sphere of social justice are our capacity to have a conception of the good and our sense of justice, or moral agency.

There are a variety of ways we can understand the objection that political standing requires a form of reciprocity or moral agency. We might hold that political inclusion, in the form of full political standing, requires that one be able to contribute in an economic form to society. Or, we might hold that the sort of reciprocity required is less narrow and that the ability to contribute to society *in some way* is all that is needed. Or, perhaps all that is required is that one be a moral agent, where moral agency is understood as the ability to reflect on the reasons one has for acting and to be held morally responsible for one's behavior.

No matter which of these requirements we choose, however, they all face the same set of problems. First, we already reject these as requirements for political inclusion in the case of human beings. Individuals with severe physical or intellectual disabilities are not denied legal rights or standing because they might use more economic resources than what they contribute to society. Nor do we think that human beings who are not yet, or will never be, moral agents responsible for their own behavior ought to be excluded from the political sphere. Therefore, just as we do not think the lack of economic reciprocity, societal contribution, or moral agency in a human being are grounds for denial of full political standing, so too, we should not think it is in the case of other animals.

Another way of limiting membership in the political sphere appeals to a different understanding of moral agency. Often moral agency is understood in a very rationalist way. For those who

propose it as a necessary condition for inclusion in the political sphere, to be a moral agent requires that an individual can make moral judgments, can think about their actions in terms of propositions, can revise or reconsider how they might act in light of moral principles, and can act in light of these principles.

However, against this view, one might hold that there is something about our *moral relations* with others, understood in less narrowly rationalist ways, that is important for an individual's political inclusion. Leslie Francis and Anita Silvers, for example, have proposed that we reimagine how we understand both social contract theories of justice and the required capacity for inclusion in the sphere of social justice, in a way that accommodates individuals with intellectual disabilities. Instead of understanding the social contract under the bargaining paradigm, in which individuals with competing interests negotiate rules and principles they can all accept, Francis and Silvers suggest that we think of the social contract in terms of practices and principles that engender trust. On their view, no individual should be considered a "marginal case" or "outlier" on a social contract theory of justice.

A somewhat similar proposal is put forward by Amy Mullin regarding the moral status of children. Mullin argues that the ability to engage in morally valuable relationships, characterized by a reciprocity of care, contributes to the moral status of an individual. Mullin's argument is concerned with moral status; however, one might hold that only those individuals who are capable of reciprocity of care are legitimate members of the political sphere.

One advantage of these proposals is their ability to account for more of the diversity of human beings within the political sphere. If we extended Mullin's proposal as a requirement for full political standing, it seems most (but probably not all) human individuals with severe intellectual disabilities would be included, since most have the capacity to engage in caring relations. And the proposal drawn from Francis and Silvers would likely extend even further, as nearly all human beings appear capable of trusting others.

What would these proposals mean for the political inclusion of other animals? Francis and Silvers consider how their approach to social justice might accommodate other animals, but their discussion on this topic, despite a promising start, is ultimately disappointing. Francis and Silvers rightly recognize that other animals are capable of trust. They cite a feral dog gradually coming to trust her new human guardian as a good example of this. In this example, they argue, we see the importance of mutual reliability and mutual deference to the ways of each party. Both parties learn what behaviors they must exhibit to gain and keep the other party's trust. As a result, Francis and Silvers do not think it is a stretch to say that other animal's participation in trust-building relationships "shapes the principles that guide the relationship despite the animal's inability to reflect on and articulate those principles."<sup>86</sup>

However, when it comes to inclusion in the sphere of justice, the requirement for other animals is, oddly, an ability to trust other human beings. As Francis and Silvers write, "Only animals positioned to trust humans can be owed trustworthiness in humans."<sup>87</sup> This is a surprising requirement since Francis and Silvers were explicit that their approach to social justice was meant to prevent any "outliers." Further, rather than considering what sorts of political principles the inclusion of other animals in the sphere of social justice might generate, Francis and Silvers instead focus on how our treatment of other animals affects our ability to trust other human beings, not the ability of other animals to trust us. When it comes to whether justice would permit killing other animals for food, for example, they suggest an answer to this depends on how these practices relate to the ability of humans to trust one another, and of animals to trust us. Yet they have nothing to say beyond this, noting simply that there is significant disagreement about the permissibility of killing animals for food.

Francis and Silvers are right to recognize that many animals are capable of trusting humans.

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<sup>86</sup> Francis and Silvers (2005), p.71.

<sup>87</sup> Francis and Silvers (2005), p. 72.

Indeed, most domesticated animals were domesticated because of their sociability and their abilities to interact with, respond to, and trust human beings. Further, many domesticated animals have been bred in ways that have enhanced these abilities. Nevertheless, when Francis and Silvers consider what justice might require of our treatment of other animals, they treat the interests of other animals very differently than they would those of human individuals. Here they leave it open to consideration whether another animal's most fundamental and basic interest – in continued existence – can be sacrificed, suggesting that there is no problem of justice so long as relations of trust between humans are not hampered. While seeming to grant some inclusion to other animals, then, Francis and Silvers's approach ultimately does not treat other animals as political subjects whose interests matter directly to the large community of which they are a part.

Another problem with Francis and Silvers's suggestion is that it would exclude from the sphere of justice animals not capable of trusting humans. A similar problem would also confront the proposal, adapted from Mullin, that inclusion in the political sphere requires the ability to engage in morally valuable relationships characterized by a reciprocity of care. These proposals would seem to rule out many wild animals, who either seem to lack the capability to trust other human beings or who, for good reasons, simply do not trust other human beings. Likewise, many of these same animals also do not engage in relationships involving reciprocity of care. However, it is hard to see why these facts are important to protecting these animals from both direct and indirect harms, or why they should not be granted full political standing to protect and uphold their basic rights. Even animals that cannot (or do not) trust human beings share the same capacity to suffer and have the same interest in continued existence.

These problems, I believe, suggest that attempts to limit inclusion in the political sphere to those capable of certain moral relations are misguided. Inevitably, this restriction is likely to exclude *some* human beings, whose interests we already recognize as being of crucial

importance to the political sphere. But beyond this, attempts to restrict membership in the political sphere to beings with some specific capacity – beyond the possession of interests and rights – lack rational justification. Our recognition of the political importance of protecting and upholding the rights of all human beings, regardless of intelligence or moral agency, suggests that their inclusion stems not from some ability they might possess but instead from the fact that they matter as individuals and that their moral rights deserve protection.

### **3.3.3 Other Animals Are Not Part of Our Societies or Communities**

Another objection to granting other animals political standing holds that other animals are not part of human societies or communities, and that membership in these is necessary for political inclusion and political standing. This objection involves two claims, each of which can be contested. First, we might doubt whether it really is the case that other animals are not part of the societies and communities that human beings live in. Certainly, this is true of many animals who live apart from human settlements. But what about animals that human beings have domesticated? Are these animals not part of our communities or societies?

One way we might defend the claim that domesticated animals are not members in human societies or communities is to hold that this membership requires some level of understanding that one is a member. On this view, if an individual is not capable of recognizing their own membership in a community, then they are not, in fact, part of that community. This requirement, however, is a rather implausible way to think about membership in the communities human beings live in. Thinking of membership in this way would seem to exclude many human beings that are part of our communities: babies and infants, individuals with severe cognitive disabilities, and elderly people with severe dementia. Many of these individuals do not understand that they are members of our societies and communities, yet they are members nonetheless.

Another attempt to exclude nonhuman animals appeals to the views other people hold regarding who is a member of a given society or community. On this latter view, one is a member of a given society or community only if most of that society's members believe that individual is a member. On this view, membership depends on the subjective attitudes of others. So, for example, if most community members in the Jim Crow era of the American South did not consider African Americans members of their town, then these individuals were not in fact members of this town's society or community.

Even if we think this second view is a plausible account of membership in a community, and there are good reasons to deny this, there are substantial problems with holding that membership in a society or community is a necessary condition for being owed political standing. The above example makes this clear. Even if the majority of a town in the Jim Crow era of the American South denied that African Americans were members of their community, this has no significance for the full political standing (and equal citizenship) that these individuals were owed.

Moreover, it is not clear that in every liberal democracy domesticated animals are not seen as members of our communities. This claim is suspect at least with respect to companion animals. In the United States, well over 90% of households with companion animals consider their animal to be a "member of their family."<sup>88</sup> Given these sentiments, it would be odd were the guardians of companion animals to hold, nonetheless, that members of their families were not also members of their broader community.

Further, in the human case, we normally do not deny political membership and full political standing to an individual if they eschew human communities, choosing to be a recluse and live apart from any other human beings or human settlements. Granted, the exact nature of an

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<sup>88</sup> Harris Poll (2015).



individual's political status might be altered if they choose to "opt out" of most or all forms of civic participation: the American Amish, for example, are sometimes thought to have "opted out" of their citizenship. Like other religious groups who seek to protect and sustain their own communal ways of life by living apart from the outside world, they instead occupy a political status known as denizenship, where they enjoy more limited rights and responsibilities in relation to the state.<sup>89</sup> Yet even in the case of the recluse, or the opt-out denizen, we do not think these individuals lose their basic legal rights, say, or their ability to bring a suit before a state's court. Their entitlement to full political standing is not altered by a decision to eschew society and make no contribution to the lives of others. Given this, it is hard to see why membership in a society or community is a necessary condition for an individual being owed full political standing. We reject this in the human case and we ought to reject it in the case of other animals as well.

Nevertheless, it does not seem that an individual human being is owed full political standing by every state in the world, or by any country they might travel to or visit. While it is true that non-citizens do, generally, possess legal rights and legal standing when residing in or visiting other states, many do not think they are owed some form of political representation for their interests. This point is not without dispute.<sup>90</sup> However, many are inclined to think that even when the interests of human non-citizens of one state are substantially affected by another state, they are not owed a special form of institutionalized political representation in states in which they are not a citizen.

Given this structure in the human case, we can ask in which state or states nonhuman animals should have full political standing. For some animals, this is not a particularly difficult question. Many domesticated and liminal animals do not travel between different states. As a result,

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<sup>89</sup> See Donaldson and Kymlicka (2011), p. 231-234.

<sup>90</sup> See Goodin (2007).

protecting and upholding their rights should only require that they are granted full political standing in the state in which they reside.

For wild animals this question is more difficult. Many wild animals do not simply reside in one habitat, but often traverse great distances. The same goes for certain aquatic animals (such as whales and dolphins). Here, as well, many different countries can infringe upon the basic rights of these animals. As a result, upholding and protecting the rights of these animals would seem to require forms of institutionalized political representation in each state that impacts the lives of these animals, and perhaps even in international governmental organizations. I will have more to say about how we might think of the political representation of wild animals in Chapter 8. But for now, it is worth flagging how the issues of membership in a country and political standing can come apart.

### 3.3.4 Obligations to Other Animals Concern Private Morality

The connection between our moral obligations to other animals and the claim that it is the business of the state to uphold and protect these rights is one that might be disputed.<sup>91</sup> Some might claim that while we have *moral* obligations to other animals, these obligations concern private morality, not public or political morality. That is, we might think these obligations apply to the choices made by individuals but that it is not the province of the state to enforce and uphold them. Here we can make an analogy to other moral obligations we have. Our obligations to be honest to others, for example, are generally not obligations that the state should legitimately coerce others to uphold. While it is legitimate for the state to have laws against perjury, the same does not hold outside the courtroom, and a law requiring citizens to tell the truth in their personal interactions with others would be illegitimate. Certain areas of

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<sup>91</sup> See Wissenburg (2014), p.34-35.

morality – such as our obligations to be honest, or to give money to help those living in extreme poverty – might put substantial demands on us as individuals, yet many think it would be wrong for the state to enforce these obligations. So perhaps our obligations to other animals are like this: private moral obligations that apply to individuals, but that the state has no business enforcing.

This position, however, is quite extreme and is already rejected by nearly every liberal democracy that exists today. The law recognizes that intentionally and knowingly causing harms to other individuals should be treated differently from, say, failing to benefit others living in extreme poverty. And in nearly all liberal democracies there are animal cruelty laws, as well as increasingly basic welfare laws, that limit in at least some minimal ways how individuals can treat other animals. These laws recognize that harms to other animals do matter in the eyes of the state, that animal welfare is an important legal and political consideration, and that it is legitimate for the state to intervene in the lives of citizens to protect other animals.

### 3.3.5 Pluralism and Legitimacy

Although the position that all of our obligations to other animals concern private morality and should not be enforced and upheld by the state is clearly too extreme, there is a more nuanced version of this argument that would be consistent with the basic forms of animal protection present in many liberal democracies. In this modified position, we might grant that morality demands a great deal of us as individuals, when it comes to how we treat and relate to other animals, yet at the same time hold that it would be wrong to impose these beliefs on others when they do not enjoy a consensus in a given society.<sup>92</sup>

One way to defend this position appeals to certain limits on what sort of laws can be justified in

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<sup>92</sup> See Flanders (2014).

a pluralistic society. Most modern states are made up of individuals who hold a wide variety of worldviews or, to use Rawls's language, "comprehensive doctrines." Citizens of these states hold a variety of different religious and philosophical doctrines, many of which are incompatible with one another. If we recognize this pluralism, and if we think that the variety of religious and philosophical doctrines other citizens hold are *reasonable*, then we are confronted with the problem of how to justify political principles and laws to our fellow citizens, given the fact of reasonable pluralism.

The question at issue is how the law's coercive force can be justified to other citizens who do not share the same comprehensive doctrine. More specifically to our concerns, how can we justify granting other animals full political standing when many of a state's citizens do not think animals have basic moral rights?

According to Rawls, we have no right to use the state's coercive power on the basis of any one reasonable comprehensive doctrine.<sup>93</sup> Instead, Rawls proposes what he calls the Liberal Principle of Legitimacy. This principle holds that "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals as acceptable to their common human reason."<sup>94</sup> Rawls argues that when it comes to principles of justice and what he calls "constitutional essentials," it is illegitimate to appeal exclusively to one's comprehensive doctrine. Instead, these principles and laws ought to be based on more broadly shared political values that form an "overlapping consensus."

While Rawls' limits the scope of his account of public reason to "constitutional essentials," others have argued that it should be extended to all coercive laws.<sup>95</sup> And we can understand

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<sup>93</sup> Rawls (2005), p.62.

<sup>94</sup> Rawls (2005), p.137.

<sup>95</sup> See Quong (2011), p.273-289.

the current objection we are considering in this way. On the surface, it would seem, extending political standing to other animals violates Rawls' Liberal Principle of Legitimacy. However, whether this is the case depends on how we interpret the requirements of public reason.

One requirement of political arguments that are consistent with Rawlsian public reason is that these arguments are "free standing" with respect to comprehensive doctrines. That is, arguments meant to justify political principles, or specific laws, should only appeal to political values that can be understood and shared by individuals who hold different comprehensive doctrines. The value of human equality is a good example. Among liberal democracies, there is an "overlapping consensus" that affirms human equality. However, this is the case even though citizens disagree about the ground or basis of human equality. Some religious believers may hold that the basis of human equality is that we are all made in the image of God; others might claim it is our capacity to reason or to be moral agents that grounds human equality; still others the fact that we are conscious individuals. Despite these differences, however, Rawls thinks we can appeal to the value of equality, without making further claims about the basis or ground of this value, because it is a widely shared *political value*.

Rawls also adds that legitimate political arguments ought only to appeal to "presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial."<sup>96</sup> This last statement is particularly vague, and it appears we can interpret Rawls' account of public reason in a couple of different ways.

On one interpretation, political principles and laws can be legitimate and in accordance with public reason even when they make controversial arguments that might not enjoy a consensus in a society, so long as they appeal to *premises* that involve widely shared political values that

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<sup>96</sup> Rawls (2005), p.224.

are “free-standing.” If this is how we interpret the requirements of public reason, and the liberal principle of legitimacy, then it does not seem that there is a problem with the arguments in favor of granting other animals full political standing. As we saw in Chapter 2, many of the arguments in favor of moral rights (and obligations) to other animals start from widely shared “free-standing” premises about the rights of other human beings, arguing that we cannot plausibly recognize these rights or obligations without recognizing them for all other conscious animals. The *conclusion* of this argument is certainly controversial and likely at odds with the views most people currently hold. But the argument relies only upon premises and political values that are already widely shared. Further, most citizens of liberal democracies appear to hold a rather inconsistent and disparate set of beliefs concerning the moral value of other animals and our obligations to them.<sup>97</sup> As a result, appealing to arguments that require consistency among these beliefs and values seems consistent with public reason.

However, a different interpretation of the requirements of public reason holds that the conclusions of political arguments in favor of political principles or coercive laws must not only be “free-standing”; they must also *already* enjoy a place in the “overlapping consensus,” as part of the political values of our shared society. On this view, I think it is fair to say, arguments in favor of extending political standing to *most other animals* would fail.

Interestingly, however, it is not clear that this would be the case for all nonhuman animals. In the United States, for example, it is possible that most citizens would think that companion animals should have legal rights protecting their most basic moral rights, that they should have legal standing so others can bring suits on their behalf, and that they should have some form of institutionalized political representation. Similar claims for the great apes, elephants, whales, and dolphins might enjoy broad support in many liberal democracies. At the very least, I think it is fair to say that many citizens would have some degree of openness to these arguments and

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<sup>97</sup> See Joy (2010).

that they would reject the view that other animals are simply property that should enjoy no protections under the law or inclusion in the political sphere.

In any case, this second interpretation of public reason ought to be rejected and is undermined by several different objections. The first problem with this interpretation of public reason is that it is subject to a particularly troubling problem of moral arbitrariness. Imagine it were the case that in the United States a vast majority of its citizens believed companion animals (just dogs and cats, let us say) ought to be granted full political standing. Further, imagine that, not unlike in our own society, these citizens held a rather inconsistent set of views when it came to the moral value of other animals. In this society, full political standing is thought to be owed to companion animals but not to other animals, such as those used for consumption, in entertainment, or in medical research. According to the interpretation of public reason we are considering, if laws were passed to grant these other animals full political standing, these laws would lack legitimacy and would fail to respect this state's citizens and the views they hold. Yet there is no way we can consistently and plausibly recognize companion animals as beings deserving of full political standing while denying the same to other animals with similar cognitive capacities. This inconsistency reveals a deeply problematic moral arbitrariness. Even worse, the account of public reason we are considering entrenches this arbitrariness, and dismisses laws that would correct it as illegitimate because they conflict with the status quo beliefs of most citizens living in a state.

The example we are considering also helps to illustrate other problems with this more restrictive interpretation of public reason. The restrictive interpretation of public reason that we are considering is inherently conservative, as political arguments and laws based on these arguments are legitimate only when they enjoy a wide social consensus. This restrictiveness might not be a problem if a society is mostly just, but if there are widespread and systematic injustices that are ignored and dismissed by most of a society's citizens, then the narrower

account of public reason seems much more problematic.

The narrower account of public reason that we are considering also mistakes what respect for fellow citizens, as free and equal, requires of us. It regards as illegitimate political arguments that have controversial conclusions, even when they appeal to premises that are widely shared and are part of the political values of a given society. The purpose of this view, it seems, is to avoid any controversy that might fracture the unity and cohesion of a state's citizenry. But when there are systematic injustices or even *alleged* systematic injustices, making controversial political arguments not only does not disrespect fellow citizens, but, I would argue, respects their moral agency and their capacity to revise and rethink the moral beliefs they hold. Sometimes controversy is exactly what a vibrant and healthy democracy needs!

Finally, it is worth noting that this restrictive interpretation of public reason is far too demanding and would, if taken seriously, bring about political paralysis. Various types of political action and public policy lack the political consensus this account of public reason would require, particularly among countries that have sharp, ideological divides. If the conclusions of any political argument must already enjoy a political consensus, in many states this would mean there is very little that could be done.

Given these problems, I think it is fair to say that the more restrictive account of public reason is not plausible. It can, in certain circumstances, "justify" morally arbitrary laws; it helps to preserve the status quo in the face of systematic injustices; and it rests on a mistaken account of what respect for our fellow citizens requires of us. Since arguments for granting other animals full political standing are not blocked on the less restrictive interpretation of public reason, the pluralistic nature of modern societies gives us no reason to deny other animals full political standing.

The preceding discussion points toward a shortcoming of much recent work in political



philosophy and political theory. Following the publication of Rawls's *Political Liberalism*, many political philosophers have avoided putting forward substantive theories of justice that rely on specific moral views or comprehensive doctrines. Instead, they have taken the view that this is not the job or role of political theorists. Instead, much recent work in political theory has attempted to be "free-standing" from specific moral theories and, to some extent, divorced from controversial claims in moral theory.

This approach to political philosophy only makes sense if we have prior reasons to believe that a given society is mostly just and that the comprehensive doctrines of most citizens do not have any glaring moral holes or deficiencies. If systematic injustices exist in a society but are not recognized by the majority of a state's citizens, then an approach to political philosophy that attempts to avoid making substantive moral commitments not only will fail to offer any guidance for thinking about these injustices but will fail to uncover and illuminate them in the first place. If, for example, most human citizens reject the moral rights of other animals, then the inclusion of these individuals will not be part of an "overlapping consensus" and will not be possible on an approach to political philosophy that attempts to be "free-standing" from substantive moral commitments. Similar points could be made about societies where the moral equality of women or of members of different races was not accepted by most of a state's citizens and not, therefore, part of an "overlapping consensus." All of this suggests that there will always be an important role for political philosophy that is more closely tied to moral philosophy and that seeks to investigate and challenge some of our fundamental moral commitments, including questions about which beings have moral rights and who is part of the political community.

### **3.3.6 Political Inclusion and Distributive Justice**

Another reason, I suspect, that political theorists have held that other animals fall outside the

sphere of social justice stems from the belief that justice concerns the distribution of various goods and that these goods are not applicable to other animals.<sup>98</sup> We can appropriate this argument, considering it in terms of whether other animals should be granted full political standing. If political inclusion primarily concerns the distribution of various goods, such as income, healthcare, and education, then we might think it is not applicable to other animals. It makes little sense to talk of distributing these goods to wild animals, for instance, and the other goods, apart from healthcare, do not appear applicable to domesticated animals.

Yet it would be a rather limited and narrow understanding of political inclusion if we thought it concerned only to the distribution of goods like income, healthcare, and education. In the human case, we recognize that the basic security of individuals and the protection of their most basic and fundamental rights are crucial to social justice and political inclusion. We can talk, if we'd like, about a society's "distribution" of basic legal rights. But if we do this, then legal rights will be the sort of thing that can be distributed to other animals.

However, not only does the objection we are considering offer an inadequate account of the purpose or goals of political inclusion, but many political goods can and, as I argue in part two of this dissertation, should be distributed to protect and benefit other animals. Basic security, for example, requires a certain distribution of a society's goods: among other things, it requires the funding and implementation of things like a police force, detectives, courts and a justice system, and so on.

The distribution of goods like these clearly can be altered to protect and uphold the basic rights of other animals. The real objection to granting other animals full political standing must be that this sort of distribution is not appropriate or morally required. But if this is the claim being made, we need *independent* reasons to support this view. I have already argued against this

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<sup>98</sup> Garner (2013), p. 4.

position, attempting to show that the only way we can adequately protect and uphold the basic rights of other animals is by granting them full political standing. Absent specific reasons for thinking this is not the case, we are left with no reasons to think that the subsequent alteration of the distribution of various goods and resources to grant other animals full political standing is appropriate.

### 3.3.7 Political Inclusion for Animals is Utopian

One final objection holds that granting other animals full political standing is unrealistic and utopian. One way we can unpack and develop this objection draws on a distinction political philosophers often make between ideal and non-ideal political theory.

Ideal theories in political philosophy are not unrealistic utopias that human being will never, and can never, achieve. Rather, these theories intend to imagine an “achievable social world,” while taking into account the constraints of human nature.<sup>99</sup> In the words of Rawls, we can think of ideal theory as putting forward a “realistic utopia” that “takes men as they are and laws as they might be.”<sup>100</sup> The main difference between ideal theory and non-ideal theory, however, is that ideal theory assumes “strict compliance.” Ideal theory assumes both that the laws of a society are just and that nearly everyone strictly complies with the principles of justice. Given these assumptions, ideal theory looks at issues and principles of social justice that would exist in a mostly just society.

Non-ideal theory, on the other hand, does not assume strict compliance. Instead, non-ideal theory looks at how we might work towards and achieve the long-term goals of ideal theory,

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<sup>99</sup> Rawls (2001), p. 6.

<sup>100</sup> Rawls (1999), p.11.

usually in gradual steps, while taking into consideration various social, economic, and historical barriers to its full realization.<sup>101</sup>

Drawing on this distinction, one way to argue against granting other animals full political standing would be to hold that it fails to meet basic requirements of an ideal theory and is unrealizable in the long term. If granting other animals full political standing is truly unrealizable – if, for example, it violates important constraints on human nature – then it would be a utopian vision and is not consistent with the (seemingly) reasonable constraints of a legitimate ideal theory of justice.

Granting other animals full political standing requires no assumptions that “violate important constraints on human nature.” Human beings can and often do view other animals as valuable creatures, deserving of legal protections and political inclusion. No aspect of full political standing or of the institutional changes needed to bring it about requires anything unthinkable or impossible on the part of other human beings. Nor are there any good reasons to think that granting other animals full political standing is unrealizable in the long term. A world where other animals are recognized as having full political standing clearly is an “achievable social world.” In fact, there is already a strong push in some places to recognize some animals – such as chimpanzees (and other great apes), elephants, and dolphins – as legal persons with legal standing and certain legal rights. And this position has considerable academic support.<sup>102</sup>

Granting other animals full political standing does not violate the constraints of ideal theory. Indeed, a better case can be made that the argument I have made for political standing is a type of non-ideal theory, since it doesn’t assume strict compliance on the part of humans. It is not a utopian vision that humans are incapable of achieving. It might be a long time before most other animals are afforded this form of political recognition, but this is no knock against it,

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<sup>101</sup> Garner (2013), p.12.

<sup>102</sup> See Cavalieri and Singer (1993).

nor any reason to hold that other animals should not be granted full political standing.

### 3.4 Conclusion

In this chapter, I have argued that we ought to recognize other animals as having full political standing. If we are going to protect and uphold the most fundamental rights of other animals, this requires that we extend to other animals legal rights, legal standing so that others can bring claims on their behalf, and some form of institutionalized political representation to represent their rights and interests. Absent these legal and political reforms, the rights of nonhuman animals will not be adequately safeguarded.

After making this argument, I considered and argued against several objections to granting other animals full political standing. These objections do not challenge the claim that other animals have certain basic moral rights. Rather, they dispute the connection between this claim and the claim that other animals should be granted full political standing. I have argued that none of these objections succeed and that there are no good reasons not to include other animals in the political sphere or to deny them political standing.

There are, of course, other objections to granting other animals full political standing. Some might think doing this would include too many dependents in the political sphere, or that doing so would be way too costly, or that it would require human beings to police the natural world in a way that is problematic or too demanding. I will consider these objections, however, after I have put forward my own positive and more detailed views regarding the political status of *different groups* of animals.<sup>103</sup> Once I have presented these views, it will make more sense to consider whether or not the political inclusion of other animals is “too costly” or includes too

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<sup>103</sup> See Chapter 7.3.

many dependents.

Full political standing is meant to be a starting point, not an end point, for thinking about the political inclusion of other animals. Once we recognize the moral rights of other animals, I have argued, we must include them in the political sphere. At a minimum, I believe, this means we should recognize other animals as having full political standing. Anything less and humans will not be able to uphold and protect the basic rights of nonhuman animals.

At its core, full political standing represents a minimal form of membership in our political communities. The rights and interests of individuals with full political standing deserve to be included in our legal and political institutions. They are not the property of others and their interests cannot be discarded or ignored. They matter in their own right and their interests matter to the political communities whose decisions often have a great impact on their lives.

But political theory cannot stop here. Recognizing that other animals deserve full political standing does not tell us a great deal about the full nature and extent of our positive obligations to other animals, nor does it have much to offer in terms of what justice requires in our interactions and relations to different groups of animals. These questions are the focus of the second part of my dissertation, to which I now turn.

## 4 Introduction to Part II

Many important questions remain about our political relations with other animals that are not settled simply by recognizing their full political standing. One important set of questions concerns the nature and extent of our *positive obligations* to other animals. Negative obligations require that we not interfere with the lives of others in certain ways (respecting their right to life, and right not to be made to suffer), while positive obligations require active measures to benefit or assist others. My arguments in favor of granting other animals “full political standing” focused primarily on upholding our negative obligations to other animals – specifically, in upholding negative rights that animals have – which requires certain reforms to our legal and political institutions to safeguard the negative rights of nonhuman animals.

Safeguarding and protecting the basic, negative rights of nonhuman animals requires that active steps are taken to protect nonhuman animals. Protecting these rights requires more than just non-interference on the part of humans: laws must be changed to recognize the rights of nonhumans, to prosecute individuals who violate those rights, to institute forms of political representation that safeguard the rights of animals, and so on. While useful, the distinction between negative and positive rights, and between their corresponding negative and positive obligations, is imperfect. Still, the ultimate goal of the institutional reforms I advocated is clear: protecting the negative rights of nonhuman animals, so that others do not violate their most basic and fundamental rights.

All of this leaves open what obligations humans might have to *benefit* other animals, beyond merely not violating their basic moral rights. Here we can consider a variety of questions. Are there any collective obligations to benefit other animals – obligations that require collective action on the part of humans to fulfill – that ought to shape and influence how we see animals existing in, and relating to, our political communities and institutions? Are these obligations the

same for all conscious animals, or do they differ for different groups of animals? And if there are positive obligations to benefit some nonhuman animals what implications does this have for how we structure our legal and political institutions?

The way we approached these questions in Part I, with a focus on the rights of other animals, gives us a start, but it does not fully answer the question of what our positive obligations to nonhuman animals are. While it is true that all conscious animals possess certain basic rights, their lives differ in many ways. For example, unlike the interests in not suffering and continued existence that are shared by all animals, other features of what constitutes a good life for a nonhuman animal appears to be much more variable. A good or flourishing life for a nonhuman animal is often shaped by a variety of factors that differ among different species and, in some cases, among different members of the same species. To note just a few variables, different animals have different relations with members of their own species, including different relations with family members and kin. Different animals also have different cognitive abilities and different emotional capacities, which shape the nature of their good life. Different animals also have different needs when it comes to space, movement and roaming, and their desire for interactions and relations with other species, including human beings. Among a variety of different dimensions, what constitutes the good life for different animals will look very different. We can contrast what a good and flourishing life looks like for a companion dog with that of an alligator.

Humans stand in very different relations to different animals. The life of a dog living with a family looks very different from that of a squirrel in their front yard, which in turn looks quite different from that of a polar bear in the Arctic. Part of the difference relates to dependency. Domesticated animals, such as dogs, are directly dependent on human beings for many of their needs, while this is generally not true for non-domesticated animals like squirrels or polar



bears.<sup>104</sup> These animals differ significantly in the ways in which they are dependent on and vulnerable to human beings. Another difference concerns our relationship with and to these animals. In the case of dogs, human beings have genuine relationships *with* these animals. This is not true, in general, for squirrels or polar bears.

The possibility that humans have some collective, positive obligations to benefit other animals has only recently begun to gather attention. Much of the work in animal ethics, particularly by those working from a rights-based framework, has understandably focused on the ways that human beings presently harm nonhuman animals, especially in animal-use industries. Given the vast array of serious harms humans inflict on other animals, it is not surprising that much greater attention has been given to arguing that these practices are not morally justified, rather than to theorizing about the nature and extent of our positive obligations to benefit other animals.

Some exceptions to this general trend have emerged. Some have explored our special obligations to companion animals.<sup>105</sup> Wild animals, as well, have also been singled out for consideration of the special obligations that human may have to them, including whether we have obligations to reduce the suffering caused in nature and by predation.<sup>106</sup> And along with work that focuses solely on one particular type or category of animals, some scholars have argued in favor of taking a relational approach to animal ethics that is focused on and attuned to the unique and different relations humans have with different animals.<sup>107</sup>

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<sup>104</sup> Donaldson and Kymlicka (2011), p.218.

<sup>105</sup> See Burgess-Jackson (1998); Cooke (2011); Overall (2017); Sandoe, Corr, and Palmer (2015).

<sup>106</sup> On predation, see McMahan (2015). Hadley takes a more systematic approach in his theory of property rights for wild animals (Hadley 2015). And Oscar Horta has done important work on the suffering experienced by wild animals, see Horta (2010a) and Horta (2010b).

<sup>107</sup> See Palmer (2010)

Much of this work makes important progress in our thinking about our moral relations with other animals. The recognition, for example, that we may have special, unique, and variable obligations to different animals, stemming in part from the different relationships we have with and to them, is an important insight. Nevertheless, there remain substantial shortcomings. Some of the relational approaches to ethics that have been put forward have been presented as an alternative to an animal rights approach rather than an extension of it. Furthermore, most of this work has not addressed the question of collective obligations we may have to benefit different animals. Recent work on our special obligations to companion animals, for example, has for the most part focused on the obligations of the guardians of companion animals, rather than the obligations and responsibilities that might be held by the societies and states in which these animals live. Similar points apply to many discussions of our obligations to wild animals that, even when they consider collective obligations, are presented in the abstract and remain divorced from the sort of political reforms and mechanisms that would be needed to make fulfilling these collective obligations possible.

In general, two fundamental problems confront much of the work on positive obligations to different animals. First, much of this work is piecemeal, looking at very specific groups of animals.<sup>108</sup> Lacking a systematic approach to our positive obligations, there is a worry that the prescriptions will be ad-hoc, drawing on and applying principles that would be rejected or modified in the case of other groups of animals.

The second problem is that much of this work considering is not explicitly political. Discussions of positive obligations to different animals are commonly presented in an abstract manner that fails to make clear who exactly is charged with fulfilling these obligations.<sup>109</sup> Moreover, there is little discussion about how our positive obligations to other animals relate to the political

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<sup>108</sup> Donaldson and Kymlicka (2011), p.12.

<sup>109</sup> See Palmer (2012).

sphere. There is a failure to consider what political reforms and political mechanisms are needed to make fulfilling these obligations possible.

The best way to approach thinking about our positive obligations to other animals, I believe, is to focus in on three distinct groups of animals – wild animals, liminal animals, and domesticated animals – in an explicitly political framework. This way of separating different categories of animals is introduced by Donaldson and Kymlicka in *Zoopolis*.

Part of their motivation for this approach comes from the recognition of how the exclusive focus on the negative rights of other animals represents a remarkably “flat moral landscape.” This becomes clear when we look at how we approach moral and political theorizing in the case of humans:

To be sure, all humans have certain basic inviolable negative rights (e.g., the right not to be tortured, or be killed or to be imprisoned without due process). But the vast bulk of moral reasoning and theorizing concerns not these universal negative rights, but rather the positive and relational obligations we have to other groups of humans. What do we owe to our neighbours and family? What do we owe to our co-citizens? What are our obligations to remedy historic injustices at home or abroad? Different relationships generate different duties – duties of care, hospitality, accommodation, reciprocity, or remedial justice – and much of our moral life is an attempt to sort out this complex moral landscape, trying to determine which sorts of obligations flow from which types of social, political, and historical relationships.<sup>110</sup>

When thinking about our positive obligations and political relations to other humans, most political theorists go beyond the resources provided by universal, basic rights. In addition to

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<sup>110</sup> Donaldson and Kymlicka (2011), p.6.

rights, one of the primary and pervasive ways of thinking about our political relations involves citizenship theory. We do not think simply about the obligations any one state has to all humans as such but about a state's specific obligations and relations to citizens of that state, to long-term and temporary residents residing in the state's territory, to national groups residing in that state, and to other states and the citizens of other states.

In *Zoopolis*, Donaldson and Kymlicka argue that we ought to take a similar, group-differentiated approach to understanding our positive obligations to different groups of animals. They argue that the best way to think about these positive obligations is in the explicitly political terms provided by citizenship theory, and they suggest that different groups of animals should be seen as having different political statuses. Specifically, they propose that we understand our political relations in different ways for three groups of animals: domesticated animals, liminal animals, and wild animals. These categories are derived from the fact that these groups of animals share very different interests and stand in quite different relations to human beings. Donaldson and Kymlicka believe that domesticated animals should be recognized as our fellow, and equal, co-citizens. Liminal animals should be recognized with the political status of denizenship, with certain reductions in rights and responsibilities that are in the interests of both liminal animals and the state. And finally, wild animals should be seen as living in their own sovereign territories, with rights to their land and territory against continued human colonization.

#### **4.1 A Group-Differentiated Approach to the Political Status of Animals**

One of the most important insights made by Donaldson and Kymlicka is that we need different political statuses for different groups of animals. Different groups of animals have very different interests and stand in very different relations to humans, and these facts shape the nature and

extent of our positive obligations to them. Further, I believe Donaldson and Kymlicka have correctly identified the relevant groups of animals for whom we need different political statuses: domesticated, liminal, and wild animals. These groups of animals share similar interests and maintain similar relations with and to human beings, all of which justifies grouping them in this way.

Domesticated animals, for example, are dependent on humans to meet many or most of their basic needs: food, shelter, healthcare, companionship, etc. Indeed, most domesticated animals have been bred to increase their dependence on human beings, such that life “in the wild” is no longer a viable option or possibility for many of them. Some domesticated animals, notably companion animals, have very intimate relations with human beings involving high degrees of trust, companionship, love, and affection.

Wild animals, on the other hand, are not dependent on human beings for most of their basic needs. And while wild animals are affected and often harmed by human beings in a variety of ways (as I detail in Chapter 5), they live their lives largely independent from interactions with human beings, nor do they generally seem to show much interest in interacting with human beings (often, quite the opposite).

Finally, the relations of many animals with human beings fall through the cracks of our wild/domestic dichotomy. So-called “liminal” animals (raccoons, coyotes, squirrels, ducks, deer, and so on) present their own unique set of issues. They are dependent on human beings in many ways (for example, for things like food or shelter) while at the same time they show little interest in living or interacting with human beings. They are all around us, and yet individual liminal animals are, unlike domesticated animals, not under the direct care of individual humans.

This three-part division of the animal kingdom does the best job of capturing the interests of different animals and the most morally and politically pertinent relations that humans have with other animals. In this respect, I agree with Donaldson and Kymlicka's group-differentiated approach. Where I disagree, however, concerns how we should conceptualize our political relations with these groups of animals.

As we have seen, Donaldson and Kymlicka argue that we ought to extend political categories that we utilize in the human case to other, nonhuman animals. This extension is not an analogy or metaphor. Domesticated animals, they believe, should be recognized as our equal, co-citizens (not as something *like* citizens), liminal animals as fellow denizens, and wild animals as living in their own sovereign territories. The extension of these categories, they believe, best captures what we owe these different groups of nonhuman animals and how we ought to relate to them politically. Moreover, they believe that this extension does not fundamentally alter or stretch beyond recognition concepts such as citizenship, denizenship, or sovereignty. In fact, they argue that our understanding of these concepts is clarified and improved when we apply them to other animals.

Here I depart from Donaldson and Kymlicka. Part of the challenge in thinking about the political status of different animals is that the political categories and statuses we use in the human case – things like citizenship, sovereignty, and denizenship – do not appear to be the best fit for the interests and lives of other animals. Instead, thinking about our political relations with different groups of animals challenges us to think of new and better ways of conceptualizing these political relations and their accompanying political statuses. For some animals, we will need altogether new concepts for thinking about their political status. For others, there is a need to modify and alter concepts used in the human case.

## 4.2 Wild and Liminal Animals

In Chapter 5, I turn first to our relations with wild animals and liminal animals. The central question I consider in this chapter is the nature of our collective obligations to each of these groups and how these obligations ought to shape how we conceptualize our political relations with them. With respect to wild animals, I argue that our obligations are primarily to end the direct harms we inflict on them but also to mitigate, as much as we can, indirect and unintentional harms.

Nevertheless, respecting the basic rights of wild animals requires a great deal of positive action and forethought. We need a way to formalize and conceptualize how wild animals relate to our political institutions. To do this, I propose a Protected Territory Model for thinking about our relations with wild animals and I argue that this model offers the best way to think about our political relations with wild animals. This model draws inspiration from the protectorate relation among states, but it also differs in some crucial respects. The focus of this model is primarily on protecting wild animals from harm caused by humans, but it also recognizes some obligations to aid. This approach to thinking about our relations, I argue, has advantages over several other approaches to our obligations and moral relations to wild animals, such as a Stewardship approach, the “Laissez-faire” approach advocated by Clare Palmer, as well as Donaldson and Kymlicka’s Sovereignty model.

After considering the case of wild animals, I turn to those liminal animals who live in and around human beings but are not directly dependent on us for care. These animals have, until recently, been mostly neglected by work in animal ethics. What sorts of positive obligations do we have to these beings? And how should we conceptualize our political relations with them?

I argue that our primary obligations are, as with wild animals, to protect these animals from direct harms and to mitigate many of the ways we indirectly harm them. I argue that liminal

animals should be viewed as a Protected Class: a group of beings with unique interests who are inherently vulnerable to human harm. I defend this view against two alternatives: Palmer's Laissez-Faire approach that argues we have no positive obligations to liminal animals, and Donaldson and Kymlicka's Denizenship model.

### 4.3 Domesticated Animals

In Chapters 5 and 6, I turn to the place of domesticated animals in the *polis*. Domesticated animals present a unique set of challenges for thinking about our political relations with other animals. They have been made dependent on human beings, and this process has made them unable to survive and flourish on their own. Domestication has also shaped and transformed these animals. Unlike many other animals, they are capable of unique relations involving trust, communication, and intimacy with human beings.

I argue that domesticated animals must be understood as fellow members of our communities. We have made them members of our society, and yet we presently deny and ignore this membership. The central issue, therefore, is how we ought to understand this membership and what follows from it. In Chapter 6, I argue that membership in a state should entail citizenship. We recognize this in the case of human beings, and we ought to recognize this in the case of domesticated animals as well. However, the citizenship of domesticated animals differs in some important respects from the citizenship of most paradigmatic human citizens. I argue that we should distinguish two different types of citizenship: Citizenship-as-Membership, and Citizenship as Responsible Political Agency. Here, my view differs from the approach to domesticated animal citizenship taken by Donaldson and Kymlicka. Distinguishing different ways citizenship is enacted, I argue, allows us to recognize domesticated animals as our fellow



citizens, without having to defend implausible claims that they are political agents who can be politically responsible.

In Chapter 7, I address two remaining issues: the practical implications of viewing domesticated animals as our fellow citizens, and the relationship between their citizenship and that of human beings. On the first question, I consider the implications that viewing domesticated animals as our fellow citizens might have in areas such as legal protection, guardianship, healthcare, public spaces and mobility rights, and sex and reproduction. On the second issue, I argue that the relationship between the citizenship of humans and that of nonhuman animals cannot be answered simply with appeals to equal value or equal co-citizenship. I argue that while we can and should affirm the equal value of nonhuman animals, this does not always translate into the same priority when it comes to public policy. I argue that we can divide issues of public policy into cases where animals and humans have roughly equal interests, cases where they have altogether different interests, and cases where they have similar interests but where some individuals can experience greater harms. If it is the case, as I believe is likely, that most humans are harmed more by death than other animals, then this consideration is relevant for how we ought to approach certain public policy issues.

#### **4.4 Political Representation**

In Chapter 8, I turn to the topic of political representation for nonhuman animals. Here I consider in much more detail why nonhuman animals are owed various forms of political representation and I consider and defend various ways humans can represent the interests of nonhuman animals in the political sphere. I argue that the rights and interests of nonhuman animals must be represented in both elected and unelected areas of government. In recent years, some political theorists have argued that modern, liberal democracies do a poor job of

representing various individuals and other entities who cannot represent themselves (including individuals with severe cognitive disabilities, young children, future generations, and environmental interests). I draw on this literature and argue that animals present a similar challenge. I defend the view that states should reserve certain representatives in their national legislature to represent the rights and interests of nonhuman animals. These Animal Representatives would run for these designated seats and would come from distinct political parties dedicated specifically to animal issues. I argue that a system with designated Animal Representatives would improve the representation of the interests of animals in a variety of ways, and I defend this proposal against a variety of objections.

## 5 Wild and Liminal Animals

In this chapter I consider the political status of wild animals and the political status of liminal animals. These animals present an interesting challenge to political theory: we have good reasons to think our collective obligations to these animals should be understood in political terms, however, the political concepts used in the case of humans are an awkward fit for these animals. Instead, I argue that we need to put forward new political categories to better understand our collective obligations to these animals and our political relations to them.

### 5.1 Living in the Wild

Wild animals live outside of human settlement and generally avoid humans and urban spaces. Unlike liminal animals (such as squirrels, coyotes, racoons, etc.), who have not been domesticated yet live near human beings and human settlements, most wild animals live largely independently from human beings in their own territories and waters.

Life for most wild animals is far from easy. They confront a multitude of harms and dangers, some of which are the result of human behavior. The most obvious are the harms that stem from predation. Wild animals are injured and killed by predators. And as we will see a little later, the vast majority of wild animals do not live into adulthood but are killed by predators in their infancy. Along with this, wild animals suffer as the result of disease, illness, starvation, climate, natural disasters, and other natural causes.

Some of the harms wild animals experience are intentional and directly caused by human beings. Humans hunt, fish and “whale,” trap, poison, and capture wild animals. This is done for a variety of purposes: for “sport;” for the pleasure we get from eating animals and wearing their fur; to use their body parts for other purposes; to avoid or mitigate the ways in which wild

animals are a “nuisance;” and for the entertainment captive wild animals provide in zoos, circuses, aquatic shows, and as exotic pets. Wild animals are also killed in the name of “wildlife management”: to protect endangered species (both animal and plant); or promote “ecosystem health;” or when the number of a given species is perceived to be a problem (such as predators harassing farmed animals); or in the name of scientific research.

Unlike farmed animals, estimates for the number of animals harmed and killed in these ways are not easy to find. The number of fish and other aquatic creatures killed by humans for food and supplements (such as fish oil) is quite large. Much of the data on the capture of these animals for food is recorded in tons (a subtle reminder of how little thought we give these creatures’ lives). However, estimates put the number of fish and aquatic creatures killed somewhere in the range of 1 to 3 trillion every year.<sup>111</sup> Hundreds of millions of animals are killed every year by hunting, trapping, and in the name of “wildlife management.”

In addition to the ways in which wild animals are directly and intentionally harmed by human beings, they are also unintentionally harmed in many ways. Many of our actions and behaviors predictably lead to harm to other animals and we are either ignorant of or indifferent to the ways these activities and behaviors will result in this harm. Habitat loss is one of the ways in which wild animals are unintentionally harmed by humans.<sup>112</sup> Here, humans do not set out to harm wild animals. Rather, we are interested in clearing forests to graze animals and grow crops, to expand human settlement, extract resources, and so on. Animals are often harmed in various ways because of this habitat loss.

Wild animals are also harmed and killed unintentionally by a variety of other human activities. Prominent examples include the harms caused from human transport (by our cars, planes,

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<sup>111</sup>See Mood (2010), Chapter 19.

<sup>112</sup>The World Wildlife Fund estimates that since 1970, the population size of vertebrate species has declined by half. See World Wildlife Fund (2014).

ships, and trains), harms caused by our buildings, skyscrapers, and infrastructure (such as power lines, wind turbines, etc.), and harms that result from pollution and human-caused climate change. We can get a sense of the scale of these harms by considering just one of these causes: the death of birds who fly into human buildings and skyscrapers. In Canada, for example, it is estimated that as many as 25 million birds are killed flying into buildings every year.<sup>113</sup> During the day, birds often fly into clear glass windows. At night, the lights left on in large buildings can attract migratory birds, leading to collisions with buildings. Somewhere between 100 million and 1 billion birds are believed to be killed every year in the U.S. from collisions with buildings.<sup>114</sup> The number of deaths worldwide caused in this way is likely in the billions.

Life for wild animals is not all bad, of course, at least for those who survive past their infancy. Animals in the wild experience a variety of pleasures and enjoyable experiences. These include pleasures from: play, food, creaturely comforts (such as lying in the sun, the touch of other members of their species, and so on), species-specific behavior (running, flying, and climbing), courtship and sex, as well as relationships and friendships with family members and conspecifics (at least for more social animals).<sup>115</sup>

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<sup>113</sup> Machtans, Craig and Christopher Wedeles and Erin Bayne (2013).

<sup>114</sup> See New York City Audubon Society (2007), p.37.

<sup>115</sup> Balcombe (2010).

## 5.2 The Political Status of Wild Animals

How should we think about whether humans have any collective obligations to wild animals? And if they do, should these obligations be understood or conceptualized as political relations? It will be helpful to review some of the previous ground we have already covered with respect to wild animals. Earlier I argued that wild animals possess certain basic moral rights because they are conscious individuals. I argued that they deserve full political standing: legal rights that protect their basic moral rights, the legal standing so that others can bring suits on their behalf, and some form of institutionalized, political representation of their rights and interests. This is something that all animals are owed simply in virtue of being the bearers of certain moral rights and wild animals are no exception. This, as we will see, has important implications for how we should conceptualize our political relations with wild animals. At the very least, humans must end the ways we harm wild animals and violate their moral rights.

Nevertheless, the recognition that wild animals possess moral rights does not, by itself, provide a comprehensive answer to how we should view our collective obligations to these beings and whether, and to what extent, we should understand these obligations in political terms. Many important questions remain:

- What obligations do humans have to mitigate or eliminate the ways we unintentionally harm wild animals?
- How should humans approach the territory in which wild animals live? Is further expansion into this territory morally justified? If so, when? And for what purposes?
- What obligations do we have to intervene in the wild to benefit wild animals? Should we attempt to reduce wild animal suffering when we can? Is this something that is permissible? Is it ever morally required?

- How should we assess predation and the suffering it causes? Is this a moral problem? And if so, are any interventions justified to mitigate or reduce the harms caused by predation?

Attempts to approach and answer these questions are not fully determined even if we recognize that wild animals have moral rights. They are also further complicated by the fact that wild animals have a rather diverse set of interests. It is true that, as conscious beings, wild animals share some of the same interests – in not suffering and in continued existence. Yet, many of their interests differ. A flourishing life for a wild animal often looks very different depending on the animal in question – a good life for a hawk looks very different than a good life for a bonobo. And, of course, the interests of predator and prey animals often compete with one another.

In what follows, I begin to approach these questions by looking at three distinct approaches to our obligations to wild animals. The first two positions argue in different ways that our primary responsibility with respect to wild animals is to leave them alone. The third view is the Sovereignty Model put forward by Donaldson and Kymlicka. I argue that the first two views do not adequately capture our obligations to wild animals. Donaldson and Kymlicka's approach does a much better job at this; however, I argue that the Sovereignty Model is a poor fit for understanding our political relations with other animals and that a new political category is needed.

### 5.2.1 The Traditional Animal Rights Approach

The approach taken by many in the animal rights tradition to wild animals could be summarized simply by the injunction to ‘Let them Be.’<sup>116</sup> Many working from within the animal rights tradition have been content to hold that our obligations to wild animals consist primarily, if not exclusively, in an obligation not to violate their negative rights. Humans have obligations to not directly harm wild animals. We should not hunt, fish, trap, or capture them, or harm them in the other ways we so often do. However, beyond that we ought to simply leave wild animals alone. On this common view, we have no duties to *intervene* to benefit wild animals. Our only duties are to respect the negative rights they hold against us.

This approach taken by early writers on the issue of animal rights is understandable. The primary concern of many of these writers was the massive suffering and rights violations inflicted by humans on domesticated animals (particularly farmed animals). It is not surprising that many of those who wrote and discussed animal rights would be concerned with working towards ending these injustices. Along with this, some of these authors might have worried that if an animal rights position entailed that we ought to massively intervene in the natural world, the view wouldn’t be taken seriously by others.<sup>117</sup> There were certainly pragmatic reasons, then, for not tackling in depth the issue of wild animals and the challenges they pose to moral and political philosophy.

Nevertheless, there are a variety of problems that confront the ‘Let them Be’ Approach put forward by many in the animal rights tradition. One initial problem is that the attempts to defend this approach have been rather weak. Tom Regan, for example, has argued that there is no duty to intervene to assist wild animals when they are not threatened by moral agents.<sup>118</sup>

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<sup>116</sup> Donaldson and Kymlicka (2011), p.158-159, and Palmer (2010) make this point. For proponents of this sort of view, see Regan (1984), p.357, and Francione (2000), p.185.

<sup>117</sup> See McMahan (2016), p.271-272.

<sup>118</sup> Regan (1984), p. 272.



According to Regan, threats posed by other animals or nature do not generate a duty on our part to aid these animals. Their suffering in these cases might be tragic but it does not generate a *moral* problem that demands action on the part of moral agents.

A little reflection illustrates that this position is not plausible. We can imagine a variety of cases where humans could, without a great deal of effort, and with little risk to themselves, assist wild animals who are suffering or in danger of dying. If a dolphin has washed up on shore and you and your friends know that with a little effort and with little risk to your health and safety you can save the dolphin's life by returning him or her to deeper water, you ought to do so. The fact that this dolphin's misfortune is not caused by a moral agent does not mean you are under no obligation to assist.

Moreover, the view that we only have obligations to assist when an individual's misfortune is the result of moral agents either will conflict with very strong intuitions in the human case or will rest on speciesist foundations. You have an obligation to wade in and save a drowning child in a shallow pond, whether or not this child's misfortune has anything to do with actions on the part of other moral agents. More generally, we have obligations to assist human beings in need even when their situation is not caused by moral agents but instead is the result of other causes, such as natural disasters. If we are going to deny that we have similar obligations in the case of wild animals, we need some sort of reason that would justify this. Otherwise the position is open to the charge of speciesism.

The 'Let them Be' approach faces other problems. The view is incomplete and silent on many important issues. The view ignores the variety of indirect harms that human behavior causes wild animals. Not only is this approach silent on this issue, but it is silent on the potential remedies. If we have obligations to mitigate and eliminate these harms, are they obligations that fall only on individuals? Or, are they collective obligations? If the later, what changes to our

legal and political institutions are needed to address this issue? None of these questions are addressed with the injunction that we leave wild animals alone.

With this, the view has nothing to say on the issue of predation. This is a problem because there are reasons to think this is, at the very least, a serious moral problem worthy of consideration. If predation causes wild animals to suffer and if it could be phased out in ways that did not harm wild animals or violate their rights, and that lead to less suffering, should we do so? This is a serious issue that requires more detailed discussion.

This important gap in the animal ethics literature has recently led others to move beyond an approach that focuses exclusively on intrinsic moral rights, to consider other normative factors that might shape our obligations to wild animals. The next two approaches – that of Clare Palmer, and Donaldson and Kymlicka – are examples of these approaches.

### **5.3 Clare Palmer and the Laissez-Faire Intuition**

Clare Palmer has written more extensively and systematically about our obligations to wild animals. In her book, *Animal Ethics in Context*, Palmer focuses specifically on our duties to assist other animals. Palmer argues that our obligations to assist other animals are generated from the relations we have, or have had, with other animals. She argues that we have certain prima facie duties not to harm any animals, simply in virtue of their moral status that results from intrinsic capacities (as conscious creatures). However, Palmer does not think we can account for our positive obligations to other animals simply in virtue of intrinsic capacities that other animals have.

Wild animals make up a large part of Palmer's focus and she defends a version of what she calls the 'Laissez-faire intuition' (LFI). The LFI is meant to capture the common intuition, held by

many, that we do not have obligations to intervene in the lives of wild animals even when we could prevent them from suffering or premature death. There are different ways we can understand the LFI: different ways of interpreting or more precisely articulating what this position holds. The most formidable, and the one Palmer defends, is the “No Contact LFI.” The No Contact LFI holds that:

1. We have prima facie duties not to harm any animals,
2. There are normally no requirements to assist wild-living animals, though we usually are permitted to do so, and
3. We are often required to assist domesticated animals and (on occasions) other animals that fall into what Palmer calls the human/animal “contact zone.”<sup>119</sup>

One way to defend the No Contact LFI appeals to human ignorance and the potentially disastrous consequences our intervention in the wild might have. If efforts to assist wild animals might lead to more harm than they alleviate, we might conclude that we have no obligations to assist animals in the wild. Palmer recognizes that our lack of knowledge on these matters is morally relevant. However, she thinks this response is too contingent and fails to account for the deeper reasons that explain why we do not have obligations to assist wild animals.

### 5.3.1 Relations as Grounds for Special Obligations

Instead, Palmer argues for the No-Contact LFI by defending the claims that relationships ground our special obligations to assist others and that these are absent in the case of wild-living animals. Palmer argues that wild animals are *distant* from humans in ways that are morally

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<sup>119</sup> The human/animal “contact zone” refers to situations where “human actions have affected animals’ lives negatively”, see Palmer (2010), p.5.

relevant. She is not concerned with spatial distance but instead with their independence from human beings, understood in terms of a lack of interactions.

To support her position, Palmer appeals to a thought experiment involving hungry individuals on another planet. Suppose we discovered a community of hungry people living on Venus. Their crops have failed due to fluctuations in their planet's climate (and this failure is in no way connected to human behavior). Palmer appears to doubt that we have any obligations to assist the hungry Venusians (assuming it were possible to do so). But she suggests that if there are duties to assist these Venusians, they are much weaker than duties to assist comparably hungry humans.<sup>120</sup> Why is this? According to Palmer, this is explained, in part, by the fact that the Venusians are "beyond any boundary of community or nation, they share no common intuition with other humans or indeed with human society more broadly construed, and there has been no interaction with them from societies on Earth."<sup>121</sup> The Venusians are not part of our communities, nor have we interacted with them. Along with this, the fact that we are not causally responsible for their suffering also explains why we do not have any obligations to assist these individuals (or if we do have obligations to do so, why they are much weaker than our obligations to assist our fellow humans).

Palmer believes wild animals are distant in similar ways. These animals, she believes, are mostly independent from human beings and humans are not responsible for most of the ways these animals suffer. With this, fully wild animals, she argues, "are outside of human social/political contexts. Even if there is a sense in which something resembling justice could be relevant to animals, it does not apply in *their* case. If they are hungry, or suffering, or being preyed upon, there is nothing *unjust* about the state of affairs."<sup>122</sup> These unfortunate facts are not the result of the behavior of moral agents, so on Palmer's view they cannot be injustices. Unlike human

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<sup>120</sup> Palmer (2010), p.87.

<sup>121</sup> Palmer (2010), p.87.

<sup>122</sup> Palmer (2010), p.88.

beings living in poverty, then, Palmer argues that wild animals do not have the requisite relations with humans that generate obligations to assist.<sup>123</sup> It may be permissible to intervene to benefit wild animals but humans are under no general obligation to do so.

### 5.3.2 Evaluating Palmer's Approach

Palmer's arguments make important advances over previous arguments for similar conclusions. She recognizes that intrinsic capacities alone will not fully answer the question of what positive obligations we have to different animals. A full and complete answer to this question must consider the ways other variables – including relations, history, and different conditions needed for flourishing lives – might influence the extent and nature of our positive obligations. And while in *Animal Ethics in Context* Palmer presents her view as an alternative to an animal rights position, it can also be seen as a supplement to a rights-based approach.

Nevertheless, Palmer's approach faces several important objections. One objection concerns Palmer's methodology. Palmer appears to start from the intuition that there is something to the Laissez-faire intuition and she works to justify this assumption by considering what reasons might support and justify this position. However, we should question how much weight or credence we should initially give the LFI.<sup>124</sup> It is only within the last 40 years or so that academic philosophy has started to seriously consider the interests and rights of nonhuman animals. With this, it is only more recently that philosophers have begun to seriously consider the nature and extent of our positive obligations to other animals. We might worry, then, that some of our pre-reflective intuitions regarding our positive obligations to wild animals may be biased or prejudiced in various ways. Many of our moral intuitions were likely shaped within small tribes of hunter-gatherers in situations very different than our present world. The possibility that our

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<sup>123</sup> Palmer (2010), p.89.

<sup>124</sup> See McMahan (2016), p.272.

intuitions might be biased because of this, at the very least, gives us reasons to have some measure of suspicion about the truth of these intuitions. This is relevant to how we approach intuitions about our obligations to aid those living in extreme poverty, as well as intuitions about obligations to aid animals living in the wild.

More seriously, however, Palmer's approach can rule out obligations to assist wild animals only by simultaneously weakening our duties to assist other humans. Many will not share Palmer's intuitions regarding the Hungry Venusians and our reactions to this case are likely influenced by other factors than the ones that Palmer points to. We might think our obligations to assist Hungry Venusians are weaker than obligations to assist humans in a comparable situation because of the significant costs likely required to assist the Venusians and because of a lack of knowledge as to how best assist these individuals. If assisting hungry Venusians would be incredibly costly or unlikely to succeed, we might think it is these factors, and not their emotional and societal distance, that explains why we do not have obligations to assist them or why our obligations to assist are weaker. Further, if we amend the thought experiment in ways meant to account for these other variables it appears much less plausible. If we replace the hungry Venusians with hungry individuals living on a previously undiscovered island on Earth – a group of humans who have lived completely independent from other humans for thousands of years – I doubt Palmer's case will have the same intuitive appeal.

But beyond this case, Palmer is unable to offer a convincing account of why we have obligations to assist *humans* who are in need and who are suffering when their suffering is not a result of injustice (i.e. the wrongdoing of certain moral agents). Palmer recognizes the importance of this challenge. A child who has fallen into a shallow pond seems like a clear case where we have a duty to assist, even though the child's situation is not an injustice. Here, Palmer suggests that she can account for our obligations to assist the drowning child by appealing to that child's

membership in a wider, global community. Membership in this sort of morally significant community, she thinks, could generate duties of assistance.

This approach faces its own problems. Palmer recognizes that attempts to limit this community only to human beings are problematic and face important objections. If we think membership requires the ability to participate in relations with other members, there is no way to plausibly maintain that all human beings are members and no animals are members. On the other hand, if all human beings, regardless of intellectual ability, are members, then domesticated animals must also be included.<sup>125</sup>

However, once Palmer has made this move – arguing that the membership of all human beings in a wider, global community is what grounds our obligations to assist suffering humans – it is unclear why wild animals should not be understood as members of a wider, global community. It is true that humans do not often have interactions with these beings. But that is also true of many other human beings – people who live in isolated groups or communities, loners, and so on. If these individuals are still part of our global community, why are other sentient beings not also part of this community? Further, Palmer does not claim that one must have actual relations with members of this community to be owed assistance. She does not want to rule out humans who live independent lives but one day might need assistance.

To avoid her argument being extended in the way I have suggested, Palmer must hold that the boundaries of the wider community she appeals to, in which membership generates duties of assistance, are defined either by species or in such a way that it excludes all wild animals. The claim that the boundaries of this wider community are created by species membership is unconvincing and appears to be nothing more than an *ad hoc* attempt to generate the conclusion Palmer is looking for. Species membership is a rather arbitrary category, as it is hard

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<sup>125</sup> Palmer (2010), p.123.

to see why being more genetically similar than other animals and having the ability to reproduce and have offspring that reproduce, are morally relevant features that generate an obligation to assist others.

Palmer might argue that the wider community includes all humans (including those with whom we have no relations) because this community includes all the beings who *can have* relations with us. On this view, this community is defined not by the individuals with whom we actually have real relationships, but with whom we could possibly have relationships. This position is also unconvincing. Once we have abandoned the view that genuine relations generate duties of assistance, it is unclear why the possibility of relations generates obligations. Intelligent and rational Venusians could possibly have relations with us. Further, this position does not exclude wild animals. Wild animals are capable of relationships with humans – these relations look different, they are not always likely to occur, but the capability and possibility are there. There are plenty of cases of humans who have developed interesting and ongoing relations with certain wild animals. Here is one example that illustrates the interesting form these relations can take: a diver in Japan has visited with the same fish, named Yoriko, an Asian sheepshead wrasse for over 25 years.<sup>126</sup> With this, there are many different types of wild animals who have been injured and subsequently lived in captivity, forming relations with their caretakers.

Two other problems confront Palmer's defense of the LFI. First, much of Palmer's discussion of wild animals underestimates the effects that humans have on wild animals and their well-being. As we have already seen, wild animals are harmed in many ways by human beings: both directly and indirectly. Billions of wild animals are harmed and die every year simply because human behavior has not taken their interests into account when constructing our buildings, roads, transportation, and infrastructure. Moreover, human-caused climate change and human

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<sup>126</sup> Waters (2017, June 21).



pollution make it rather difficult to claim that *any* wild animals live outside of human contact or influence.

Once we recognize this, however, Palmer's claim that we have no obligations to assist wild animals appears much less plausible. On her account, we might not have obligations to assist wild animals when we can be sure the harm or suffering they experience is not caused in some way by human beings. However, if we limited our focus just to the ways that human beings harm wild animals and attempted to reduce or eliminate these harms, this itself would be a massive undertaking. And while Palmer claims that "fully wild animals are outside of human social/political contexts"<sup>127</sup>, our legal and political institutions have a huge effect on the lives of wild animals. There are no conceivable ways human beings could seriously attempt to mitigate or eliminate the direct and indirect harms we cause to wild animals without finding ways to incorporate and represent their interests in our legal and political institutions. These obligations can only be fulfilled if they are collectively undertaken. Simply gathering much more extensive knowledge about all the ways humans unintentionally harm wild animals would require significant expenditures on the part of the state.

Given these problems, we ought to reject Palmer's argument for the claim that we have no obligations to assist wild animals. As we have seen, this claim does not go nearly as far as Palmer thinks it does, since the lives of so many wild animals are influenced and negatively affected by human behavior. Much more fundamentally, however, Palmer has failed to convincingly explain how our lack of duties to assist wild animals is consistent with strong duties to aid human beings.

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<sup>127</sup> Palmer (2010), p.88.

## 5.4 Wild Animal Sovereignty

Like Palmer, Donaldson and Kymlicka do not think that an approach which focuses only on the intrinsic moral status of various beings will be capable of fully accounting for our obligations and moral relations with those beings. Unlike Palmer, however, Donaldson and Kymlicka see their attention to our different relations with wild animals as supplementing a rights-based approach. They believe that all animals who are conscious have certain moral rights, including a right not to be killed. But a rights view, they think, cannot by itself fully account for our positive obligations to these beings.

According to Donaldson and Kymlicka, we cannot understand the extent and nature of our positive obligations to wild animals without first addressing a much larger question: “what are the appropriate sorts of relations between human and wild animal communities?”<sup>128</sup> To answer this question, Donaldson and Kymlicka argue we need to appeal to political categories, specifically a Sovereignty Model. They argue that we ought to extend rights of sovereignty to wild animals and that we ought to approach our relations with these animals through the lens of “fair terms of interaction amongst sovereign communities.”<sup>129</sup>

The extension of sovereignty to “wild animal communities” will strike many, at least initially, as odd. Wild animals cannot make law, create governments or political institutions, create or follow treaties with other states, or engage in many of the political activities that are generally thought to be central to sovereign states. However, Donaldson and Kymlicka believe that these concerns can be ameliorated once we recognize the core moral purpose of sovereignty. They reject accounts of sovereignty that require things like law, formal government, or legal and political institutions as “unduly narrow.”<sup>130</sup> These accounts of sovereignty, they argue, are

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<sup>128</sup> Donaldson and Kymlicka (2011), p.166.

<sup>129</sup> Donaldson and Kymlicka (2011), p.169.

<sup>130</sup> Donaldson and Kymlicka (2011), p.171.

inadequate in the human case. Most human communities throughout human history have been stateless. We ought to recognize that European imperialists who invaded indigenous communities in the Americas violated these communities' rights to sovereignty, even though some of these communities did not have states.

What, then, is the moral purpose of sovereignty? The view of most recent theorists, they suggest, holds that the moral purpose of sovereignty is to protect autonomy as a means of community flourishing.<sup>131</sup> Donaldson and Kymlicka affirm this view. "Insofar as the flourishing of a community's members is tied up with their ability to maintain their own forms of social organization on their territory, then we commit a harm and an injustice when we impose alien rule on them, and sovereignty is the tool we use to protect against that injustice."<sup>132</sup> Once we recognize the moral purpose of sovereignty, however, we ought to recognize that a community's right to sovereignty need not require any "command structure." This, they claim, "fetishizes legal form over moral substance."<sup>133</sup>

With a clearer sense of the moral purpose of sovereignty in front of us, Donaldson and Kymlicka argue we have no legitimate grounds to deny it to wild animals.<sup>134</sup> As they write, "Wild animals have legitimate interests in maintaining their social organization on their territory, they are vulnerable to the injustice of having alien rule imposed on them and their territory, and sovereignty is an appropriate tool for protecting that interest against vulnerability to injustice."<sup>135</sup> A good life for many wild animals is a social life. For many wild animals, their life is lived with other members of their species and the ability of these animals to exist in these social groups apart from human beings appears crucial to their well-being. Human expansion,

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<sup>131</sup> Donaldson and Kymlicka (2011), p.172.

<sup>132</sup> Donaldson and Kymlicka (2011), p.172.

<sup>133</sup> Donaldson and Kymlicka (2011), p.173.

<sup>134</sup> Donaldson and Kymlicka (2011), p.174.

<sup>135</sup> Donaldson and Kymlicka (2011), p.174.

as well as paternalistic management, can threaten this social organization. Since the moral purpose of sovereignty is to protect autonomy as a means of community flourishing, they argue, sovereignty claims can be extended to wild animals.

Donaldson and Kymlicka emphasize that a Sovereignty Model does not provide simple answers to every question concerning our relations to wild animals. However, they see it as a helpful lens for understanding what just relations with these animals requires. And certain implications are clear. Sovereign wild animal communities have a right to freedom from colonization and invasion.<sup>136</sup> With this, they have a right to freedom from external, paternalistic management of their territory intended to protect wild animals from the dangers of predation or from other types of suffering caused by nature. Although, as we will see, they make room for some exceptions to this general rule.<sup>137</sup>

One central challenge the Sovereignty Model faces concerns whether wild animals are, in fact, competent to handle their own affairs, to take care of themselves and manage their “communities,” separately from human beings. Donaldson and Kymlicka recognize this as a legitimate requirement of sovereignty. And they argue that wild animals are competent, both as individuals and as communities.

“As individuals, for example, they know what foods to eat, where to find them, and how to store them for winter use. They know how to find or construct shelter. They know how to care for their young. They know how to navigate vast distances. They know how to reduce their risk of predation (vigilance, hiding, diversion, counter-attack), and to guard against wastage of energy...And wild animals are competent as communities as

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<sup>136</sup> This, however, does not mean that humans can never expand their territories, or live with and among wild animals. Sometimes the sovereignty of wild animals will be shared and overlapping with human communities. See Donaldson and Kymlicka (2011), p.188-191.

<sup>137</sup> Donaldson and Kymlicka (2011), p.170.

well, at least amongst the social species. They know how to work together to hunt, or to evade predators, or to care for weak and injured members of the group...In these and countless other ways, wild animals, both individually and collectively, confront the challenges of life in the wild, successfully tending to their needs and minimizing risks.”<sup>138</sup>

It is true that many wild animals succumb to death from things like starvation or predation. However, Donaldson and Kymlicka argue that predator-prey relationships “are defining features of the context within which wild animal communities exist; they frame the challenges to which wild animals must respond both individually and collectively, and the evidence suggests that they respond competently.”<sup>139</sup>

Nevertheless, Donaldson and Kymlicka recognize that the competence of some wild animals is more compelling than for others. It is more compelling for social mammals and much less for other wild animals, like reptiles and amphibians, that have many offspring and leave them to fend for themselves. However, here they appeal to other considerations to support the Sovereignty Model: our fallibility when it comes to large-scale, systematic interventions to benefit wild animals; and the claim that large-scale paternalistic interventions undertaken to separate predators from prey would likely undermine the flourishing of many wild animals, severely curtailing their natural dispositions and abilities.

#### 5.4.1 Implications of a Sovereignty Model

Donaldson and Kymlicka are clear that Sovereignty Model does not rule out all forms of intervention and positive assistance for wild animals. Instead, they believe this model provides a useful framework for assessing when, and how, intervention is acceptable. As they see it, the

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<sup>138</sup> Donaldson and Kymlicka (2011), p176.

<sup>139</sup> Donaldson and Kymlicka (2011), p.176.

defining question for any intervention to benefit wild animals is the effect it will have on the ability of communities to sustain their social life and flourishing. Efforts to mitigate the harms of predation by separating predators from prey, for example, would fail to meet this criterion. But they recognize that other interventions are consistent with a Sovereignty Model. There may be cases where humans have a duty to assist wild animals in cases of natural calamities or disease, where humans could limit or reduce the suffering of wild animals while also restoring their abilities to live independently of humans and meet their own needs. When this is the case, they believe humans have a duty to assist.

The Sovereignty Model also has implications for human expansion. When we recognize the rights of sovereignty of wild animal communities, we should see that we ought to end the vast majority of human expansion of human settlements into wild animal territories.<sup>140</sup> Human efforts to extract natural resources would also be heavily curtailed, and would need to change in many ways, so as not to displace and disrupt the lives of wild animals.

One final implication of the Sovereignty Model concerns how we approach and evaluate the risks that humans and wild animals often pose to one another. “A sovereignty framework,” they write, “insists that we treat the distribution of risks as an issue of justice between sovereign communities.”<sup>141</sup> At present, human beings generally take even relatively minor risks posed by wild animals as entitling us to eliminate that risk, often with lethal means. Justice, as they see it, demands that we significantly reduce the risks we impose on wild animals. We must rethink and rework our highways, other forms of transport, buildings, and so on, so that we impose much less of a risk on wild animals. On the other side, they argue that we cannot demand that zero risk be imposed on us by wild animals. Efforts to wipe out coyotes or other predators, because of the risk they pose to our companion animals, for example, are not justified.

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<sup>140</sup> There are some exceptions to this rule, namely, when areas of land are not a habitat to wild animals (such as formerly mono-cropped farm land).

<sup>141</sup> Donaldson and Kymlicka (2011), p.198.

## 5.5 Against the Sovereignty Model

There is a lot to like with the way Donaldson and Kymlicka frame and approach our obligations to wild animals. With them, I agree that we should view a relational approach as supplementing the basic rights of other animals. Donaldson and Kymlicka were the first to explicitly emphasize that our relations to wild animals should be understood as *political relations*. Our obligations to wild animals are not simply obligations that fall only to individuals. The only way that humans can effectively uphold their obligations to wild animals is with collective action. Upholding our obligations to wild animals requires efforts and actions on the part of the state (and, as we will see, at the international level as well). As a result, Donaldson and Kymlicka are right that our relations with wild animals should be understood in political terms.

Nevertheless, I do not think that a Sovereignty Model best captures how we should think about our political relations with wild animals. Two main problems confront this approach. First, a Sovereignty Model fits wild animals poorly, as it requires stretching certain concepts like “community” and “competency” too far. More fundamentally, however, I argue that a Sovereignty Model underestimates the level and extent of human involvement and action that is needed to protect wild animals from human harms. A Sovereignty Model, I will argue, is ill-suited for upholding many of the collective obligations to wild animals that Donaldson and Kymlicka affirm. And this suggests we need a new way to think about and conceptualize our political relations to wild animals.

### 5.5.1 Animal Communities?

Donaldson and Kymlicka believe the core moral purpose of sovereignty is to protect autonomy as a means to community flourishing. And they think that many animals can be legitimately said

to live in communities. This claim, however, does not make sense when applied to *all* wild animals living in a given territory. Most wild animals do not have relationships with animals of other species and one of the central interactions of many wild animals with other species comes in the form of predator / prey interactions. These are no hallmark of a larger community.<sup>142</sup>

Instead, Donaldson and Kymlicka's position is that within various wild animal territories, there are a variety of separate animal communities, each of which generates a claim to sovereignty. This claim is strongest for many social mammals, such as bonobos, chimpanzees, dolphins, elephants, gorillas, lions, orcas, and wolves. These, and other social animals, have ongoing relationships with both family members and with other conspecifics. In these cases, it is not a stretch to say that these animals can form various communities.

However, for many wild animals, it is doubtful that they can be properly described as living in a community. Many wild animals live a solitary existence, engaging with other animals only to mate or in predator-prey relations. This is true for many amphibians, birds, fish, and reptiles. Moreover, for some of these animals who live with and around members of their own species, it is not clear if these groupings should be described as "communities," at least in the relevant sense. For the term to be meaningful in the social and political context, a community must refer to more than just a group of individuals who live close to one another. Horta suggests we understand communities "as groups of interacting individuals with some kind of cohesion, common aims and some form of collaboration or reciprocal support."<sup>143</sup>

There are more and less demanding ways to understand what is required for "common aims and some form of collaboration or reciprocal support." On one view, common aims would

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<sup>142</sup> There are some exceptions to this, where we find cooperative behavior among different species. But this is generally the exception and not the rule.

<sup>143</sup> Horta (2013a), p.120.



require specific, shared goals that are consciously held by members of the community. I am inclined to think that this interpretation of community is the best way to understand what is required for claims to sovereignty. We need not understand these goals as requiring linguistic ability: chimpanzees or elephants might have consciously held goals or aims among their members, even though these goals are not held in the forms of propositions. If this is the account of community we take, many groups of wild animals, outside of certain social mammals, would appear to fall short. These animals may live and travel together, but they appear to lack anything approaching a 'shared communal life' in the way that humans, and some social mammals, seem to have. A troop of chimpanzees, it seems to me, is plausibly described as a community. A shoal of fish is probably not.

Less demanding, we might hold that to be in a community only requires that wild animals *act* toward some common aims or goals, in ways that involve some form of collaboration or reciprocal support. A shoal of fish would do this – the fish act in ways that support common goals like survival and feeding – and would, thus, qualify as a community. The problem confronting this account relates to what Donaldson and Kymlicka claim is the underlying moral purpose of sovereignty: to protect autonomy as a means of community flourishing. The less demanding our requirement for community, the less plausible it is to claim that autonomy will be necessary to promote community flourishing. In part, this is because one of the purposes of sovereignty is to guard wild animal 'communities' from paternalistic management. This management, Donaldson and Kymlicka worry, would threaten the autonomy of these communities and their ability to flourish.

However, if wild animals cannot reflect on their shared goals and do not even have any consciously held goals or aims in the first place, it is not clear how ways of interfering or intervening in the lives of these animals to promote the welfare of their members would be problematic. In the absence of commonly held goals or beliefs or aims, it is not clear that

“community flourishing” refers to anything other than the flourishing of individual members. But if this is the case, then it is not going to be the case that all wild animal groups have an interest in autonomy. Rather, they might have an interest in certain types of relations with other members of their species, perhaps, but this will be consistent with different types of interventions or paternalistic management geared towards improving the welfare of their members.

The fact that many wild animals do not live in communities – in the sense relevant to sovereignty – poses a problem for the Sovereignty Model. If the rights to territory and non-interference are grounded in sovereignty, then it appears that in areas where wild animals do not live in communities, these animals would not have a right to their territory and to non-interference.<sup>144</sup> If, however, we want to argue that these wild animals also have a right to their territory and to non-interference, then it is not clear what work the communal claims to sovereignty are doing.

Donaldson and Kymlicka’s position appears to be that the rights of wild animals to their territory, and against certain forms of paternalistic intervention, are *normatively overdetermined*. They want to argue that even in places where animals do not live in communities and where they cannot competently handle their own affairs, these animals should still be seen as having rights to their territory and to non-interference, so as to protect the ability of these animals to flourish and to guard against human fallibility.<sup>145</sup> However, if this is the case, it is not clear we need to appeal to a contested and controversial account of sovereignty to secure justice for wild animals.

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<sup>144</sup> The moral case for different types of intervention to reduce wild animal suffering is strengthened when we consider the ways many wild animals produce. I address this below.

<sup>145</sup> Donaldson and Kymlicka (2011), p.177.

### 5.5.2 Are Wild Animals Competent to Handle Their Own Affairs?

A second problem concerns the extent to which wild animals are competent to handle their own affairs. Wild animals suffer and die at a rather alarming rate. Some have used this fact to argue that these communities are analogous to failed states.<sup>146</sup> If wild animals are not competent at handling their own affairs and protecting their members from suffering and death, then perhaps various forms of intervention to reduce their suffering and promote their welfare can be justified.

The idea that wild animals are competent at handling their own affairs appears most plausible when we are considering adult, social mammals who invest a great deal in the care and upbringing of their offspring. For a variety of reasons, I suspect that these are the sorts of animals many of us tend to think of when we consider animals in the wild.<sup>147</sup> However, as Horta notes, the clear majority of wild animals are not social mammals, they do not reach adulthood, but instead die in their infancy.

In the natural world, there are two general types of reproductive strategies. Some animals, such as social mammals, have very few offspring and invest a great deal of energy and effort in each offspring they have. In population dynamics, these animals are referred to as K-strategists (where the variable K denotes an environment's carrying capacity).<sup>148</sup> Most animals on Earth, however, do not reproduce in this way but instead have very large number of offspring (in the form of eggs) and invest little in each offspring. These animals are referred to as r-strategists (where the variable "r" denotes the population's "carrying capacity"). This is the method of reproduction employed by most fish, amphibians, and reptiles.

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<sup>146</sup> See Horta (2013a).

<sup>147</sup> Horta (2013a), p.116.

<sup>148</sup> Horta (2013a), p.115.

All of this is important to the question of animal competency because most wild animals are r-strategists. These animals produce large numbers of eggs – in the case of fish, for example, it is often in the millions per fish. If populations are to remain stable, only one offspring per parent will on average survive long enough to reproduce. As a result, for most wild animals the number of offspring who come into existence only to die and suffer is incredibly high and vastly outnumber those who survive into adulthood.

This fact represents a substantial problem for Donaldson and Kymlicka's claim that wild animals are competent at handling their affairs. One basic measure of competency is whether wild animals can protect their members from suffering and death. Most wild animals cannot do this in any meaningful way, however, as the reproductive strategies they employ make this impossible. Their offspring are simply left to fend for themselves and nearly all of them die.

Donaldson and Kymlicka set the bar for competency rather low. Responding to this objection, they argue that predator-prey relationships “are defining features of the context within which wild animal communities exist; they frame the challenges to which wild animals must respond both individually and collectively, and the evidence suggests that they respond competently.”<sup>149</sup> As they see it, it is only fair to evaluate wild animal competency if we allow for the fact that predation is part of their world, a “defining feature.” The fact that wild animals suffer and die because of predation, they think, should not count against their competency.

But why should we understand competency in this way, especially if we hold, as Donaldson and Kymlicka surely do, that the lives of *individual* wild animals are valuable and have moral importance? In the human case, we wouldn't hold that a human community was competent to govern its own affairs if every year nearly all its children died painful deaths. It is not clear why

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<sup>149</sup> Donaldson and Kymlicka (2011), p.176.

such a different standard, which allows for the suffering and death of the vast majority of (conscious) offspring, should be acceptable.<sup>150</sup>

One way to defend the competency of wild animal communities is to argue that there is an ecological component to competency I have glossed over. Wild animal communities are competent because predation manages their population size. On this objection, because wild animals live in a larger ecological system where predation serves this purpose, it should not knock against their competency.

This objection is not convincing for a couple of reasons. First, characterizing wild animals as ecologically competent is inaccurate and misleading. Even if we think the management of their population size is an aspect of competence, this is not something that most animals actually do. Instead, they live around other animals that they compete with for resources and predators kill and injure them. This is not competence, but at best living within a larger system that serves this function.

More fundamentally, this objection conceals the implicit comparison of different values that is being made. As we have seen, the best case against the competency of wild animal communities is the vast suffering and early death of many of their members. Against this, the objection we are considering claims that their existence within a system involving predation and death from various natural causes manages their population size and perhaps allows for ecological balance. But, of course, it is possible that in the future there might be other ways to manage the population size of wild animals. And if that is the case, it is not clear what work this claim to competency is doing. The “overpopulation” of a particular species of wild animals

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<sup>150</sup> There are some reasons to think that the death of many of these animals is not as bad as we might initially think. Some of these animals are not conscious when they are killed, and among the others, the vast majority die in their infancy. We have reasons to think that death harms these animals less than more cognitively mature beings, who have a greater psychological connection to their future selves. None of this, of course, mitigates the suffering these beings experience.

might be concerning if it threatens the welfare or lives of other conscious animals, but if this is not the case, then it is not clear why we should view this as a “defining feature” of their lives or existence.

Perhaps the competency of wild animals is not challenged if the death of other animals harms them, or is less bad for them, than the death of paradigmatic human beings. The r-strategists, whose offspring die in such large numbers, are not mammals and they generally have less complex cognitive abilities compared to humans and other social mammals. If it is the case that death is not as bad for these creatures, then the widespread death of the offspring of r-strategists would appear to be less of a challenge to their competency than comparable deaths would be to any human community.

I think there is something to this argument and I do think it is likely that death is less bad for some animals than others. However, even if this is the case, this is not enough to show that they are competent at handling their affairs. This is because of the vast amount of suffering their members experience. There are no good reasons to discount this suffering. If we are committed to the principle of equal consideration when it comes to suffering, then the vast amounts of suffering experienced by wild animals is a significant problem for the claim that they are competent at managing their own affairs.

The reproductive methods of wild animals, however, are not the only reason to doubt their competency when it comes to handling their own affairs. In addition to this, their competency is also limited when it comes to responding to human-caused dangers and problems, like climate change, various forms of environmental destruction, and the other dangers posed by human infrastructure. This, of course, is not the fault of wild animals or anything for which they are responsible. But, as we will see shortly, it gets at important differences between the capacities of sovereign human communities and those of wild animals. Wild animals are

incapable of adequately understanding a variety of human-caused problems and as a result face much greater challenges in responding to them.

### 5.5.3 Sovereignty & Protection from Human-caused Harms

Part of our understanding of sovereign communities is that they can govern their own affairs. They oversee the 'day-to-day management' and are tasked with protecting their residents. However, the Sovereignty Model advocated by Donaldson and Kymlicka ignores how simply working to prevent *humans* from harming wild animals (either intentionally or unintentionally) will require a great deal of involvement by our states in the affairs of wild animals. Donaldson and Kymlicka rightly believe that human beings have an obligation to try and prevent the ways in which we intentionally and unintentionally harm wild animals. But when we think concretely about the sorts of actions and policies this will require, we see that a Sovereignty Model is a poor fit for wild animals.

We can start to see this by considering what sorts of efforts and policies would be required if humans seriously attempted to end the direct, intentional harms that we inflict upon wild animals. What would be required if a state seriously attempted to eliminate hunting, trapping, the capture of wild animals, as well as the other ways humans directly harm wild animals? Laws would need to ban these practices. But for these laws to have teeth, they would have to be enforced. Police (or some official government body) would need to investigate crimes committed against animals and those who violate these laws would need to be prosecuted. These actions would provide an important deterrent effect that would prevent a great deal of harm to wild animals. But some humans would continue to hunt, trap, and harm wild animals in other ways. And this suggests that some form of monitoring of wild animals (perhaps the populations most likely to be targeted) would be required. This would require police or some sort of policing body, dedicated to monitoring, protecting, and investigating the killing of wild

animals. In addition to this, states would need to monitor potential black markets where wild animal products are bought and sold and institute criminal sanctions here as well to deter the killing of wild animals.

A serious attempt to end or at least drastically mitigate the unintentional ways humans harm wild animals would also require significant effort and involvement in the lives of wild animals. Humans would need to rethink and redesign our buildings, our roads and systems of transportation, and we would need to work to mitigate the harms that may result from various forms of pollution and climate change. Crucially, any serious attempt to do this would require considerable information. Humans must study how our buildings affect the migratory patterns of animals, we must study how our transport harms wild animals, we must study what effects climate change is having on wild animals, and we must study interventions aimed at mitigating and eliminating these harms. Gathering this information will require a variety of efforts to actively monitor how we are affecting the lives of wild animals.

Efforts to prevent unintentional harms from afflicting wild animals are also likely, at times, to require some forms of active intervention. This is likely to be the case with respect to harms that stem from human pollution and climate change. We do not know in advance what sorts of interventions in wilderness areas might be necessary to mitigate or prevent harms from pollution and climate change from afflicting wild animals. However, we can imagine cases where animals might need to be moved (or encouraged to move) over time to more hospitable climate or where humans might undertake efforts to improve their habitats in ways that would mitigate some of the damage of climate change.

If our focus is on the practical, concrete efforts states would need to undertake to prevent and mitigate many of the ways humans harm wild animals, we can see that a considerable amount of effort is needed to do this. But we should not stop here. Donaldson and Kymlicka think humans can and should intervene even when humans are not the cause of harm, to prevent



things like natural disasters and diseases from causing vast harms to wild animals. However, this too will require information, which require that states (as well as international organizations) actively monitor wild animals to watch out for natural disasters, disease, and so on.

These considerations point to another way in which a Sovereignty Model is both a poor fit and an unhelpful guide for thinking about our obligations to wild animals. Sovereign states oversee their own affairs, their day-to-day management, and the protection of their members. And yet, as we have seen, the practical demands of the obligations that Donaldson and Kymlicka affirm would require that human states devote significant resources to actively monitor wild animals, protecting them from both human harm and potentially disastrous harms that stem from natural disaster and disease. This is an important way in which human states would be intervening in wild animal territories. Moreover, this is not something that would need to be done only on a short-term, temporary basis, but indefinitely. These interventions strike me as inconsistent with viewing wild animals as sovereign communities in charge of their own affairs. Instead, they suggest that human political communities have significant responsibilities when it comes to protecting wild animal communities, which stem, in part, from the fact that many wild animals are not capable of protecting themselves. This responsibility falls not on them, like it generally does for sovereign states, but on the human-led states in which their territory resides. A Sovereignty Model obscures these important claims.

Donaldson and Kymlicka are motivated to defend a Sovereignty Model because they believe the territory wild animals live on is theirs, not ours, and they want to guard against certain forms of paternalistic intervention inconsistent with the social and communal lives of some wild animals. And yet a Sovereignty Model is a poor guide for thinking about the obligations human states have to wild animals. Wild animals appear largely incapable of protecting themselves from human harms (intentional and unintentional), as well as responding to potential new harms

that result from climate change. Moreover, they are not, and can never be, *states* that can enter relations with human states: to negotiate fair terms of interaction, to approve intervention, and so on. Human states must make these decisions *on behalf of* wild animal populations. A Sovereignty Model obscures this fact and the extent of the decisions and action human states must make on behalf of wild animals. Given these problems, we need a new political category for thinking about our relations with, and obligations to, wild animals.

## 5.6 Wild Animal Protected Territories

A much better way to frame our relations with wild animals is under a Protected Territory Model, which draws some inspiration from protectorates and protected states. Among human states, the term “protectorates” has been used to represent a wide variety of states with varying relations to their protecting state. Protectorates were most often established with a treaty between two states, “whereby the dependent entity surrendered to the protecting State or States at least the conduct of its foreign relations, and often the responsibility for such relations together with various rights of international intervention, without being annexed or formally incorporated into the territory of the latter.”<sup>151</sup> Historically, many states deemed protectorates were much closer to colonies. And over time this form of relations between states has largely disappeared.

Nevertheless, an important form of dependent relations exists among some “microstates” with larger states. States that enter into these relations are often referred to as *protected states*. Protected States “are sovereign states that give some aspect of their sovereignty to larger powers in exchange for benign protection of their political and economic viability.”<sup>152</sup> Many of

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<sup>151</sup> Crawford (2007), p.287.

<sup>152</sup> Dumienki (2014), p.4.

these microstates simply lack the resources for national defense and so, through a consensual agreement, a larger state agrees to offer this protection. Outside of this domain, the affairs of the protected state are left to that country and its residents. Examples of modern-day protected states include Liechtenstein, San Marino, Monaco, Cook Islands, the Federated States of Micronesia, and the Republic of Marshall Islands.

Protected states provide a useful inspiration for thinking about the relations between human states and wild animal populations. Like protected states, wild animals are not fully capable of adequately defending themselves from many of the threats they might face. Wild animals lack the abilities to adequately protect themselves from human beings and from other types of regularly occurring harms that they face. If states are to fulfill their obligations to not intentionally or unintentionally harm wild animals, they will need to be involved in the affairs and territories of wild animals in many ways: most importantly, by monitoring wild animals on a regular basis. This arrangement, I believe, can be best framed in terms of a Protected Territory Model. This model holds that wild animals are incapable of adequately responding to many of the threats they face (those caused by humans as well as others) and that human states have the responsibility to protect wild animals from a variety of outside threats. On this model, it is the responsibility of states to protect wild animals from human-caused harms and to help wild animals avert large-scale catastrophes.

It is important to highlight how a Protected Territory Model differs from some of the other ways we might view our relations with wild animals, such as views that call for us to be “stewards” of wilderness territories or for us to engage in “benign domination.” One of the principal differences between these sorts of views and a Protected Territory Model is that on this view the territory wild animals live on is their territory, not ours. A model of “benign domination” or “stewardship” presupposes that the land wild animals live on is ours and that we can make decisions, perhaps within certain reasonable limits, for how to use that territory

to advance our own interests, often in ways that conflict with or go against the interests of wild animals.

A Protected Territory Model, in contrast, concedes that the territory wild animals live on is their territory, not ours. We can understand this claim in a few different ways. At the most basic level, it recognizes that wilderness areas are not “undeveloped” land and waterways for humans to use however they see fit, but land and waters that are inhabited by morally valuable creatures whose lives can go well or poorly. Recognizing the land and waters where wild animals live as their territory involves the recognition that these areas are inhabited by creatures whose welfare and rights matter and that our expansion into, and disruption of, the spaces they occupy harms them. Further, recognizing these areas as wild animal territory should also guide how we view our own actions within them. Human beings can travel in wild animal territories, but we do so as visitors who have an obligation not to harm these residents. The same goes for other ways we often disrupt the places wild animals live. Human beings can use resources from wild animal territories, but we must do so in ways that do not cause these animals harm. This is no small task.

Protected human states provide only an inspiration for how we might think about our relations with wild animals. Animal Protected Territories differ in important respects from human protected states. Most obviously, protected states can enter into formal, consensual agreements that outline their arrangement and the responsibilities taken on by the protecting state. Protected states are consistent with the smaller states still being conceived of as sovereign, in a way that wild animals are not. Protected states can handle their ‘day to day’ affairs in ways that wild animals cannot. Nevertheless, I believe a Protected Territory Model offers a useful framework for thinking about our political relations with wild animals. This model provides a better framework, in contrast to Donaldson and Kymlicka’s Sovereignty Model, in several different ways.

### 5.6.1 Borders and Territories

The Protected Territory Model that I am advocating has advantages over a Sovereignty Model on the issue of borders. A Sovereignty Model applies most easily when wild animals occupy a distinct territory, apart from humans. This is true for some wild animals. But as Donaldson and Kymlicka recognize, it is not true for many wild animals, particularly birds and fish. Moreover, this picture is further complicated by the migratory patterns of animals. Donaldson and Kymlicka recognize these complexities and suggest that analogies can be drawn with nomadic human communities. In many cases, we can think of wild animals having “parallel sovereignty” with other groups.<sup>153</sup>

Nevertheless, they recognize that the ways current boundaries are drawn may not always be in the best interest of wild animals. As they write, “Current settlement patterns may need to be adjusted, not only in light of future needs and ecological sustainability, but also to compensate for historic injustices.”<sup>154</sup> On these issues, Donaldson and Kymlicka suggest that humans need to negotiate with the interests of wild animal communities when it comes to disputes about land and territory and that these negotiations should be done “on the basis of reciprocal relations between sovereign equals.”<sup>155</sup>

I agree with some of the concrete proposals put forward by Donaldson and Kymlicka when it comes to wild animal borders and territories. The territory these animals live on is their territory, not ours, and decisions that involve significantly displacing or moving wild animals should only be undertaken to benefit these animals and not simply to advance any human interest. However, many of these suggestions fit more easily under a Protected Territory Model

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<sup>153</sup> Donaldson and Kymlicka (2011), p.190.

<sup>154</sup> Donaldson and Kymlicka (2011), p.195.

<sup>155</sup> Donaldson and Kymlicka (2011), p.194.

than a Sovereignty Model. Some of the suggestions Donaldson and Kymlicka make – in particular, claims about “negotiating” with wild animal interests and “reciprocal relations” between human and wild animal communities – do not fit wild animals well and bring more conceptual baggage than we need. Obviously, wild animals cannot negotiate with human beings about their territory and any changes that are to be made. Perhaps Donaldson and Kymlicka have in mind negotiations happening between representatives of human states and human representatives appointed for wild animal communities. But if this is the case, we have moved even further away from more common notions of sovereignty, where sovereign communities represent their own interests.

Complicated questions about territorial disputes – whether it can be in the interest of wild animals to move to more ecologically viable areas, whether and how certain areas should be modified or changed to improve the lives of animals, and so on – deserve significant representation for the interests of wild animals. But this fits much better, I believe, under a Protected Territory Model, where human states recognize they are responsible for protecting these animals from human-caused harms and helping them avert natural disasters and other causes of widespread suffering.

Similarly, the language of “reciprocal relations” and “fair terms of cooperation” stretch these concepts and ideas too far. While both humans and wild animals impose risks on one another, decisions about what levels of risk (going both ways) can only be made by human beings. And any negotiation or cooperation can only occur between humans and human representatives for wild animals. Thus, when it comes to decisions that must be made about borders and territories, a Sovereignty Model offers a poor fit for wild animals. These decisions must be made and they ought to be made to promote the flourishing of wild animals. However, this can only happen when human states internalize and take on this responsibility.

### 5.6.2 Political Representation

Another issue where a Protectorate Territory Model fares better than a Sovereignty Model is the issue of political representation. Donaldson and Kymlicka suggest that wild animals need some form of “proxy representation by human beings” to represent their interests.<sup>156</sup> I agree.<sup>157</sup> However, this is another area where a Sovereignty Model appears to conflict with the necessary steps to fulfill our obligations to wild animals. One important feature of sovereign states, it seems, is that they have some ability to represent themselves (or, at least, the ability to delegate this authority to another state). Wild animals cannot do this.

However, when we think about what forms this representation ought to take, even more pressure is put on the Sovereignty Model. Forms of political representation would certainly be needed within the states in which many wild land animals reside. In addition to this, wild animals will also need representation at the international level, as well (for reasons we will see shortly). But if we grant this, then at this point we have affirmed that human states have the responsibility to protect wild animals from a variety of harms, to represent them in their states, and to represent them at the international level as well. It makes more sense, and is more illuminating, to view these animals as living in Protected Territories, rather than sovereign communities. A Sovereignty Model brings with it conceptual baggage that we do not need and can also obscure the very active role a state must play simply to protect wild animals from the harm that humans cause them. A Protected Territory Model can recognize that states have a variety of responsibilities to secure justice for wild animals. These responsibilities, moreover, would require important changes on the part of the states where wild animals reside: allocating resources to protect wild animals, representing them in their political institutions, and at the international level.

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<sup>156</sup> Donaldson and Kymlicka (2011), p.209.

<sup>157</sup> In Chapter 8 I explore some of the forms this political representation might take.

### 5.6.3 International Protection

Human states play a crucial role in protecting wild animals from a variety of human and nonhuman caused harms. However, many wild animals migrate between states and much of the world's wild animals live in international water and are thus not within the confines of any one state. This suggests it is not only states that must take on the responsibility of protecting wild animals from human-caused harms. International organizations have an important role to play as well.<sup>158</sup> The model for this protection should be the same: international organizations should view wild animals as living in Protected Territories and undertake the responsibility to protect these animals from human-caused harms. This, as we have seen, will require international organizations to monitor wild animals, gather a variety of different information, and to police international waters and territories.

Here, again, we see another shortcoming of the Sovereignty Model. Wild animals living in international territories not only cannot protect themselves from human caused harms, they are incapable of representing themselves here. If changes at the international level are going to happen, it will only be because humans bring about these changes, and in terms of protection, because other states take on the responsibility of protecting wild animals in international territories.

International organizations are not only crucial when it comes to eventually protecting certain wild animals from human caused harms, they are also important in terms of the ability of states to protect animals (both wild and domestic) domestically. As Horta notes, "currently there are multilateral agreements and supranational institutions that put limits on the ways in which nonhuman animals may be protected domestically."<sup>159</sup> Examples include the European Union's

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<sup>158</sup> See Horta (2013b) and Cochrane and Cooke (2016).

<sup>159</sup> Horta (2013b), p.375.



Common Agricultural Policy, which provides significant subsidies to animal agriculture in Europe, as well as the World Trade Organization (which can decide whether states can legitimately ban the importation of goods that involve the harm of animals).<sup>160</sup> Advancing justice for animals domestically will also require international action. This requires human states to take this on and understand protecting wild animals from human-caused harms as one of their responsibilities.

#### 5.6.4 Intervening in the Wild

One remaining issue concerns when human intervention into the lives of wild animals is morally justified. We can imagine different versions of a Protected Territory Model that take different stands on this issue. It is a larger framework and the details can be filled in different ways. Nevertheless, one of the important features of this approach is that it denies wild animals have a claim to sovereignty over their territory and it denies that interventions must be done in ways consistent with promoting the autonomy and social organization of wild animals.<sup>161</sup> As a result, beyond calling for the various interventions needed to protect wild animals from human harms, this approach is consistent with many types of interventions geared towards protecting wild animals from other harms they face. This is an important difference between a Protected Territory Model and the Sovereignty Model of Donaldson and Kymlicka. A Protected Territory Model allows for much greater intervention by humans in the affairs of animals to benefit them. Here I fill out this model, offering my own views for how we might think about how and

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<sup>160</sup> Gambardella (2010).

<sup>161</sup> This is an important way my approach diverges from a Sovereignty Model. Donaldson and Kymlicka emphasize that human interventions to assist wild animals should have the goal of preserving their independence and autonomy from human management, Donaldson and Kymlicka (2011), p.181-182.

when humans should intervene in the lives of wild animals. I start first with forms of intervention that address suffering, before turning to the more difficult issue of predation.

The moral case that human beings have duties to assist wild animals to prevent them from suffering is relatively straightforward.<sup>162</sup> Animal suffering matters morally, as it is intrinsically bad for those who experience it. The suffering experienced by wild animals is just as bad for them whether it is caused by a human being or by other causes. In the case of humans, we recognize that we often have an obligation to intervene if we can prevent many humans from experiencing significant suffering (even when their suffering is not the result of the behavior of moral agents).<sup>163</sup> However, if we recognize this in the case of human beings, there are no convincing reasons not to recognize it for nonhumans as well.<sup>164</sup>

The argument I have presented makes no appeal to the rights of animals. Rights are legitimate claims that constrain the behavior of moral agents. It is not clear, however, that the rights of wild animals can generate a duty to intervene when their suffering is not the result of moral agents. Yet it is a mistake to think this settles the issue.<sup>165</sup> This is because moral rights do not cover all of morality. The suffering of wild animals matters, just as the suffering of human beings matters.

There are potentially a wide variety of situations where human beings might intervene to mitigate the suffering of wild animals. These include interventions to prevent suffering that

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<sup>162</sup> For a similar argument, see McMahan (2016).

<sup>163</sup> Here I have in mind cases where large numbers of individuals are likely to suffer significantly through no fault of their own.

<sup>164</sup> In some cases, we might have weaker reasons to assist humans because of the role they played in bringing about their own suffering. These sorts of reasons will not apply to nonhuman animals, however, as they lack the capacities to be held morally responsible for their behavior.

<sup>165</sup> Tom Regan revised his position on this issue in the second edition of *The Case for Animal Rights*. See Regan (2004a), xxvii.

results from diseases wild animals contract, from habitat loss or changes to their habitat that lead to suffering, as well as from drought or severe food shortages.

Common objections to human interventions to mitigate wild animal suffering are not convincing. One worry is that humans simply do not know enough about ecosystems and wild animals to be confident that our interventions will reduce wild animal suffering. Without this knowledge, there may be a substantial risk that our efforts will be counterproductive and may lead to more suffering. Perhaps our efforts to feed a wild deer population that is suffering from a lack of food will in time only lead to more suffering (if the population grows too large and this leads to an even larger collapse). Given these worries, some argue that we should not intervene to prevent the suffering of wild animals unless we can be confident the intervention will reduce wild animal suffering. Until we have this knowledge, we ought to refrain from intervention.

This objection takes no issue, in principle, with human intervention to prevent wild animal suffering. All it claims is that at present humans lack sufficient knowledge of ecosystems and wild animals to be have enough confidence our efforts will not be counterproductive. Nearly everyone agrees with this claim. The much stronger claim – that any intervention by humans into the lives of wild animals is risky and cannot rule out unforeseen, counterproductive consequences – is not plausible. As Horta notes, humans already intervene in nature for a variety of different “environmental” purposes (to preserve native species, to “benefit” ecosystems, etc.). And yet rarely are these practices met with strong objections that we cannot completely rule out unforeseen consequences.

Further, if the problem is a lack of knowledge, humans can and should engage in research to learn what sorts of interventions are likely to reduce wild animal suffering. Once we have greater knowledge, we could begin to undertake smaller-scale interventions, perhaps in more remote and less complex ecosystems, with the hope of reducing animal suffering and learning more in the process.

The fallibility objection is far from decisive and does little more than point out what is already generally agreed upon: at present, humans currently do not have enough knowledge to be confident that many types of interventions to reduce wild animal suffering will succeed. Yet the underlying moral reasoning in favor of intervening to reduce wild animal suffering remains intact. Interventions to prevent wild animals from suffering and dying from treatable diseases, from drought or food shortages, and from changes to their habitat, then, all appear to be good candidates for ways that humans could, in the future, prevent many wild animals from suffering.

A Protected Territory Model recognizes that states can have an obligation to prevent wild scale suffering of wild animals when they have the knowledge required to successfully do so. Making efforts to gain this knowledge is one of the present responsibilities of human states. Wild animals lack the capacity to respond adequately to many events that cause them suffering and human states are uniquely positioned to help mitigate some of this suffering.

## **5.7 The Problem of Predation**

An important question confronting any discussion of human obligations to wild animals concerns predation. Here I wish to address a few different questions. First, is predation a moral problem? And if it is, might humans ever have obligations to undertake efforts to eliminate or reduce predation? Except for some small-scale interventions, it is worth emphasizing that humans presently lack anything approaching the knowledge that would be required to confidently 'phase out' predators in a way that would be likely to reduce wild animal suffering. However, the scale of the suffering caused by predation and the possibility of various relevant technological developments in the future give us good reasons to seriously consider predation

and ways humans might mitigate the suffering caused by predators.<sup>166</sup> Additionally, as with the issue of wild animal suffering, a Protected Territory Model of our obligations to wild animals is consistent with different approaches to predation. As we will see, however, one of the primary differences between this model and Donaldson and Kymlicka's Sovereignty Approach is that the former is much more amenable to policies geared towards reducing suffering caused by predation.

The argument that predation is a moral problem runs along similar lines as the argument that wild animal suffering is a moral problem. Predation inevitably involves the suffering and death of animals and the amount of suffering caused by predation is truly enormous. One reason for this is that most wild animals do not survive to adulthood. Most wild animals have a very large number of offspring (most often eggs) and invest very little in the life of each offspring. Most of the offspring do not survive for long. As Horta notes, many likely die before they become conscious.<sup>167</sup> However, those who survive to become conscious live very short lives that involve very few positive experiences. In most cases, they either starve or are killed by predators very shortly after coming into existence.

Sadly, this is the fate of the overwhelming majority of beings who come into existence on Earth. The average clutch size (number of eggs laid in a *single* nesting) of the bullfrog is 6,000 to 20,000 eggs. The American lobster lays around 8,500 eggs.<sup>168</sup> And some species of fish can lay even more eggs.<sup>169</sup> The Atlantic Cod can lay anywhere from a few thousand to several million

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<sup>166</sup> Our lack of knowledge in this area is one of the reasons greater priority should be given to reducing the ways humans unintentionally harm wild animals. Compared to the complexity of predation, reducing these harms are 'low-hanging fruit,' and resources dedicated to reducing these harms are likely in the near term to prevent considerable suffering. With this, efforts to address this type of suffering are much more politically tractable.

<sup>167</sup> Horta (2010a).

<sup>168</sup> Ng (1995), p.270.

<sup>169</sup> Jørstad (2007), p.11.

eggs. It is likely that many of these offspring do not survive long enough to become conscious, and thus capable of feeling pain. But a sizeable number do, only to suffer and be killed.

It is helpful to get a glimpse of the scale of this suffering. Horta gives an example where he looks at one species in one specific location: the Atlantic Cod off the coast of Maine.<sup>170</sup> On the basis of several very conservative assumptions (about the population size of Atlantic cod, the number of eggs laid, the percentage of eggs that develop into a young immature fish, the probability that any particular fish becomes sentient, and the average time of suffering being 10 seconds), Horta estimates every time these animals reproduce we can expect 200 billion seconds of suffering. This is the equivalent of approximately 6337 years of suffering. Over the course of six decades of human life, the number of years of suffering experienced by Atlantic Cod off the coast of Maine would be 380,265. And all of this is for one species, in one very specific area, making a variety of rather conservative assumptions. The amount of suffering that occurs every year for wild animals because of predators is hard to comprehend. Nature is much more cruel and tragic than we commonly think.

The argument that all this suffering is a moral problem only needs to appeal to the position that that suffering is intrinsically bad and that *if* this suffering can be prevented (or at least reduced), without harming others in the process, we have *prima facie* moral reasons to do so. However, even if we recognize that predation is a moral problem and that we have *prima facie* reasons to intervene, this does not show that we ought to intervene to prevent or reduce predation or even that interventions are morally permissible. While efforts to intervene might result in less suffering, some have argued that this would require means that are impermissible or would have other consequences or effects that make this intervention morally wrong.

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<sup>170</sup> Horta (2010a), p.10.

If it were the case that there are no ways to reduce or mitigate predation without violating the rights of predators or without acting in ways that are immoral, then it would not be the case that predation is a *moral* problem. Predation could be considered a tragedy, since nothing could be done consistent with the demands of morality to reduce wild animal suffering. But if nothing can be done, then it does not appear to be a *moral problem* that demands our attention.

If the only way to eliminate predators were to kill them, then arguments in favor of eliminating predators would face the challenge that they violate the right of predators not to be killed.<sup>171</sup> Here my focus will be on efforts to “phase-out” predators that involve non-lethal means. Nevertheless, there are a few objections to attempts to reduce or eliminate predation that focus on other values.

One general argument against human intervention to reduce predation appeals to the value of “natural processes.”<sup>172</sup> On this view, there is value in the natural world that is compromised when human beings interfere with natural processes, as there is something valuable about wilderness areas lying outside the influence and direct intervention of human beings. Whatever one makes of this claim, to succeed in arguing against any interventions to phase out predators, this value would need to outweigh the suffering and death experienced by wild animals because of predation.

This view faces many problems. First, it is not clear how many people actually hold this view. Human beings intervene in the natural world all the time (to preserve endangered species, to

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<sup>171</sup> Whether any predators could be justifiably killed to protect other individuals is a more complicated issue, that involves difficult questions of when self- and other-defense is justified when the harms in question are caused by morally innocent threats. Here I want to consider the strongest case that can be made for phasing out predators, whereas these questions would take this discussion too far afield.

<sup>172</sup> Eric Katz (2010) argues that there is value in ‘natural spaces’ where humans have not intervened and do not control.

protect “native species,” to protect certain populations of animals, to promote the “health” of an ecosystem, and so on). Few individuals are opposed to all of these forms of intervention. But if that is the case, it is unclear why intervening to reduce or eliminate predation would be any more of an affront to “natural processes.” The second issue concerns the problematic way this position separates human beings from “natural processes.” Human beings, after all, are part of the natural world, so it is hard to see how our actions are not also natural processes.

Perhaps most worrisome, however, this position relies on an unjustified form of speciesism. As Horta points out, no advocates of this view would be prepared to accept it if the victims of predators were humans.<sup>173</sup> If humans were being routinely killed and made to suffer, at a mere fraction of the levels of suffering experienced by wild animals, few would object to using non-harmful ways of reducing or eliminating this suffering. And yet, simply because animals are members of a different species, the suffering and death inflicted upon them is downplayed by this view.

Some object to the idea of reducing or attempting to eliminate predators because of the effect this might have on biodiversity. On this view, biodiversity is an important value.<sup>174</sup> If efforts to reduce and eliminate suffering caused by predation were to reduce biodiversity, then, on the view we are considering, they would be immoral, as the value of biodiversity outweighs the suffering and death experienced by nonhumans.

This view faces similar problems. This view would be rejected if humans were the victims of predation. Few defenders of this view, for example, advocate efforts to eliminate human beings, even though humans are the largest driver of biodiversity loss on the planet. And if the suffering and death of human beings could only be lessened with efforts that would reduce

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<sup>173</sup> Horta, 2010b, p.5.

<sup>174</sup> Ben Bradley (2001) presents the view that a diversity of different species has a type of value he calls “contributory value,” a type of value distinct from intrinsic and instrumental value.



biodiversity, few would object to this. This objection faces the same charge of speciesism that the previous view confronted. Since we reject this in the case of humans, it is hard to see what sort of reason could justify this position in the case of nonhuman animals.

On a related view, some hold that the existence of a species has impersonal value. On this view, the existence of a species is valuable independent of whether the species existence is good for or to anyone.<sup>175</sup> The world would lose something of value, on this view, if the Siberian tiger became extinct. This is the case not because there would no longer be these animals who have valuable experiences but because the existence of this species of animals simply has impersonal value. However, we can affirm that species have some impersonal value while still maintaining that we are morally justified in phasing out predator species to reduce suffering and death. For the above objection to work, it needs to claim not just that species have impersonal value but that this value outweighs or is more important than other values: namely, reducing the suffering and death of conscious animals.

Here, again, the objection is willing to discount the interests of nonhuman animals in avoiding suffering and death, when we would not accept the same conclusions for humans. An example can help to illustrate this problem. Few defenders of the view that species have impersonal value would want to hold that it can never be morally acceptable to try and eliminate the existence of a species. It would be implausible to claim, for example, that it is wrong to try and eliminate deadly bacteria or a dangerous virus that kills humans and causes them significant suffering. What is clear, then, is that we can weigh the impersonal value of a species with other values. In the case of human beings, any impersonal value a species might have is outweighed by concerns for the well-being and lives of humans. But there is no way we can plausibly maintain this for *all* human beings, while denying similar claims for nonhuman animals.

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<sup>175</sup> McMahan (2016), p.276.

However, even if the impersonal value of species is weaker than other values and only generates relatively weak obligations to preserve a species, it still might generate stronger obligations on the part of humans not to undertake positive action with the intention of eliminating a species as a means to reducing suffering. This position is similar to the view some take towards the value of human life. We might think that our obligations to preserve human life are not as strong as obligations not to directly take human life. To be plausible, this position would need to add that some species have greater value than others, since efforts to eliminate a deadly bacteria or virus to reduce suffering are not immoral. Perhaps more complex life forms have more impersonal value. A few problems confront this more nuanced objection. First, to be plausible, we would need a convincing account of why the value of species (and not of individual members of a species) have greater value with more complexity, otherwise the position appears ad hoc. More troubling, however, the view still takes a speciesist stance. Efforts to phase out more complex species that cause significant harm and suffering to humans would be morally justified. Few, I suspect, would deny this. But if we hold this, there are no good, non-speciesist reasons to reject the same conclusion when the intention is sparing nonhuman animals of significant suffering.

Principled objections to efforts to phase out predator species are not convincing. Nevertheless, this still leaves a variety of practical problems that stem from specific methods of addressing the problem of predation and that concern whether the *means* of reducing and eliminating predator species are morally acceptable. There are many ways humans might intervene to prevent or mitigate the harms caused by predation. Here, our focus will be on three possible types of non-lethal interventions:

- Contraception and Sterilization
- Genetic alteration

- Separating Predators from Prey

### 5.7.1 Contraception and Sterilization

The use of forms of contraception and sterilization present the most promising near-term scenario for how humans might intervene to phase out certain predators. On this approach, humans could find ways to sterilize predators or provide them with contraceptives and gradually phase them out in ways that would be likely to reduce animal suffering. We can also imagine this strategy being used in scenarios where a specific predator is already on the brink of extinction and is confined to a specific and limited geographic region. If this predator has not existed in large numbers in the past and if humans had sufficient knowledge that it was likely the absence of this species would lead to less animal suffering, then efforts to prevent the predator from reproducing would be morally justified.

Two important worries confront the use of contraception and sterilization to phase out certain predators. The first worry is that these efforts will result in harm. Capturing predators to sterilize them might harm these animals by causing them significant stress and anxiety, so this would have to be avoided. One possibility would involve using tranquilizers to capture predators, sterilizing them before they wake up, and returning them to where they were captured. Another option is using food as a vehicle for sterilization.<sup>176</sup> At present, humans do not have safe and effective ways to do this for most predators, so these drugs would have to be developed. One worry is that when this is done, most likely in the form of something the animals would eat or drink, it may have side effects that cause the predators or other animals who might eat the food source harm.

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<sup>176</sup> This method has been used on rats living in New York City's subway system. See Flegenheimer (2013, March 11).

These concerns are important but none of them are insurmountable. These problems represent practical concerns that should influence and constrain how humans go about producing and utilizing forms of sterilization and contraception. However, humans can find ways to sterilize predators that would not harm these animals and that would not harm other animals. It is an open question what forms of sterilization and contraceptives we can develop and the risks they will involve. But there is no reason, in principle, to think this is impossible.

A second, related worry concerns the rights of predators. Do these animals have a right to reproduce that would be infringed by efforts to sterilize them or use a long-term contraceptive? And if so, are there any circumstances in which the infringement of this right can be justified? Or, do the rights of animals to reproduction always outweigh other moral considerations?

These are difficult questions.<sup>177</sup> The first question we ought to ask, however, is whether nonhuman animals have an interest in having and raising offspring. We should distinguish between an interest in *sexual activity* and an interest in *having and raising offspring*. Many nonhuman animals clearly have an interest in sexual activity: they regularly engage in sex acts and show every sign of enjoying this.<sup>178</sup> But it does not follow from this that they have an interest in having offspring. The question here is whether this is something that contributes to their well-being or flourishing. Many predators clearly do not have an interest in having and raising offspring. Many animals show very little interest in their offspring and for many, have no relationship with them at all. This is certainly true for animals, like fish, reptiles, and other predators, who simply lay eggs. In these cases, it is hard to see how these animals, as individuals, have a welfare interest in reproduction. As a result, they have no corresponding right to reproduce.

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<sup>177</sup> I consider this issue in more detail in Chapter 7, where I look at the question of whether domesticated animals have a right to reproduce. This question is more difficult because many domesticated animals are social mammals, some of whom seem to enjoy raising offspring.

<sup>178</sup> It is worth noting that this might be true for the males of some species, but not the females.

Some may object that humans have a right to reproduce even if they take no interest in their future child and do not plan on raising it. Given this, we might question if similar claims hold for animals and if a right to reproduce really requires an interest in having and raising children. But the rights in question here, and their moral basis, are different. In the human case, part of what seems to ground a right to reproduce involves claims to bodily autonomy. Efforts to sterilize humans or otherwise infringe on their reproductive capacities violate the right of humans to bodily autonomy. Further, these rights must ultimately appeal to the interest humans have in autonomy and in making their own decisions about whether they wish to reproduce.

Nonhuman animals appear to lack the cognitive abilities to think through these questions. As a result, if they have a right to reproduce, the basis of this right will be different.

Many predators have no interest in having and raising offspring. This is true for predators who simply lay eggs and have no subsequent relations or interactions with their offspring. Lacking this interest, these animals lack a right to reproduce.

In some cases, however, it does appear that nonhuman animals may have an interest in reproducing. The case is most compelling for social mammals who have long-term relationships with their offspring, such as orcas and dolphins. In cases where animals form strong bonds with their offspring, where they appear to derive pleasure and satisfaction from these relationships, and when they have the cognitive capabilities to desire having an offspring, then the animals certainly have a strong interest in reproducing that could ground a right.

Nevertheless, the fact that some predators may have a right to reproduce does not settle the issue of whether attempts to sterilize these animals could be morally justified. It would if we understood rights as always trumping any other moral consideration. But the position I defended in Chapter 2 was a moderate rights position. This position allows that in some circumstances the rights of an individual may be justifiably infringed to prevent disastrous consequences (such as enormous amount of suffering and death). This does not mean that *any*

right can be infringed to prevent disastrous consequences, or that the threshold for any right is the same. An individual's right to life is much more stringent than their right to liberty or their right to reproduce.

As a result, a variety of factors appear relevant to assessing whether sterilizing certain predators, who have a significant interest in reproduction, could be morally justified. A full assessment will require that we know how strong an animal's interest is in having and raising offspring, whether it is strong enough to ground a right to reproduce, and if it is, the extent of the suffering and death that can be avoided by phasing out a particular predator. On this last point, it is important to emphasize the enormous potential for reducing suffering and premature death that phasing out just one predator species could have. As McMahan notes, "If human beings could eliminate even one carnivorous species while ensuring that its extinction would not have disruptive ecological effects, that alone could prevent a vast amount of suffering among animals that would otherwise have been prey for members of that species."<sup>179</sup>

Navigating all these factors is difficult. However, I believe that in cases where an animal has an interest in reproduction but a flourishing life is very likely even if they are sterilized, *and* (most importantly) these efforts are likely to help phase out or eliminate these predators, leading to a large reduction in suffering and death, sterilization is morally justified. This is one area where the moderate rights position I argued for in Chapter 2 has important differences compared to an absolute rights position.

Still, the use of contraceptives and sterilization is likely to be rather limited in the near to medium term. We do not yet know, with a high level of confidence, when phasing out predators would reduce overall suffering and death. With this, there are limitations to this approach. The use of sterilization might reduce the numbers of a particular predator, but it

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<sup>179</sup> McMahan (2016), p.279.

could be difficult to eliminate a predator species. With this, it is likely to be much easier to attempt to phase out land animals than aquatic creatures. And there are some limitations on when this method can be justified. Further, some nonhuman animals may have a right to reproduce that may not be justifiably infringed.

When these conditions can be met, then I believe human states have an obligation to work to phase out predators. This duty is grounded in an obligation to prevent large amounts of suffering and death when we can. We affirm this duty in the case of humans, and we should with respect to other animals.

### 5.7.2 Genetic Alteration

Another way to attempt to reduce and mitigate the suffering and death caused by predation would be through the genetic alteration of predators. With increasing knowledge of the genetic makeups of predator animals, it might become possible to one day transform these predators into omnivores or herbivores, through genetic alterations that are passed on to their offspring.<sup>180</sup> Unlike sterilization, where there are already forms of sterilization that can be fed to animals, this is not a technology that currently exists.<sup>181</sup>

Nevertheless, if this technology can be developed there are reasons to prefer it over other ways of phasing out predators. Genetically altering existing predators in a way that eventually transformed them into herbivores wouldn't prevent species from reproducing. So, this method of reducing predation need not involve the violation of any rights to reproduce (for those species who are bearers of this right). With this, this method of reducing or ending predation is more in line with concerns about the value of species. Although predator species would

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<sup>180</sup> See McMahan (2016), p. 273-274.

<sup>181</sup> The ability to do this appears more likely with the recent emergence of the precise, gene editing tool known as CRISPR. See Doudna and Sternberg (2017).

certainly change, in quite dramatic ways, they would not be eliminated and a diverse array of different, former-predator species would exist.

This approach to eliminating predator species faces its own practical problems. One initial problem concerns how humans might gain the knowledge to effectively genetically alter predator species. We might worry that the process of learning how to genetically alter animals would violate their rights not to be made to suffer by moral agents and not to be killed. I am inclined to think that, unlike a right to reproduce, the right not to be made to suffer and the right not to be killed have much more limited circumstances in which they can be overridden. This concern is important but it is far from inevitable that gaining knowledge would require violating the rights of predators. Humans should attempt to learn and find ways to genetically alter predator species without using animals as test patients. Perhaps this is not realizable now, but it is possible that at some point it will be. Further research and study of this issue is important.

A second objection appeals to consistency in applying genetic alteration. If humans are going to subject predator species to genetic alterations, then perhaps they should also be willing to subject themselves to genetic alteration.<sup>182</sup> While human beings are not carnivores, they are rather weak-willed omnivores with a strong desire to eat meat and other animal products. So we could imagine genetic alterations on humans that made consuming animal products repulsive. Beyond this, humans could alter themselves genetically – or in the near term, use other methods, such as selecting certain embryos for implantation – in ways that minimize our environmental impact, which indirectly harms other animals. We could engineer humans to be smaller and lighter, requiring less food and resources to live on.<sup>183</sup>

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<sup>182</sup> Donaldson and Kymlicka pointed out this as a possible objection to the genetic alteration of nonhuman animals.

<sup>183</sup> Liao, Sandberg, and Roache explore the possibility of using various technologies to engineer humans as a way of addressing climate change. See Liao, Sandberg, and Roache (2012).



Those who find these forms of engineering objectionable in the human case may come to similar conclusions in the case of animal predators. If we find something objectionable about engineering humans in these ways, then perhaps we ought to come to a similar conclusion about nonhuman animals. But for this objection to work, it must specify what, precisely, is wrong about genetically engineering humans and animals. We have already ruled out ways of genetically engineering animals that harm them or violate their rights to life and not being made to suffer. Further, unlike human beings, animals will not have the knowledge that their offspring are subject to certain genetic alterations. Apart from the possibility of harm, it is hard to see what could be objectionable about these forms of genetic alteration.

Like sterilization, the genetic alteration of animal predators may, at one point, offer a way in which humans can reduce the suffering and death caused by predation. Any attempt to do this must take seriously important constraints: most importantly, the knowledge required for genetic alteration must be gained in a way that does not violate the rights of other animals. However, if these technologies are developed and we can implement them knowing they will lead to a reduction in suffering and death, we ought to do so.

### **5.7.3 The End of Nature: Separating Predators from Prey**

The previous methods of addressing predation do not appear to be widely feasible in the short-term. A different approach to the moral problems posed by predation would be to attempt to significantly end a much larger portion of predation now by separating predators from prey. Predators would be separated and live apart from their prey and fed some sort of adequate meat substitute (either genetically engineered meat made from plants or meat from animals that are not sentient). Prey animals would live separately, and for many their population size would need to be monitored and likely controlled (perhaps through selective sterilization) to

prevent it from growing to levels that are either unsustainable or that would lead to suffering and death.

This effort to address predation appears to be what some writers have in mind when they consider efforts to eliminate predation.<sup>184</sup> This sketch, of course, is all too brief, and ignores the complexities that birds and small predators pose to eliminating predation. It also appears much less plausible for predators who live in water, compared to those who live on land. It is hard to see how humans could permanently separate fish and other aquatic predators from each other.

Nevertheless, this brief sketch of what would be involved in trying to end predation through separation and confinement indicates that it would spell the end of “nature”. Natural spaces that exist largely outside of direct human control would be eliminated. All of the earth, at least where predator and prey animals live, would need to be controlled and actively managed by human beings. This approach would thus require significantly greater effort and active management in wild animal territories than the other approaches to predation that we have considered.

Donaldson and Kymlicka appear to have this method of eliminating predation in mind when they claim that protecting wild animals from predation can only be achieved “by radically disrupting their ways of life, and indeed by imposing radical restrictions on their freedom and autonomy.”<sup>185</sup> One way in which they object to these efforts is that they infringe upon the rights of wild animal communities to manage their own affairs. I have already noted problems with thinking that many wild animals exist in their own “communities” and are competent to handle their own affairs. However, even if we think this claim is plausible for some social mammals, it is not plausible for many animal predators.

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<sup>184</sup> Donaldson and Kymlicka, for example, seem to focus primarily on this method, as opposed to genetic alteration or sterilization. See Donaldson and Kymlicka (2011), p. 182.

<sup>185</sup> Donaldson and Kymlicka (2013), p.155.

Donaldson and Kymlicka raise a second objection to this approach to predation. Here they argue that attempting to eliminate predation in this way would turn all of nature into a large zoo.<sup>186</sup> And this sort of life, they argue, is not compatible with the well-being and flourishing of wild animals. Wild animals, they note, avoid human contact and often resist human contact and interaction when in captivity. Moreover, they often rely on ecological niches that cannot be reproduced in captivity or require significant space and freedom to engage in a variety of natural behaviors that appear to be part of their flourishing.

This second worry gets at the biggest problem confronting this way of reducing predation. Efforts to reduce predation in this way would likely cause a variety of harms to the animals being captured, separated, and confined in certain areas. Catching and transporting animals will likely cause them significant amounts of fear and anxiety. And for many animals, a life in captivity will likely inhibit their flourishing in certain ways (for example, by limiting their mobility and the mental challenges they face daily). Finally, this sort of approach commits human beings to an incredibly large undertaking. Human states would oversee managing nearly all of the land wilderness animals in their territory. The level of resources needed to do this would far surpass other ways of addressing predation. Unlike the Sovereignty Model, the problem with this method of addressing predation is not that it involves active and significant human management by humans of animal territories. The Protected Territory model that I defended accepts that humans can intervene and even “manage” different aspects of wild animal territories to advance the interests of wild animals. It is in this respect that these efforts would likely fail. Given the likely harms these efforts to address predation would cause, as well as the ongoing costs associated with managing all the territory wild animals live on, this approach to addressing the issue of predation is not justified. Our efforts at addressing

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<sup>186</sup> Donaldson and Kymlicka (2011), p.156.

predation will be best suited by studying and eventually implementing the other methods I have discussed.

Lest we think the preceding discussion is all idle speculation, the moral problems posed by predation are not limited to future scenarios where humans might undertake to reduce or phase out certain predator species. In some places we are seeing large-scale pushes to eliminate certain predators. In New Zealand, the Predator-Free-2050 campaign is being pushed to kill all “invasive” predators of birds, including rats, possums, and stoats on the island.<sup>187</sup> In this case, the motivations appear primarily to be to protect “native” bird species and not to reduce the suffering of wild animals. With this, many countries are engaged in efforts to address concerns about ecosystems and biodiversity by introducing certain predators back into certain wilderness areas. One common example is the re-introduction of wolves into areas where they once existed, but have not been for quite some time.<sup>188</sup> However, if I am right that the values of biodiversity and species do not outweigh the value of reducing (or preventing) the suffering and well-being of nonhuman animals, then many of these efforts lack moral justification and should not be undertaken. One way, then, that states can reduce the suffering caused by predation is to bring to a halt the efforts already taken which increase predation in the wild.

A Protected Territory Model does not, by itself, answer every question about our relations and obligations to wild animals. However, I believe this approach has many advantages over a Sovereignty Model and is a much more useful guide to thinking about how we should relate to wild animals. A Protectorate Model is not committed to controversial claims about animal communities or their competency when it comes to responding to human- (and other-) caused harms, nor is it committed to a contested account of sovereignty. This model recognizes the

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<sup>187</sup> See Yong (2017, November 16)

<sup>188</sup> See Horta (2010c) for a helpful discussion of this issue.

central role that states must play in protecting wild animals from the harms humans cause, and provides a better conceptual guide for addressing the actions and institutional changes needed to mitigate these harms. Finally, it is consistent with one of the main reasons Donaldson and Kymlicka appear to adopt a Sovereignty Model: that the territory wild animals live on is theirs, not ours. The best way to think about our relations to wild animals, then, is to recognize them as living in protected territories, where human states have the responsibility of protecting them from harms we cause, as well as other large-scale catastrophes.

## 5.8 Liminal Animals

In the minds of many, the world of nonhuman animals can be divided into two categories: wild and domesticated. This basic dichotomy reflects a popular way humans tend to categorize other animals and divide up the nonhuman world. This dichotomy is flawed. As Donaldson and Kymlicka have pointed out, this way of categorizing the animal world obscures billions of animals who are not domesticated but who, unlike wild animals, live in and among human settlements. Mice, rats, squirrels, pigeons, geese, crows, bats, ducks, foxes, coyotes, ravens, and many other animals disrupt the neat and simple wild/domestic dichotomy.

Donaldson and Kymlicka call this group of animals “liminal” to indicate their status in-between the popular wild / domestic dichotomy and I follow them in using this term.<sup>189</sup> Sometimes called “urban wildlife,” liminal animals live near and around human beings, but do not have relationships with human beings and are not under the direct care of human beings. These animals generally avoid encountering human beings, although this will vary among different liminal animals. Nevertheless, living in closer proximity to human beings provides opportunities for these animals to find food, water, shelter, and to avoid predators. As a result, liminal

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<sup>189</sup> Donaldson and Kymlicka (2011), p.210.

animals are dependent on human beings but, unlike domesticated animals, they are generally not dependent on specific humans. Instead, they are dependent on “human settlement writ large.”<sup>190</sup>

Liminal animals live and survive among human beings in different ways. Most liminal animals are opportunistic animals who are highly adaptive and can alter their diet and needs when it comes to shelter to changing circumstances.<sup>191</sup> These animals include squirrels, raccoons, coyotes, bats, deer, hawks, crows and ravens, along with many others. Other liminal animals are less adaptive and instead have found a specific niche among human settlements in which they can thrive. Examples can be found in the English hedgerow, where a variety of animals, such as the hazel dormouse, bank vole, blue tit, and yellowhammer, live and survive in this specific niche.

Liminal animals also differ in the ways in which they came to live in and around human settlement. Some of these animals are the descendants of opportunists who chose to move in and around human beings because of the opportunities this provided. Other liminal animals were forced to adapt to changing circumstances due to human encroachment and loss of habitat. And still other liminal animals were introduced to human settlements by human beings. Some of today’s liminal animals were exotic captive (“non-native”) animals that were either released by humans or escaped. The red-masked parakeets of San Francisco are the descendants of wild birds captured in Ecuador and Peru. Other examples include pythons in the Florida everglades and the South American parrot in Connecticut. And still others are feral animals – formerly domesticated animals (like dogs, cats, rabbits, pigs, and pigeons) who have either been abandoned or escaped human control.

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<sup>190</sup> Donaldson and Kymlicka (2011), p.218.

<sup>191</sup> See Donaldson and Kymlicka (2011), p.219-220, for an overview of these animals.

Liminal animals are a diverse lot. As we have seen, they differ both in terms of how they survive among human settlements and in how they got to human settlements in the first place. The unifying features of their lives, however, is that they live in and around human settlements and are dependent on human settlements but are not under the direct care of human individuals. It is this feature that generates the need to recognize them as a distinct group of animals, rather than lump them in the category of wild animals.<sup>192</sup> We should note that this category of animals is not meant to include wild animals who, through migration or encroachment of their habitat, occasionally come into some contact with humans but who take every effort to avoid it. Although there is some overlap between the categories of wild and liminal animals, these animals are best understood as wild animals.

At the species level, many liminal animal species have successfully adapted to urban life and the opportunities and challenges it poses. Many specific liminal animals have seen their population size grow as they've adapted to live among human settlement. Nevertheless, success at the species level does not mean individual liminal animals do not face a variety of dangers and potential harms in their lives.

Liminal animals are often viewed and treated as if they do not belong where they live. Indeed, when many of us think about urban spaces, we often think of these spaces solely in terms of their human inhabitants (with perhaps the exception of some companion animals). Liminal animals are invisible in many of our conceptual understandings of urban spaces. As a result, their presence, when it is recognized, is often viewed as problematic. Liminal animals are often understood as aliens, or invaders, or pests that ought to be exterminated. And they often face a variety of direct harms inflicted upon them by human beings. They are often the targets of "extermination campaigns" at the city level, and many cities and municipalities have departments dedicated to "Animal Control" that routinely kill liminal animals who are

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<sup>192</sup> For this reason, I refer to these animals as liminal animals and not urban wildlife.

perceived as a nuisance or who damage human property. They are also targeted directly by private citizens who shoot and kill them, poison them, trap and kill them, and so on.

Liminal animals are also the victims of many inadvertent harms. Because we do not think of these animals as part of our urban spaces, their interests do not often enter how we design our buildings, roads and transit systems, and public spaces. For example, liminal animals are often injured when they fly into glass buildings or when they try to cross busy roads.

However, while cities and other urban spaces do pose dangers to many liminal animals (many of which could be mitigated or eliminated), a return “to the wild” is not a viable option. While many liminal animals are the descendants of animals that lived apart from human settlements, they have adapted to life in urban spaces. Many of these animals would not survive if they were moved from urban spaces to wilderness areas. Urban spaces have become their habitat. If these individuals are to live and to thrive it is here among us.

How, then, should we think about our collective obligations to liminal animals and the nature of their political status? These animals pose a distinctive challenge because the political categories I have put forward thus far (citizenship in the case of domesticated animals, and a Protected Territory Model for wild animals) are a poor fit for the situation and interests of liminal animals. A Protected Territory Model obviously will not work for liminal animals, as these animals live in and around urban spaces. They share the very same territory with humans. Citizenship does not appear to be a good fit for the interests of liminal animals either. While liminal animals live in and around human-animal societies, they have very few interactions with human beings and generally no relations with human or animal members of our societies. Unlike domesticated animals, then, who are members of our society and are owed citizenship on this basis, it is not clear that the same can be said for liminal animals. Liminal animals retain a significant degree of independence from human beings and in general have no relations with other humans. Unlike domesticated animals, they are not social with humans and are not part of our shared, social



life. Further, the fact that liminal animals avoid direct human contact means that it is not in their interest to become a member of our society.

### 5.8.1 Liminal Denizens?

If citizenship is not in the interest of liminal animals, then how should we understand their political status? One proposal comes from Donaldson and Kymlicka, who argue that our political relations with liminal animals are best understood with the category of denizenship. On their view, liminal animals should be viewed as *denizens* of human-animal communities.

Denizenship is a political category that involves a reduction of both rights and responsibilities in the interest of both the state and the denizens. Donaldson and Kymlicka argue that in the human case this political category does a good job of understanding the political status of certain human groups, such as the Amish in the United States (an example of *Opt-Out Denizens*) and temporary migrants (an example of *Migrant Denizens*). To protect their communal way of life, the Amish resist fulfilling a variety of responsibilities involved in citizenship, including serving on juries or in the military and contributing to public pensions. However, the Amish also “waive” certain citizenship rights: they do not vote or run for political office, nor do they take advantage of public welfare. Insular communities, like the Amish, suggest that in some circumstances reciprocal reductions in both the responsibilities and rights of citizenship can be fair and just. In the case of the Amish (as well as temporary migrants), denizenship can be in both the interest of these individuals and the state. Denizenship is meant to be adapted to the legitimate interests of both parties.

Donaldson and Kymlicka argue that denizenship is also the best way to conceptualize the political status of liminal animals. As they write, “Liminal animals are co-residents of human communities but not co-citizens. They belong here amongst us, but are not one of us.

Denizenship captures this distinctive status, which is fundamentally different from either co-citizenship or external sovereignty.”<sup>193</sup>

Donaldson and Kymlicka argue that denizenship requires three types of protections in order to be just. The first protection concerns security of residence. Denizens have a right to reside in the territories they live once they are there and the right not to be treated as foreigners or aliens. Second, the reduction in rights and responsibilities must represent a mutually beneficial accommodation of interests. Lastly, anti-stigma safeguards must be put in place and undertaken by the state to prevent denizens from being stigmatized as “aliens” or “invaders” or (in the case of liminal animals) “pests.”

What are the practical implications of viewing liminal animals as denizens? A central implication concerns protecting liminal animals from human harms. At present, humans do not generally accept that liminal animals have a right to reside in our cities and settlements. If we recognize them as denizens, however, this means recognizing that they have a right to reside here. With this, it would also mean that humans would need to undertake efforts to drastically reduce the harm we cause liminal animals. In addition to respecting the basic rights of liminal animals, humans must rethink and reimagine how they design their cities and urban spaces to reduce the inadvertent harm that our buildings, transport, and built environment cause to liminal animals.

However, Donaldson and Kymlicka suggest that, like in the case of human beings, states have a right to limit the migration of animals *into* human-animal settlements and cities. Recognizing liminal animals as denizens does not mean that they can have free range to go wherever they want in our urban areas, nor does it mean that no legitimate efforts can be undertaken to prevent animals from moving into urban areas in the first place. However, these measures must

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<sup>193</sup> Donaldson and Kymlicka (2011), p.214.

respect the basic rights of liminal animals.<sup>194</sup> And once an animal has established itself in an urban area and is unlikely to survive being transferred to wilderness areas, they establish a right to residence.

Unlike domesticated animals who, as citizens, have a right to protection from predators, Donaldson and Kymlicka do not think liminal animals have this right. States do not have an obligation to protect prey from predators or to undertake efforts to reduce suffering from predation. As they write, “The lives of liminal animals involve levels of risk which we would consider unacceptable in the human case. However, reducing these risks would involve levels of coercion and confinement which we would also find unacceptable.”<sup>195</sup>

I find much to agree with Donaldson and Kymlicka’s proposal regarding our practical obligations to liminal animals. Not only have they identified and brought attention to a group of animals commonly ignored by those writing about our obligations to animals, I believe they have also correctly identified many of our obligations to these animals. Nevertheless, I do not think denizenship is the right political concept for understanding our relations and obligations with liminal animals. Here, again, the political categories we utilize in the case of humans do not fit the interests or capabilities of animals well and can offer a poor guide to our collective obligations. A new way of conceptualizing our relations with these animals is needed.

Donaldson and Kymlicka explain that denizenship involves a reduction in both rights and responsibilities in the interest of both parties. However, a reduction in responsibilities makes little sense when we consider liminal animals. These animals have no responsibilities in our communities and in the political sphere. They are incapable of being held morally, legally, or politically responsible for their behavior. The political status of denizenship invites confusion on this matter and is not needed to understand our obligations to these animals.

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<sup>194</sup> Donaldson and Kymlicka (2011), p.228.

<sup>195</sup> Donaldson and Kymlicka (2011), p.242.

To some extent, Donaldson and Kymlicka recognize this problem. They write that animal denizenship involves a “significantly weaker form of cooperation and obligation” than human denizens.<sup>196</sup> And they recognize that liminal animals cannot be held responsible for regulating their behavior. Given this, they suggest that “it is up to humans to impose a framework of reasonable accommodation, one which recognizes the legitimacy of human concerns about safety (as well as aesthetic and other concerns), and balances this against risks imposed on animals.”<sup>197</sup> Despite these concessions, however, Donaldson and Kymlicka do not go far enough. Liminal animals are not capable of any forms of obligation and only extremely limited forms of cooperation with human beings. For the most part, they just are not interested in interacting with us or engaging with humans (except as a source for providing food).

There are important ways in which we can draw an analogy between liminal animals and the human individuals (in particular, temporary migrant workers) who Donaldson and Kymlicka categorize as denizens. Both human denizens and liminal animals are in a similar position in terms of their vulnerability to harm and exploitation. There is a constant danger that they will be viewed as foreigners or outsiders or invaders. In both the human case and the animal case, it does appear to be in the interest of these individuals not to be citizens of the states in which they reside. And in both cases, they do need some political status that recognizes their vulnerability and provides adequate safeguards.

However, despite these similarities, there are important differences. First, as we have already noted, there is no meaningful sense in which liminal animals can be held responsible. Talk of a “reduction of responsibilities” in their case does not make sense. With this, there are also important differences in terms of *why* a reduction in rights is in their interest. In the human case, the reduction in certain rights of citizenship stems from the choice of human individuals.

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<sup>196</sup> Donaldson and Kymlicka (2011), p.243.

<sup>197</sup> Donaldson and Kymlicka (2011), p.246.

In some cases, like that of the Amish, this is because they see the life of a citizen as incompatible with their vision of the good life. In other cases, like that of some temporary migrants, it is because they remain connected to their home country and plan on eventually returning (or because the country in which they reside has accepted their presence only for a temporary period).

Liminal animals should not be seen as holding all of the same rights as domesticated animal citizens. However, their “reduction in rights” stems not from choices these animals make but from very different concerns, namely: what is in the interest of promoting their well-being and flourishing. For example, because liminal animals do not have relationships with human beings and do not trust humans, something like routine medical care does not appear to be in their interest. This would involve capturing these animals, subjecting them to scary and harmful confinement, and then releasing them. Similarly, *full-scale protection* from predators – in the form of separating all predators from all prey animals – does not also appear to be in their interest.<sup>198</sup> This, too, would require capturing and confining liminal animals to ensure that predators were separated from prey. This would cause significant harm to many liminal animals, forcing them into a way of life that would appear to frustrate many of their natural desires and inclinations.

Given these concerns, how should we conceptualize the political status of liminal animals? One possibility is to argue that liminal animals should be seen as their own, distinct type of denizen. The category is new enough, after all, so perhaps we can expand it to account for denizens who have a reduction in their rights (compared to citizens), but no responsibilities.

This is one route we might take but I fear it would be prone to confusion and that it would prove unhelpful. We can affirm one important respect in which liminal animals are in a similar

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<sup>198</sup> However, I will argue that other efforts should be undertaken to phase out predators among liminal animals.

situation to certain human denizens – they are both prone to being viewed as aliens and outsiders – without committing ourselves to the same political category.

### 5.8.2 Protected Residents

Instead, we ought to think of liminal animals as protected residents. This political status is much more straightforward, does not invite confusion on the issue of responsibility, and directly gets at our fundamental duties to liminal animals. Liminal animals should be viewed as our fellow residents and the primary obligation humans have to these animals is to protect them from human-caused harms. We ought to recognize that, as protected residents, liminal animals who have been living in human settlements have a right of residence. For most these animals, attempts to remove them from human settlements and urban spaces would only cause them harm and would often lead to their death. Liminal animals have a right to reside where they are.

Nevertheless, this right can be justifiably infringed in some cases. In some rare cases, where large predators pose a real and substantial threat to the lives of humans and nonhuman citizens that cannot be mitigated through peaceful means, transporting the animal to another habitat can be justified. Humans can and should live peaceably with many liminal animals that are predators (such as coyotes, foxes, and bobcats). But in some cases, this will not be possible and efforts to relocate certain predators can be justified.

Recognizing that liminal animals have a right to reside in our shared territories does not mean, however, that we cannot keep future animals from entering these territories and taking up residence in human settlements. Donaldson and Kymlicka recognize this point. However, the grounds on which they rest this claim are not strong. They argue that the state has a

fundamental right to regulate migration and to keep potential residents out.<sup>199</sup> However, important (and I think successful) challenges have been raised against the view that states have a fundamental right to keep out human immigrants.<sup>200</sup>

Instead, I think a strong case can be made that the interest that nonhuman animals have to enter and reside in human settlements is much weaker than the interest humans have in free movement and in living in the state of their choosing. Humans can think about what sort of lives they find valuable. Having a choice about where they wish to reside and live can be a rather important element in their ability to fulfill their own conception of a good life, as well as to increase the opportunities available to them. Nonhuman animals lack these reflective capacities. And they are not made worse off and are not prevented from living lives in line with their individual desires by being denied entry to human settlements. As a result, whether or not the state has a right to deny entry to human immigrants, there are good reasons to think the state can deny entry to opportunistic wild animals. If we are not encroaching on the land and habitat of wild animals, preventing wild animals from entering our settlements need not violate any of their rights or prevent their flourishing. All of this, of course, is compatible with cities and municipalities that collectively decide to build urban spaces that are attractive and inviting to other animals. My point is simply that the recognition of liminal animals as residents of our shared spaces does not commit us to inviting or allowing future animals, not currently in our urban spaces, to take up residence among us.

Liminal animals are not simply residents, however. They are particularly vulnerable residents, who deserve the protection of the state. It is in this respect that the analogy to human denizens is useful, even though as a political category it is not the best fit for liminal animals. The most important problem facing liminal animals concerns the harms that they face because of human

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<sup>199</sup> Donaldson and Kymlicka (2011), p.237.

<sup>200</sup> See Carens (2013), Chapter 11; Kukathas (2005).

beings. Protecting them from these human harms should be the primary concern of the state and various levels of government. This is true both for direct, intentional ways humans harm liminal animals, and for inadvertent and unintentional ways we harm these animals when we fail to consider how our actions will affect them. Liminal animals possess basic moral rights (including a right to life and a right not to be made to suffer by moral agents). Given these rights, cities and states must end efforts to exterminate or “cull” liminal animals and must make the extermination of conscious animals illegal.

In North America, extermination campaigns are perhaps most often undertaken to control deer populations that are perceived to have grown too large. These extermination campaigns often rely on claims about the size of deer populations that are unsubstantiated. Frequently, these killings are called for when deer are simply seen by many as a nuisance, for eating food and plants in the gardens and yards of human residents, and for vehicle collisions that involve deer.

Recognizing deer as protected residents requires, first and foremost, that efforts to kill these animals are outlawed. Deer, like other conscious animals, have a right to life. This, by itself, is enough to rule out killing them. However, like other liminal animals, they are also our fellow residents. Humans are quick to kill deer when they pose the slightest nuisance to us (eating our gardens and plants). Recognizing them as residents requires that we think creatively about how to live with and among other animals. In the case of deer, many cities and municipalities have begun to do just that. Some cities and municipalities have introduced by-laws against feeding deer, along with education campaigns on this front, to make deer less attracted to human residential areas. With this, other efforts have taught residents what plants deer will not eat and how fencing can keep them out. And, finally, others are starting to address the issue of habitat fragmentation, which often leads deer into human settlement in the first place.

Eliminating efforts to kill liminal animals, like deer, is just the start. Recognizing liminal animals as protected residents requires that the police enforce their legal rights and prosecute those



who violate them. It requires that cities, schools, and other organizations engage in education efforts to counter the stigmatized status of liminal animals. On this front, many humans hold inflated views about just how dangerous liminal animals are (both in terms of aggressive behavior and in terms of the risk of zoonotic disease).<sup>201</sup> There is also a need for education in terms of the ways in which humans can alter their behavior to live more peaceably with other liminal animals.

Human states must also begin to take seriously the ways we unintentionally and inadvertently harm liminal animals. Like wild animals, liminal animals are often unintentionally killed by our buildings, transport, and infrastructure. We will need to rethink our built environment to accommodate the liminal animals that live amongst us and to allow for a more peaceful co-existence. This is a problem that city planners and city councillors must begin to address.

Some will object that this demands too much on the part of humans. If we grant that wild animals should be seen as living in their own territories then perhaps we should view urban areas and other settlements as human territories. We might grant that liminal animals have a right to reside here, but does this really demand that we re-design the structure of our cities, our transport, and our infrastructure, so as not to inadvertently harm these animals? We might argue that humans have an obligation not to directly violate the rights of other animals, but that it is the responsibility of liminal animals to navigate our territories on our own terms. If it is not, and if we must build our cities so as to not unintentionally harm these beings, then we might think humans have no claim to any territory.

This objection wrongly assumes that we would be right to hold liminal animals responsible for ways we have built our cities and urban environments that pose a threat to them. And this points to a problem I noted earlier with viewing liminal animals as denizens who can be

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<sup>201</sup> See White and MacKay (2012), p.11.

responsible for their behavior. This is another area where the analogy to denizenship proves unhelpful. Human states do not have an obligation to make every effort to accommodate human denizens in their society. They can expect that denizens will figure out how to navigate within a country even if they do not speak the primary language, for example, or if they might initially struggle with some aspects of the dominant culture. But it would be a mistake to extend this analogy and argue that liminal animals are responsible for navigating the ways we create risky and hazardous environments for them. We are wrong to do so because they lack the capacities to reliably and successfully avoid the substantial harms that our cities and urban areas pose to them. Further, the second problem with this objection is the assumption that humans occupy their own territory. We have already seen this is not the case. Humans share their urban environment with liminal animals and, as we will see in the next chapter, domesticated animals. The territory is not exclusively ours, to shape however we wish, no matter the consequences for other sentient beings. While we need not take active steps to make our built environment inviting to liminal animals in every respect, respect for the value of liminal animals and for their basic rights requires that we do not build or structure our environment in ways that will foreseeably cause them death and cause them to suffer when there are alternatives.

Collectively fulfilling these obligations to liminal animals, however, will require certain forms of institutionalized, political representation for them. And it is here, too, that a Denizenship Model does not appear to fit the needs of liminal animals. One of the most common reductions in rights that human denizens accept is the lack of a right to vote. This political right is generally reserved for citizens. Perhaps we should rethink whether human denizens deserve the right to vote.<sup>202</sup> However, there are at least some reasons to think that the rights of human denizens can be adequately protected in the absence of this right, while the same is not true for liminal

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<sup>202</sup> I think there are good arguments that all permanent residents should be given a right to vote. See Lopez-Guerra (2014), Chapter 4 for an argument that all residents should have a right to vote.

animals. One reason is that a belief in universal human rights is much more widely recognized and internalized among the citizens of modern, liberal democracies. Denizens often face discrimination and forms of economic exploitation, but they are not routinely subject to extermination efforts. Further, human denizens can articulate their concerns (and are often given a voice through concerned non-profit groups). Liminal animals, however, cannot articulate when their basic rights are being violated. As a result, it seems there are strong reasons that support giving them some form of political representation, even if human denizens are not owed the same.

Liminal animals challenge the notion that only those who are members of our society deserve representation in our political institutions. Whether or not they are “one of us,” or members in our society, they are our fellow residents and any adequate effort to protect them from human-caused harm must find adequate ways to represent their interests in the political arena.<sup>203</sup>

### 5.8.3 Liminal Animals and Predation

The last issue where my approach differs from Donaldson and Kymlicka concerns predation. Here, like with wild animals, I think they underestimate the moral problem posed by predation and ignore potentially feasible ways in which humans might attempt to reduce predation. Donaldson and Kymlicka reject the idea that we have obligations to protect liminal animals from predation because of the costs they believe this would impose on the liberty of these animals. As they write, “The lives of liminal animals involve levels of risk which we would consider unacceptable in the human case. However, reducing these risks would involve levels of coercion and confinement which we would also find unacceptable.”<sup>204</sup> As with wild animals,

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<sup>203</sup> Some have argued that political representation must go even farther than this. See Goodin (2007).

<sup>204</sup> Donaldson and Kymlicka (2011), p.242.

Donaldson and Kymlicka consider efforts to reduce predation primarily in terms of separation. “We could not protect house sparrows from hawks without caging one or both. We could not protect squirrels from food shortages without undertaking systematic management of their food supply and reproduction rates, and we could not protect them from cars or raccoons or weasels without confining them.”<sup>205</sup>

In the short term, separating predators from prey might be the only option to reduce the harms of predation among liminal animals. But in the long term, addressing the predation involving liminal animals seems like one of the best candidates for predation that might plausibly be “phased out.” As we have already seen, separation is not the only way to reduce the harms caused by predation. Sterilization and genetic alteration are other possible means by which humans could attempt to reduce predation among liminal animals. In fact, sterilization is already used among some liminal animals. Trap-Neuter-Return programs are already used by many cities to keep in check feral cat populations. These programs are run for a variety of purposes, but one strong reason in support of them is the suffering and death that feral cats cause. Feral cats are particularly active and effective predators. It is difficult to estimate precisely how many animals feral cats kill. Nevertheless, one study suggested that in the United States alone, free-ranging cats kill between 1 and 4 billion birds a year, and 6 to 20 billion mammals.<sup>206</sup> Feral cats are believed to be the cause of most these killings. Given the scale of carnage, cities and municipalities should invest much more in efforts to sterilize feral cats, with the goal of drastically reducing their populations and phasing them out.

Governments should work to reduce the harms of predation for liminal animals as well, when we have the knowledge that efforts to phase out predators will lead to less suffering and death. Indeed, efforts to reduce and potentially eliminate predation might be more realizable in the

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<sup>205</sup> Donaldson and Kymlicka (2011), p.214.

<sup>206</sup> See Loss, Will and Marra (2013). This study includes both feral and domesticated free-ranging cats.

case of liminal animals. Part of the reason is that these animals live in much less complex ecologies. There are significantly fewer animal species living in and around human settlements, and much less complicated interactions among these species. This feature makes it more likely that humans could, at some point, have knowledge as to when efforts to “phase out” predators would lead to less suffering and death.

## **5.9 Conclusion**

Wild and liminal animals present different challenges when it comes to thinking about our collective obligations to them and how we should understand these animals’ political status. I have argued that both groups of animals require new political categories to adequately frame and capture our obligations to them. Wild animals should be seen as living in Protected Territories, where human states recognize their responsibility to protect them from a variety of threats. Liminal animals, I argued, should be seen as Protected Residents, who have a right to reside in urban centers and deserve protection from human-caused harms. These categories, I believe, help to guide how we understand our relations to these animals and are superior to other ways of conceptualizing their political status.

## 6 Domesticated Animals and Citizenship

Domesticated animals present perhaps the most interesting challenge for thinking about the political status of nonhuman animals. The process of domestication has made these animals dependent on, and vulnerable to, human beings in a way unlike wild or liminal animals.

Thinking about how these animals ought to exist in our political communities, moreover, raises several questions that are central to political philosophy. How should we understand the nature of their membership in our political communities? What sorts of claims on the distribution of a state's resources do domesticated animals have? How should we understand the agency of domesticated animals, particularly as it relates to politics? How does their membership relate to the political membership of human citizens? And are domesticated animals our 'political equals'? Before turning to these questions, however, it is worth considering some basic features of domestication, features that shape the lives of all domesticated animals.

### 6.1 Features of Domestication

Humans have domesticated a wide variety of different animals for a wide variety of purposes. In this category, we find a diverse array of animals, including: farmed animals (like cows, chickens, pigs, and lambs) who have been domesticated for their flesh and by-products; animals used in experimentation and research (like rats, mice, and rabbits); animals domesticated for work, transport, and entertainment (like camels, oxen, horses, and dogs); and animals domesticated for companionship (such as dogs, cats, rabbits, ferrets, and many others).

Given this diversity, it is helpful to consider what exactly constitutes domestication, so we will have a better grasp of which animals fall into this category, as well as some common features that unite this diverse group of animals. The historian of domestication Juliet Clutton-Brock defines domestication as "the keeping of animals in captivity by a human community that

maintains total control over their breeding, organization of territory, and food supply.”<sup>207</sup> This definition succinctly captures important features of domestication, to which I will turn shortly. However, it fails in a few important respects. While it is true that as a matter of current practice most human communities do exhibit near total control over the breeding, organization of territory, and food supply for domesticated animals, this fact is not a necessary feature of domestication and is something humans can adapt and change in the future. Rather than offer my own definition of domestication, however, I think it is more useful to identify central features shared by domesticated animals – features that largely separate them from wild and liminal animals and that influence the shape and nature of their lives.

### 6.1.1 Domesticated Animals are Kept in Captivity

The first feature of domesticated animals is the most obvious: Unlike animals in the wild, domesticated animals live with and among other human beings. The proximity in which domesticated animals live to human beings is an important feature of the lives of these animals. Unlike liminal animals, however, who live near and around human beings but are free to move about as they please, humans impose a significant degree of control over the mobility of domesticated animals. Domesticated animals are *kept* in captivity. Farmed animals are forcibly confined to cages, barns, and feedlots. Domesticated animals used for experimentation are also caged or kept in confinement. And companion animals are most often kept in homes, and allowed to go outdoors only under the supervision, and often direction, of their human guardians.

As these examples suggest, the level of control over mobility that humans exert on domesticated animals varies considerably. At one end of the extreme humans exert nearly

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<sup>207</sup> Clutton-Brock (2012), p.3.

complete control over the mobility of domesticated animals. Here we find farmed animals in extreme confinement, such as chickens living in battery cages, who are unable to engage in very basic bodily movements, such as fully spreading their wings or walking on the ground. For the entire duration of their lives, from their birth until they are slaughtered, the movement of these animals is controlled and curtailed by human beings. At the other end of the continuum, however, are domesticated animals with considerable freedom in where they move about, with very little direct control exerted over them by human beings. Some companion animals fall at this end of the continuum. A cat who spends some of her time in her family's home, but who is free to go outside and inside whenever she pleases (through the cat door) is still a domesticated animal, even though she has considerable freedom in moving about. In her case, she is not kept in captivity through forced confinement. Rather, she remains a domesticated animal through a combination of her dependency and relations with her human guardians, her socialization growing up and living with them, and her continued choice to return and stay with them.

### **6.1.2 Domesticated Animals are Dependent on Human Beings**

Another general feature shared by all domesticated animals is their dependency on human beings to meet many of their most basic needs. While it is true that wild and liminal animals are sometimes dependent on human beings, rarely are they dependent on *particular* humans to meet their most basic needs. This is not the case for domesticated animals. Domesticated animals depend on specific humans to meet many, if not all, of their basic needs, including shelter, food and water, healthcare, and companionship.

For the vast majority of these animals, moreover, there is no going back to the wild. We have made domesticated animals dependent on us to meet their basic needs, and as a result, most of these animals would not survive if we attempted to "return" them to the wild. Indeed, talk of



returning these animals to the wild is misleading. Domestication has changed the very nature of these animals, altering them in important ways from their wild ancestors. They have become different animals. Domesticated animals used for food, for example, have been bred to grow in ways that make these industries more profitable. These animals generally have extra layers of fat, compared to their wild ancestors, as well as less developed sense organs.<sup>208</sup> Some have been bred so that they grow very rapidly: Chickens bred for meat, today, grow to be nearly four times as large as breeds of chickens from the 1950s.<sup>209</sup> Because of this selective breeding, these chickens are slaughtered at a much younger age and suffer a variety of health problems.

### 6.1.3 Domesticated are Social Towards Human Beings

An additional feature shared by all domesticated animals is their sociability towards human beings. Domesticated animals are comfortable around human beings (they do not, for example, always flee when near human beings), they are capable of being socialized and trained by human beings, and they are able to communicate in a variety of ways with other human beings. This should come as no surprise: most domesticated animals were domesticated precisely because of their sociability. And the animals that proved capable of being domesticated were the ones more sociable towards human beings. Most of the species of animals that have been domesticated, for example, are social mammals.

Not surprisingly, then, humans were successful in domesticating animals who were more social and cooperative to begin with. Attempts to domesticate less social animals, who were more prone to act aggressively towards humans, were met with failure.<sup>210</sup> This appears to be the

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<sup>208</sup> See Diamond (1999), p.152.

<sup>209</sup> See Zuidhof (2014).

<sup>210</sup> See Diamond (1999), p.161-167.

explanation for why zebras, prevalent across the continent of Africa, were never domesticated.<sup>211</sup> Unlike horses, zebras are more aggressive, have a much more powerful kick, and are difficult to lasso (and, thus, to saddle and ride). These features made “taming” and controlling these animals much more difficult and help to explain why they were never domesticated.

#### 6.1.4 Domesticated Animals Breed in Captivity

One final feature of domestication concerns reproduction. All domesticated animals are capable of breeding in captivity. An important feature of domesticated animals, in fact, is precisely this ability to reproduce in captivity. Many of the animals humans have attempted to domesticate did not reproduce at rates high enough to keep these animals in captivity. Attempts to domesticate cheetahs failed for this very reason – these animals rarely breed in captivity, in part because of elaborate courtship rituals they engage in in the wild that include running over long distances.<sup>212</sup>

The reproductive lives of domesticated animals are also largely controlled by humans. Like mobility, the level of control humans exert over the reproduction of domesticated animals also falls on a continuum. However, for most domesticated animals humans exert close to complete control over their reproduction. Many farmed animals are forcefully impregnated on a regular basis (often by artificial insemination), with no choice over who they mate with or when. And many companion animals are spayed or neutered at a young age. Moreover, the control humans exert over the reproductive lives of domesticated animals has been geared, almost entirely, to the economic and aesthetic ends of human beings. Farmed animals have been bred to grow bigger and faster and many suffer a variety of health problems because of selective

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<sup>211</sup> Diamond (1999), p.164.

<sup>212</sup> Diamond (1999), p.163.

breeding. Companion animals, as well, have also been bred largely with an eye to the aesthetic preferences of humans, rather than the health and well-being of the resulting animals.

These four features of domesticated animals explain what unites the variety of animals humans have domesticated and what it is to be a domesticated animal. Domesticated animals are kept in captivity (almost always through human-imposed restrictions on their mobility), they are dependent on human beings for their most basic needs, they are social creatures who exhibit some degree of sociality towards human beings, and they are capable of breeding in captivity. These features of domestication account for the variety of different animals that humans have domesticated, for a variety of different purposes. Further, these features of domestication help to differentiate domesticated animals from many other animals living in captivity, such as wild captives.<sup>213</sup>

Overwhelmingly, however, the history of domestication is a dark one. Most domesticated animals were domesticated against their will in ways that violated many of their basic rights (most frequently, their right to life), to fulfill the purposes and goals of human beings, often with little regard for the well-being and flourishing of these animals. As Donaldson and Kymlicka

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<sup>213</sup> This distinction, however, is not perfect and should not be understood as a list of necessary and sufficient conditions for domestication. While some wild captive animals are not social towards human beings and are either indifferent or aggressive towards human beings, this is not always the case. Orcas and dolphins, for example, do not neatly fit into this distinction. The unlucky orcas and dolphins living in captivity meet the four features of domestication I laid out previously. Nevertheless, they are not generally considered to be domesticated animals. One reason for this, perhaps, is that our common, everyday notion of 'domestication' is at least in part normative. Orcas and dolphins, many think, should not be held captive: a flourishing life is not possible for these animals when confined by humans. Another possibility is that these animals have not changed, as a species, because they have lived in captivity. This suggests that perhaps an additional feature of domestication is that an animal living in captivity has undergone some sort of genetic change as a result of their confinement, and are different, in some respect, from their wild counterparts. While many animals have undergone genetic changes from their wild counterparts, I do not think this is a necessary feature to qualify as a domesticated animal. If we found out, for example, that certain breeds of cats were genetically nearly identical from their wild counterparts, it wouldn't follow that these were not domesticated animals. The four features I have identified, then, seem most pertinent to identify which animals are domesticated and important features of domesticated animals that are widely shared.

note, throughout most of human history both the process and the treatment of domesticated animals has been deeply unjust, as they have primarily involved “the coercive confinement, manipulation, and exploitation of animals for the benefit of humans.”<sup>214</sup>

Nevertheless, despite the historical injustices of domestication, there is no “going back” for these animals. Most domesticated animals would not survive in the wild. And the process of domestication has changed the very nature of these creatures, making them dependent on human beings and, for most, a life in the wild impossible. The appropriate response to the original injustices of domestication should not be an attempt to abolish their existence by preventing any of these animals from breeding. Not only would such an effort likely prove unworkable, but such an approach would jettison the crucial facts that a flourishing life is possible for domesticated animals and that they have become members of shared human-animal communities.<sup>215</sup> We cannot and should not try to abolish these animals. Rather, the task confronting political theory is to make sense of their membership in our shared, human-animal societies.

## 6.2 The Political Status of Domesticated Animals

The starting point, then, for any discussion of the political status of domesticated animals ought to be the fact that we have made them members of our communities who are dependent on us for the conditions and circumstances needed to have good lives. A flourishing life for these animals is only possible within a shared, human-animal community. The real question – indeed, the central question of this chapter – is what should follow from this membership? That is, given that domesticated animals are members of our communities, how should we view the

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<sup>214</sup> Donaldson and Kymlicka (2011), p.73.

<sup>215</sup> See Donaldson and Kymlicka (2011), p.77-89, for an extensive critique of the strict, abolitionist position.

precise nature of their political status? What demands does this membership put on our political and legal institutions? And how does the membership of domesticated animals relate to that of human members?

As was the case with wild and liminal animals, one initial question that we are confronted with concerns what political categories and political concepts we should appeal to, to make sense of their political status and their relationship to our political communities. Should we appeal to the same political categories used in the human case? Or are new political categories needed to best account for the membership of domesticated animals?

My view is something of a middle-ground position between these two approaches. On the one hand, I reject the view that we need entirely new political categories for thinking about the membership of domesticated animals. Instead, I argue that domesticated animals should be viewed as our fellow citizens. However, I argue that not all the features sometimes thought to comprise citizenship are applicable to domesticated animals. Instead, thinking about the citizenship of domesticated animals suggests that citizenship can be enacted in different ways. And, I argue, it is helpful to distinguish between two different types or ways citizenship can be enacted.

### **6.3 Domesticated Animal Citizens**

Domesticated animals have been made members of our shared, human-animal societies, and this has consequences for how we should understand their political status. As members of our shared societies, they should be seen as our fellow citizens. Permanent membership in a given state should entail that an individual is recognized as a citizen of that state. This is as true for humans as it is for other animals. Citizenship, I believe, is the best way to make sense of the relationship of domesticated animals to our political communities. It is the best framework for

understanding their relationship to our communities and to understand what they are owed as a matter of justice. As our fellow citizens, domesticated animals have a claim on the distribution of resources to promote their interests. Goods like healthcare and police protection are not luxuries that benevolent humans may extend to them, but goods they are owed as our fellow citizens.

For many the claim that domesticated animals could be citizens will seem puzzling, if not downright incoherent. Citizenship, after all, is commonly thought to involve a package of rights and responsibilities and it is not immediately clear how domesticated animals could fulfill the sorts of political responsibilities generally associated with being a citizen. Domesticated animals cannot vote or sit on juries or engage in political discourse. When we think of many of the common and central political activities citizens engage in, they do not appear to be things domesticated animals can do.

It is a mistake, however, to hold that citizenship must involve political responsibilities or that the ability to be politically responsible is a necessary requirement to qualify as a citizen. As we will see, while it is true that for many human citizens, citizenship involves both rights and political responsibilities, this is not the case for all human citizens. Moreover, a narrow focus only on certain forms of political responsibility and democratic agency that is often associated with citizenship obscures crucial elements of what it means to be a citizen.

In *Zoopolis*, Donaldson and Kymlicka draw attention to this fact. They argue that we must untangle different aspects of what is involved in citizenship. And as they see it, we can separate three distinct features or functions of citizenship.<sup>216</sup>

1. Nationality
2. Popular sovereignty

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<sup>216</sup> Donaldson and Kymlicka (2011), p.55-56.

### 3. Democratic political agency

The first function of citizenship, nationality, is the passport sense of citizenship. A citizen of a given country has a right of residence in that country. They cannot be kicked out or forcibly removed. As members of this country, they have a right to reside within its borders. To be a citizen, in this sense, is to have a right of residence.

The second function of citizenship goes a bit deeper and concerns popular sovereignty. Citizenship, here, involves being a subject of a state, whose individual good ought to count in shaping and determining the public good that the state acts to promote. One additional aspect or function of citizenship, then, is determining whose interests ought to count in determining the public good and who has a claim on the distribution of a state's resources. The interests or individual good of non-citizens *may* be considered by the state when crafting public policy (a state may try, for example, to attract tourists by promoting street signs in a foreign language). However, tourists, temporary residents, and other non-citizens are not *entitled* to their interests being included in these ways. A state must respect their universal, basic rights. This is true both of human citizens of other states and of wild and liminal animals. But non-citizens are not entitled that the state *promotes* their interests in other ways, beyond the conditions necessary to secure and protect their basic rights. Citizens, in contrast, are entitled to have their own subjective good shape and influence the public good. Related to this, citizens also have a unique claim, compared to non-citizens, on the distribution of a state's resources. Part of what it means to be a citizen, then, is just to be an individual whose individual good ought to inform the public good in this way and who has a claim on the distribution of the state's resources.

The last function of citizenship concerns democratic political agency. According to Donaldson and Kymlicka, citizens are not simply passive subjects for whom the state benevolently acts to promote their interests. Rather, Donaldson and Kymlicka argue that part of our understanding

of citizenship involves recognizing that citizens are political *agents*, who have not only rights of democratic participation (to vote in elections, to run for office, etc.) but certain responsibilities as well. Citizens actively shape the rules of cooperation and participate in “an ongoing role as co-creator of the community, participating collectively in the shaping of one’s society, and its culture and institutions.”<sup>217</sup>

There are no conceptual problems with recognizing domesticated animals as citizens in terms of the first *two* functions of citizenship outlined by Donaldson and Kymlicka. Clearly, we can make sense of the notion that domesticated animals have a right to reside in the states in which they live and that their good ought to inform and shape the public good. As we will see shortly, I will part ways with Donaldson and Kymlicka when it comes to viewing domesticated animals as political agents, capable of fulfilling various political responsibilities.

However, not only are there no conceptual problems with viewing domesticated animals as citizens, there are no good reasons to deny them this political status and every reason to extend it to them. There are different ways one can argue this point but perhaps the clearest appeals to how we understand citizenship in the human case.

In the case of human beings, moral claims to citizenship are best understood as being grounded in social membership.<sup>218</sup> As Joseph Carens writes, “social membership is normatively prior to citizenship. Social membership (actual or anticipated, authorized or unauthorized) provides the foundation upon which moral claims to citizenship normally rest.”<sup>219</sup>

This becomes most apparent when we consider the case of children who are denied citizenship by a state but who have become members of the society in which they reside. The denial of

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<sup>217</sup> Donaldson and Kymlicka (2011), p.103.

<sup>218</sup> For an excellent defense of this claim, see Carens (2013), especially chapter 8.

<sup>219</sup> Carens (2013), p.140.



citizenship to “Dreamers” in the United States (the children of undocumented immigrants, most often from Mexico or Central America, who came to the United States at a young age and who have lived there for most of their lives) is an injustice because they have become members of the communities in which they live. The problem with denying these individuals citizenship is not just that they often have no other place to go or that some would be stateless. It is true that many Dreamers, for example, do not speak the language spoken in their country of birth, that they know little to nothing about life there, and that they have few connections with their birth country. Life for many would be difficult if they were forced to return to the country from which their parents immigrated to the United States. But the basis of their moral claim for citizenship does not rest solely on these claims. Rather, the legitimacy of these claims stems from the fact that they have become members of our societies. And as members, citizenship is something that they are owed.

Similar points also apply to adults who have become permanent members of a society. As Carens points out, while it might be permissible during the early stages of settlement to limit some rights (such as protection against deportation or certain redistributive payments), the longer people stay in a society, the stronger their claim of citizenship becomes. And once individuals have settled for an extended period “they are morally entitled to the same civic, economic, and social rights as citizens.”<sup>220</sup>

If moral claims to citizenship are grounded in social membership, then it is hard to see why these claims would not also extend to nonhuman animals who are members of our communities. In the case of human children, no further tests should be set as a requirement for citizenship, beyond establishing that they have become members of a society. And citizenship is granted to all human beings regardless of intellectual ability.<sup>221</sup> We do not think that individuals

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<sup>220</sup> Carens (2013), p.89.

<sup>221</sup> This is a normative point, not a descriptive point. We recognize that all human beings *should* be considered citizens in the states in which they are permanent members, even though many are not.

with very severe cognitive disabilities are not citizens. They are citizens and part of what this means is that they have a right to reside in the states in which they live and that their well-being must inform and shape the public good. These citizens are owed various goods by the state. We do not think that to qualify as a citizen, humans must meet a certain level of intelligence or linguistic aptitude.<sup>222</sup>

Once we recognize this, however, we ought to recognize that the same political status is owed to domesticated animals, who, like their fellow human citizens, are also members of our societies. The fact that domesticated animals belong to a different species, for example, clearly cannot justify denying them citizenship. Careful analysis of the human case illustrates that there is no legitimate threshold or litmus test for intelligence or agency to qualify as a citizen. Citizenship ought to follow from membership in a given society. And as members of our societies, domesticated animals ought to be recognized as our fellow citizens.

Two initial objections can be raised against my claim that citizenship ought to follow from the membership of domesticated animals in our society. The first challenges the nature of the membership of domesticated animals and whether their membership grounds claims to citizenship. Some may argue that the membership of domesticated animals is different in important respects from that of the children of human immigrants or other humans who have become members of a society but are denied citizenship.

One way to defend the claim of the children of immigrants to citizenship is to point to the dense and rich networks of relationships and associations that they form as members of a society. The children of immigrants go to school, where they make friends, they often have

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<sup>222</sup> Citizenship tests are sometimes administered to adults who are attempting to become citizens. These sometimes measure an individual's proficiency in the language spoken in the state, and also test an individual's knowledge of the history and political system of the state. For an argument against the legitimacy of these tests, see Carens (2013), p.54-60.

relationships not just with their immediate family but with extended family, they often attend religious organizations, they participate in sports and other leisure activities, and so on. In these and other ways, these children are often part of a dense and rich network of relationships and associations. This is part of the reason it makes sense to say they have become members of our society and as a result are owed citizenship.

Some may question whether domesticated animals can be members in the same way. Can they be part of the same dense and rich network of relationships and associations? If not, then perhaps their membership differs in an important respect from that of most human beings, and as a result does not entail the same sort of claim to citizenship. Perhaps the social membership that grounds the moral claim to citizenship is distinct from the membership of nonhuman animals.

Domesticated animals, it seems to me, are capable of existing in a rich network of relationships and associations. But even if we think that their relationships and associations are likely to be more limited, this should not be a barrier to recognizing them as members of our society with a claim to citizenship. The claim of the children of immigrants to citizenship is not weakened if they have fewer friends, are homeschooled, and only interact with members of their immediate family. Membership is established once their family settles down. Once this has happened, the life of an immigrant child is profoundly affected by the state in which she resides. As Carens writes, "The state where an immigrant child lives profoundly shapes her socialization, her education, her life chances, her identity, and her opportunities for political agency."<sup>223</sup> This fact is not altered if this child has few relationships with others, is a loner, and is not part of as dense or 'rich' a network of relationships and associations as others. Further, we do not think humans do not have a claim to citizenship if they lack the cognitive abilities to form certain types of relationships.

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<sup>223</sup> Carens (2013), p.46.

Similar appoints apply to domesticated animals. Even if they do not have many relationships or associations with others, they are members nonetheless and their life chances are significantly affected by the state in which they reside. Moreover, the ability of domesticated animals to form relationships with others is often curtailed and hampered by policies made by the state. Many farmed animals, for example, have very limited relationships with others (both conspecifics and members of other species) precisely because the state allows their movement to be so severely curtailed and allows them to live in conditions incompatible with forming quality relationships with others. This is no justification for denying their membership in our society or for denying their citizenship. We cannot deny domesticated animals the conditions needed to form relationships with others and then deny them citizenship on this basis.

A second objection suggests that social membership is not sufficient for citizenship. Earlier I pointed out that children are not subject to any sort of tests when being granted citizenship. Unlike some adults who become citizens and who are often required to take citizenship tests, children face no such obstacle. Now, an objector might hold, the fact that children are not subjected to these sorts of tests does not show that social membership is sufficient for citizenship. Children, after all, are not yet capable of the political responsibilities often associated with citizenship. With this, it might be more efficient, from the perspective of the state, to simply assume they will eventually gain the requisite abilities to fulfill political responsibilities, rather than testing them at some later point to ensure this is the case.

A moment's reflection, however, shows this response will not do. For as we have already seen, all human beings who are members of a society deserve the recognition of citizenship. This is true regardless of intelligence level. We do not strip individuals of their citizenship if they have very severe cognitive disabilities or if they lose the ability to fulfill political responsibilities because of severe dementia, say. Once we recognize this, however, it should be clear that we

are left with no grounds for denying citizenship to domesticated animals. They have been made members of our societies. And membership demands citizenship.

## 6.4 Two Types of Citizens

While domesticated animals should be seen as our fellow citizens, further clarification about the nature of their citizenship is in order. It is a mistake to attempt to fit domesticated animals into a 'one-size-fits-all' understanding of citizenship. The concept of citizenship is used in many ways. Nevertheless, I want to suggest that citizenship can be understood as having two central uses or meanings and that each use or meaning represents a particular way in which citizenship can be enacted. The first use captures a type of legally and politically recognized membership in a state. The second captures a type of responsible, political agency. Citizenship can be enacted in both ways and we should not conflate the two understandings.

### 6.4.1 Citizenship-as-Membership

The first type of citizenship is a form of political membership. This is the type of citizenship I am appealing to when I claim domesticated animals ought to be recognized as our fellow citizens. And it corresponds to the two functions of citizenship I presented earlier: a citizen has a right to reside in their state; and their subjective good must help shape and inform the state's notion of the public good. These functions of citizenship constitute two of the central political ways members of a society ought to be recognized. As Carens writes, "it is through the granting of legal status as citizen that a modern state officially recognizes someone as a member of the political community."<sup>224</sup> Citizenship-as-Membership recognizes an individual as a member of

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<sup>224</sup> Carens (2013), p.20.

the broader political community, who has a claim on the distribution of resources, and whose rights and interests ought to shape and influence the public good.

To be a citizen in this sense requires only that an individual is a member of a given society and that they have a welfare that can be affected by others. Citizenship-as-Membership does not require that individuals are capable of being a political agent, or co-authoring laws, or fulfilling any responsibilities of citizenship. Being a citizen, in this sense, has no litmus test for individual ability.

Most liberal democracies recognize all human members of a society as citizens in this sense.<sup>225</sup> Young children, individuals born with severe cognitive disabilities, and individuals with very severe dementia are not denied the right of residency in their home country, nor is it commonly accepted that these individuals' interests do not matter for the public good.<sup>226</sup> These individuals are recognized as citizens all the same and they face no threshold test for their abilities to fulfill various types of political responsibilities. The same should apply to the domesticated animal members of a state.

#### 6.4.2 Citizenship-as-Responsible-Political-Agency

Citizenship, however, can be enacted in different ways. For many citizens, citizenship involves more than just having a right to reside in a state and having a claim on the distribution of that state's resources. Citizenship, *for these citizens*, involves a variety of *responsibilities* to contribute to the functioning of the *polis*. These citizens pay taxes, sit on juries, vote in elections, and contribute in numerous other ways to the functioning of the *polis* and its legal and political institutions. Citizenship involves both obligations that the state may impose (like

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<sup>225</sup> See Carens (2013), p. 24.

<sup>226</sup> While I suspect this is, in fact, the most prevalent view, this does not mean the interests and well-being of individuals with cognitive disabilities get the attention and resources they deserve.

jury duty) and other obligations that are part of the normative requirements of citizenship, that may not be legally required by the state: such as voting, running for office, engaging in political debate and protests, and so on.

Nevertheless, the fact that for many citizens their citizenship comes with both rights and responsibilities should not lead us to assume this is a necessary requirement of being a citizen or anything fundamental to the concept of citizenship itself. Being a citizen who is a responsible political agent is not a requirement for being an individual the state should recognize as a citizen. In other words, Citizenship-as-Responsible-Political-Agency is not a requirement for Citizenship-as-Membership.

In their survey on citizenship, Norman and Kymlicka note how two different concepts are sometimes conflated in discussion of citizenship: “citizenship-as-legal-status, that is, as full membership in a particular community; and citizenship-as-desirable-activity, where the extent and quality of one’s citizenship is a function of one’s participation in that community.”<sup>227</sup> The distinction I want to make is similar, but slightly different. Citizenship-as-Membership includes the legal-status of animal citizens but it is broader than this and has implications for things like political representation, as well as other claims on the distribution of resources. This is the form of citizenship that corresponds to one’s political membership. With this, on the distinction I am making, the second way citizenship can be enacted – Citizenship as Responsible, Political Agency – has more to do with the political obligations and responsibilities that fall on many of a state’s citizens, rather than simply the civic virtues often associated with being a citizen.

In any case, the claim that being a citizen who is a responsible political agent is not a requirement to be a citizen of a state (in the sense of membership) is far from revolutionary. It reflects, instead, the way many of us think already think about the citizenship of many human

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<sup>227</sup> Kymlicka and Norman (1994), p. 353.

beings and humans at different stages of life. All human beings that are members of a given society, regardless of intellectual ability, ought to be recognized as citizens. Further, we recognize that babies, infants, and children are citizens of a state, even though they are not yet capable of some of the political responsibilities that can accompany citizenship. And we do not cease to recognize someone as a citizen if old age and dementia removes their ability to uphold certain political responsibilities, such as voting in elections or sitting on juries.

It is also worth noting that citizenship understood as responsible, political agency is not all or nothing. That is, the abilities and capacities that allow an individual to be politically responsible fall on a continuum. At one end of the spectrum fall individuals who are fully morally and politically responsible agents, who the state can rightly hold responsible for their behavior, and on whom it can impose various political duties (like paying taxes, sitting on juries, and so on). However, the mere fact that an individual is not a fully responsible political agent does not mean they are not capable of being held responsible for any of their actions or that some political duties might not be appropriate. The case of children is instructive here. Young children are not yet fully responsible political agents. However, as children age they can become increasingly responsible members of the polis and even take on certain limited political responsibilities.

With this, the point of thinking about citizenship as a form of responsible, political agency is not to single out a certain group of citizens as “full” citizens or more important citizens or as a separate or more deserving class of citizens. Rather, the point is to recognize that for some individuals, because of the capacities they possess, citizenship involves certain responsibilities that do not apply to all of a state’s citizens. Citizenship is not one and the same for all citizens.

Here we can draw a parallel to work in ethical theory. Moral philosophers frequently distinguish between moral agents and moral patients. Moral agents are individuals who are capable of being held morally responsible for their behavior. Moral patients, on the other hand, are



individuals that matter morally. One need not be a moral agent to be a moral patient. And the mere fact that one individual is a moral agent does not entitle that individual's interests to greater consideration (although it might mean that individual has some interests that are different from moral patients'). However, while we can distinguish between agents who are fully responsible for their behavior and agents who are not at all responsible, it would be a mistake to think that moral agency is necessarily all or nothing. Many philosophers have begun to note that the capacities involved in moral agency all appear to admit of degrees.<sup>228</sup> And it is certainly possible that individuals can be responsible for some behavior, perhaps in some limited domains, while not always or even generally morally responsible for their behavior. Children, and some great apes, are good examples of this.

Similarly, we can distinguish between citizens who are members of the state and those citizens who are also fully responsible political agents, while recognizing that some citizens will fall somewhere intermediary on the spectrum between the two. We should not think of political responsibility and political agency as all or nothing. And some individuals may be capable of being political agents, in some domains, even though they cannot be held politically responsible in general or for all their behavior.

If this is the case, however, some may question what purpose is served by distinguishing between Citizenship-as-Membership and Citizenship-as-Responsible-Political-Agency. If the capacities that are required to be a responsible political agent fall on a continuum and if there are some individuals who will have some capacity to be responsible politically – perhaps in certain domains, but not in others – why make this distinction? Further, we might worry that dividing up a state's citizens in this way opens the door to the subordination of a state's citizens who are not considered responsible political agents.

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<sup>228</sup> See Donaldson and Kymlicka (2011), p.265, n.13, and Rowlands (2012), p.240-241.

I believe these worries are misplaced. Part of the motivation for distinguishing Citizenship-as-Membership from Citizenship-as-Responsible-Political-Agency is to better clarify and understand some of the ways many liberal democracies already treat their citizens. States recognize young children and individuals with very severe cognitive disabilities as citizens even though they do not think these individuals are to be held politically responsible. So, while as a matter of political membership, liberal democracies recognize humans of varying abilities as citizens, the class of individuals who are held politically responsible is more restrictive.

Failing to make this distinction, however, leaves us prone to problematic ways of talking about the citizenship of individuals who cannot be held politically responsible. In discussions about the citizenship of children, it is not uncommon to see the citizenship of children challenged or to see children referred to as only “partial” or “incomplete” citizens. But this way of framing the debate is problematic and prone to increasing confusion. The distinction I am making helps to illustrate why. Children are citizens because of their social membership within a state. This is a legal and political status that they are owed and that ought to shape how law and policy are formed and how resources are distributed. If, as some claim, we ought to rethink and expand the ways children can and do participate in the public sphere, this is not a call to make them “full citizens,” but rather an effort to recognize that they already have certain capacities to be responsible political agents (even if, they are not yet entirely capable of fulfilling every political responsibility).

The worry that this distinction will lead to the subordination of a state’s citizens who are not responsible political agents is also misguided. As I have already indicated, whether or not a citizen is a responsible political agent should not amplify or downgrade the interests of a citizen. Moreover, the distinction that we are considering is not one that is codified directly in the legal and political institutions of a state and stamped onto a citizen’s passport, so to speak. Rather, it is already a distinction states *apply* when it comes to their citizens: deciding who can

serve on juries, who can vote meaningfully, and who is capable of fulfilling various other political responsibilities, as well as when individuals should be held fully responsible for criminal behavior. The purpose is not to separate citizens to give the interests of some greater weight, but to recognize that certain political responsibilities and obligations that are important to the state do not apply to all a state's citizens.

## **6.5 Objections**

The view that I have laid out can be challenged from two different directions. The first challenge, presented by Donaldson and Kymlicka, suggests that the view of citizenship I have presented does not go far enough and fails to account for the ways in which domesticated animals can rightly be seen as responsible political agents. The second challenge comes from the other direction. This challenge suggests I have stretched the concept of citizenship too far. On this view, political agency and political responsibility are essential to the notion of citizenship and it makes little sense to extend citizenship to individuals who are not capable of being political agents or being held responsible in the political sphere.

### **6.5.1 Domesticated Animals as Responsible Political Agents?**

While Donaldson and Kymlicka agree that domesticated animals should be seen as citizens in the way I have outlined, they argue this approach does not go far enough. They argue that there are no conceptual problems with viewing domesticated animals as democratic political agents and that approaches to the political status of domesticated animals that do not stress their agency will fail to adequately protect and promote these individuals' interests.

The problem, as Donaldson and Kymlicka see it, is that many political theorists have failed to understand what is truly required to be a democratic political agent and have over-rationalized these requirements. This explains why the thought that nonhuman animals could be citizens initially appears so odd. Citizenship, in both the popular imagination and as understood by many political theorists, is thought to require linguistic agency. The paradigmatic human citizen on this view is an individual who engages in political discourse, who thinks and reasons about the law and public policy, who makes political arguments to others, and who takes on various other responsibilities of citizenship that are mediated through language. The ability to be a linguistic agent is seen as a threshold requirement for engaging in some of the responsibilities of citizenship, like sitting on a jury, voting in elections, and engaging in reasoned, political discourse. Without this sort of agency, many struggle to see how animals could fulfill the responsibilities of citizenship and genuinely participate in a democracy as political agents.

To counter this view, Donaldson and Kymlicka draw on the disability rights movement and recent disability theories of citizenship (specifically, those that focus on individuals with severe cognitive disabilities). The slogan from the disability rights movement, “nothing for us without us,” captures the motivating ideal of a great deal of this work. Much of this recent work in disability theory reimagines the core capacities commonly thought to be required for citizenship. As Donaldson and Kymlicka note, citizenship is commonly thought to require the following capacities:

- a. the capacity to have and communicate a subjective good;
- b. the capacity to comply with social norms and cooperate with others;
- c. the capacity to participate in the co-authoring of laws.<sup>229</sup>

These capacities can be understood in intellectualized or rationalized ways that exclude individuals with severe cognitive disabilities. But recent work on the citizenship of individuals

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<sup>229</sup> Donaldson and Kymlicka (2011), p.103.

with severe cognitive disabilities has emphasized the capacities these individuals have, as well as ways we can understand them enacting their citizenship in each of these areas. Individuals with severe cognitive disabilities have an individual good. While they might not be able to fully articulate this good to others linguistically, this does not mean they cannot communicate views about their good to others. Disability theorists have put forward different models of “dependent agency”: where caretakers or others with intimate knowledge of individuals with severe cognitive disabilities can interpret things like body language, subtleties of expression, gesture and sound, and construct a larger account of their preferences and goods from these forms of communication.<sup>230</sup>

Disability theorists have also emphasized the ability of individuals with severe cognitive disabilities to comply with social norms and cooperate with others. These abilities do not require that one be a linguistic agent. Instead, we can recognize how these individuals “participate in and enrich the cooperative scheme through their relationships of love, trust, and mutual dependency”.<sup>231</sup> Similar points about the possibilities of dependent agency apply to the capacity to participate in the co-authoring of laws. While individuals with severe cognitive disabilities cannot do this in the same way as other human individuals who can use language, models of dependent agency<sup>230</sup> can facilitate their participation. With this, these individuals also have the power to influence and affect political debate through their bodily presence.<sup>232</sup>

One way to look at much of this recent work on the citizenship of individuals with cognitive disabilities is to see it as an expansion of our conception of citizenship, as putting forward a newer, more inclusive sense of citizenship. And in some important senses that is true. However, Donaldson and Kymlicka suggest that these ways of understanding the capacities required for

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<sup>230</sup> See Francis and Silvers (2007).

<sup>231</sup> Donaldson and Kymlicka (2011), p.106.

<sup>232</sup> Donaldson and Kymlicka (2011), p.107.

citizenship better illuminate the concept of citizenship for all human beings, not simply for individuals with severe cognitive disabilities.<sup>233</sup> As they write, “All of us need the help of others to articulate our subjective good; all of us need the help of supportive social structures to participate in schemes of social cooperation. We are all interdependent, relying on others to enable and sustain our (variable and contextual) capacities for agency.”<sup>234</sup> The agency of a refugee, for example, who needs the assistance of an interpreter to vote, or to testify before Parliament, is a dependent form of agency. While the political agency of individuals with severe cognitive disabilities looks different, the fact of dependent agency is not something altogether new: it is something that applies to all of us. It would be a mistake, then, to conclude that individuals with severe cognitive disabilities are not full and equal citizens if they lack or have a severely diminished capacity for linguistic agency. Their citizenship is practised in different ways. But they are full and equal citizens nonetheless.

Donaldson and Kymlicka argue domesticated animals should be viewed in a similar way. The capacities required for citizenship, they believe, do not require linguistic agency. We learn this by investigating and to some extent re-imagining citizenship in light of individuals with severe cognitive disabilities. Recognizing this, however, we are left with no reasons to deny that domesticated animals are full and equal co-citizens.

Domesticated animals have a subjective good and they communicate this in non-linguistic ways to human beings. Anyone with a companion animal knows this. Domesticated animals have preferences, interests, and desires and intentionally communicate these to human beings.<sup>235</sup> While they might not be able to reflect on these desires and construct larger narratives and goals for their lives, not all human beings are capable of this and these abilities should not be a threshold for citizenship.

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<sup>233</sup> Donaldson and Kymlicka (2011), p.107.

<sup>234</sup> Donaldson and Kymlicka (2011), p.107.

<sup>235</sup> Donaldson and Kymlicka (2011), p.108.

Similarly, Donaldson and Kymlicka argue that domesticated animals can comply with social norms and cooperate with others. As they note, domesticated animals were domesticated by humans because of this very capacity and it has only grown and been strengthened over time. Moreover, it is a mistake, they think, to insist on an overly-rationalistic understanding of the regulation of behavior required to be a citizen, where citizens must be capable of not only regulating their behavior but doing this for the right reasons.<sup>236</sup> This view, they think, sets the bar too high and overly idealizes what is required for the ongoing function of society. For many human beings, much of our conformity to various social norms is unreflective and only occasionally do changing circumstances or personal circumstances lead us to reflect on different social norms.

Donaldson and Kymlicka argue that, while not capable of reflecting on social norms, domesticated animals have the capacity to engage in cooperation and regulate their own behavior to comply with social norms. We see this in many areas of their lives, including grooming, playing, mating, and food sharing. It would also be a mistake, they argue, to dismiss this behavior as mere instinct, rather than intentional behavior that “reflects a process of conscious learning, negotiating, and developing social norms.”<sup>237</sup>

On this point, Donaldson and Kymlicka cite many compelling and interesting examples. Among these are recent investigations by Bekoff on the play behavior among wolves, coyotes, and dogs.<sup>238</sup> In their play behavior, for example, these animals engage in a system of rules and expectations, as well as sanctions for violations. Dogs invite one another to play by bowing. During play they moderate their behavior – controlling their power and the strength of their bite, for example – to ‘level the playing field.’ Moreover, the process of play is constantly monitored and re-negotiated: when other dogs become too aggressive this is not tolerated, and

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<sup>236</sup> Donaldson and Kymlicka (2011), p.116.

<sup>237</sup> Donaldson and Kymlicka (2011), p.118.

<sup>238</sup> Bekoff and Pierce (2009), p.116.

Bekoff has observed that dogs and other canids use bowing to re-assure a play companion if a previous bite or hit was too hard or to indicate that the next, more aggressive move is still within the confines of play.

The ability of other animals to regulate their behavior and follow rules and norms is not limited, moreover, simply to the interaction of companion animals with conspecifics. Companion animals routinely engage in play behavior with other species, including other companion animals and, of course, humans! Here, too, we find examples that suggest the ability to comply with norms and rules is something other animals intentionally do and something they can monitor on an ongoing basis. Mark Rowlands offers a particularly illuminating example of cooperation (and toleration) between his two dogs – Nina, a “ferocious German shepherd / malamute cross, and Tess, a wolf-dog mix who, though gentle, had some rather highly developed predatory instincts” – and his toddler son.

During the eighteen months or so that their old lives overlapped with that of my son, I was alternately touched, shocked, amazed, and dumbfounded by the sorts of care, solicitude, toleration, and patience they exhibited toward him. They would follow him from room to room, everywhere he went in the house. Crawled on, dribbled on, kicked, elbowed, and kneed: these occurrences were all treated with a resigned fatalism. The fingers in the eye they received on a daily basis would be simply shrugged off with an almost Zen-like calm.<sup>239</sup>

Nina and Tess’s interactions with Rowland’s young son illustrate a clear ability to cooperate with, and in this case also tolerate, other human beings and to regulate and modify one’s behavior due to changing circumstances. Nina and Tess recognize that a toddler is different from grown human beings and that behavior that wouldn’t be accepted or tolerated from

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<sup>239</sup> Rowlands (2012), p.ix



adults (fingers in the eyes, elbows and kicks) should be tolerated in the case of an infant. Further, their behavior goes beyond this – as Rowlands notes, Nina and Tess did not simply tolerate the sometimes-annoying behavior of his young son, they actively monitored and looked out for his son, including waking up Rowlands at night when his toddler cried or showed distress.

Companion animals, Donaldson and Kymlicka argue, are capable of the sort of cooperation and self-regulation that are needed for citizenship and so too, they argue, are other domesticated animals. They cite several interesting examples where cows and pigs have sought the assistance of humans for a difficult birth (in the case of cows) or an injured human companion (in the case of Lulu the pig). And these behaviors, they claim, suggest that these animals are capable of cooperation and recognize, to some extent, “that they are part of a cooperative community with humans (and each other).”<sup>240</sup>

Finally, Donaldson and Kymlicka argue that domesticated animals are capable of being political agents. They reject what they view as overly-rationalistic accounts of what is required to be a political agent and instead emphasize the ways in which domesticated animals can influence and alter political debates by their embodied presence. Donaldson and Kymlicka note how invisibility and exclusion can influence political debates. We see this in the case of individuals with disabilities. “When people with disabilities were rendered invisible from the public sphere, the shape of the political community was altered. Absent bodies could no longer act as a corrective presence, or a shaping force in political life. It is no coincidence,” they note, “that the escalation of separation and invisibility coincided with the height of the eugenics movement, and the most egregious assaults on the rights of people with disabilities.”<sup>241</sup> The insistence of the disability movement on reintegration and access stems, in part, from the recognition that

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<sup>240</sup> Donaldson and Kymlicka (2011), p.119.

<sup>241</sup> Donaldson and Kymlicka (2011), p.113.

the presence of individuals with disabilities “alters our conception of the political community, and the institutions and structures of communal life. Sheer presence, in other words, constitutes a form of participation.”<sup>242</sup>

Donaldson and Kymlicka believe domesticated animals are capable of political participation along similar lines. It would be a mistake to think that animals are merely passive individuals and that only humans are political agents who can advocate and argue politically on behalf of other animals. Like individuals with disabilities, Donaldson and Kymlicka believe domesticated animals, by their sheer presence, can be advocates of change. We see this, they think, in the ways the presence of dogs in public spaces (like restaurants and public transit) can change and alter the perception of other humans. Humans may be “essential ‘enablers’” in the political advocacy on behalf of other animals, but this does not change the fact that other animals are still political agents, “doing what they want to do—exploring, playing, hanging out with their human and dog friends—and by virtue of being present, and carrying on their lives, helping to shape their shared community with humans.”<sup>243</sup>

Thus, Donaldson and Kymlicka believe domesticated animals are capable of being political agents and political participants. They are the sorts of beings capable of living in a mixed, human animal community, while following and adjusting their behavior to various social norms, and at the same time shaping the life and character of that community through their own agency. On their view, then, all the different functions of citizenship apply to domesticated animals, including democratic political agency.

While Donaldson and Kymlicka make an impressive case for re-examining the agency of domesticated animals, I remain skeptical that we can properly view these animals as political agents who can fulfill various political responsibilities. While I share the view that domesticated

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<sup>242</sup> Donaldson and Kymlicka (2011), p.113.

<sup>243</sup> Donaldson and Kymlicka (2011), p.115.

animals are best understood as citizens of our states, I think it is important to emphasize how their citizenship is different, in some important respects, from paradigmatic, adult human beings.

### 6.5.2 The Extent of Animal Agency

One problem concerns the extent to which *all* domesticated animals are capable of the norm-following and cooperative behavior that Donaldson and Kymlicka present. This objection is somewhat of an internal objection to Donaldson and Kymlicka's approach. Here is the basic idea. According to Donaldson and Kymlicka, the bar for qualifying as a political agent is set rather low. Domesticated animals can qualify simply because their embodied presence will alter and influence political debates. As a result, they see domesticated animals as playing a crucial role in this process – not by engaging in political debate, but simply by being themselves, living their lives, doing the things they like, and so on. Nevertheless, Donaldson and Kymlicka want to go beyond the position that domesticated animals can be understood as political agents simply because of their embodied presence. Part of the reason that they discuss animal agency at length, as I understand it, is that they think the abilities of domesticated animals to follow and learn various norms, to cooperate with human beings in a variety of ways, and to contest and respond to various rules and norms that affect their lives are *also* crucial to how they can participate politically.

As a result, while some might be skeptical that the mere bodily presence of domesticated animals should be understood as a form of political agency, this is not the only view they propose. Others might think it makes sense to view domesticated animals as political agents and participants to the extent that they can follow norms, engage in cooperative activities with human beings, and do things like contest various rules and norms that govern their lives.

Crucially, then, the extent to which some are likely to view domesticated animals as political agents may depend on the extent to which they are capable of these various abilities. If domesticated animals are only capable of the most basic cooperative activities with humans (such as not actively harming humans), if they are inflexible in terms of which norms they can follow, and so on, then some might be skeptical that these abilities alone will be enough to qualify as a political participant.

One worry, here, is that dogs might be special. Other domesticated animals may not be nearly as adept at engaging in cooperative behavior, adapting their behavior in a flexible way, and following and sometimes contesting different social norms.

One notable feature of Donaldson and Kymlicka's discussion of animal agency is the extent to which they often turn to evidence and examples of the agency of dogs. Dogs are, we might say, their exemplar or paradigmatic animal citizen. Nevertheless, there are good reasons for thinking that dogs might be particularly special among domesticated animals in their sociability and in their abilities to cooperate, self-regulate, and reciprocate with others in our communities. It is unclear whether other domesticated animals are nearly as capable as dogs with respect to these abilities.

One reason we might suspect that dogs are outliers in these abilities stems from their history of domestication. Dogs were the first species to be domesticated by a considerable margin of time. There are different estimates for when exactly the process of domesticating the grey wolf (the ancestor of all modern dogs) began. However, joint partnerships in hunting between hunter-gatherers and wolf packs may have occurred as far back as 30,000 years ago.<sup>244</sup> And there is very good evidence that dogs had been domesticated (with anatomical differences already differentiating the grey wolf from dogs) sometime between 17,000 and 13,000 years

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<sup>244</sup> Clutton-Brock (2012), p.1.

ago.<sup>245</sup> More recent work, drawing on DNA analysis, suggests the domestication of dogs happened sometime between 15,000 and 25,000 years ago.<sup>246</sup> Whatever the precise date happens to be, what is clear is that dogs were the first species to be domesticated by humans and that the domestication of dogs very likely predates the invention and adoption of agriculture. This is not surprising: dogs descended from wolves and were useful for hunting for pre-agricultural hunter-gatherers. Humans became inclined to domesticate other species only after agriculture's adoption, when agriculture made raising and feeding other animals for meat and their fur possible. Evidence for the domestication of cats appears first around 9,500 years ago, where the ancestors of domesticated cats likely preyed on mice and other animals that fed on grain storage.<sup>247</sup> Other domesticated animals – like sheep, goats, cattle, chickens, and horses – also came only after the invention and adoption of agriculture.<sup>248</sup>

Why is this history relevant? The fact that dogs were domesticated a considerable time before other domesticated animals means that there has been a much longer time for selective breeding to influence the very nature of domesticated dogs, making them more sociable, more cooperative, and more likely to be able to adapt to new circumstances and comply with different social norms. Domestication changes the nature of animals, and dogs have had much more time for selective breeding and evolution to produce more social and cooperative dogs.

Along with this, dogs have been both used and selectively bred for a wide variety of purposes. While today many of us think of dogs primarily as companions, historically dogs have been bred and kept primarily for their usefulness to humans. For quite some time dogs worked with, and for, humans in activities like hunting, shepherding, guarding, and cart pulling. And today dogs work in a variety of capacities, including assisting individuals with disabilities and mental health

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<sup>245</sup> Clutton-Brock (2012), p.

<sup>246</sup> Bradshaw (2011), p.31.

<sup>247</sup> Clutton-Brock (2012), p.21

<sup>248</sup> Clutton-Brock (2012), Chapter 2.

issues, in search and rescue, in bomb detection, and in policing. The wide variety of work dogs are capable of illustrates the incredible extent to which these animals can adapt to different circumstances and cooperate with human beings. This ability likely stems, in part, from the social and cooperative nature of dogs' pre-domesticated, wolf ancestors. But it is likely that the purposes for which dogs have been selectively bred have only strengthened their ability to cooperate with others. Further, dogs, unlike most other domesticated animals used for work, live with their human guardians, in much closer proximity than other animals (such as cows, chickens, or pigs). All of this suggests that we have a variety of good reasons to think that dogs will be much more capable of the sort of self-regulation and cooperative behavior that Donaldson and Kymlicka stress, compared to other domesticated animals. Dogs very well might be outliers among domesticated animals when it comes to their ability to self-regulate and cooperate with human beings.

If this is the case *and* if we think that there are certain threshold requirements for the abilities to self-regulate, follow social norms, and cooperate with others to count as forms of political participation, then it is not clear that other domesticated animals (beyond dogs) are in fact capable of being responsible political agents. Donaldson and Kymlicka deny that we should take a threshold approach to these capacities. However, if there are domesticated animals that are capable of very little self-regulation and cooperation, others may be more skeptical that we can plausibly view these individuals as responsible political agents. Moreover, the less capable an animal is in these respects, the less and less clear it is why all the functions of citizenship should be seen as applying to that particular animal.

A couple of points must be made in response to this objection. First, as Donaldson and Kymlicka themselves note, we still have a lot to learn in terms of what domesticated animals are capable of. As a result, we should remain open to the possibility that other domesticated animals will surprise us in their abilities to cooperate with humans and navigate social rules and norms.

Second, nearly all domesticated animals certainly are capable of some self-regulation and cooperation with humans. As we noted earlier, domesticated animals were domesticated precisely because of their sociability and ability to cooperate. And it can be easy to overlook some of the ways in which many domesticated animals modify their behavior that we take for granted. To give just one example, many large domesticated animals, like horses and cows, are careful to avoid injuring or harming humans as they move about, behavior that displays not just self-regulation but some level of understanding that their behavior can harm others.

Nevertheless, at present, it does seem that dogs are much more capable than other domesticated animals with respect to these abilities. Cats, chickens, cows, goats, pigs, rabbits, and other domesticated animals might turn out to be capable of levels of self-regulation, cooperation, and behavioral flexibility that we have not yet imagined. However, as of now, these (and other) domesticated animals do not appear nearly as capable as dogs of cooperating with humans and of regulating their behavior with a great deal of flexibility. Thus, for those inclined to think that a certain threshold of these capacities is needed for an individual to be capable of political agency, it is not clear all domesticated animals will qualify.

### **6.5.3 Political Participation and Political Agency**

Nevertheless, even if all domesticated animals were as capable of self-regulation, norm-following, and adapting to new circumstances as the most adept dog, it is not clear to me that we should view them as political agents, or, as we will see, that a great deal hangs on the matter. Donaldson and Kymlicka claim that domesticated animals are political agents, in part, because of the way that their embodied presence can alter and shape political debates. And the bodily presence of domesticated animals certainly can have this effect.

However, it is a significant stretch to claim that domesticated animals are political agents. The embodied presence of domesticated animals can shape and influence debates about the law and public policy. But it does this only to the extent that human political actors choose to be responsive to the needs and desires of domesticated animals. In the examples Donaldson and Kymlicka give – where the embodied presence of these animals alters political debates – domesticated animals do not appear to be doing much more than living their lives, and in some cases expressing their preferences and desires. Human citizens, surely, ought to be responsive to these desires. But it is human citizens who are the ones, ultimately, that must debate and make decisions about the law and public policy. Human citizens, and only human citizens, are capable of actually making law and public policy. Nonhuman animals do not, and cannot, co-author laws with their fellow humans. And the responsibility to do this falls only on us.

Other animals surely can be agents. They can act on the basis of a variety of emotions and reasons and very often this goes beyond simple instinct or conditioning.<sup>249</sup> However, their agency seems best understood in terms of the reasons that *they* have for acting. And when we focus on these reasons, it is hard to see their actions as political.

Consider Eclipse, a Seattle dog who learned to ride the public bus in Seattle without her guardian to her favorite dog park.<sup>250</sup> Eclipse's behavior demonstrates remarkable agency: her ability to navigate the public bus on her own, getting on and off at the right stops, is impressive. And this behavior, as reporting on Eclipse attests, very likely alters the attitudes of the other, human bus riders. Seeing Eclipse on the bus, these riders learn that dogs can ride public transit without being disruptive. Much to the contrary, the experience of most riders seems to be one of enjoyment and pleasure. Eclipse seems to improve the bus ride for other humans, relaxing others, and increasing conversations among strangers.<sup>251</sup> It is possible that by learning these

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<sup>249</sup> See Rowlands (2012), p.3-8.

<sup>250</sup> See Krol, C. (2015, January 16).

<sup>251</sup> See Wood, Lisa J. et al. (2007).



things, these humans will rethink our laws about how animals can and should be allowed to use public transit, as well as other public spaces that ban and restrict domesticated animals.

Given these political effects, Donaldson and Kymlicka believe we should understand Eclipse as a political agent. As they see it, she is a necessary participant in a process that very well might lead to new laws. Her embodied presence and action, moreover, help to shape the way others understand what the law ought to be. However, Eclipse's behavior does not seem to be motivated by any desire to achieve these effects. She just wants to go to the dog park. We have no reason to believe that Eclipse is aware of or motivated at all by these larger policy questions that her behavior may very well influence.

For an individual to be a genuine political agent, a basic requirement is that the individual has some awareness that they are participating in the making of a law or acting in a political way. The best way of understanding an individual's agency, it seems to me, will be based on the reasons *they* have for acting. No nonhuman animals appear capable of acting with political intentions. Nonhuman animals might engage in behavior that can have political effects. But this is not enough to be a genuine political agent. To be a political agent requires that one has some sort of political intentions: to change a law, to influence public policy or political decision-making, and so on.

One objection to this requirement for political agency points to how we understand agency in other domains. Our common understandings of what it means to be a social agent or an economic agent do not appear nearly as restrictive as the basic requirement I put forward for political agency. An individual does not need to understand what it means to be a social agent; she just needs to be able to interact with others. Likewise, an individual does not need to understand economics, and the law of supply and demand, to be an economic agent; they just need to be able to engage in economic activities, such as buying or selling a product. If this is

the case, we might question whether the requirement for political agency I have put forward sets the bar too high.

I do not think it does. In both domains above, we still understand an individual's agency in terms of his or her intentions. A child who initiates a conversation with another individual intends to interact with that person. That is enough to be a social agent. An individual who buys or sells something intends to engage in this activity and that is enough to be an economic agent. Although here, to truly buy or sell something seems to require that an individual has some understanding of the basic concepts involved in the transaction. If a child 'sells' something only to immediately ask for it back, we might wonder if they are yet capable of being an economic agent.

Similarly, for an individual to have political intentions requires that they have at least some grasp of the political sphere: one would need some understanding of what a law, or regulation, or public policy, or justice is to have political intentions. Without any understanding of these or related concepts, it is hard to see how one's intentions can be genuinely political. We can recognize this without being committed to the view that this knowledge must be perfect or complete. One does not need to be a political theorist, with a fully thought out account of the law, justice, and the political sphere to be a political agent. But genuine political agency does require at least some form of political intentions, however loosely understood. Absent this, it is hard to see how we can meaningfully say an individual acted politically.

Donaldson and Kymlicka object to the idea that we should understand political agency in terms of any necessary conditions needed to be a political agent. Instead, they claim that "to treat someone as a citizen involves facilitating and enabling their political agency" and this commitment "rests on a recognition of the dangers of paternalism, the harms of coercion, and

the value to individuals of being able to act upon their own desires and attachments.”<sup>252</sup> On this approach, we should not attempt to evaluate whether an individual is capable of being a political agent. Instead, we should seek to enable and facilitate the agency of all citizens, “at all stages of their life course and at all levels of mental competence.”<sup>253</sup>

These claims only muddy the water. We can recognize other animals as agents, without holding that they are political agents. As we will see, what really matters are the reasons we must be responsive to the agency of domesticated animals and the ways (and areas of policy) that their agency should inform and shape political decision-making.

#### 6.5.4 Animal Preferences

The discussion above suggests that our concepts and understanding of political agency and political participation are pulled in different directions. On the one hand, it appears plausible to say that domesticated animals can participate in political processes, and thus, that they can be political participants. Nevertheless, I have argued that animals cannot be genuine political agents, as they appear incapable of acting on the basis of political reasons or having political intentions.

Rather than explore this issue further, however, I am going to put it aside. I believe much of this debate is a distraction from much more central issues concerning domesticated animals and their place in the political sphere. I do not think it makes sense to claim domesticated animals are political agents, but I do not think a lot hangs on this question. A much more important question concerns why the preferences and desires of domesticated animals matter for the law and public policy, and how their preferences and desires could be solicited, interpreted, and

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<sup>252</sup> Donaldson and Kymlicka (2011), p.59.

<sup>253</sup> Donaldson and Kymlicka (2011), p.60

used to shape the laws and policies that affect their lives. As we will see, we can recognize the need for this, whether or not we think domesticated animals are political agents.

On this question, it is not entirely clear why Donaldson and Kymlicka think the preferences of domesticated animals matter for the shaping of law and public policy. Donaldson and Kymlicka contrast their citizenship approach with the way a wardship model approaches the preferences of domesticated animals. And they think a wardship model is deficient in how it approaches and deals with the preferences of other animals.

For them, the primary difference between viewing domesticated animals as wards, compared to citizens who are democratic, political agents “is that whereas citizens are active co-authors of the community’s laws and institutions, wards are passive recipients of our duty to protect the vulnerable.”<sup>254</sup> Donaldson and Kymlicka reject a wardship model because they believe it ignores the agency of domesticated animals. With this, they believe this model ultimately “treats domesticated animals as a leftover or remainder, located on the (literal and figural) margins of human society, having no claims regarding how the broader community governs itself and its public spaces. It treats domesticated animals as something like protected aliens or guests, who do not really belong here, but whom we have a duty to treat humanely.”<sup>255</sup>

In more recent work, Donaldson and Kymlicka have expanded their argument against the wardship model.<sup>256</sup> They argue that wardship is prone to excessive paternalism, as guardians are prone to be particularly risk-averse towards the wards under their care. This is problematic, they argue, because it denies domesticated animals “opportunities for mobility, exploration, choice, learning, challenge.”<sup>257</sup> Second, they argue that wardship engenders oppressive terms

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<sup>254</sup> Donaldson and Kymlicka (2011), p.102.

<sup>255</sup> Donaldson and Kymlicka (2011), p.102-103.

<sup>256</sup> See Donaldson and Kymlicka (2015).

<sup>257</sup> Donaldson and Kymlicka (2015), p.327.

of cooperation, as “responsibilities are set unilaterally by one party,” without the proper attentiveness to what domesticated animals want or prefer.<sup>258</sup> As a result, wardship inevitably leads to an unfair distribution of benefits and burdens for the wards in a society. On their view, then, anything other than equal co-citizenship – where domesticated animals are viewed as democratic political agents – fails to adequately recognize the membership of domesticated animals in our communities and wrongly confines them to a second-class political status.

Donaldson and Kymlicka reject a wardship approach because it does not recognize domesticated animals as agents and fails to engage and respond to their preferences for their lives. On their view, engaging the preferences of domesticated animals is requirement of justice. As they see it, justice requires both spaces for domesticated animals to explore and express their preferences about the shape of social rules, as well as political mechanisms that translate those preferences into inputs for political decision-making.

Missing from Donaldson and Kymlicka’s account is an explanation of *why* soliciting the preferences of domesticated animals is important to the demands of justice. I see two possible answers to this question. The first appeals to well-being or flourishing. We might think that only if we give domesticated animals room to explore and express their preferences about their lives and the social rules that govern them (and then make sure those preferences enter and influence political decision-making), will they be capable, or perhaps have a much greater probability of living good, flourishing lives.

A second possible answer appeals more directly to membership. On this view, we ought to solicit the preferences of domesticated animals about their lives and the social rules that govern them because they are members (and thus citizens) of our shared, animal-human societies. On this view, the ability to shape the social rules of the society you live in is

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<sup>258</sup> Donaldson and Kymlicka (2015), p.327.

something you are owed as a member of that society, apart from, and in addition to, the extent to which these rules will affect an individual's well-being.

To the question of why the preferences of other animals matter, I am much more convinced by an answer that appeals to their well-being, rather than the demands of membership. One of the reasons we might think that human control over the lives of domesticated animals that is not responsive to their well-being and preferences can be tyrannical is that it fails to take seriously our role in these animals living flourishing lives. Only if we are constantly attuned to their preferences will all domesticated animals be capable of flourishing lives. The tyranny, then, consists in making decisions about the lives of domesticated animals without recognizing how those decisions affect their well-being.

Some may think that the tyranny of unresponsive, human control over the lives of domesticated animals goes deeper. On an alternative view, what is wrong with this control is not simply that it is not always going to be conducive to the well-being of domesticated animals but that it fails to treat them as members of our shared communities, whose preferences and views ought to influence the shape of our society (and things like social norms) beyond just the ways it might affect their well-being.

I find this latter view perplexing. Most human beings, as rational agents, have an interest in autonomy that is not possessed by other animals.<sup>259</sup> Most humans can form plans for how they want their life to go, what they value, and, crucially, how they want the larger society of which they are a part to look. Part of the reason it is wrong to deny humans various forms of political participation stems, then, from our interest in autonomy. To deny our fellow human citizens the ability to take part in and influence the shape of our society, its social rules, laws, and policies, is a form of tyranny. This is because humans, as rational agents, can reflect on our

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<sup>259</sup> See Cochrane (2012), p.11.

shared life together and the shape and nature of the rules, policies, and institutions that we live under. As a result, humans have an interest in engaging in these forms of decision-making.

Domesticated animals do not appear capable of reflection or thought on these matters. Unlike paradigmatic humans, domesticated animals do not appear capable of developing conceptions of the good life that go beyond their present desires or preferences, let alone visions of what society or a just social order ought to look like. They are not autonomous in this way.<sup>260</sup> Further, domesticated animals are not capable of understanding that they are being denied forms of political input or participation. While they may be harmed as a result of this denial – if a lack of participation leads to policies that are not conducive to their flourishing – knowledge that they were denied participation is not something that harms these beings or that disrespects them.

None of this is meant to show that we ought to ignore the preferences or desires of domesticated animals and that justice does not require that these inform a state's political institutions. Far from it. Instead, soliciting the preferences of domesticated animals is important because doing so will often be crucial to allowing domesticated animals to live good, flourishing lives.

What this discussion illustrates, instead, is that there is considerable conceptual space to consider between the options of viewing domesticated animals as wards and the view that they should be viewed as citizens capable of being responsible political agents. Donaldson and Kymlicka criticize a wardship model because they believe it fails to treat domesticated animals as agents. And they point to empirical research they believe highlights the failures of treating

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<sup>260</sup> By this I mean that no domesticated animals appear capable of reflecting on our social life and the shape and nature of our society. Some nonhuman animals may have some capacities to reflect on their lives. I think this is at least an open question for animals like dolphins and the great apes. However, this does not appear to be the case for any domesticated animals.

humans, such as children or those with severe cognitive disabilities, as wards to be protected.<sup>261</sup>

However, the problem is not that a wardship model fails to treat domesticated animals as political agents. Rather, the problem is that this model takes a problematic approach to how we can promote the well-being and flourishing of nonhuman animals. Even if we are skeptical that domesticated animals can be genuine political agents, it does not follow that we should not attempt to solicit their preferences for the variety of rules and policies that govern their lives. Doing so is essential to promoting their flourishing and to ensuring that our understanding of their well-being is not inaccurate, or misguided, or self-serving. The wardship model is problematic if it is lazy and if it assumes we can know what is good for so-called wards (children or animals) without frequently soliciting their feedback and their perspective.

All of this, I hope, suggests that the debate about whether domesticated animals can be properly described as “political agents” is not of central importance. What really matters is whether there are good reasons for soliciting and responding to the preferences of domesticated animals. I think there are. We can affirm the need to do this, whether we think domesticated animals are genuine political agents or whether we see them as members of our society, because doing so is crucial to allowing these animals to live flourishing lives.

Further, the conceptual space for thinking about the political status of domesticated animals is not limited simply to a wardship model and the view that domesticated animals are citizens who are responsible political agents. In between these views, we find views like mine that recognize domesticated animals as our fellow citizens, without claiming they are political agents.

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<sup>261</sup>See Donaldson and Kymlicka (2015), p.325-328.



### 6.5.5 Responsibility

In their effort to extend conceptions of citizenship that include democratic, political agency to domesticated animals, Donaldson and Kymlicka also make claims about the ability of domesticated animals to be responsible for their behavior. These claims are not persuasive.

According to Donaldson and Kymlicka, not only does it make sense to view domesticated animals as political agents, they believe it makes sense to view domesticated animals as *responsible political agents*. That is, they believe that domesticated animals can fulfill various duties of citizenship (although in their case they will look different than many of the duties of human citizens). Domesticated animals, they think, can be held responsible for regulating their behavior in certain ways, cooperating with others, and following social norms. They suggest that their behavior can go beyond just routine compliance, to the point where they are capable of being responsible for their behavior.

To better illustrate what they mean, Donaldson and Kymlicka use the example of a guide dog. Guide dogs, they believe, offer a great example of how domesticated animals can be responsible for their behavior. These animals have “a remarkable range of responsibilities for observation, communication, assistance, and forbearance.”<sup>262</sup> Donaldson and Kymlicka believe guide dogs do not simply *do* these things when they assist blind humans in various ways. Rather, they think that guide dogs can be *responsible* for doing them and can be *held responsible* when they fail to do them. In support of this position, they argue that guide dogs do not just obey commands and negotiate various obstacles that arise during a day; they also seem to internalize the view that their job is to protect a human who cannot see.<sup>263</sup> Recognizing this, Donaldson and Kymlicka think they can be responsible for their behavior.

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<sup>262</sup> Donaldson and Kymlicka (2015), p.328.

<sup>263</sup> Donaldson and Kymlicka (2015), p.329.

According to Donaldson and Kymlicka, this point extends beyond just the case of guide dogs. Other domesticated animals, too, can be held responsible for their behavior and legitimately praised or blamed when they fail to comply with various social norms. Thus, as they see it, accounts of citizenship that highlight the responsibilities of citizens can be extended to domesticated animals as well. Domesticated animals are not simply owed the rights of citizenship, as I have suggested, but qualify for a package deal of rights and responsibilities that political theorists often associate with citizenship.

Two problems confront the view that domesticated animals can be responsible for their behavior. First, as we have already seen, there are legitimate worries that dogs might be special when it comes to carrying out the sort of things for which Donaldson and Kymlicka suggest domesticated animals can be held responsible. This worry is particularly pressing when it comes to the ability of domesticated animals to be responsible for their behavior. The ability of dogs to be trained to learn and carry out complicated tasks – and the level of attention they often pay to their human caretakers, compared to other animals – very well might outpace all other domesticated animals. If this is the case, it is unclear that other domesticated animals can fulfill the “responsibilities of citizenship” suggested by Donaldson and Kymlicka.

More fundamentally, Donaldson and Kymlicka’s defence of the claim that domesticated animals can be responsible for their behavior appeals to a very different sense of responsibility than what people like myself, and others, mean when they say human individuals can be responsible political agents. Donaldson and Kymlicka are right that the behavior of domesticated animals can certainly go beyond simple compliance to social norms, and, in at least some cases, involve a type of internalization of these norms (or something like them) and their importance, as the case of guide dogs seems to illustrate. However, it does not follow from this that domesticated animals can be morally or politically responsible for their behavior. While sometimes humans may praise or blame domesticated animals for their behavior, these actions are different in an

important respect from the *moral* praise and blame that is given to paradigmatic adult human beings who are moral agents.

In the case of moral agents, blame can be appropriate when an individual has acted wrongly. But domesticated animals do not appear capable of committing moral wrongs, as they lack the knowledge and reflective abilities to genuinely understand that an action is wrong and to adjust and modify their behavior accordingly.<sup>264</sup> None of this, of course, is to suggest that these animals are not capable of impressive feats. But it does indicate that we are doing something different when we praise or correct them for their behavior.

Any “responsibilities” they have are not genuinely moral or political responsibilities: their failure to comply with social norms does not make them genuinely blameworthy and any corrections or “blame” should only have the goal of modifying future behavior. A guide dog, for example, who falters during the course of a day, and as a result endangers the human she is assisting, has not acted wrongly and is not genuinely deserving of blame. The question of whether blame is ever appropriate, in this case, is a question of what will effectively (and ethically) help to shape and modify better, more social behavior in the future.

Donaldson and Kymlicka seem to use the term “responsibility” in a different way. To say that the guide dog is responsible for his or her human is, it seems, just another way of saying that the guide dog can be *reliably predicted* to act in this way and fulfill these desired actions. Along with this, the guide dog is the one who carries out these actions. But none of this should be confused with what it means to be morally or politically responsible for one’s behavior.

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<sup>264</sup> While I am skeptical that domesticated animals can commit moral wrongs and ever be held morally responsible for their behavior, I am much less confident this view applies to all other, nonhuman animals - particularly the great apes.

Domesticated animals are certainly capable of carrying out various actions and activities that contribute to and enrich our shared social life. Nevertheless, there is a large gulf between this ability and the capacities required to be a responsible political agent. The case for the citizenship of domesticated animals need not depend on claims that they can be responsible in the political realm.

Moreover, I fear that efforts to extend talk of responsibility to domesticated animals opens the possibility of imposing burdens on them that are unfair. If we think that animals can legitimately be held responsible for their behavior, then some might be inclined to think it is legitimate to impose certain burdens of citizenship on domesticated animals. In the case of human beings, citizenship comes with certain responsibilities that can be viewed as unwanted burdens. Imposing taxes and jury duty on human citizens, for example, is legitimate, even though many human citizens might not want to sit on juries or pay their taxes.

However, if domesticated animal citizens can also be responsible for their behavior, it is not clear why at least some burdens of citizenship cannot be extended to them. Some may think, for example, that domesticated animals who are capable of some forms of work should be responsible for doing so (if it is consistent with their basic rights and with their living a good life). If this is the case for human citizens, then why does not the same apply to our fellow animal citizens? At the very least, we need some reason why it would be wrong for certain burdens of citizenship to be extended to domesticated animals.

There are a couple of problems, then, that confront the extension of the language of responsibility to domesticated animals. The first, as we have seen, is that it may be used to justify the imposition of unfair burdens on domesticated animals. The second problem is that this language is, in my view, mostly misleading about who is really 'on the hook' for fulfilling the burdens or responsibilities at issue. At times, Donaldson and Kymlicka write as if certain

burdens and responsibilities of citizenship really do fall on domesticated animals. In their discussion of sex and reproduction, for example, they write:

As citizens, domesticated animals have rights, including rights not to have their sexual and reproductive activities unnecessarily curtailed, and the right to have their offspring cared for and protected by the larger, mixed human-animal society. But, as citizens, domesticated animals also have the responsibility to exercise their rights in ways that do not impose unfair or unreasonable costs on others, and that do not create unsustainable burdens on the scheme of cooperation.<sup>265</sup>

I am skeptical that we can meaningfully ascribe to domesticated animals the responsibility to “exercise their rights in ways that do not impose unfair or unreasonable costs on others,” as Donaldson and Kymlicka suggest. This burden falls not on them but on their human caretakers. Suggesting that domesticated animals are responsible for their behavior in this area and others obscures the fact that ultimately it is human guardians who must navigate and make decisions in these areas.

Donaldson and Kymlicka suggest that we do not know how, given “the opportunity to live in social communities in which they mix with others of their choosing, mate by choice, and raise their young” domesticated animals would regulate their activities, if at all. And they concede that, to the extent that domesticated animals are not capable of exercising meaningful agency, humans are justified in imposing paternalistic protection.

But we have good reason to be skeptical that domesticated animals could ever regulate their behavior in ways that would make them genuinely responsible for their behavior and capable of taking on “burdens of citizenship.” This is because domesticated animals simply lack the cognitive abilities required to understand when they would be imposing unfair or unreasonable

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<sup>265</sup> Donaldson and Kymlicka (2011), p.146-147.

costs on others. Ultimately this responsibility falls to human citizens. Little clarity is achieved, I believe, by suggesting otherwise.

#### 6.5.6 Stretching Citizenship Too Far?

The second objection to my argument that domesticated animals should be viewed as our fellow citizens comes from the opposite direction. Some may object to my attempt to distinguish two different ways in which citizenship can be enacted, or to my claim that an individual can be a citizen of a state and yet not hold any political obligations or responsibilities.

Hinchcliffe, for example, argues that, at its core, citizenship is concerned with political participation. As a result, the capacity to be a democratic political agent should be seen as a necessary requirement to be a citizen. Attempts to extend citizenship beyond democratic political agents, according to Hinchcliffe, incorrectly apply the concept and fail to see that citizenship is a sub-category of political membership.

According to Hinchcliffe, it is misleading to claim that there are different functions of citizenship that we can pull apart or separate. He makes this point with respect to the claim that one function of citizenship is nationality, or the right to reside in a specific state. The fact that slaves could be “citizens,” in this sense, while failing to be citizens in the sense of being individuals whose rights and interests shape and inform the public good, suggests that there is a problem with the idea that such a “thin” conception of citizenship is really a conception of citizenship at all. As he writes, “We should question whether any category which might include the condition of slavery could be conceived as a sense of citizenship without thereby doing violence to both ideas, since they are often understood as antitheses.”<sup>266</sup>

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<sup>266</sup> Hinchcliffe (2015), p.308.

On Hinchcliffe's view, it is a mistake to think there are separate functions of citizenship or a "spectrum of 'citizenships.'" Rather, the functions of citizenship we have thus far identified, Hinchcliffe thinks, more accurately represent a spectrum of different forms of political memberships. However, not all forms of political membership qualify as instances of citizenship. Instead, Hinchcliffe accepts what he calls the "Common View." On this view, "citizenship, in its fullest expression, is essentially about political participation and so a capacity for democratic political agency is a necessary condition for the possession of citizenship."<sup>267</sup> Since Hinchcliffe thinks animals lack the capacity to participate in democratic politics, it follows that animals cannot be citizens. Citizenship, at its core, is concerned with political participation. Other functions of citizenship, on this view, do not really get at the concept at all but instead concern different forms of political membership.

The argument put forward by Hinchcliffe challenges my attempt to distinguish between two types of citizenship. According to Hinchcliffe, at its core citizenship must involve political agency and participation: without this the term is stretched too far and loses its essential meaning and purpose. Citizens are political agents, capable of both participating in the polis and being held responsible for various political obligations. On Hinchcliffe's view, what I have called Citizenship-as-Membership is not citizenship at all but instead a form of political membership distinct from citizenship. Perhaps this form of membership falls on a continuum with citizenship but it is not until a member of a society is capable of political agency that the concept of citizenship applies.

In some respects, it is not clear if this objection is really all that substantive but instead is much closer to a verbal dispute about the proper use of the concept citizen. If, for example, we grant that other animals are members of our society, that they have a right to reside in these communities, that their rights and interests ought to inform and shape the public good (with all

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<sup>267</sup> Hinchcliffe (2015), p.306.

the implications to be discussed in the next chapter), and that they have a claim on the distribution of the state's resources to promote their welfare, then it appears we only have a squabble over the proper or legitimate use of the term "citizen." As we saw in the discussion of political agency and participation, what really matters are the substantive demands of justice – how animals should be treated, what they are owed by the state, how their interests can be represented politically, and so on – not the specific terms we think apply or does not apply in the case of animals.

If the dispute in this case is merely semantic, then the position I have advocated can be easily translated into the language of political membership. However, like the language of rights, in the realm of real-world politics, there are good reasons to retain the language of "citizenship" when it comes to political advocacy. Citizenship is not just a concept employed by political theorists. As we have already noted, it is a legal and political status recognized by the state. Thus, in the realm of politics, the position I have put forward should be understood as the claim that domesticated animals deserve the legal and political status of citizenship.

It is quite possible, however, that for many the dispute goes beyond the correct use of a concept and instead involves substantive normative commitments about the nature of political membership and the implications that genuine citizenship has for the political sphere. Some of what Hinchcliffe writes suggests this interpretation. He writes, for example, that the inability of a group's members to be political agents and participants "provides at least a *prima facie* reason not to grant them political rights, as in the case of very young children."<sup>268</sup> Hinchcliffe suggests that, in some cases, this might be outweighed: there might be important, symbolic reasons for extending these rights to groups lacking the capacity to be political agents, perhaps to affirm their equal standing within the community.

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<sup>268</sup> Hinchcliffe (2015), p.310.



Unfortunately, Hinchcliffe does not specify what political rights are supposed to hinge on being a citizen (as opposed to a political member of a state). Perhaps Hinchcliffe has in mind political rights like the right to vote or rights to freedom of speech. He might think that these require certain capacities that he believes are necessary to qualify as a citizen. If animals cannot *exercise* these rights (by voting, by engaging in speech), then we might wonder what purpose would be served by extending these rights to them.

Nevertheless, this approach focuses too narrowly on how certain political rights are currently specified in the human case and fails to consider some of the underlying reasons (and interests) that explain why protecting these rights is so important. The right to vote, for example, is meant to secure for all citizens their voice in government. This is meant not just to safeguard their right to participate but also is one means of ensuring that the rights and interests of each citizen help shape the decisions of the government. But as we have already seen in our discussion of full political standing, there are good reasons that support the view that other animals deserve some form of institutionalized, political representation in government. Limiting this only to citizens who can be responsible political agents ignores the rights and interests of other members of society without any justification. Hinchcliffe, and others, may think this view can be supported but the burden of justifying it falls on them.

Thus, the objection that the concept of citizenship only applies to members of a society who are political agents falters in a couple of ways. It ignores the fact that citizenship is a real-world legal and political status. With this, attempts to argue that only citizens who are responsible political agents deserve political rights or greater political consideration lack a compelling justification. Nearly all of us reject such a position in the case of human beings who are not capable of being responsible political agents and we ought to reject it in the case of animals.

## 6.6 Conclusion

Domesticated animals ought to be recognized as citizens of the states in which they reside. They are members of these societies and this membership deserves the real-world, political recognition of citizenship. Crucially, this recognition does not require that these individuals meet any sort of test for political agency or responsibility. This becomes clear when we distinguish two different ways citizenship is enacted: Citizenship-as-Membership and Citizenship-as-Responsible-Political-Agency. We ought to recognize domesticated animals as our fellow citizens – with a right to residency, a claim on the distribution of resources, and a right to shape the public good – while acknowledging that none appear capable of being citizens who are morally or politically responsible for their behavior.

Two important sets of questions remain. First, there is the issue of what practical implications ought to follow from recognizing the citizenship of domesticated animals. What obligations do we have to our fellow animal citizens? What sorts of demands do they have on the distribution of goods and resources? And how should their citizenship alter how they exist in and relate to our society and political institutions? Second, and related to this, there is the issue of how the citizenship of domesticated animals relates to that of human citizens. Are animal citizens our co-equals? And how should we understand their claim on the distribution of resources in comparison to those of human citizens? To these questions I now turn.

## 7 Citizenship and Equality

Two important issues concerning the citizenship of domesticated animals remain that were not addressed in the previous chapter. The first issue concerns what practical implications ought to follow from recognizing domesticated animals as our fellow citizens. The second issue concerns the relationship between citizenship and equality.

### 7.1 Implications of Citizenship

Let us begin with the first. A lot can be said about the implications of recognizing domesticated animals as our fellow citizens in a variety of different areas, not all of which I can address here. However, it is important to point out that adopting the view that domesticated animals should be seen as our fellow citizens offers a framework for approaching our collective obligations to these animals and their place in the political sphere. It does not provide definite and uncontroversial answers as to the precise nature of these obligations and relations. Just as in the human case, disputes about what is owed to our fellow citizens are to be expected. Here I wish to consider several important areas where adopting a citizenship framework has important implications. The basic challenge, in each area, is for the law and public policy to affirm the citizenship of domesticated animals, while at the same time recognizing and incorporating their unique interests and abilities.

### 7.1.1 Protection

I have already argued that all conscious animals are owed legal rights, legal standing, and some form of institutionalized political representation. Protecting and upholding the basic moral rights of all nonhuman animals requires that we recognize them as having these forms of political standing. Nevertheless, the citizenship of domesticated animals does have some implications beyond these basic protections.

In the legal and political context, rights are only meaningful if they are upheld and enforced. One central question, when we recognize domesticated animals as our fellow citizens, concerns the institutional mechanisms needed to adequately protect and uphold these individuals' rights. For example, should the police enforce and protect the legal rights of nonhuman animals or should separate organizations or perhaps separate units within a police force be dedicated to protecting domesticated animal citizens?

In some jurisdictions crimes committed against other animals (most often those that fall under animal cruelty laws) are not handled by the police but instead by private organizations or charities that enforce the law.<sup>269</sup> Numerous problems confront this institutional approach.<sup>270</sup> These organizations are often underfunded and they frequently lack the authority to properly investigate crimes and to bring those responsible to account. Sometimes they are partially responsible for their own fundraising, which can lead to significant conflicts of interest (imagine the conflict of interest if the police made up a large part of their budget by fundraising from private citizens!). Privately run organizations are also less accountable because citizens have less access to information about investigations done by a private charity than they do when the police do investigations. Finally, granting authority to a privately-run body and not the police

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<sup>269</sup> In Canada, for example, potential crimes committed against animals are generally handled by the local chapter of the Society for the Prevention of Cruelty to Animals.

<sup>270</sup> I would like to thank Camille Labchuck for pointing out to me many of the institutional problems with private enforcement of laws relating to animals.

sends the message that crimes against other animals are fundamentally different than those against humans and of sufficiently lesser importance that the police cannot be bothered.

Crimes committed against animals should be a matter dealt with by the police. It will probably take time and different experiments to learn what institutional arrangements for policing will best protect the rights of nonhuman citizens. Nevertheless, there are good reasons to think the same police who currently serve humans should also serve nonhuman citizens. One reason for this is rather simple: many crimes are committed against both humans and animals at the same time, or nearly the same time, by the same perpetrator. This is often true in cases of domestic abuse.<sup>271</sup> It might make sense, in some cases, to have certain groups of police officers and detectives dedicated to animal matters, but the protection of all citizens (human and animal) should still be the responsibility of all police officers.

Along with this, another important change concerns criminal sanctions for the violations of crimes against animals. These sanctions must better reflect the severity of the crimes being committed. At present, this is not the case. For many domesticated animals, particularly those who are farmed, many forms of harm, abuse, and killing are perfectly legal. This needs to change and criminal sanctions should be attached to those who seriously harm and kill domesticated animals. Even in cases where deliberately harming domesticated animals is made illegal, as is the case for some companion animals, the punishments for these crimes are often rather meager.<sup>272</sup> In some states in the U.S. killing a cat or dog can incur no more than 6 months to a year in prison.

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<sup>271</sup> Ascione (2007).

<sup>272</sup> I consider the issue of how the severity of punishment for crimes committed against animals should relate to that of comparable crimes against humans later on in the essay.

In addition to protection provided by the police, domesticated animals, as our fellow citizens, also deserve protection from natural disasters, fires, and other catastrophes and threats.<sup>273</sup> Like their fellow citizens, they deserve the protection and assistance afforded by various public servants, including: firefighters, paramedics, first responders, and so on. Interestingly, this is already something that is beginning to be recognized by various cities and municipalities and represents another way humans are already starting to see their companion animals as members of our larger societies with a claim on our collective resources.

In the United States, Hurricane Katrina brought this issue to public consciousness. Many residents of New Orleans left their companion animals when they were evacuated from their homes, under the false impression that they would only be gone for two or three days. Many of these animals drowned or died following the hurricane. Others were separated from their companion animals in shelters and were never reunited. Perhaps most concerning to emergency officials, many residents refused to be evacuated because doing so meant leaving their companion animals (since emergency responders would not rescue these animals). A post-Katrina survey found that 44% of residents who chose to stay at home rather than be evacuated did so because they were not allowed to evacuate with their animals.<sup>274</sup> In the aftermath of Katrina, the United States Congress passed the Pets Evacuation and Transportation Standards Act which requires states seeking the assistance of the Federal Emergency Management Agency (FEMA) to include pets and service animals in their plans for evacuating residents. One of the bill's co-sponsors, Representative Tom Lantos, described being motivated to pass the bill after seeing a photo of a child being separated from his dog and realizing he would not have been able to leave his own dog to face a near certain death. These are important developments. All domesticated animals should also be the beneficiaries of emergency services. This is something they are owed as our fellow citizens.

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<sup>273</sup> Donaldson and Kymlicka (2011), p.133.

<sup>274</sup> McCulley (2007).

### 7.1.2 Domesticated Animals and Property

One issue I have not yet addressed is whether it can be permissible to own and sell domesticated animals. It may appear obvious that if domesticated animals are our fellow citizens, then it cannot be just for them to be considered property in any form. I think this view is right and that property ownership is inconsistent with citizenship. However, some have argued that an appropriately regulated and limited property regime can be just toward animals. I have already rejected and argued against certain aspects of the current property regime towards animals – other animals deserve legal rights and legal standing and their interests matter for the public good. Thus, the question before us is whether certain aspects of a property regime – namely, buying and selling animals – can be acceptable. Is this consistent with their rights and with their citizenship in our political communities?

Alasdair Cochrane defends the view that the ownership (including buying and selling) of animals is consistent with treating other animals justly.<sup>275</sup> Cochrane points out that property rights do not always confer on the owner absolute rights over his or her property.<sup>276</sup> Instead, ownership is best thought of in terms of a set of incidents or relations which vary in different contexts.<sup>277</sup> Ownership does not preclude recognizing the moral status of sentient animals, nor does it preclude respecting their rights. Rights can place restrictions on what owners can do with their property.

Cochrane narrows in on three incidents of property – the right to possess, the right to use, and the right to transfer – and argues that none of these conflict with the interest of domesticated animals. The possession of domesticated animals is consistent with their interests, he argues,

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<sup>275</sup> Cochrane (2009).

<sup>276</sup> Cochrane (2009), p.426.

<sup>277</sup> Cochrane (2009), p.428.

because they are not autonomous beings and their interest in freedom differs from that of adult humans. While parents do not own their children, they do possess them. Similarly, Cochrane thinks there is nothing about possessing domesticated animals that is contrary to their interests. On the right to use, Cochrane argues that animals do not have the same interest as humans in not being used. If we use animals in ways that are consistent with their living flourishing lives, using them can be permissible. Finally, Cochrane argues that buying and selling animals is consistent with their interests. Being transferred from one owner to another can often be in the interest of domesticated animals (although Cochrane does recognize that sometimes it can cause them to suffer).<sup>278</sup> As a result, he sees no problem with the buying and selling of domesticated animals, although he suggests ways we can regulate the system of ownership (through the licensing of pet owners, for example) that would help to ensure that transfers will not cause animals to suffer.

Given these arguments, Cochrane concludes that animal ownership is consistent with the just treatment of animals. A sufficiently restricted regime of property ownership, one that recognizes both the moral status and the moral rights of nonhuman animals, is consistent with treating these animals justly. We do not need to abolish all forms of animal property to achieve the demands of justice. The possession, use, and transfer (through buying and selling) of domesticated animals are aspects of a property regime that can legitimately remain in a just society.

Several important objections can be raised against Cochrane's argument. First, given the arguments he makes, it is odd that Cochrane does not consider whether it would be acceptable to sell and purchase young human beings, or human beings who in his view are not autonomous. He defends the selling of animals because they lack these abilities but many humans do as well. And yet no one thinks it would be morally acceptable to allow the selling

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<sup>278</sup> Cochrane (2009), p.440.



and purchasing of human children. Why is this? One reason concerns the welfare of children. A market for the sale and purchase of children, even a heavily regulated market, would create a monetary incentive to have and transfer children that strongly conflicts with their well-being. Allowing the sale and purchase of children would likely cause some children to suffer.

However, even if we could guarantee that the selling and buying of children would not hurt the welfare of children, this would not be morally acceptable. Selling and purchasing children should be banned not simply because of concerns over child welfare but also because of what it says about the value of these individuals and their membership in our communities. Allowing these individuals to be bought and sold suggests their lives have a limited worth, that they are not as valuable as other humans, and that their membership in our communities is a subordinate form of membership.

Similar considerations apply to domesticated animals. Commercial monetary incentives to breed and transfer these animals, as with children, conflict with what is most likely to promote their well-being.<sup>279</sup> Moreover, affirming the value of domesticated animals – who for thousands of years have been considered property in all relevant senses and denied the most basic forms of moral consideration – is even more important. The law serves many different purposes. One of them is to articulate some of a community's most fundamental values. Even a heavily regulated property regime suggests that the interests of animals deserve less consideration and that they are not members of our community in the way that humans are.

A related problem concerns the ahistorical approach to ownership that Cochrane takes. Cochrane has us consider what the possible features of various property regimes are and then

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<sup>279</sup> This does not mean that no form of reimbursement or monetary exchange is permissible. Just as adoption agencies can charge parents money to help cover costs, so too, we can imagine a similar arrangement for the adoption of young domesticated animals. What matters is that this process is closely regulated, to ensure that the commercial sale of animals, for profit, is prohibited.

examine whether they might be consistent with just relations with other animals. What is missing from this analysis is recognition of the historical features of ownership and what these features convey about the value and status of the individuals who are owned. The ownership of slaves and women were deplorable not just because it adversely affected their welfare and not just because it denied their autonomy but also because allowing human beings to be bought and sold signalled that their lives mattered less and that they were less valuable. The history of human slavery and the fact that not that long ago human beings were often considered someone else's property fundamentally shapes our perception of what it is for an individual to be property and how this relates to their value and their membership in our society. Being someone else's property signals that you are not as valuable as others and that you are not a full or genuine member of the society in which you live.

Given this history, it is hard to see how allowing the sale and purchase of nonhuman animals would be likely to *advance* their interests and to promote more just relations with animals. Even if we could institute a carefully regulated system of transfers – a market where domesticated animals could be bought and sold – that would prevent their rights from being violated and that could ensure they would not suffer, allowing these individuals to be bought and sold signals that they are different and less valuable than all human beings. It signals that their membership is not as central to our political communities as other individuals who we do not allow to be bought and sold. We ought to reject the view, then, that any property regime, no matter how regulated, is consistent with just relations with nonhuman animals. Purchasing and selling domesticated animals, even if consistent with their well-being, is not consistent with their membership in our communities. Given the history of ownership of both humans and animals, it would send the message that they are less valuable and important than human beings.

### 7.1.3 Animal Guardianship

Humans who have domesticated animals under their care should be understood as their guardians. There are several important issues to sort out when it comes to the guardianship of domesticated animals. The issues that relate to guardianship are far from inconsequential. If animal agriculture is ever phased out, the vast majority of domesticated animals will be companion animals. And few issues are more likely to affect these animals' well-being than how the state approaches their guardianship.

Often we hear that companion animals have it very good and live cushy or plush lives. However, this claim is frequently meant to compare the lives of companion animals with wild animals, not with other humans who are our fellow citizens. A more detailed assessment of the lives and well-being of companion animals shows a much more complicated and troubling picture. Unfortunately, companion animals still experience a variety of harms and bad experiences. Many of these stem from how these animals are bred, which I will address later when I consider the issue of domesticated animals' sex and reproduction. However, companion animals are also harmed once they are under the care of human guardians.

Some of the harms experienced by companion animals are directly inflicted upon them by human beings. Companion animals are frequently physically abused by their human guardians. Along with this, they are often killed when the animals have become old, when they are difficult to take care of, or when medical expenses are more than the guardians wish to pay. Sometimes these killings are referred to as "euthanasia," but many are not genuine cases of euthanasia, as death is not in the interest of the animal being killed, who still has a life worth living. Some of these animals have their bodies modified in harmful ways to please the aesthetic preferences of their owners. Ears are "cropped," tails are "docked," and these and other body mutilations can cause animals to suffer and disadvantage them in the future. Dogs communicate a variety

of information with their tails to other dogs and humans and cutting off their tails hinders the ability of this information to be known.<sup>280</sup>

Companion animals also face a variety of harms of deprivation. Companion animals are often neglected and experience significant boredom and separation anxiety or separation distress.<sup>281</sup> In some circumstances, they are not provided with the goods and conditions important to their well-being: things like sufficient space, play opportunities, and mental stimulation and challenges. Companion animals are often not provided with appropriate medical care. Finally, in some cases they are not properly socialized in ways that will allow them to flourish in our human-animal societies.

The variety of harms commonly experienced by companion animals illustrates the need to regulate animal guardianship, not just for companion animals but for other domesticated animals as well. States have a responsibility to find ways to mitigate and prevent these harms, just as they have a responsibility to protect children from a variety of harms that they can experience because of their parents and caretakers. In the case of children, governments have set up a variety of institutional mechanisms to mitigate the harms children experience growing up. The challenge in this area is to strike the right balance between the need to safeguard the well-being of children with the interest in privacy possessed by parents and families. Among the institutional protections that have been created, we find agencies dedicated to Child Protection and Welfare, Government Ministries (at various levels of government) dedicated to children and child welfare, special ombudsmen for children and child welfare, laws requiring notification of abuse by certain professionals, the screening of parents for adoption, and mandatory education for all children.

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<sup>280</sup> Wansbrough (1996).

<sup>281</sup> See Bradshaw (2011), p.171.

Most states recognize that children are particularly vulnerable to harm and abuse and that various forms of institutional protection are needed to mitigate these harms. Domesticated animals are even more vulnerable to abuse and harm caused by their human guardians. An even stronger case can be made that the state must play an important role in protecting domesticated animals from harm caused by their guardians. One reason for this stems from a simple lack of knowledge about the lives and well-being of domesticated animals. Compared to our knowledge about child development and the well-being of children, our knowledge about the development and well-being of domesticated animals is much more incomplete. This is true both in terms of our collective knowledge and in terms of what the typical guardian knows about the well-being of the domesticated animal under their care. A good example of this is the separation anxiety and distress many dogs experience while their human guardians are at work or on vacation. It is only recently that humans have started to become aware of this, and yet it is a very significant fact in the lives of these animals, a negative experience many deal with daily.<sup>282</sup> Another area where there is a widespread lack of knowledge concerns how to best socialize domesticated animals to live with humans and other animals. This is one area where we have significantly improved information on the best ways to socialize animals. And yet, poor training and socializing techniques based on a false understanding of the minds of companion animals and their evolutionary history abound and are prevalent among dog guardians and dog trainers.<sup>283</sup>

There are a variety of different ways that states might try to protect domesticated animals and improve their care under guardians. As with children, figuring out which combination of

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<sup>282</sup> Bradshaw (2011), p.164-165.

<sup>283</sup> One example of this is the view that dogs, as descendants of wolves, are “pack animals” with a desire to dominate those (human and nonhuman) in their pack. As Bradshaw points out, this view is no longer plausible - it was based on misleading studies of wolves in captivity - and more recent studies of wolves dispute the idea that they live in competitive packs where each wolf attempts to seek a dominant position. See Bradshaw (2011), p.16-28.

regulations and government organizations will work best requires trial and error. However, certain policies appear likely to improve the lives of domesticated animals under their guardian. Like children, a government agency should be dedicated to investigating the abuse of domesticated animals and removing these animals from abusive guardians. With this, other policies could work to prevent abuse in the first place.

One such policy would be licensing, and a licensing class, prior to the adoption of domesticated animals. Licensing is already done for adoptive parents of humans. And already many potential guardians of companion animals are screened when they attempt to adopt a pet from a private shelter or rescue agency. Licensing could require that potential adoptive guardians are suitable guardians for the adopted animal and that their home, lifestyle, and attitudes are a good fit with the animal's personality and needs. Classes involved in the licensing could highlight the best practices for socializing domesticated animals, as well as issues related to the well-being of companion animals (like separation anxiety) that guardians might not be aware of.

Another important issue concerns regulations on transferring custody of domesticated animals. This is already an issue some jurisdictions are beginning to grapple with in the context of family law when there are disputes about which guardian should have custody or guardianship when a couple separates.<sup>284</sup> How best to regulate transfers of custody is a tricky issue for a variety of reasons. First, in many cases hasty transfers in custody are likely to be difficult for companion animals and to cause them emotional distress and suffering. However, transfers in custody will not always lead to this result. Different life changes, changes in living situations, and other new circumstances might mean that animals will live more flourishing lives with a different family or primary guardian. This is an area where we will likely need more information and research.

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<sup>284</sup> This is yet another area where laws relating to other animals lag far behind public opinion. See Rook (2014) for an overview of pet custody disputes in the context of family law, where animals are treated as property.

A further concern, however, is that if the regulation of transfers is too cumbersome and too difficult a process this increases the likelihood that individuals will skirt the regulations and instead transfer custody of animals without any oversight. Finally, social norms surrounding the transfer of companion animals currently differ markedly from those concerning children. In the case of human children, strong moral condemnation is generally expressed towards anyone who abandons children after undertaking parenthood. This is not the case for the guardians of companion animals. While many do view these animals as members of their family, not everyone does and even for some who do this is not seen as incompatible with giving up these animals (either by abandoning them to a shelter or by transferring custody to a new family) when taking care of these animals becomes inconvenient or difficult.

A good case can be made, given these confluence of factors, that transfers in custody should be regulated. Below are some guiding principles for how transfers in custody might be regulated:

1. A presumption that transfers in custody will, in most cases, cause animals some emotional distress.
2. Custody transfers must be consistent with the flourishing of the animal. That is, domesticated animals should not be transferred to a guardian when there is reason to believe this will prevent them from living a good or flourishing life.
3. In addition to other possible sanctions, those who abandon a domesticated animal in their care (leaving it on the side of the road or dumping it off at a shelter) should, in addition to other sanctions, lose the ability to adopt an animal in the future.
4. Finally, some government body or organization should be charged with reviewing transfers of domesticated animals.

One final area of concern for the guardianship of domesticated animals concerns how humans are socialized. Recognizing domesticated animals as our fellow citizens has implications not just

for how we should regulate guardianship and protect these animals from the harms their guardians might cause them but also for how we raise, socialize, and educate human citizens.<sup>285</sup> Once we recognize that domesticated animals are our fellow citizens, we ought to work to combat their historically marginalized status by affirming their value and combating prejudice towards them. Some of this socialization and education should come in public schools, where students should learn about past injustices committed against animals. Additionally, there should also be some basic learning about the lives and needs of domesticated animals that all human citizens are taught. Part of living in a mixed, human-animal society means that humans have a moral obligation to improve our understanding of the domesticated animals we live with and to learn how to better understand their desires and needs, as well as how we can improve our interactions and understanding of their behavior.

#### 7.1.4 Animal Labor

Another important set of questions concern how we ought to approach domesticated animals engaging in various types of work and labor, as well as the sale of animal products. If animals are members of our society and fellow citizens, should there be an expectation that they should do some work? After all, there is often the implicit expectation on the part of human citizens that they will engage in paid labour to cover most of their living expenses. Does this extend to animal citizens as well?

I believe domesticated animals should not be expected to work, but they should not be denied opportunities to work either, especially when those opportunities can contribute to their leading a flourishing life. This is one area where clarifying the nature of domesticated animal citizenship is important and where the account of citizenship I have presented fares better than

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<sup>285</sup> Donaldson and Kymlicka (2011), p.124.



the account put forward by Donaldson and Kymlicka. While domesticated animals are citizens, they are not the sort of citizen who is capable of being a responsible political agent. As a result, their membership in our society should come with no expectation that they contribute economically to its functioning.

The issue of animal labour is often framed in terms of whether, and under what conditions, we can “use” other animals. We recognize that it can be morally acceptable to use other humans in various commercial interactions (such as taking a taxi or getting a haircut). This way of framing the issue strikes me as odd, especially when we recognize other animals as members of our society. For while in some academic settings we might speak of various commercial interactions as examples of “using” other humans, this is not the way these interactions are normally framed. Instead, we tend to think of them as a type of labor that is mutually beneficial to both parties and that is based on the free choices of both parties. Someone who provides a ride for me in a taxi or who cuts my hair is providing me with a service. Talk of when it is acceptable to “use” animals suggests the view that animals are *ours to use*, and as such, this talk should be largely abandoned. This language is not helpful. We do not think of the work that individuals with severe cognitive disabilities engage in under the framework of when it is acceptable to “use” them. Rather, we recognize that in some cases work can be part of a meaningful and flourishing life for these individuals and that these individuals should not be denied the opportunity to contribute to the society in which they live in ways that are also beneficial to them.

I think we should approach the work of domesticated animals in a similar way. The general principle governing when work can be acceptable for domesticated animals requires that the work must be consistent with, and contribute to, a flourishing life for the animal in question. The context here matters. The question we should ask ourselves when considering whether animals engaging in labor in certain forms are morally acceptable is not whether doing so would

still allow them to have a life better than they would “in the wild.”<sup>286</sup> This way of framing the debate fails to see that other animals are members of our societies and only seeks to protect other animals from the most egregious forms of exploitation. Further, we explicitly reject this line of reasoning in the case of human beings: the fact that some immigrants might be better off living in developed countries does not justify various ways of exploiting these individuals.<sup>287</sup> Instead, the question we should ask when it comes to animal labor is whether it is consistent with a flourishing life as a member of our shared society.

This question will not always be easy to answer and there are a variety of difficult cases and challenges. On the one hand, we should not deny that animals can and should be able to contribute to our societies through work that can be meaningful for them. However, we must ensure that this work does not slide into a form of exploitation. One challenge is what level of risk should be acceptable for the work animals engage in. Some work that animals engage in does not pose much of a threat to the health or lives of animals. But some forms of work do. Dogs that work in policing or in the military face a much greater risk of death and harm than they would otherwise face. How should we evaluate whether dogs should be allowed to engage in these forms of work, and more generally, what level of risk is acceptable? The mere presence of some risk should not be enough to rule out the work in question. A flourishing life for domesticated animals involves risk and they should not be denied the opportunity to engage in activities they might greatly enjoy because there is some risk involved. The question, then, is what *level* of risk is acceptable.

This is a difficult debate and it seems to me to be one where there can be reasonable disagreement as to just how much risk is acceptable. However, some activities we can safely

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<sup>286</sup> DeGrazia (1996) and Rolston (1988), p.79, put forward this limiting condition for how we should treat and “use” domesticated animals. Philip Kitcher (2015), p.300-301, suggests a similar comparison in the context of animal experimentation, although he does not explicitly endorse it.

<sup>287</sup> Donaldson and Kymlicka (2011), p.93.

rule out. Unlike humans, who can choose to undertake work knowing there is a decent chance of death or serious harms, domesticated animals lack this capacity and cannot make choices involving serious risk. As a result, I think it is fair to rule out work that carries a decent chance of death or serious harm, such as work in war zones. Policing is a less clear case. It seems to me that some forms of policing are not likely to come with too great a risk, while others might and should be ruled out. Dogs that work sniffing out bombs or drugs do not appear to be at too great a risk of death or harm, but this is not often the case for those who engage in other forms of policing.

Another central concern is the type of training domesticated animals must go through to engage in various types of work and the effect this might have on their preferences for their lives. The worry here stems from the well-known problem of adaptive preferences.<sup>288</sup> Many of the work activities dogs engage in, for example, require extensive training that starts when they are very young. This training often shapes their preferences and very well could prevent dogs from having other desires and from developing other interests that can contribute to a flourishing life.

Donaldson and Kymlicka describe these problematic features of the way other dogs are often trained.

Most therapy and assistance animals are not trained to develop their own potential and interests, but are moulded to serve human ends...Animals with specific tractable temperaments are identified early, and pegged for future roles. Training, often very intensive over many months, involves significant restraint and confinement, and frequently severe correction and deprivation. Even so-called positive reinforcement is usually thinly disguised coercion. If the only way a dog gets treats, play time, or

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<sup>288</sup> See Cudd (2006), Nussbaum (2001), Sen (1995). Nussbaum highlights that the issue of adaptive preferences also applies to animals as well, Nussbaum (2006), p.343-344.

affection from others is by performing tasks to please them, this is blackmail not education. Many working animals are denied any real down time in which they can run free, or socialize with others, or simply explore and experience their world. Their work often puts them in stressful and even dangerous situations. They are often denied a stable environment and continuity in terms of their friendships and environment, and instead are shunted between trainers, workplaces, and human employers. Far from being nurtured to develop their potential, these animals are moulded into submission. Their agency is not enabled, but suppressed in order to turn them into effective tools for crowd control, human entertainment, hippotherapy, or assistance to people with disabilities.<sup>289</sup>

As Donaldson and Kymlicka note, many of the ways we currently train domesticated animals for work drastically shape their preferences, providing them with little room to develop other interests or other desires. This is a problem. Morally acceptable work for domesticated animals during both training and the work itself must present the animals with meaningful opt-outs, so that they can express other desires or a desire not to engage in the work for which they are being trained. With this, they should be given time and opportunity to develop other interests and other desires. Similar concerns should guide our approach to the work of humans with severe cognitive disabilities.

The threat of exploitation of animals in work is always present and requires that the work be regulated and that certain safeguards are always in place to make sure the work contributes to the flourishing of the lives of other animals and that it is not a form of exploitation.<sup>290</sup> One way this could be achieved would be for independent animal advocates to be incorporated into some of the places where animals work, to monitor their training and the type of work they

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<sup>289</sup> Donaldson and Kymlicka (2011), p.141.

<sup>290</sup> See Cochrane (2016).

engage in. Additionally, the training of animals would also need to be regulated in line with the requirements noted above.

Finally, some form of compensation is also appropriate for domesticated animals who engage in productive work.<sup>291</sup> This is important to recognize and affirm the contribution they are making and to provide a counterweight against certain impulses that push towards exploitation. Interestingly, some jurisdictions have started to consider compensating animal workers, at least in some ways. For example, the Nottinghamshire Police, in the U.K., have implemented a plan to provide a “pension” to retired dogs who worked on the police force.<sup>292</sup> On this plan, each dog who has retired from the force will get up to £500 paid in medical costs a year for the first three years after they leave the force (paid to their guardian). This plan represents more of an insurance program for the dogs, providing funds to help assist with their care once they are no longer working but it is a step in the right direction.

Some may object to the position that domesticated animals who engage in productive labor should be paid. If this work contributes to a flourishing life for the animal and if the animal enjoys the work, we might think that compensation to benefit that animal is not needed. Domesticated animals cannot understand that they are making an economic contribution, nor can they feel aggrieved or disrespected if they are not compensated. So perhaps compensation is not something that they are owed.

It is a mistake to hold that only those who can understand the labour they are engaged in or who can feel disrespected if they are not compensated are in fact owed compensation. It is entirely possible to exploit and take advantage of individuals who are unaware, and incapable of being aware, that they are being exploited. Compensating animal workers is important to publicly affirm the contribution they are making and to reward them, in part, for that

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<sup>291</sup> Cochrane (2016) also argues that animals who work are owed compensation.

<sup>292</sup> Carter (2013).

contribution. We recognize this in the human case: there are human workers who engage in productive labour and who have a much more limited understanding of what this means and who would not feel disrespected if they were not paid. We should pay these individuals for the work they engage in and the same holds for nonhuman workers.

One final issue concerns how we ought to approach the sale and use of animal products. The vast majority of the ways humans currently use animals for their body parts, flesh, fur, and by-products (eggs and milk) are incompatible with their basic moral rights. The practices involved in raising animals for these products significantly harm them in a variety of ways and violate their right to life.<sup>293</sup> These practices are far from consistent with a flourishing life for these animals. However, we can imagine ways in which certain animal products could be obtained that would not violate the rights of animals and that are consistent with their living flourishing lives. Two examples are the eggs produced by chickens and the fur produced by sheep. Female chickens inevitably produce eggs and sheep often need to be periodically sheared.

As with animal labor, the crucial question here is whether the sale of animal products is consistent with a flourishing life for the animal in question. And we can imagine cases where the eggs produced by chicken companions, or the fur produced by sheep living good lives, are produced in ways that do not detract from but actually contribute to their flourishing. However, the fact that we can imagine ways in which eggs or fur might be obtained in ways that are just and fair does not, by itself, tell us that the sale of these products should be legal. As Donaldson and Kymlicka note, one reason this does not immediately follow stems from a concern about the forces commercialization might put on how animals like chickens and sheep are treated. “When the profit motive is introduced, there is strong pressure towards exploitation.”<sup>294</sup> Unless

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<sup>293</sup> For a summary of some of these harms see Hooley and Nobis (2016), p.94-96.

<sup>294</sup> Donaldson and Kymlicka (2011), p. 137.

sufficient safeguards are put in place, we might worry that incentives to make a profit will lead to conditions that are inconsistent with the full flourishing of the animals involved.

This is an issue where there is room for reasonable disagreement and, I suspect, where different policies might better fit different jurisdictions and states with different histories regarding animals. It may be reasonable to ban the purchase and sale of animal products that can be produced in ways consistent with animal flourishing (like chicken eggs or wool) for a time in many jurisdictions, until respect for animals and their basic rights is more widespread and universal. Another option is to severely circumscribe the size or nature of entities that engage in the sale of these products. The sale could be limited to non-profits or to very small companies. This approach would need to be coupled with regulations that represent the animals involved and ensure that the practices are consistent with a flourishing life.

It appears much more likely, however, that technological innovations will make certain animal products (like eggs, wool, or milk) obsolete. At present, of course, there are no commercial enterprises where these products are produced in ways consistent with the flourishing of these animals. But beyond this, these industries are also rather inefficient: it takes considerable resources to feed chickens or cows for them to produce milk and these inefficiencies are a large part of why these industries are large contributors to climate change. As a result, many companies have sprung up with the goal of producing plant-based versions of these products: replacements of eggs that are made from plants or cow's milk that is brewed with yeast. If humans ever come to take the rights and lives of other animals seriously, I suspect it is much more likely that these innovations will replace the use of animals for things like eggs and the milk of cows.<sup>295</sup> Indeed, it is most likely that technological developments that replace animal-

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<sup>295</sup> See Shapiro (2018). I suspect something similar will happen when it comes to the consumption of animal protein. I do not think it is worth considering the issue of consuming animal bodies who have died natural deaths, or accidental deaths (i.e. killed in a car accident). While some humans might wish to consume the bodies of these animals, I suspect that the vast majority in the future will prefer plant-based and cultured meats.

based products will come first and will be followed by a more widespread change in views on the moral status of animals.

### 7.1.5 Healthcare

In nearly every industrialized country, healthcare is viewed as a right of the state's citizens.<sup>296</sup> Different states attempt to ensure their citizens have access to healthcare in different ways. And there are different ways a just society can ensure and fulfill these rights. However, just as it is the responsibility of the state to ensure that all its human citizens have adequate and affordable healthcare, so too the state is responsible that all its animal citizens also have healthcare. One possibility would be a requirement that all guardians of domesticated animals purchase health insurance for the animals in their care on a regulated private market. Another way states could fulfill this responsibility would be state sponsored medical insurance for its animal citizens. In addition to health insurance, however, much greater funding is needed from states into the health problems that afflict domesticated animals.

Providing healthcare to domesticated animals is not without its difficulties. Animals cannot give informed consent to medical procedures and treatments. And their inability to understand a procedure or treatment (such as an invasive surgery or a medication with certain painful side effects) complicates their treatment. In some cases, painful and extended treatment will not be in the interest of domesticated animals suffering from certain chronic and terminal illnesses. In some cases, it will be in the interest of animals to maintain their quality of life as long as possible and then to be euthanized when, because of pain and suffering, their life is no longer worth living.

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<sup>296</sup> Donaldson and Kymlicka (2011), p.142.



At present, however, many domesticated animals are killed when they still have lives that are worth living often because their guardians do not want to (or cannot afford to) pay for their medical expenses. Adequately addressing this problem will require laws that prevent veterinarians from killing their patients when it is not in the patient's interest to die, oversight for the use of euthanasia, and efforts to make healthcare treatments affordable and accessible to all. With this, a further issue that should be addressed concerns oversight of the medical decisions guardians make for the companion animals under their care. Here, we might worry that some guardians who care deeply for their companion animals and are not ready for them to die might pursue aggressive and invasive treatment even when it is no longer in the interests of their companion.

#### **7.1.6 Public Space and Mobility**

Another important set of questions, when we recognize domesticated animals as our fellow citizens, concern what sort of access they should have to public spaces, when this can be legitimately restricted, and what limitations on their mobility are justified. This is one area of current controversy in many cities, states, and countries, as guardians of domesticated animals (particularly dogs) have begun to push for greater access to parks, public transit, and other public places (like restaurants and shopping areas). To answer these questions requires both an understanding of the different types of spaces we are considering, as well as the interests domesticated animals have in accessing these spaces and in mobility in general.

The spaces we are considering fall on a spectrum ranging from public to semi-public to private spaces. Among the fully public spaces we find public parks, public transit, public buildings, roads and sidewalks, and so on, all of which are owned by the state and open to all. Other spaces are generally open and available to all a state's residents but are privately owned: these include

restaurants, retail stores, resorts, etc. Finally, there are privately owned places, such as apartments and houses, which are only accessible at the discretion of their owner.

It might appear that if domesticated animals are recognized as our fellow citizens, then they ought to have the same sort of right of access to these spaces that human citizens do. If open access to these spaces is a right of citizenship, then it would seem domesticated animals also should possess this right. This argument moves too fast. Domesticated animals *would* possess the same right of access to these spaces if they shared the same *interest* in accessing these spaces. If domesticated animals had the same interest in accessing these different spaces, denying them access would represent an unjust form of discrimination. But the interests of domesticated animals on this issue are not the same as the interest of humans.

Let us begin where I believe domesticated animals have the strongest case against restrictions on access: publicly owned spaces. Domesticated animals, I have argued, are members of our society and ought to be recognized as our fellow citizens. Given this, it is hard to see how a general ban on access to public spaces could be justified. Once we recognize animals as our fellow citizens, we ought to recognize that they have a right to access these spaces just as other citizens do. General bans preventing domesticated animals from accessing parks, public transit, or public buildings thus should be removed. Further, recognizing domesticated animals as citizens requires not simply removing these bans, but how we conceive of and construct public spaces in the first place. Public spaces should be rethought and constructed to accommodate our fellow animal citizens.

Beyond publicly owned spaces, however, the case for restrictions gets more complicated. In the human case, we recognize that some restrictions can be legitimate. Children, for example, are often restricted from bars and other venues where alcohol is served. They are restricted from accessing adult cinemas and strip clubs. And, in some cases, some fine-dining restaurants have bans on young children (or social norms that very young children are not welcome).

Children are not the only individuals who are restricted from accessing these spaces. Parolees are often prevented from leaving their state and sex-offenders are often banned from being near schools and parks where children are present.<sup>297</sup>

These restrictions serve a variety of purposes. In the latter cases, they are meant to prevent parolees from fleeing their state and to prevent future harm by sex offenders. In the case of children, they are sometimes intended to promote the interests of children (in not consuming alcohol at a young age), to provide adults with spaces in which only other adults congregate, and (in the case of fine-dining bans on children) to avoid the nuisance young children can sometimes cause.

Of course, bans that apply to private establishments have often been unjust. Restaurants and other establishments that banned minorities, for example, represented an unjust form of discrimination, which was rightly outlawed. And this illustrates that bans meant to target oppressed minority groups should not be allowed. However, the harms humans experience when they are part of a minority group targeted by a ban are quite different from the harms animals may experience when banned from these establishments. Human victims of these bans are aware of this rejection and experience it as an affront to their equality and equal membership. Nothing similar appears to occur with other animals.

This suggests that a different set of factors are needed for evaluating restrictions on access for domesticated animals. Potential bans on domesticated animals must be evaluated in terms of how these bans might affect the well-being of these animals, as well as the symbolic message these bans might promote. At present, the wide-scale ban against domesticated animals entering private establishments lacks a compelling rationale and can adversely affect the well-being of domesticated animals. In the United States, for example, human citizens who wish to

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<sup>297</sup> Donaldson and Kymlicka (2011), p.128-129.

take their dog with them to a restaurant are generally without options. While some restaurants allow dogs on patios, most states have regulatory codes that prohibit nonhuman animals from being inside restaurants (with exceptions for service animals). Purported justifications for these bans often appeal to public health, as many fear allowing dogs and other domesticated animals would lead to animals defecating on the floor or employees failing to wash their hands. But these fears are exaggerated. As places like France illustrate, dogs and other domesticated animals can be allowed in restaurants without causing any public health problems. And the increased presence of service dogs shows that dogs need not represent any threats to public health.

Not only do these bans lack a compelling justification, but they also adversely affect the well-being of domesticated animals. The widespread ban on domesticated animals in restaurants, retail stores, and other semi-public places means that human residents who wish to take their animals with them when they run errands or get a bite to eat or travel have few to no options. This prevents these animals from having enjoyable and meaningful experiences with their humans and it can also contribute to their anxiety and boredom (as they are frequently left at home, often alone). A *general* ban on domesticated animals in restaurants, retail stores, and other semi-public places lacks justification. These bans lack a compelling rationale and they adversely affect the well-being of some domesticated animals. But beyond this, the symbolism inherent in the bans is problematic as well. Bans like the ones we are considering make other domesticated animals much more invisible in our lives and send the message that they are not legitimate or full members in our communities. They imply that these animals belong only in our private homes, and perhaps our parks, but not elsewhere. And they suggest that their interests matter less, and that humans deserve complete or near-complete control in where these animals can go.

As a result, there should be a strong presumption against bans on domesticated animals in public and semi-public spaces.<sup>298</sup> Nevertheless, I do think some restrictions on the access domesticated animals can have to certain places can be justified. After all, there are some non-speciesist reasons for limiting the access of domesticated animals to certain spaces: some humans are allergic to these animals and others can find their behavior annoying or distracting. One possibility, of course, is that restaurants could have sections available for domesticated animals, with others that are not (for those who are allergic). Some humans would still want spaces where only other humans are allowed (just as some adults prefer spaces that do not allow or that discourage young children). Some establishments like this could be permitted, I am inclined to think, so long as the default presumption is against bans on domesticated animals and there are plenty of options for domesticated animals and their guardians.

A separate but closely related issue concerns the mobility rights of domesticated animal citizens. Domesticated animals certainly have a strong interest in moving around and in mobility in general. As a result, there should be a strong presumption against severe constraints or confinement. This can be overridden when individuals pose a real threat to themselves or to others. However, at present, most human societies severely constrain the mobility of domesticated animals in ways that are not justified. This is the case not only for animals that are farmed but for companion animals as well. Many jurisdictions, for example, impose blanket laws mandating that all dogs in public be kept on leashes even when we know many dogs can safely navigate our towns and cities off-leash. These laws and others clearly lack a compelling justification.

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<sup>298</sup> This is consistent, of course, with bans on individual animals who have proven, over time, incapable of respecting basic norms, such as not harming other individuals. If a given domesticated animal has proven over time to be incapable of respecting these norms, then a ban on access to some places can be appropriate (at least until it can be demonstrated that the animal can now comply with the social norms in question).

In addition to a strong presumption against constraints and confinement, we ought to recognize that domesticated animals are entitled to “an adequate range of options needed for a flourishing life.”<sup>299</sup> This does not mean that no restrictions can be put on the mobility of domesticated animals. Rather, human guardians have an obligation to make sure that the animals under their care have access to various mobility opportunities. This is important both for guardians of domesticated animals but also for city planners and others who help shape and design our towns and cities. Recognizing domesticated animals have a strong interest in mobility, however, does not mean that all domesticated animals should be allowed to travel on their own. Clearly, many animals are not capable of this and doing so would put their lives in danger. Nevertheless, some domesticated animals, such as dogs, are capable of safely traversing town and city life on their own. They should not be restricted from doing so.

A more difficult case concerns the mobility of cats and what sort of restrictions on their mobility are justified. The challenge, here, is that many cats are skilled and effective killers.<sup>300</sup> Many domesticated cats that roam freely are likely to injure, harm, and kill birds and other animals. Further, it will often be difficult for the guardians of any particular cat to know if their free-roaming cat is likely to kill other animals.<sup>301</sup> At the same time, many cats are both capable of navigating urban settings on their own and seem to benefit in some ways from this freedom. However, there is much more risk to these cats in this freedom. Cats that live indoors live longer than cats that do not.

I believe restricting the mobility of cats can be justified and in many cases doing so is obligatory to prevent harms from being inflicted on other animals. The risk that many cats pose to other

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<sup>299</sup> Donaldson and Kymlicka (2011), p.129.

<sup>300</sup> Loss, Will, and Marra (2013) estimate that free-ranging domesticated cats in the United States kill 1.4 to 3.7 billion birds, and 6.9 to 20.7 mammals every year.

<sup>301</sup> Although the challenges here are not insurmountable. Guardians of cats could, for example, affix a small recording device on their cat’s collar and monitor the footage of what the cat does and if it is killing other creatures.

animals is too high to allow them to roam freely. However, guardians should take seriously the welfare interests that many cats have in moving more freely. Guardians of cats have moral obligations to provide opportunities for cats to move around outside of their homes. Further, taking the mobility interests of cats more seriously will require finding ways to create more places and spaces where cats can roam freely without posing a threat to others or significantly risking their own life. We could imagine parks and other spaces that could be dedicated to this purpose.

### 7.1.7 Sex and Reproduction

One interesting feature about imagining a world where other animals are recognized as members of our political spheres is that, for many domesticated animals, this would mean they are no longer bred and no longer exist in anywhere approaching the numbers in which they currently exist. Many of the animals humans have domesticated and raise for food and animal products are currently bred at unsustainable levels.<sup>302</sup> Without an economic incentive to raise these animals, many of these animals – including cows, chickens, pigs, turkeys, etc. – will exist in much smaller numbers.

An important question, however, remains: do domesticated animals have reproductive rights? Donaldson and Kymlicka describe this issue as one of the most difficult issues facing any theory of animal rights.<sup>303</sup> On this issue, Donaldson and Kymlicka suggest that their citizenship approach implies “a package that involves a mix of rights and responsibilities.”<sup>304</sup> As citizens, they argue domesticated animals have a right “not to have their sexual and reproductive

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<sup>302</sup> Farmed animals contribute to environmental degradation in many ways. Perhaps most concerning is the large role that industrial animal agriculture plays in climate change. For an overview of this issue, see Steinfeld (2006).

<sup>303</sup> Donaldson and Kymlicka (2011), p.144.

<sup>304</sup> Donaldson and Kymlicka (2001), p.146.

activities unnecessarily curtailed,” as well as “the right to have their offspring cared for and protected by the larger, mixed human-animal society.”<sup>305</sup> However, they suggest that domesticated animals also have a responsibility when it comes to exercising these rights, that they should be exercised so as not to impose unfair and unreasonable costs on others, and in ways that create unsustainable burdens on society as a whole.<sup>306</sup>

Donaldson and Kymlicka recognize that the costs of caring for the offspring of so many domesticated animals could become prohibitive. And here they suggest that some limits on reproduction could be justified, although they should be the least restrictive of the options available. Their preferred method, in so far as it is possible, is to impose birth control measures (such as birth control vaccines, temporary separation, etc.) on domesticated animals after they have had a chance to have a family. And this approach, they believe, should replace one where certain animals are designated breeders, while others never get a chance to have a family. We should enable choice where we can – allowing other animals more say in who they mate with and when they show interest.

There is much to like about Donaldson and Kymlicka’s proposals. They are right to recognize that humans have exerted near-complete control over the reproduction of many domesticated animals, to further our own ends (aesthetic and otherwise), often to the detriment of the health and well-being of these animals. These practices must end, as should the practice of using certain females as dedicated breeders who have no say in the matter. The recognition that other animals should not be treated as property that can be bought and sold means that commercial breeding of domesticated animals must end.

Nevertheless, as elsewhere, the approach to citizenship that Donaldson and Kymlicka take leads to some awkward proposals that can sometimes confuse more than they illuminate. Their

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<sup>305</sup> Donaldson and Kymlicka (2001), p.146.

<sup>306</sup> Donaldson and Kymlicka (2001), p.146.



suggestion that domesticated animals have a responsibility to exercise their rights to sex and reproduction so as not to impose unfair costs on others is implausible. Domesticated animals do not have this responsibility because they are incapable of being held responsible on this matter. While they are Citizens-as-Members, they are not the sort of citizen capable of being held responsible for their behavior. Humans can and must make decisions about the sexual and reproductive lives of domesticated animals.

However, the question of whether domesticated animals have *prima facie* rights to sexual reproduction, and to raise offspring, is not a question that flows simply from the fact of their citizenship. The central question is whether sexual reproduction, and raising offspring, are in the interest of domesticated animals. That is, are these activities part of a good or flourishing life for these creatures? These, we should note, are also separate questions. Animals might have a strong interest in sexual reproduction but no corresponding interest in raising offspring. Answering these questions is not easy and is not something that we can answer, in the abstract, for all domesticated animals.

For many domesticated animals, sex appears to be something they desire and that they have an interest in. They engage in sex when they can, often seek this out, appear to enjoy themselves, and in other ways express a desire to have sex. This, of course, is not the case for all domesticated animals: it is not the case for many females who actively avoid advances made by males. But it appears to be generally true.

Whether domesticated animals have an interest in having offspring is a more difficult question. Answers to this question are complicated in a couple of different ways: we simply lack sufficient knowledge for many domesticated animals on a variety of relevant questions, but there is also potential disagreement regarding how we conceptualize a good or flourishing life for domesticated animals.

On the first issue, we simply lack knowledge on a lot of relevant questions and issues. Are any domesticated animals capable of thinking about having offspring? Is this something for which they can have desires? Even if this is not possible, how likely is it that domesticated animals will enjoy having offspring and playing a role in raising their offspring? Do domesticated animals find having and raising offspring pleasurable or meaningful or satisfying?

We simply do not know the answer to many of these questions. On some of them, we have a variety of anecdotal evidence. Some female dogs, for example, clearly appear to take pleasure and gain satisfaction from their offspring. There are also evolutionary reasons to suspect that many animals, once they have had offspring, gain satisfaction from taking care of them. And there is similar anecdotal evidence for other animals. Female cows, for example, who are used for their milk, very often express significant distress when they are separated from their calves. The female cow Clarabelle was rescued from a dairy farm in Australia and like all dairy cows, Clarabelle had previously given birth (so she would produce milk) and had her child taken away from her.<sup>307</sup> Volunteers at the farm sanctuary where Clarabelle lived, however, noticed that she began to act differently a week prior to her due date. After a brief search, the volunteers found out that Clarabelle had already given birth and had hidden her calf in a nearby area of tall grass, presumably because she feared her calf would be taken away from her.

However, other animals appear frightened and anxious by the process of having offspring and taking care of them, and it is not clear if having offspring brings them pleasure or something like satisfaction. And for some animals, we simply do not know if they are likely to enjoy or gain satisfaction from having and raising offspring. This is an area where further research is clearly needed.

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<sup>307</sup> Schelling (2015, Feb 25).

There are also important questions about value, which even the most detailed and systematic empirical studies cannot answer. Assessing whether domesticated animals have a strong interest in having and raising offspring is much more complicated than this question as it relates to human beings. Humans can have a very strong interest in having and raising children. Humans can think about and articulate their reflective preferences for their lives. And for many, raising children is of central importance to their vision of what will make their life go well. Things get much more complicated, however, for humans who cannot think about and reflect on raising children. In some cases, when an individual has a very severe cognitive disability and is unable to understand what pregnancy and parenthood involve, and when they lack the abilities needed to be an adequate parent, we recognize that they do not have a strong enough interest in reproducing that could ground a right to reproduce.

The case of domesticated animals raises similar difficulties. We do not know if any domesticated animals are capable of desiring to have offspring. It seems likely that some nonhuman animals may be capable of this but it is not clear if any domesticated animals are capable of this, and if so, how strong these desires are. If domesticated animals do not have desires about offspring, however, this does not settle whether they have a strong claim to have children. Answers to this question will appeal to contested accounts of how we ought to think about the well-being of other animals.

On one approach to animal well-being, what matters is the satisfaction of animal preferences. If domesticated animals do not have any desires or preferences to have offspring, then denying them this opportunity does not appear to harm them or make them worse off in any way. An account of animal well-being that only considers their existing preferences, however, appears inadequate. As we have already noted, the preferences of nonhuman animals, like humans', can adapt to the circumstances in which they are born and raised. It is possible, then, that

animals raised in unjust or inhumane circumstances might not have preferences for certain things that are central to their well-being.

Against a view of animal well-being that focuses on the satisfaction of desires and preferences, we might think that certain things are objectively good for domesticated animals, whether they have preferences or prior desires about these things.<sup>308</sup> On these views, we might think that (for some domesticated animals, at least), having and raising offspring is something that contributes significantly to their well-being. Perhaps having and raising a family is just intrinsically valuable. Or, we might think that domesticated animals gain a distinct type of pleasure or satisfaction from having and raising offspring that they do not get from other activities or pursuits.

How might we begin to sort through this debate over competing accounts of animal well-being? Even if one accepts an objective-list account of animal well-being, as I am inclined to do, it does not follow that having and raising offspring will contribute to the well-being of all domesticated animals. Some animals, after all, might not have much of an interest in raising offspring or might not experience the distinctive types of goods that raising offspring confers on certain animals.

Further, even if raising offspring is something that contributes to the well-being of some domesticated animals, it does not follow from this that domesticated animals necessarily have a right to raise offspring. Clearly, domesticated animals do not have a right to engage in any type of activity that they might find enjoyable or that might contribute to their flourishing. This would be far too expansive and demand far too much of their human guardians. Domesticated animals might benefit from being introduced to all sorts of different species of domesticated animals and provided with the opportunities to form a variety of friendships with other species

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<sup>308</sup> This is consistent both with objective-list accounts of well-being or perfectionist accounts of well-being.

of domesticated animals. But it does not follow from this that they have a right to be introduced to every available species of domesticated animals. Rights require not simply an interest in a good, but an interest that is sufficient to justify corresponding duties on others.<sup>309</sup>

The real question, I believe, is whether there might be something special about having and raising offspring that would ground a *prima facie* right for domesticated animals to reproduce. That is, is there something special about having and raising offspring that contributes in an important way to the well-being of domesticated animals that is different from, say, being introduced to members of other species. At present, I think we simply do not have enough information to answer this question with a great deal of confidence for most domesticated animals. More research is needed to understand the benefits to their well-being that raising offspring might provide, as well as the potential desires for offspring that some domesticated animals might have.

## 7.2 Citizenship and Equality

With this outline of some of the practical implications of citizenship before us, I want to turn to an important set of questions not addressed thus far. Should domesticated animals be seen as our *equal* co-citizens? How should we understand these sorts of claims regarding equality? And do they have the same claim on the distribution of resources that human citizens have? These questions concern how the citizenship of domesticated animals relates to that of their fellow human citizens.

These questions are important for several reasons but one is the central place political philosophy has generally given to equality. Some theorists, such as Ronald Dworkin and Will

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<sup>309</sup> Raz (1988), p.166.

Kymlicka, have even suggested that all plausible, modern political theories have the same ultimate value of equality. This suggestion is not meant to rule out libertarian theories of justice or other modern political theories from the realm of plausibility. Instead, the suggestion is that underlying all plausible, modern political theories is a fundamental idea of “treating people as equals.”<sup>310</sup> Different political theories can be understood in terms of what is required, as a matter of justice, to treat other people as equals. Egalitarians, sufficientarians, prioritarians, libertarians, and marxists will interpret what this requires in different ways but all are committed to a fundamental notion of equality.

If Dworkin and Kymlicka’s suggestion is right, it raises an interesting issue when it comes to the place of other animals in the political sphere. If other animals are not our equal co-citizens, then this seems to represent a significant departure from the general thrust of most modern political theory which takes equality (in the sense outlined above) to be central to political philosophy and the political sphere. On the other hand, some might worry that if we affirm the equality of animals and humans, then in the case of domesticated animals we would be committed to a variety of implausible conclusions. We might think, for example, that equal co-citizenship would require that all crimes against humans and animals are punished equally or that humans and animals have the same claim to healthcare resources. Whichever position one takes, at the very least there appear to be important worries that must be addressed.

Thus far, I have not presented my arguments for the citizenship of domesticated animals using the language of equality. Donaldson and Kymlicka, however, claim that domesticated animals should be viewed as our *equal* co-citizens. And it is clear from their work that the notion of equal citizenship is central to how they understand the place of domesticated animals in the political sphere. They reject a wardship model because they believe it relegates domesticated

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<sup>310</sup> Kymlicka (2002), p.3-4.

animals to a second-class political status. Instead, they argue that, as citizens, domesticated animals “have the right to be considered full and equal members of the political community.”<sup>311</sup>

One issue, however, that is not addressed in *Zoopolis* concerns how the citizenship of domesticated animals and their claims on the distribution of a state’s resources ought to relate to those of human citizens. This is important because of some of the different ways claims about equality and “equal co-citizenship” might be interpreted. Some might think, for example, that if animals are our equal co-citizens, then they have all the same entitlements as humans and these entitlements are always as strong and demanding as human entitlements. However, if we are inclined to deny this – if we think that, at least in some circumstances, domesticated animals do not have the same claim or as strong a claim as human citizens – then we might think we are suggesting they are second-class citizens. On this view, either animals are our equal co-citizens with the same claim on the distribution of resources, or they are second-class citizens.

This is a false dilemma and I want to suggest that both interpretations are mistaken. They stem, I believe, from a problematic way of understanding claims of equality in terms of moral status.<sup>312</sup> Both positions appear to understand claims about equal citizenship in terms of abstract and general views of moral status. On the one hand, if two individuals are equal citizens then they have an equal moral status, and based on this, the same claim on the distribution of resources. On the other hand, if we deny that animals and humans always have the same claim on the distribution of resources, then it appears we are claiming they have a lesser moral status and are not our moral equals. Underlying both views, it seems, is the position that moral status is operative over all our interests and decides who matters and how much.

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<sup>311</sup> Donaldson and Kymlicka (2017), p.18.

<sup>312</sup> It is possible to understand what motivates this dilemma about equal citizenship in different ways. I frame it in terms views about moral status because I suspect this is what underlies this way of framing the issue.

The positions outlined above understand claims of equality and equal citizenship in terms of moral status. They hold that moral status comes in degrees and that it is operative over all our interests. Put another way, moral status is about our moral rank compared to others. On this approach, we first try to figure out an individual's moral status or how much they matter morally. Once we have this figured out, we can compare this individual's moral status to other individuals'. Individuals with a greater moral status than others have a greater claim to the distribution of a state's resources, as well as more pressing and important claims. Some individuals – such as those who are our equal co-citizens – have the same moral status, and with it, the same claim on the distribution of resources, while others have a lesser moral status and a correspondingly weaker claim on the distribution of resources.

This sort of approach is rather common when it comes to thinking about how humans relate to other animals. Many think that humans have a higher moral status than nonhuman animals, and that because of this, all (or at least many) human interests matter more (and deserve priority) over all or many nonhuman interests. If one accepts this approach to equality and if one thinks that humans do have a greater moral status than nonhuman animals, then it would have important implications for thinking about the citizenship of nonhuman animals. When thinking about the distribution of a state's resources, the interests of animals would deserve a lower priority in virtue of their lesser moral status. So, while animals might have a right to healthcare, the health needs of humans would be given greater priority.

This is a bad way to think about equality and the wrong way to approach how we should weigh the interests of others. Pitched at an abstract level, this approach might sound plausible. But when we begin to consider, in more detail, some of its implications, the problems with this approach become clearer. On this view, the interests of those with a higher moral status deserve priority over those with a lower moral status. But we have good reason to reject this. It is not plausible, for example, that *any* interest of humans deserves greater consideration than



any animal interest. The interest of an animal in not suffering or in continued existence certainly is more important than the interest of humans in various forms of pleasure.

Further, to avoid the charge of speciesism this approach would need to specify what capacities ground the higher moral status of humans. And there is no plausible way of doing this such that all humans have a greater moral status than all nonhuman animals.<sup>313</sup> Any appeal to certain cognitive capacities will leave many humans with a lesser moral status. Most of us, however, reject the claim that the interests of these individuals matter less simply because they have different cognitive capacities. In the human case, we are committed to the principle of equal consideration, whereby roughly similar interests deserve equal consideration regardless of the individual who has the interest. But the principle of equal consideration cannot be confined just to human beings.<sup>314</sup> We ought to extend it to animals as well and that means abandoning an understanding of claims of equality simply in terms of the ranking of moral status.

Against the view above, I think we should understand claims about equality, involving humans and animals, as a way we affirm the equal *moral value* of different individuals. This is an important function that talk of equality can have. And I agree with the view that all conscious animals have equal value. I take this to hold that all animals matter equally, when it comes to morality. No animals are worth more or count for more when it comes to considering their interests.

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<sup>313</sup> Some are willing to accept this view, and argue for the position that persons have a greater moral status than that of non-persons. See Kagan (2016).

<sup>314</sup> Singer (2002), Chapter 1.

### 7.2.1 Three Categories of Interests

However, left alone or without further clarification, claims of equality are open to a variety of misinterpretations and misunderstandings. What we need to address, then, is how the interests and claims of human citizens in the political sphere relate to the interests and claims of animal citizens. While I believe we should affirm that all animals have equal value, I do not think it follows that they will always have the same claim on the distribution of a state's resources. We should consider the respective claims on a state's distribution of resources in three separate categories.

1. *Roughly Equal Interests.* On many issues of public policy, humans and nonhuman animals have roughly similar interests. Here the principle of equal consideration demands that the interests of nonhumans are given the same political consideration as the interests of humans.
2. *Altogether Different Interests.* In other areas of public policy, humans and animals simply have different interests, which generate different claims with respect to the distribution of a state's resources.
3. *Similar Interests / Greater Harms.* Finally, in some areas of public policy, humans and animals have similar interests but the extent to which humans and animals can be harmed varies considerably. I argue that, in some contexts, the state can give greater priority to some individuals to prevent greater harms from occurring.

In the first category, where humans and animals have roughly equal interests, we find many of the areas of public policy we have already considered in this chapter. For example, other animals have a roughly similar interest in not being made to suffer and as a result they have an equal interest in legal protection, access to healthcare, and in institutions protecting them against abuse or neglect from their guardians.

Humans and other animals often have different interests and we see this best when it comes to education. This is one area of public policy where humans have a very strong interest in receiving an education, while the same cannot be said for nonhuman animals. The differences in the claims humans and animals have, then, stems from the different interests they possess. Similar points will apply to other interests that depend on cognitive capacities nonhuman animals do not share. For example, certain political rights, like the right to freely practise one's religion or the right to free speech, are not rights where nonhuman animals have the underlying interests that are deserving of protection. Nonhuman animals do not hold religious beliefs or engage in religious practices, nor do they engage in the type of speech that needs the protection afforded by a right to freedom of speech. In this case, as in others, humans and animals just have different interests that stem from the different type of beings that they are.

Finally, in some areas, humans and animals will have similar interests but because of their different cognitive capacities they will be capable of harms to a greater or lesser extent. This can be important for the priorities and allocations made by the state. In healthcare we see this when it comes to end of life care and the use of aggressive treatment for potentially terminal illnesses and diseases. One important difference between most humans and other animals is in the ability of individuals to understand their diagnosis and to understand their treatment. Unlike most humans, other animals do not appear capable of understanding these things. And this makes decisions about when aggressive forms of treatment, which subject an animal to pain and suffering, are in the animal's best interest more difficult. In some cases, more aggressive forms of treatment will not be in the best interest of other animals. This is more likely, it seems, when it is uncertain how much a given treatment will extend the animal's life and when it will subject the animal to ongoing pain and suffering.<sup>315</sup>

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<sup>315</sup> Mark Rowlands presents a compelling and personal discussion of the difficulty he had regarding decisions about the medical treatment of his companion Wolf, Brenin. See Rowlands (2008), Chapter 7.

The fact that other animals have different interests when it comes to the use of aggressive treatment and end of life care is also relevant to how governments allocate funds for the research and development of new drugs and medical treatment. At present, very little research and funding is done to find new drugs and treatment to help fight the diseases and ailments that afflict domesticated animals. The recognition that domesticated animals are members of our society and our fellow citizens, with many unmet needs in healthcare, means this must change. As our fellow citizens, money for research and development should be allocated to address the health problems these animals face.

Nevertheless, it does not follow simply from the fact that domesticated animals ought to be seen as our fellow citizens that they have precisely the same claim on the distribution of research and development. This is one area where abstract claims about equality might lead us astray. Because of the different cognitive capacities that other animals have, it is legitimate for the state to give some priority to research and development on life-threatening diseases that afflict humans. Part of the reason for this is that humans are capable of suffering in ways that animals do not. Humans can think about their disease, they can reflect on and think about how their disease might progress, how their life could be cut short, and so on. Because they are capable of these thoughts, humans appear capable of certain types of suffering from life-threatening conditions that nonhuman animals are not capable of experiencing. Moreover, because humans can understand and choose to opt for treatment that can be difficult and uncertain, it will often be in their interest to opt for this treatment, in ways that it will not be for many nonhuman animals. As a result, there are good reasons for some priority to be given (but, again, far from exclusive priority) to research and development targeting life-threatening diseases that afflict humans.

The ground or basis of this priority is not the claim that humans matter more or that they have a greater moral status. Rather, as I have pointed out, it stems from specific interests that most

humans have because of the specific cognitive capacities they possess. These capacities allow humans to sometimes experience greater harm because of diseases that afflict them; and these capacities also allow certain types of treatment to be in their interest, when the same is not always the case for nonhuman animals. While both domesticated animals and humans have a claim on the distribution of a state's resources and on research and development that promotes their interests, it is legitimate for the government to pursue research and development that is likely to prevent greater harms.

It is important to emphasize, however, that the different cognitive capacities possessed by nonhuman animals might mean that in some circumstances they suffer more than humans in roughly comparable circumstances. One example of this, which we have already touched on, concerns the anxiety and distress companion dogs often experience when their guardians leave them at home alone. Here, dogs experience the world differently in ways that allow them to suffer more than, say, typical infant humans. Differences in the cognitive abilities of dogs in terms of their ability to know that, and when, their human guardian is likely to return can mean that they can suffer significantly in ways that humans do not. In some respects, evaluating the degree or significance of this suffering is a difficult task. We do not know what it is like for a dog to experience separation anxiety and distress and can offer only approximations based on certain shared experiences and the behavioral cues dogs provide regarding their distress.

In some cases, then, the different capacities humans (and animals) have means that they are capable of suffering to a greater degree than their nonhuman (or human) counterpart. And this can be relevant to how we approach certain areas of public policy and the law. Nowhere is this more important than in a variety of public policies and laws that relate to the harm or badness of death.

Emergency services represents another area of public policy where different degrees of harm are at stake. In many cases, other animals have roughly an equal interest as humans in

emergency services based on their equal interest in not suffering. However, in some cases, when many humans and animals face the threat of death, it is legitimate for some priority to be given to potential human victims who may be killed. This is because the state can give priority to preventing greater harms or worse outcomes and we have good reason to believe that, in most cases, the harm caused by death is greater for most human beings than it is for most nonhuman animals.

### 7.2.2 The Comparative Harm of Death

The view that most humans are harmed more by death than most nonhuman animals is widely held, even among proponents of animal rights and other animal defenders.<sup>316</sup> Attempts to justify this view generally appeal to two factors: (1) the value that continued existence would have had for the individual that is killed and, (2) the psychological connection between that individual and their future self.<sup>317</sup> I will not rehash these arguments here. Instead, I wish to consider what might follow *if* it is the case that most humans are harmed more by death than most nonhuman animals. This is an important question that deserves much more investigation than I can give here. However, I want to note one important implication.

The extent to which death harms different individuals appears relevant to the strength of the claims that different individuals have when it comes to the state preventing harm from befalling them. I have claimed that the state can legitimately act to prevent greater harms when it is unable to prevent harm from befalling all affected parties. This is a compelling principle for thinking about state action when resources or time are limited. Indeed, there are good reasons to think something like this principle is already implicitly accepted by most states.

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<sup>316</sup> See Regan (2004a); Rowlands (2002), Chapter 4; and Simmons (2016). For defenses of the view that all conscious animals are harmed equally by death, see Bernstein (2015) and Pluhar (2016).

<sup>317</sup> See McMahan (2002), Chapter 3 and McMahan (2008).

If this principle is true, then the harm of death appears relevant to public policy in some, limited domains. If it is the case that death harms most humans more than most other animals, then some priority can be given to preventing or mitigating the death of humans. These claims are important for thinking about public policy on a few different issues, including: emergency services, research and development on life-saving drugs, and the investigation and prevention of murder.

The recognition that humans might be deserving of some priority on certain specific issues of public policy does not easily translate into simple guidelines or policy prescriptions. We can see the difficulty of this task by considering the issue of emergency services. One problem concerns knowledge: often emergency responders are not able to know which humans or animals are most threatened by the prospect of death and which are only threatened by injury and some suffering. And this suggests, I believe, that it is imprudent to have a general policy that gives priority in emergency services to (paradigmatic) humans. Instead, priority should be reserved for large scale disasters – response to hurricanes, earthquakes, and so on. Further, the priority should not come in the form of turning animals away from emergency services, but targeting larger groups of humans first.

Emergency services are not the only area where humans and animals have similar interests, but where humans, because of the unique cognitive capacities they have, can experience greater harms in ways that are relevant to the law and public policy. If my claim that the harm of death is generally greater for humans than it is for most nonhuman animals, this is relevant both to policing and to the crime of murder. One implication of this is that the investigation of murdered humans deserves some priority, all else being equal, over the investigation of murdered animals. Similarly, because the murder of humans causes greater harm, criminal sanctions for the murder of humans can and should be somewhat more stringent than those for the murder of domesticated animals.

One final issue concerns the costs of animal guardianship. In many states, some of the costs associated with raising human children are shared collectively. For example, many states subsidize, in various ways, the costs of childcare: in some places by providing state-run childcare, in others by providing tax credits to those with young children. In these ways, states recognize that they have some role to play in sharing the costs of raising children and in childcare.

This raises the question of how states should approach the costs associated with the care and guardianship of domesticated animals. If the state has a role to play in sharing in the costs of childcare, does it have a similar burden with respect to domesticated animals? Should states, for example, subsidize some of the costs of the care of these animals?

We might think that there is an important asymmetry, here, in terms of the care needs that young children have compared to the care needs of domesticated animals. After all, infants and young children require close to constant attention and care. But this is not true for many domesticated animals: some cats, for example, appear to do just fine when left to themselves for much of the day. So, for many domesticated animals, at least, because of their different and unique abilities, there does not appear to be the same need for daily care (in the way that children require care) and as a result, no claim that the state share the burden for some of the costs of that care.

However, it is not clear that this is true for all domesticated animals. One important exception to this is the case of dogs. Many domesticated dogs are quite attached to humans and appear to suffer from separation anxiety when they are home alone during the day. Now, this will not be true for all domesticated animals or even all dogs (some do not appear to suffer from separation anxiety). But it is true for many. Given this, we might think that an important need of these dogs is not being alone during the day, and as a result, that they have a claim that some of the costs of their care are shared by the state. If we recognize this in the case of young



children, should not we also recognize this in the case of other, nonhuman citizens, like dogs, that also need care? I think this is right and that domesticated animals who have certain care needs should have these costs subsidized by the state. They are our fellow citizens, and like young children, the costs involved in their care should be shared.

Some, I suspect, would object to this view because they believe that the decision to have a companion animal is optional and discretionary in a way that the decision to have a child is not. This view is not particularly plausible on the individual level. Certainly, it is optional for any *individual or couple* to decide whether they want to have and raise a child. But at the societal level, there is an important sense in which children are not optional. For a society and state to survive, some couples and individuals must decide to have children. The necessity of human children, then, to sustaining our society and state is one way in which the two cases appear to differ. At the societal level, then, domesticated animals are not necessary to the survival of society or the state.

Even though this is true, it has little bearing on the claims some domesticated animals have for their care to be at least partially subsidized by the state. These claims stem from the importance of this care to their well-being and this is true whether society could exist without these members. As we have already seen, as fellow members and citizens, domesticated animals are owed the right to health coverage. But if we are willing to recognize this, it is hard to see why care, which also can be crucial to these animals' well-being, is not something for which the costs should be at least partially shared. The fact that these individuals might not make the same economic contribution to society as other humans do or that society could survive without their existence does not undercut the claim they have. We recognize the need to make sure all humans, for example, are adequately cared for, whether they can make economic contributions to the society of which they are apart. A similar duty applies to domesticated animals.

### **7.3 Objections**

I conclude by considering objections which focus on the claims I have made about the relationship between animal and human citizenship, as well as some other objections to the view that domesticated animals should be seen as our fellow citizens.

#### **7.3.1 Equal Citizenship or Bust!**

One worry concerns my claim that in some specific areas the state can legitimately give priority to the interests of humans. Some may argue that unless we understand domesticated animals as our equal co-citizens who have the same priority in all areas where they have similar interests to human beings, then we open our political communities to the threat of discrimination and oppression. The worry is that conceding that humans deserve greater priority in a few, rather limited areas of public policy, will lead to domesticated animals being viewed as second-class citizens and that over time this will lead to perhaps the further erosion of their rights or to a failure to take their legitimate claims on our political communities seriously.

However, the position I have put forward does not deny that animal citizens have equal value to humans. My point, rather, is that domesticated animals are unique creatures with unique interests. One result of this is that the harms that can befall these creatures are not always the same as the harms that can befall humans. This is not second-class citizenship. In areas where human and animal citizens share roughly the same interests, no priority should be given to the interests of humans over animals. Rather, the approach I have outlined recognizes some of the complexities involved when different species are incorporated into the polis.

### 7.3.2 Too Many Dependents

Another worry concerns the burden that the recognition of domesticated animals as our fellow citizens might place on human citizens who are responsible political agents. While domesticated animals certainly contribute to the polis in various ways – by enriching our lives, encountering us in relationships, and in the case of some, by engaging in work that is consistent with their flourishing – it is fair to say that they are not capable of maintaining the norms and institutions required of the state. Any functioning state must have a sizeable number of citizens who are responsible political agents to maintain and continue the institutions and functions of the state.

Once we recognize this, however, we can see a couple worries about the burdens that citizenship puts on those citizens who are responsible political agents. There are two distinct worries here. One worry concerns the fairness of the increased burden that would be placed on many human citizens when domesticated animals are recognized as our fellow citizens with a claim on the distribution of the state's resources. If domesticated animals are recognized as our fellow citizens, human citizens would have even greater political responsibilities. Fulfilling the claims of citizenship that I outlined previously in this chapter would mean that the state has a much larger set of responsibilities. This would require the creation of more government jobs, more expenditure on the part of the government, and an increased tax burden on human citizens. Some might object that these consequences represent an unfair burden on human citizens. The increased expenditures the state would need to make to fulfill its responsibility to animal citizens, and the increased tax burden this would require, could mean that the average after-tax income of a state's human citizens would fall. Further, some may object to this because the burdens are not shared by all a state's citizens. These burdens fall entirely on human citizens that are responsible political agents.

The second worry is that if the ratio between citizens who are responsible political agents and non-responsible citizens dwindles, at a certain point the state will no longer be able to uphold all its duties and responsibilities to all citizens. The incorporation of nonhuman animals into the polis adds significantly greater demands on the state. Since these citizens cannot promote and contribute to the functioning of the state in the same way, a greater burden will fall on human citizens who are responsible political agents. At a certain point, if the numbers of animal citizens increases substantially, the state will not be able to meet all of its responsibilities to all of its citizens. It seems, then, that there could be a point where the ratio of citizens who are responsible political agents to citizens as members is too low for the state to meet the demands of justice.

The first objection is less concerning than the second. In response to the first objection, it is worth pointing out that it also confronts the citizenship of humans with severe cognitive disabilities. Many of these individuals are not responsible political agents and are not capable of contributing economically to our states. And yet we recognize that this does not discount or change the claims these individuals have as our fellow citizens. Similar points can be made about domesticated animals. It is true that incorporating these individuals into our political communities would demand more from human beings. It would require new jobs and positions to be created, it would require greater taxes to be levied, and it might even reduce the after-tax income of a typical state's citizen. But none of this undercuts the moral force of the claims that domesticated animals have as our fellow citizens.

The second worry is potentially more concerning but we have good reason to believe that states will never find themselves in a position where the ratio of responsible political agents to citizens-as-members is too low to uphold all the obligations and responsibilities. This might be in doubt if we held that all domesticated animals had a right, or even a prima facie right, to reproduce or to have a family. If this were the case, then we could imagine the numbers of

domesticated animals growing larger and larger and the demands of these citizens putting an increasing strain on the states in which they live and on the human citizens who carry out these responsibilities. But I have not argued that all domesticated animals have a right to reproduce. While most domesticated animals have an interest in having sex and a prima facie right to engage in sexual relations with other willing animals, these interests are distinct from those that would be needed to ground a right to reproduce. Given this, humans can exercise discretion when it comes to maintaining environmentally and politically sustainable numbers of domesticated animal populations.

We also should be careful not to exaggerate the costs that recognizing domesticated animals would bring. Some of the responsibilities I have outlined previously in this chapter would involve extending services (like policing and emergency services) to animals. This would require training many existing government employees and would also likely require an increase in police officers and emergency responders. Other areas, like healthcare, would also come with increased costs for the state. But here it is important to note a few things. First, many of these costs are already undertaken by the guardians of companion animals. Recognizing these and other domesticated animals as our fellow citizens would require that we at least partially socialize these costs, so that we can ensure all domesticated animals are guaranteed adequate healthcare.

With this, it would also be a mistake to look at many of these costs as expenditures made by the state that disappear into some sort of fiscal abyss. Much of these costs represent, instead, a redistribution of income. Providing healthcare to domesticated animals, for example, would require increased taxes on a state's citizenry, but it would also provide income and jobs to those tasked with the veterinary care of these animals. There is, of course, a limit to how much a state can tax its citizens without having an adverse effect on growth. But there is no reason to

believe that a state could not meet the needs and claims of domesticated animal citizens while also maintaining a functioning and growing economy.

### 7.3.3 A Cosmopolitan Challenge to Group-Differentiated Political Status

Alasdair Cochrane raises a more fundamental objection to the group-differentiated approach I have taken to the political status of nonhuman animals.<sup>318</sup> Cochrane challenges this approach in a few ways but here I wish to consider two specific problems he raises. Cochrane claims that a group-differentiated approach to the political status of nonhuman animals denies outsiders, such as wild and liminal animals, their just entitlements and that it unfairly privileges the rights of insiders (i.e. domesticated animal citizens).

The first objection holds that wild and liminal animals have certain entitlements that a group-differentiated approach would deny them. Cochrane argues that wild and liminal animals are entitled to have their interests included in public policy deliberations and that like domesticated animals they also have a right of residency.<sup>319</sup> However, as my account of the political status of wild and liminal animals has made clear, a group-differentiated approach does not need to deny that wild and liminal animals have a prima facie right to live in the territories they occupy or that they have a right to some form of institutionalized political representation. I agree with Cochrane on these points.

Cochrane is also concerned that a group-differentiated approach will privilege the rights of domesticated animals. Here, he asks why a right to healthcare is not owed to all animals.<sup>320</sup> Cochrane argues that all conscious animals have a significant interest in being healthy. As a

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<sup>318</sup> Cochrane (2013).

<sup>319</sup> Cochrane (2013), p.130.

<sup>320</sup> Cochrane (2013), p.134.

result, he thinks it is plausible that all conscious animals have a prima facie right to healthcare. This right is qualified in some ways. Cochrane writes that “what that right amounts to in any particular situation will depend on an evaluation of all the morally relevant factors at stake.”<sup>321</sup> However, he thinks that in some situations wild animals ought to be granted a right to healthcare. And in support of this view, he notes that sometimes attention to the health of wild and liminal animals can be achieved without significantly onerous interventions (such as dropping medicine into a waterhole to save wild animals from a disease or a slow and painful death).

I agree with Cochrane that humans have significant duties to assist wild and liminal animals and that this can include medical assistance, in cases where disease or other threats can be averted. However, I think it would be a mistake to conceptualize this as a *right to healthcare*. Here, our relations to wild and liminal animals matter. Unlike domesticated animals, wild animals generally lack the trust, intimacy, and proximity to humans that makes ongoing healthcare possible. While there might be some cases where interventions to promote the health of wild animals can be justified, this is different from a right to ongoing healthcare. One of the reasons wild animals do not have a right to this sort of healthcare stems from the lack of trust and intimacy they have with human beings. In general, we cannot provide ongoing healthcare to these animals because to do so would require taking these animals out of the wild – capturing or tranquilizing them – to examine them and treat their illnesses. Unlike domesticated animals, doing this would substantially harm wild animals. Similar points apply to liminal animals.

Against a group-differentiated approach, Cochrane argues that all conscious animals are entitled to certain prima facie rights. These rights “need to be further specified into concrete rights by making all things considered judgments of all the relevant factors and interests at

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<sup>321</sup> Cochrane (2013), p.134.

stake.”<sup>322</sup> And he rejects a group-differentiated approach because he feels group membership does not, by itself, generate different obligations.

It is not clear how much Cochrane’s approach to our political obligations to other animals must differ from the approach I have outlined. Cochrane suggests that the *prima facie* rights of concrete animals need to be further specified by making all things considered judgments that consider the relevant factors and interests. But the reason I have adopted a group-differentiated approach is that I believe wild, liminal, and domesticated animals share certain interests (with their fellow wild, liminal, or domesticated animals, respectively) in virtue of the type of creatures that they are and the relationships that they have, or do not have, to humans and human communities. These factors shape what is in the interest of these animals – the fact that wild and liminal animals do not trust humans or have relations with humans is one of the reasons ongoing healthcare is not something they have an interest in. It is not simply that humans have different relations to these animals, but that these relations shape and inform how we should best understand what is in the interest of wild and liminal animals. The interests of wild animals cannot be separated from the (lack of) relations they have with humans.

Cochrane could object to my claim that we have certain obligations to members of our society that stem from membership (and not, instead, from universal human rights). However, as my discussion of our obligations to wild and liminal animals has made clear, the entitlements and rights of domesticated animals are consistent with recognizing that humans have rather demanding obligations to wild and liminal animals.

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<sup>322</sup> Cochrane (2013), p.139-140.



## 7.4 Conclusion

In this chapter I outlined some of the central implications recognizing domesticated animals as our fellow citizens has for public policy and I considered how the claims of domesticated animals relate to those of other humans. Recognizing domesticated animals as our fellow citizens has important implications for how we ought to approach things like their healthcare, guardianship, and mobility. I argued that while we ought to affirm that domesticated animals are equally valuable individuals, this is consistent with the position that, in certain limited areas, the claims of humans deserve greater priority because greater potential harms are at stake. Adequately incorporating domesticated animals into the political sphere presents many challenges, but it need not represent a radical departure from the view that the political sphere involves individuals who are equally valuable. We can recognize other animals as beings with equal value, while recognizing the state can rightly prioritize some human interests to avert greater harms.

## 8 Political Representation for Nonhuman Animals

The idea that nonhuman animals deserve some form of political representation in a state's government institutions has started to gain traction among some working in animal ethics.<sup>323</sup> These discussions have primarily focused on the grounds that nonhuman animals have for political representation: what reasons or arguments might require that nonhuman animals be given some form of political representation. While this is an important question, less attention has been given to addressing the more practical questions relating to institutional design: How can we best represent the rights and interests of nonhuman animals in our political institutions? What changes, to which institutions, are needed? Where and how should we represent the interests of other animals? Putting forward plausible answers to these questions is important, in part, because whether animals have a claim to some form of political representation may depend on whether our political institutions can in fact be changed to better represent the interests and rights of other animals compared to the status quo. If institutional reforms are unlikely to better represent the interests of other animals and if they introduce other problems into a legislature and a government, then we might conclude that all that is needed are more compassionate and just legislators and government officials, not any sort of radical reform.

This emerging debate is occurring alongside other discussions that question the ability of modern, liberal democracies to adequately represent the interests of individuals (and other entities) who are not currently represented in our democracies and who lack (or are perceived to lack) the capacity to vote. These debates have focused on whether children, individuals with severe cognitive disabilities, future generations, and environmental interests are adequately represented in today's democracies. In these debates, more concrete and detailed proposals

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<sup>323</sup> See Donaldson and Kymlicka (2011), Garner (2016), Lyons (2016).

for institutional change have been put forward for how democracies can represent these interests, some of which I will draw on here.<sup>324</sup>

In this chapter I look at what forms the political representation of nonhuman animals might take and I defend specific proposals for representing their interests in our political institutions. After briefly addressing the question of the grounds and goals of representation, I will argue that reforms are needed to represent the interests of animals at various levels of government, in both elected and non-elected positions and institutions. Within a state's legislature, I will argue that special, designated seats should be reserved for Animal Representatives, who run in political parties devoted to the interests of animals and whose goal is to represent the interests of other animals. These proposed reforms are, admittedly, provisional. We are still in the infancy of thinking about how we can best represent the interests of nonhumans politically. If humans ever attempt to do so, we will have to test and experiment with different ways of representing their interests.

## **8.1 The Grounds and Goals of Representation**

I have made two separate arguments for the position that states should represent the interests of other animals in their political institutions. First, as I argued in Chapter 3, a strong case can be made that adequately protecting and upholding the moral rights of all conscious animals living in a state will require finding ways to incorporate their interests in our political institutions.<sup>325</sup> This is what grounds the need to represent the interests of wild, liminal, and domesticated animals that live in, or travel through, a given state. Second, as I argued in Chapter 6, domesticated animals have a further claim to political representation. They are

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<sup>324</sup> See Dobson (1996), Ekeli (2005), Ekeli (2009), Hayward (2005), Nussbaum (2010) Thompson (2010).

<sup>325</sup> Chapter 3, p.62 – 67.

members of our societies and state and as our fellow citizens their interests should be part of the public good. States must find ways to incorporate their interests into political decision-making.

These grounds for the political representation of other animals are both narrower and more defensible than other alleged grounds that have been put forward in this emerging debate. Some have defended the claim that the interests of nonhuman animals deserve some form of political representation by appealing to the all-affected principle. Robert Garner argues that humans should “enfranchise animals” with a proxy system of legislative representation.<sup>326</sup> On this approach, a certain number of humans would be elected as legislators, either by the general population or by a constituency of organizations concerned about the well-being of animals, and they would have a fiduciary duty to represent the interests of animals. Garner attempts to justify this approach by appealing to the all-affected principle.<sup>327</sup> This approach “allows for the inclusion of animals if, and when, their interests are affected by decisions made.”<sup>328</sup> Since many political decisions clearly do impact animals in significant ways, if we accept the all-affected principle it seems to follow that humans should elect representatives for these animals to represent their interests.

Yet important problems confront the all-affected principle. As Garner notes, the all-affected principle appears to be “unrealistically wide” even if we confine ourselves to presently existing humans. This principle appears to demand that for large and influential states, like the United States, nearly every voting age human on our planet has a moral claim to vote in U.S. elections. The scope of the all-affected principle appears to be so wide that it would be practically unworkable.

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<sup>326</sup> Garner (2016).

<sup>327</sup> See Goodin (2007).

<sup>328</sup> Garner (2016), p. 114.

My argument makes no appeal to this principle. Instead, as I have suggested, there are overlapping grounds as to why different nonhuman animals have a moral claim to various forms of political representation, and the ones I have appealed to are less controversial than the all-affected principle. Domesticated animals have a claim to representation that rests on their membership and citizenship within a state. The ground I have advanced for the claim that states must find ways to represent the rights and interests of all conscious animals is perhaps a cousin of the all-affected principle. But there are several relevant limiting claims at play.

First, the goal of representing the interest of all conscious animals within a state is to adequately protect and uphold these animals' basic moral rights and to mitigate and prevent ways in which citizens and policies of the state infringe upon these rights.<sup>329</sup> This is a more limited claim than an appeal to anyone who is affected by the actions of a state. Second, unlike humans who might be affected by the actions of another state, wild and liminal animals living in or near a given state have no other political representation (they are not citizens of other states, for example). Finally, there is one further crucial difference between applications of the all-affected principle to humans and the case I have made for representing the interests of nonhuman animals: these animals cannot vote. The interests of nonhuman animals would be represented by humans living in the state in question. Unlike proposed applications of the all-affected principle that call for enfranchising other, non-resident, non-citizens to vote in other states, my argument for incorporating the interests of other animals does not call for giving votes to any non-residents or non-citizens. As a result, one of the primary reasons for rejecting the all-affected principle does not appear to confront the argument I have advanced for representing the interests of other animals in a state's political institutions.

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<sup>329</sup> Garner (2016) does suggest some ways one might limit the scope of the all-affected principle, in ways that would prevent it from being unrealistically wide, while still grounding the need to represent the interests of animals within a legislature. Garner's suggests, but does not explicitly defend, limiting the principle to include "all those who will be coerced by its decisions and not just affected," (p.115) and to only sentient individuals.

## **8.2 Where Animals Should be Represented**

Thus far I have been vague about where and how animals should be represented in our political institutions. Let us get more specific. Adequately incorporating the rights and interests of nonhuman animals into our democratic decision-making and government institutions will require institutional changes at many levels of government, in both elected and unelected positions. Here I start with some proposals that I suspect are less controversial, involving unelected, appointed officials in various levels of government, and then I will advance more controversial claims involving elected representatives in a state's legislature.

## **8.3 Appointed Officials and Animal Departments**

The rights and interests of nonhuman animals intersect with many different areas of the law and policy. One way to begin to represent their interests would involve appointing officials and creating departments and sub-departments tasked with studying these issues and bringing knowledge about the interests of other animals and the effects of various policies on their rights and interests to various areas of policy making. Adequately representing the interests of other animals will require doing this at different levels of government, in different areas of law and policy making, to represent the rights and interests of wild, liminal, and domesticated animals.

At the federal level, states could create a ministry or department dedicated to the rights and welfare of nonhuman animals.<sup>330</sup> A Ministry of Animal Rights and Welfare could accompany legislation that establishes the protection of the rights and interests of nonhuman animals as a core government value, or even a constitutionally protected right, and it would be tasked with bringing the law and various regulations closer to realizing this goal.<sup>331</sup> A federal ministry could study various issues where the rights and welfare of nonhuman animals are involved, and put forward policy reforms and suggestions to the federal legislature on these issues. In the future, it might be tasked with regulatory control of issues affecting the welfare of other animals – in the way that a Ministry of the Environment and Ministry of Health often are.

A federal ministry or department would ideally contain sub-departments that would focus on issues affecting domesticated, wild, and liminal animals respectively. Domesticated animals would likely require more attention and resources. Part of this stems from the membership of domesticated animals in our society, which generate reasons to benefit these animals that we do not always have in the case of wild and liminal animals who lack relationships of trust and intimacy with humans. As with human citizens, the state has an obligation to provide the conditions needed for domesticated animals to live good and flourishing lives. Their membership in our societies also raises a greater number of issues and policy areas to address. To give just a few examples, a federal ministry might study issues related to animal guardianship (including issues related to abuse, neglect, separation anxiety, and psychological health), issue reports or guidelines for animal adoption, and use this to inform the guardians of companion animals about best practices and to structure the licensing of guardians. With this, this ministry might study broader national issues related to housing, or transportation, or parks and public spaces to make these more accommodating and accessible to domesticated animals.

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<sup>330</sup> Lyons (2016), p.172, very briefly offers a similar suggestion that states should create an Animal Protection Commission. Lyons does not present much details as to how this commission would be structured, as this is not the focus of his essay.

<sup>331</sup> Lyons (2016), p.172

They might also conduct various reviews of other ministries or departments – like Health, Transportation, or the Environment – to examine ways the welfare and rights of domesticated animal citizens could be supported and upheld in policies regulated by these ministries.

The primary focus of sub-departments dedicated to wild and liminal animals would be preventing and mitigating, as much as possible, human-caused harm to these animals and large-scale catastrophes that might befall them. These departments might monitor and study ways to minimize harm in areas related to transport and human infrastructure. They could study and create regulations on issues related to the lighting and window materials that could minimize the death of migratory birds, or on ways to create bridge or tunnel passageways that allow migrating wild animals to avoid highways and other heavily trafficked human areas. And it could study the effect that climate change is having on the welfare of wild animals living and travelling through their state.

This sort of sub-department is not particularly radical. Many federal and provincial state departments are beginning to consider the interests of other animals when it comes to road and park construction. In Canada, Banff National Park has put in place 44 wildlife crossing structures (both overpasses and underpasses), along with fencing to protect wild animals from automobiles and allow safe passage across highways.<sup>332</sup> And Parks Canada has partnered with foundations and universities to continually monitor and study these structures, to continue to improve them. As this example suggests, many states are beginning to consider the interests of other animals. What I am calling for is making the rights and interests of individual animals more central to this decision-making, and more systematic and pervasive throughout many different areas of public policy.

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<sup>332</sup> Parks Canada (2017).



Additionally, states could also experiment with various sub-departments within current federal ministries, such as those related to health, labor, housing, and the environment, to represent the interest of nonhuman animals in these policy areas, and possibly to work in conjunction with the ministry of Animal Welfare and Rights. Similar reforms could be pursued with respect to ministries or departments at the state or provincial level. I have already addressed one specific area in need of institutional reform that might be regulated at a state or city level: the protection and welfare of companion animals. This could be addressed with the creation of a Department of Animal Protection, or with the expansion of departments dedicated to the protection of children to include domesticated animals under the care of human guardians.

Along with these reforms, states could expand the scope of independent Ombudspersons – many of whom focus on issues affecting children and the elderly – to include the welfare and rights of nonhuman animals, or perhaps create a special Animal Ombudsperson tasked with focusing on complaints about animal welfare issues, rights violations, and so on.

Additional institutional changes will also be needed at the city or municipal level. Here similar reforms should target various city agencies that intersect with the rights and interests of nonhuman animals. Institutional changes would be needed in many areas, including policing, zoning and city planning, and parks. One possibility in these areas would start by appointing special Animal Representatives on zoning and development boards, fire and rescue services, and park boards to study and represent the interests of other animals. Other city agencies and services, like “Animal Control,” should be reformed in ways that respect the moral rights of all animals, the membership of domesticated animals, and the right of residency for liminal animals. These agencies could be transformed in ways that promote and seek out the peaceful resolution of the conflicts that will, inevitably, arise at times between human and nonhuman animals.

The institutional reforms noted above highlight some of the ways states could begin to incorporate the rights and interests of nonhuman animals in the political realm. The broad goals of these reforms are to increase the awareness of the ways our laws and public policies affect other animals, to improve our knowledge of these matters, and to inform policy-makers so that the rights of other animals can be protected and their interests are not ignored.

These reforms would represent a significant and important step towards better incorporating the rights and interests of wild, liminal, and domesticated animals into political decision-making. Although achieving these reforms faces a host of political challenges, several of the reforms I have put forward appear broadly in line with values that are already held by many living in liberal democracies today. A clear majority of residents in the United States think that animal welfare matters and that animals deserve at least some form of protection from harm and exploitation.<sup>333</sup> As I have already noted, most North Americans who have companion animals think of them as family members.<sup>334</sup> Given these values, and the increasing concern over the welfare and rights of other animals, some of the reforms I have suggested might be adopted at some point in the near future. It is not hard to imagine some countries creating a Ministry of Animal Welfare, or Animal Representatives on zoning or park boards, or creating an agency (or a sub-department in another agency) tasked with protecting companion animals from abuse and neglect. Like many areas of the law, it appears that our government institutions in these areas lag well behind public opinion and widely held values regarding other animals.

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<sup>333</sup> See Gallup Poll Social Series: Values and Beliefs (2015).

<sup>334</sup> See Harris Poll (2015).

## 8.4 Political Representation in Legislatures

The institutional reforms I have suggested are targeted largely towards improving the awareness and knowledge of policymakers. The obvious limitation is that they provide animals with no legislative power or representation. These reforms aim to educate lawmakers to potentially carry out and execute laws and regulations that have already passed that seek to protect animals' rights and promote their interests. However, without other legislative reforms that give some *legislative power* to representatives of animals, there are good reasons to think the legislative status quo will not adequately represent the rights and interests of other animals.<sup>335</sup> Even if humans come to view animals as deserving of much greater moral and political consideration, they are still likely to hold various forms of biases towards other animals. When they vote, it is likely that many will still give much greater consideration to their own interests, and the interests of other humans who vote for them, than they give to the interests of other animals. Relying on the status quo when it comes to who makes up the legislature, then, would appear to offer inadequate representation for the rights and interests of other animals. The question is whether we can do better.

### 8.4.1 Electoral Reform

Let us first consider a more modest type of electoral reform aimed at improving the legislative representation of nonhuman animals. Garner argues that certain tweaks to our current systems of electoral representation appear more likely to lead to political parties gaining power that are focused on the welfare and rights of nonhuman animals. He argues that electoral systems that have single member districts, and that elect these members with a first-past-the-post-system of

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<sup>335</sup> See Chapter 3, p. 62 - 67.

voting, are less likely to elect individuals and parties seeking to advance the interest of other animals. According to Garner,

first past the post electoral systems with single-member constituencies require political parties to be very broad churches if they are to maximise votes. This makes it very difficult to persuade political parties to adopt specific policy commitments from those representing very specific interests. This difficulty, of course, is compounded in the case of animals since to advocate policy commitments designed to protect them has no direct benefit to humans (although it may, of course, satisfy the altruistic desires of some), and may indeed, in some cases, be detrimental to the interests of humans.<sup>336</sup>

Some support for Garner's position stems from the fact that animal-use industries have a vested interest in preventing legislation that hurts their profits. These industries are organized, politically connected, and financially powerful. In a first-past-the-post, single-member electoral system, political parties and candidates have an incentive not to adopt and vote for policies and legislation that goes against the interests of animal-use industries. While many of these policies might be quite popular among the public at large, the strength of their concern (at least at present) is generally much less than that of the animal-use industries, and those who support these policies are not nearly as politically powerful and organized. As a result, large political parties have a strong disincentive to advance progressive animal-welfare policies, even when those policies have broad public support.

Some electoral systems with proportional representation may fare better, at this point, in terms of representing the interest of animals. In these systems, political parties that represent the interests of minority groups can gain some seats in a legislature. The Netherlands has a proportional electoral system with a very low requirement for seats (a party needs only .67% of

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<sup>336</sup> Garner (2016), p.115.

the popular vote to gain a seat in the lower house). And in recent years, the Dutch Party for Animals (PvdD) has had some success, holding seats in the lower house of the Dutch parliament since 2006. The party has gained more seats since its founding and in 2017 the PvdD gained 5 seats (out of 150) in the lower house and 2 seats in the Senate. It is, thus far, the first and only animal advocacy party to have gained seats in a national legislature.<sup>337</sup>

Nevertheless, Garner exaggerates the strength of his case for proportional representation.<sup>338</sup> His argument ignores examples where a smaller minority of voters who care deeply about one issue and vote primarily on it can have significant influence on larger parties within a first-past-the-post electoral system. A good example of this is the significant influence Cuban-Americans living in Miami have had on the U.S. government's stance towards Cuba and the imposition of sanctions and travel restrictions. Despite representing a tiny fraction of the U.S. electorate, these citizens have exerted a very large influence on the historical positions adopted by both the Democratic and Republican parties.

It is not hard to imagine voters concerned with animal rights and animal welfare eventually exerting a similar influence on larger, broad church parties. At present, it may be that in many states these voters are too few to command much influence on larger parties and to change the incentives needed for a party to adopt pro-animal positions that are at odds with animal-use industries. But this may change. If their numbers grow, it is quite possible these voters could lead parties to adopt stronger animal welfare and rights positions, especially those that already have broad public support.

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<sup>337</sup> Otjes (2014), p.107.

<sup>338</sup> Thanks are owed to Tom Hurka for pointing out some of the problems facing Garner's case for proportional representation on the grounds that it would best advance the interests of other animals.

With this, Garner's case for proportional representation glosses over the way smaller parties, in first-past-the-post electoral systems, can push larger parties to adopt their positions, to prevent these smaller parties from gaining more seats in the legislature. A plausible case can be made that this has been one of the primary ways the New Democratic Party in Canada has exerted influence at the federal level and achieved policy goals.<sup>339</sup> Despite never forming a government, the NDP has had significant influence, pulling the Liberal party to the left to prevent the NDP from gaining power. As the number of animal advocates grows, one can imagine these individuals, and perhaps animal parties they form, exerting a similar influence, pushing larger political parties to adopt some of their agenda to maintain their legislative power.

Admittedly, there are a variety of different normative factors that should go into evaluating the desirability of different electoral systems.<sup>340</sup> Garner is right that there are some advantages that a system of proportional representation (with lower thresholds for gaining seats in a legislature) would create for parties looking to represent the interests of animals. Animal parties are more likely to gain seats in the legislature, and this may bring greater public and legislative attention to issues affecting other animals. But the strength of the case for this type of reform is complicated by some other ways small groups of voters can have political influence in first-past-the-post electoral systems. At present, we lack sufficient evidence to know which sort of electoral system would do the most to represent and advance the interests of other animals in the long run. More evidence is likely to emerge if a greater percentage of human citizens become politically active on the issue of animal rights.

Even if one was convinced by Garner and thought that proportional representation offered the best near-term improvements for individuals looking to improve the political representation of other animals, there are significant limitations on what this can achieve. Even in their biggest

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<sup>339</sup> I owe this example to Tom Hurka.

<sup>340</sup> See Daniel Weinstock (2017).

electoral victory in 2017, the Dutch Party for Animals only managed to win 3% of the seats in the lower house. One problem is that voters may agree with some or even much of the platform of an animal party but not agree with their positions on policies that more directly affect humans. Or they may feel that their vote is wasted if they vote for this party and not another party centred on policies and laws affecting humans or that has a chance of having a much larger concentration of power in the legislature. There appear to be important limitations on how much animal parties, competing against other political parties, can achieve even in proportional voting systems. Further, without other electoral reforms, expecting humans to use their votes to elect parties dedicated solely to animal welfare and animal rights appears unlikely to achieve significant electoral success.

#### 8.4.2 Surrogate Voting

In light of these problems, we should consider other types of legislative reform to better represent the interests and rights of nonhuman animals. One possibility can be adapted from a proposal that has been made by disability advocates, who have suggested that individuals with profound cognitive disabilities, who are not capable of voting for themselves in a meaningful way, should be represented by their guardians.<sup>341</sup> On this approach, the guardians of individuals with profound cognitive disabilities would have two votes, one for themselves and one for the individual under their care. One way to justify this system appeals to the principle of ‘one person, one vote.’ Nussbaum argues that respecting our fellow citizens requires extending the vote to them, as this is required to treat these individuals as our equal fellow citizens. Allowing surrogates to vote on behalf of these individuals is an important symbolic gesture of their equality and equal membership.<sup>342</sup>

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<sup>341</sup> Nussbaum (2010).

<sup>342</sup> Nussbaum (2010), p. 87

A few problems confront a surrogate voting system for individuals with profound cognitive disabilities. First, the case that Nussbaum makes for this system focuses primarily on the expressive and symbolic significance that extending a vote to the surrogates of individuals with profound cognitive disabilities would have. Respect for these individuals as our equal fellow citizens, she thinks, requires extending the franchise to them in this form.

I am skeptical of Nussbaum's attempt to justify extending an additional vote to the guardians of individuals with profound disabilities on purely symbolic grounds. However, putting this issue aside, it is not clear that Nussbaum's surrogate system of voting represents the most effective way of representing the interests of these individuals.

If we move beyond symbolism, it is not obvious that enfranchising guardians of individuals with profound cognitive disabilities is the best way to signal to society their equal worth, or the best way to achieve desirable effects from this symbolism. As Lopez-Guerra notes, this system of surrogate voting is "neither a necessary nor an effective device for protecting the interests and signalling to society at large the equal worth of beings deprived of the capacity to vote."<sup>343</sup>

In terms of the effects achieved by this symbolic gesture, surrogate voting might go some way toward affirming the equal value of citizens with profound cognitive disabilities. If, for example, there is public debate prior to extending the franchise to their surrogates, and if surrogates vote in person and bring to the polls the individual who they are voting on behalf of, we can imagine this having some effect when it comes to raising awareness of these individuals and their equal worth. However, with Lopez-Guerra, I suspect that there are other public measures that can be taken to affirm their equal value that would be more likely to make gains towards this end.

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<sup>343</sup> Lopez-Guerra (2014), p.73.



My main concern is how effective a surrogate voting system would be at improving the representation of individuals with profound cognitive disabilities. I am skeptical that it will achieve much to advance this goal and this should concern those, like Nussbaum and myself, who think individuals with profound cognitive disabilities are poorly represented in our current democratic institutions. Several potential problems confront this approach. Some guardians of individuals with cognitive disabilities may not vote. With this, some guardians might do a poor job of representing the interests of those under their care.

Most worrisome, I fear that extending an additional vote to the surrogates of individuals with very severe cognitive disabilities is unlikely to substantially change electoral outcomes and how their interests are represented in a state's legislature. The number of individuals who have profound cognitive disabilities severe enough that they cannot vote on their own or with the assistance of their guardian is relatively small.<sup>344</sup> In states that do not have proportional systems of representation, it is unlikely that the votes of surrogates will make much of a difference in electoral outcomes or in changing the policy priorities and platforms of the legislatures who run and are elected.

It is possible that if guardians used their vote exclusively on disability issues, their vote might still have a large effect even in places that lack proportional representation (similar to the way some small groups, like Cuban-Americans living in Florida, can sometimes have a much larger influence on broader political parties). However, it seems plausible to assume that many guardians of individuals with profound disabilities already vote this way, and yet still lack much influence. Would doubling their voting power change this?

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<sup>344</sup> In the United States, around 1-3 percent of the population have an intellectual disability. But a strong majority of these individuals, however, have only a mild intellectual disability and are capable of voting on their own or with some assistance. See (NIH Source).

Given these worries, I think there are more direct ways to represent and advance the interests of individuals with profound cognitive disabilities that are more likely to achieve this goal. A better system would allow surrogates to vote for a special representative tasked with representing individuals with very severe cognitive disabilities. The number of these representatives could be proportional to the percentage of the population who have very severe cognitive disabilities and cannot vote for themselves. This sort of reform would do more to represent the interests of individuals with severe cognitive disabilities, compared to simply extending the vote to surrogates, by guaranteeing them a representative(s) in a state's legislature tasked with promoting their rights and interests.

Does a surrogate system of voting have more promise if it were utilized in the case of nonhuman animals? I do not think it would. We can imagine a similar system of surrogate voting, where the guardians of domesticated animal citizens would be given an additional vote on behalf of the animals in their care to represent their interests. Like the cognitive disability case, we might think these guardians are well positioned to know the needs and interests of the animals under their care. With their informed vote, this could improve the extent to which legislatures are knowledgeable of, and responsive to, the interests of other animals.

A different set of problems confront this system of representation. First, there is the obvious problem: not all nonhuman animals have guardians. A system of surrogate voting does nothing to represent the rights and interests of wild and liminal animals and I have argued that effectively protecting and upholding their rights requires representing their interests politically. However, even if we put this significant deficiency aside, other important problems confront this model.

One problem is that a surrogate system of voting for domesticated animals might be prone to abuse. Individuals would have an incentive to become guardians of domesticated animals to gain more voting power. In this respect, a surrogate voting system differs significantly in the

case of nonhuman animals compared to the cognitive disability case. Few humans would choose to adopt an individual with profound cognitive disabilities to gain one extra additional vote as their guardian. This does not appear to be the case for domesticated animals, as the financial costs and commitments (emotional, financial, etc.) of becoming their guardians are not nearly as great. A surrogate voting system thus creates a potential incentive for abuse, as individuals who are more likely to care less about the rights and welfare of other animals have an incentive to become their guardians. It is not clear just how strong this incentive is, and whether many people would take on the costs and work related to domesticated animals for an extra vote every two to four years.

This last issue could become even more pronounced depending on how votes were allotted. If surrogates are given an additional vote for *each* domesticated animal in their care, the potential for abuse grows substantially. One way to avoid this outcome would be to limit the number of additional surrogates any person could have. Guardians of domesticated animals could be given one additional vote, no matter how many animals are under their care. This approach would put greater limits on the potential abuse, but it creates its own problems. If the guardians of domesticated animals are limited to one vote, the potential influence of this voting group is diminished. The votes of the guardians of domesticated animals would still have more influence than the guardians of individuals with very severe cognitive disabilities, however, as the population size here is much larger.

The most important objection facing the surrogate model is that guardians with an extra vote may not use it to vote for and advance the interests of the animals under their care. Absent any other changes to our electoral system, it is likely that many guardians of domesticated animals would vote as they otherwise would, and that the additional vote would not be used to advance or represent the interests of the domesticated animal under their care. This appears to be an important difference between the guardians of human individuals with profound

cognitive disabilities and the guardians of domesticated animals. Although the vast majority of animal guardians view companion animals as members of their own family, their membership is, generally, not seen as having the same significance and importance as that of human members. The likelihood, then, that these guardians will simply use their additional vote to advance their own interests or political ideologies appears much higher than with the guardians of humans with severe cognitive disabilities. This worry is mitigated, to some extent, by certain political realities: it is unlikely that a system of surrogate voting would be instituted in a democracy unless most of a state's citizens came to have very different views of nonhuman animals. Nevertheless, the fact that some of a state's citizens may not hold these views, and may use them to vote against the interests of nonhuman animals, would likely still be a problem confronting this approach.

## **8.5 Designated Animal Representatives**

There are better ways states might attempt to represent the interests of nonhuman animals in their legislative bodies. The best approach, I believe, would follow an idea made in the literature on representing the interests of future generations. To more adequately represent the interests of future generations in a state's legislatures, some political theorists have suggested that humans ought to create designated seats in a legislature for representatives of future generations (F-reps).<sup>345</sup> F-reps would be elected from distinct political parties, separate from those that currently represent the interests of present generations, and they would be allotted a set number of seats in the legislature (often the suggestion is 5% to 10%).

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<sup>345</sup> Ekeli (2005) and Ekeli (2009); Kavka and Warren (1983); Thompson (2005).

An extension of this idea offers the most promise for effectively representing the interests of nonhuman animals in a state's legislature.<sup>346</sup> A certain percentage of seats in a state's legislature would be reserved for Animal Representatives (A-reps). A-reps would run in distinct Animal Parties, separate from the political parties that represent human interests, and would put forward platforms devoted to the interests of domesticated animal citizens, as well as wild and liminal animals residing and travelling within that state. A-reps would have a fiduciary duty to represent the interests of nonhuman animals and they would have the legislative power to bring forward and vote on legislation (and, as I will argue shortly, certain special legislative powers). Ensuring that the parties are distinct in these ways would help to ensure that the goals and objectives of the parties are to advance and promote the interests of nonhuman animals, and not to advance the interests of other mainstream political parties. A-reps could be elected by the general electorate, who would have a separate vote for the Animal Representative or Animal Party that they favor.

This system of proxy representation, with distinct Animal political parties and a guaranteed number of seats in a state's legislature, has several advantages over a surrogate voting model. One advantage is that this approach *guarantees* a certain number of seats in a legislature to Animal Representatives. If other animals deserve to have their interests included in political decision-making, one way to ensure this is to simply set aside a certain number of seats for representatives of the interests of other animals. A surrogate voting system creates some incentives for the same political parties and representatives who represent humans to care about, and give attention to, issues affecting nonhuman animals. But the electoral reform I am advancing would do better. It would ensure that there are representatives whose legislative focus is representing the interests of nonhuman animals. Further, a surrogate voting system privileges the votes of individuals who are the guardians of domesticated animals, at the

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<sup>346</sup> Garner (2016) makes a similar proposal for representing the interests of nonhuman animals, although his is much less detailed than mine.

expense of other voters. It is not clear why only these citizens should be given a vote on behalf of other animals, especially when other human citizens are likely to be as knowledgeable and concerned about the rights and welfare of nonhuman animals.

Still, we might worry that the potential for strategic abuse remains even if a state has designated Animal Representatives with a guaranteed number of seats in a legislature. Even if states formally guarantee a certain number of Animal Representatives, this means little unless these individuals and parties vote and work to actually advance the interests of nonhuman animals. The worry, here, is that these representatives and parties would be taken over, or infiltrated, by the political parties that already represent humans, and would vote along the already established party lines, rather than focusing on and advancing the interests of nonhuman animals.

This worry is part of the motivation for creating separation between mainstream political parties and Animal political parties. One way to address this problem would be to prevent political parties that represent humans from forming animal parties or from fielding candidates to run in these elections or from coordinating campaigns or other political work. This could be done by not allowing candidates from mainstream political parties to run in animal parties, or vice versa, or by putting time limitations on when candidates can run. With this, efforts could be made to prevent mainstream political parties from funding animal political parties. These efforts could help to prevent political parties who represent human interests from infiltrating animal parties. Additionally, courts could enforce the legal norms regulating the formation, platform, and activities of Animal parties.<sup>347</sup> This would provide an additional check against strategic abuse of Animal Representatives. The courts could also consider cases where representatives have violated their fiduciary duty to the animals they represent. If representatives have severely breached their fiduciary duty, they could be subject to fines or

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<sup>347</sup> Ekeli (2005), p.438.

civil damage suits. Fines or damages should be confined to the most egregious or severe breaches of this duty, so as not to make individuals who would genuinely try to advance the interests of other animals reluctant to run.

Along with this, there are other reasons to think that a system of designated Animal Representatives could avoid strategic abuse. First, there are practical political constraints that to some extent mitigate this concern. This type of electoral system will only be implemented if there is a significant percentage of a state's human population that supports it and would like to make it work. Concerns about strategic abuse, then, are mitigated to some extent by the fact that, if it is to get off the ground, enough humans will have come to believe that other animals deserve some form of legislative representation. At least a majority of a state's human citizenry will have some commitment to seeing a system of designated Animal Representatives work if such a system is going to be implemented.

But beyond this, there are other reasons to think a system of designated Animal Representatives could avoid strategic abuse. One reason for this is the specific, focused role that these representatives would have. Kristian Ekeli, writing about the representation of future generations, has called attention to the ways that having a specific legislative purpose might block the strategic form of abuse to advance other legislative goals.<sup>348</sup> The "civilizing force of hypocrisy,"<sup>349</sup> would make it more difficult for A-Reps to advance positions that are hostile or indifferent to the interests and needs of nonhuman animals. By giving certain representatives a specific legislative role, their ability to skirt this role is limited, to some extent, by the blatant hypocrisy this would involve. Designated Animal Representatives both frame and focus the attention of the public in a way that is conducive to promoting the interests and rights of other animals.

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<sup>348</sup> Ekeli (2005), p.447.

<sup>349</sup> Ekeli (2005), p.447.

A system of designated Animal Representatives would also significantly improve the extent to which the interests of animals are represented in a legislature. One reason for this is that such a system would make some progress towards creating accountability. This will always be a challenge when it comes to representing the interests of individuals who cannot represent themselves. However, the creation of special representatives helps to bring some measure of accountability. Animal parties would put forward platforms on issues relating to the rights and welfare of nonhuman animals and voters would vote for parties and A-reps based on these platforms and the extent to which these parties influence and bring about change in the legislature. Having specific representatives dedicated to animal issues puts a greater spotlight on their policies and focuses these representatives to not only take public positions, but to defend them as well.

Another way A-reps would improve the representation of the interests of animals in a legislature is by helping to set the agenda of the legislature. The inclusion of a select number of A-reps would likely bring a greater focus in the entire legislature to issues affecting the rights and welfare of nonhuman animals. In the Netherlands, where the Dutch Party for Animals (PvdD) has held seats in this nation's lower house, there has been an increase in attention in the legislature to the issue of agriculture (one of the PvdD's main issues).<sup>350</sup> Despite holding a relatively small number of seats, the presence and work of the PvdD has led other legislators and parties to give more attention to the issue of animal welfare in agriculture. As Otjes notes, the political attention of lawmakers is a scarce resource and the presence of an animal advocacy party in the Dutch legislature appears to have brought more attention to the place of animals in agriculture.<sup>351</sup>

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<sup>350</sup> Otjes (2014).

<sup>351</sup> Otjes (2014), p.111.



Not only would the inclusion of Animal Representatives in a state's legislature bring greater attention to issues affecting nonhuman animals, but their presence would also likely have an influence on the ways these issues are framed and debated. Animal Representatives would prevent the effects of a law on other animals from being swept under the rug and help to frame legislative debate in a way that recognizes the importance of the rights and interests of other animals.

Animal Representatives would also bring greater knowledge to the legislature about the needs and interests of nonhuman animals and the effects various policies will have on their rights and interests. Because these representatives would be focused on representing nonhuman animals, they could develop greater knowledge of these animals' interests, as well as more detailed knowledge of the various ways different laws and policies might affect them. One particularly important way A-reps could improve debates in a state's legislature, and the subsequent policy that emerges, is with an understanding of the interests of nonhuman animals that comes, in part, from consulting these animals and soliciting their preferences.<sup>352</sup>

An electoral system that included Animal Parties and Animal Representatives would also increase public exposure on issues affecting nonhuman animals. Prior to elections the parties would develop platforms on the important issues going into the election, and the presence of specific campaigns devoted to representatives for animals would bring greater attention to these issues from the public at large. This, as Ekeli has suggested in a different context, is one way a "double vote" for representatives could make the interests and needs of nonhuman animals more "imaginatively present" for human citizens, especially compared to alternative electoral reforms.<sup>353</sup>

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<sup>352</sup> See Chapter 6, p.216-220 for my argument that adequately representing the rights and interests of domesticated animals will sometimes require soliciting their preferences in certain policy areas.

<sup>353</sup> Ekeli (2005), p.440.

There are good reasons, then, to think that an electoral system with designated Animal Representatives would make important progress when it comes to representing the rights and interests of nonhuman animals. This system has important advantages over a surrogate system and appears likely to improve the representation of nonhuman animals when compared to the status quo. However, a system of Designated Animal Representatives cannot be evaluated solely in terms of how well they would work to represent and advance the rights and interests of other animals. These reforms may have other, unintended consequences for the legislature and the functioning of the government more broadly. Further, several questions remain.

### 8.5.1 Legislative Scope

One important question concerns the legislative scope or authority of Animal Representatives. Should Animal Representatives be allowed to vote on all legislative issues? Or should their votes in the legislature be restricted to issues that affect animals in some substantial way? Here we can note that a variety of difficult and tricky issues confront my initial suggestion that Animal Representatives and Animal Parties should be distinct or separate from regular representatives.

The legislative scope of Animal Representatives raises a challenging dilemma. On the one hand, if Animal Representatives can vote on all legislative issues, this would make them equally powerful legislators and, in parliamentary systems of government, valuable coalition partners. This would enhance their legislative power and, in turn, help to genuinely advance the rights and interests of nonhuman animals. Nevertheless, this position faces a potential challenge in terms of democratic legitimacy. If Animal Representatives are genuinely distinct from other political parties, and run only on a platform relating to animal issues, we might question whether their votes on non-animal issues are democratic. Voters, after all, wouldn't have

known where these reps stand on non-animal issues. As a result, we can question whether their votes on these issues are legitimate.<sup>354</sup>

On the other hand, if the votes of Animal Representatives are restricted to issues affecting animals (assuming, for the moment, that the boundaries can be classified in a satisfying and plausible way), this avoids the problem of democratic legitimacy. However, it would seem to undercut the power of Animal Representatives in a potentially problematic way. Lacking the power to vote on all legislative issues, these representatives would have a diminished power in forming coalitions and, as a result, a diminished ability to exert influence over regular political parties.

Although an important challenge, I think there is a plausible middle ground position that avoids both sides of this dilemma, or that at least addresses both worries in the best possible way. On this approach, Animal Representatives would have the authority to vote on all issues that affect nonhuman animals, as well as issues relating to general taxation, spending, and appropriations. However, they would be prevented from voting on legislative issues that do not influence the budget and that only concern human citizens. The adjudication of when a proposed bill meets these conditions could be decided by a non-partisan parliamentarian.

This approach appears capable of avoiding both horns of the dilemma. Animal Representatives would still run on platforms dedicated to animal issues, but they would make clear how these issues related to taxation, spending, and other legislative priorities. Thus, their platforms and votes wouldn't be open to the charge of democratic illegitimacy. Likewise, by including votes on taxation, spending, and the appropriation of funding, A-reps would still be valuable coalition

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<sup>354</sup> In some ways, this issue is similar to the so-called "West Lothian Question," in the UK, that deals with whether Members of Parliament from outside of England should be able to vote on issues and policies that only affect England, when English MP's are unable to vote on some issues delegated reserved to assemblies in places like Scotland and Northern Ireland.

partners. It is true that their legislative power is more constrained than other members, but this need not prevent them from being valuable coalition members (especially if, as I will argue later, they are given a decent percentage of seats within a legislature).

With this, by focusing the platform of Animal Representatives primarily on issues affecting animals, we can avoid a problem we noted in the previous discussion of animal parties that operate in present legislatures with proportional representation. In this case, some voters might support pro-animal policies, but choose not to vote for these parties because they disagree with other parts of their platform or with ways they can reasonably anticipate they will vote on other issues. Separating animal parties from mainstream political parties, and focusing A-reps primarily on animal issues, does some work to mitigate this concern. Voters will be able to vote for different A-reps from different Animal parties, representing different views on issues affecting other animals, as well as different views on how these issues relate to things like taxation and spending.

Another issue related to the separation of Animal Representatives and regular representatives concerns the platform of the non-animal political parties. Should these parties be allowed to have policies on animal issues? Presumably they should, since on my proposal these parties will also be voting on issues that affect other animals. If this is the case, both voters and the animal parties will want to know where they stand.

This raises a potential challenge. If regular political parties and candidates have policies on animal issues, then these issues would be considered and reflected twice in voting: once in an individual's vote for the Animal Rep and once for their vote for the regular legislator. We might question whether it is fair, or even a good idea, to have a set of issues influencing two elections while other issues influence only one. I do not think there is anything inherently unfair with one set of issues influencing two or even more than two separate elections or races. This, after all, is already a common feature of politics in many states. Many policy areas that involve humans are

considered and debated at multiple levels of government and are often central to different races in federal elections in states with bi-cameral legislatures.

More broadly, many issues involving animals are intimately tied up with issues involving humans. This claim is especially true for domesticated animals, who live with and among humans in our societies. Given the extent to which many issues overlap, there does not appear to me to be a democratically plausible way to prevent non-animal reps from voting on issues that affect animals. The proposal I have made is not meant to remove the desire or interest of regular legislators to represent their animal constituents but to allow animal reps to provide greater accountability within a legislature and a greater voice for other animals.

One final challenge concerns the extent to which we can plausibly separate issues that affect animals from those that do not. It seems quite possible that some issues and policies may only have a very minor or negligible effect on animal interests. Imagine, for example, that a state is considering increasing their inheritance tax, while simultaneously lowering some income tax rates so that there is no increase in revenue. This piece of legislation may have a rather negligible effect on the interests of animals (perhaps some might be effected in some indirect way if they live with wealthy human citizens?). For legislation like this, which has only the most negligible potential effect on animals, we might hold Animal Reps should not be allowed to vote. The obvious question: on what basis do we separate when Animal Reps should have a vote from when they do not?

This is a tricky issue. My attempt to resolve the problems involved in the Legislative Scope Dilemma held that A-reps would have a legislative scope that includes all issues that affect the rights and interests of nonhuman animals and on issues related to taxation and spending. Without some influence over the budget, I believe, these reps would have too little power to make for valuable coalition partners and their ability to exert power and influence within the legislature would be significantly compromised.

Nevertheless, this position requires more elaboration. It helps to consider this problem in an abstract way. Imagine a piece of legislation, for example, that has 99% of its effect on humans, and 1% of its effect on animals. If a sizeable minority of the legislature is made up of A-reps, and they vote on this issue with a sole focus on the animals that are affected, they might decide the fate of the legislation. But is this fair or desirable? Here, we might think the interests of animals are given too much voice, exerting too much influence on a piece of legislation that will have little effect on their interests. I have raised this issue in the abstract, but we can imagine real legislative issues that would raise the issue. One example might be a bill that modifies a state's public pension system for human citizens, with only a small effect on the overall budget. At what point should A-reps be allowed to vote?

I do not think there is an easy or clear answer to this question. The best approach, I believe, is to allow Animal Reps a somewhat wide leeway when a piece of legislation would implicate their basic rights or interests. At the same time, a threshold could be set for how much a piece of legislation would need to impact the budget for A-reps to have a vote (when the bill does not implicate the rights or interests of nonhuman animals). The motivating idea, here, would be to separate legislation that implicates only humans and does not really implicate a state's budget from those that do. The reason for giving Animal Reps votes on budget-related matters is to give them greater political power – which is needed to make them valuable coalition partners – and because the appropriation of funds matters to animals in substantial ways.

### **8.5.2 Number of Legislative Seats**

Another important issue concerns how many designated Animal Representatives should be reserved in a state's legislature. That is, what percentage of the legislature should be made up of Animal Representatives?

In the future generations literature, advocates of legislative representatives for future generations tend to suggest a small percentage (around 5 to 10%) of a state's representatives should be reserved for representatives on behalf of future generations. One motivation, I suspect, for giving F-reps a small percentage of seats is that any attempt at proportional representation is futile. Future generations vastly outnumber the present population, so any attempt to give proportional representation to future generations would fill the national legislature with only F-representatives. Such a proposal is a nonstarter politically.

Further, there are important moral considerations that a defender of a limited number of seats for future generations can appeal to, as well. One possibility is that some social discount rate for the future is legitimate.<sup>355</sup> More importantly, however, and more relevant to our purposes here: the grounds for the representation of future generations (if we think there are any) are going to be different, in important respects, from those of present humans. Unlike presently existing humans, future generations cannot be said to have a right to participate by voting, as they do not exist! If they do have a moral claim to some form of representation, it is because there are moral reasons that the interests of future generations deserve some form of proxy representation.

Turning to the case of Animal Representatives, how should we think about what percentage of seats should be reserved for A-reps? One initial possibility would be to make these seats proportionate to the number of nonhuman animals that live or reside in the state. One way to do this would be to estimate the number of domesticated and wild animals living within a state's territory and use this to calculate the percentage of the overall human-animal population of the state. The same percentage of seats, proportionate to their overall population, would be reserved for Animal Representatives.

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<sup>355</sup> Heath (2017).

One argument for proportional representation restricts its focus to domesticated animals. If domesticated animals are truly our fellow citizens, then we might think it is only fair that they are allocated a percentage of A-reps that is proportionate to their percentage of the state they live in. There are different ways we can support this appeal to fairness. One might argue that proportional political power – in the form of proportional representation – is necessary to adequately represent the interests of domesticated animals and to ensure fair legislative outcomes. Or perhaps a failure to give these animals proportional representation represents a failure to take their interests sufficiently seriously and perhaps to give their equal interests (where they have them) the same consideration.

A push for proportional representation is, of course, not going to happen in a world with so many farmed, domesticated animals. We can dispense with an initial worry rather quickly: that currently giving domesticated animals proportional representation would overwhelm non-Animal Representatives in a state legislature. In the United States, for example, around 10 billion land animals (mostly chickens) are raised and killed every year for food.

More realistically, a push for proportional representation would only come in a world where the basic rights of domesticated animals are not so routinely ignored and disregarded. To get a sense of the numbers, we might focus on the number of companion animals currently living in a state. In Canada, the number of companion animals is between 13 and 14 million. The human population in Canada is about 36 million. If domesticated animals were given proportional representation, they would be reserved around 27% of the seats in Parliament (with, perhaps, more representation allocated to represent the interests of wild and liminal animals).

Allocating seats on this sort of proportional basis faces important moral and practical objections. It is not clear, for example, that the principle of “one person, one vote” can be extended in a meaningful way to justify giving Animal Representatives proportional representation. In the human case, the principle of “one person, one vote” might be grounded



in the right of individuals to participate in their government and in the selection of the elected officials who will represent them. Or, perhaps it is grounded in a notion of equality. On this understanding, to give certain individuals more votes than another – or to give their vote more weight – would fail to treat them as moral equals. As I have noted previously, however, neither of these grounds is applicable to animals.<sup>356</sup> Nonhuman animals cannot vote and thus are not capable of having a right to participate in elections in this way. Given that they lack the “franchise capacity,” the failure to extend the right to vote to them is not a failure to treat them as equals, just as the failure to extend the vote to nonhumans who lack the franchise capacity is not a failure to treat these humans as moral equals.<sup>357</sup>

We might interpret the principle of “one person, one vote” in a different way, and hold that proportional representation, relative to population size, is needed to adequately protect the individual rights of animals. Without proportional representation, A-reps will not have adequate legislative power to do their jobs and the interests and rights of nonhuman animals are unlikely to be given the sort of consideration they deserve.

There are a few different practical and moral considerations that can be given against this argument. One response centers on the moral rights of animals that lay the foundation for their claim to political representation within a legislature. In Chapter 7, I defended the view that the state is justified in giving some priority to the interests of humans when doing so is needed to avoid greater harm. I argued that death likely harms (most) humans more than nonhuman animals and, as a result, in certain policy areas some priority can be given to the interests of humans. If this is the case, then we can draw on these claims to support the idea that

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<sup>356</sup> This is important to highlight because some have challenged the idea that the right to vote is a basic or fundamental right of democracy. Even if one accepted this claim, it would not affect the case I have made for electing designated Animal Representatives. See Brennan (2016) and Lopez-Guerra (2014) for arguments against the claim that individuals have a fundamental right to vote.

<sup>357</sup> Lopez-Guerra (2014), Chapter 3. For an argument against this position, see Donaldson (forthcoming).

domesticated animals are not owed proportional representation. On this approach, some priority should be given to mainstream political parties because the harm of death is greater for humans. With this, the legislative scope of issues that affect humans appear much larger, and seemingly more complex, than the array of issues that affect nonhuman animals. This is not to suggest that the issues confronting domesticated and other animals are not often difficult or complex, but that they are more limited than the vast array of political issues involving humans. Further, some of the public policy issues primarily affecting humans appear subject to a greater range of reasonable disagreement than policy issues affecting nonhuman animals.

These claims, I believe, undercut the theoretical case that domesticated animals are owed proportional representation. But further support can be found by drawing on the overall structure of the argument I have made for legislative representation of nonhuman animals. This argument is thoroughly instrumentalist, in that it evaluates the structure of political decision-making with respect to animals solely in terms of the quality of outcomes.<sup>358</sup> I have argued that other animals have a moral claim to forms of institutionalized, political representation because this is needed to protect and uphold their rights and interests, and, in the case of domesticated animals, to incorporate the interests of animal citizens into our understanding of the public good. Designated Animal Representatives are a tool for bring about better laws and public policies. The case for A-reps appeals, ultimately, to improving outcomes for other animals.

If this is what undergirds the need for a system of proxy Animal Representatives, then a claim to proportional representation lacks an obvious rationale. What matters is the extent to which our legislative bodies and other government institutions do a good job of respecting and upholding the rights and interests of nonhuman animals and at representing the rights and interests of humans. The question before us, then, is what percentage of a legislature's seats should be reserved for Animal Representatives, in order to best handle these dual aims?

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<sup>358</sup> Lopez-Guerra (2014), p.18.

Given the instrumentalist nature of my argument for Animal Representatives, I do not think there is any way we can give a specific or precise answer to the question of what percentage of seats should be allocated to A-reps on the basis of abstract theorizing. States will need to experiment with different numbers of seats reserved for Animal Representatives, just as they will need to experiment with some of the other forms of institutionalized political representation I noted previously in this chapter. The ultimate goal is to figure out what institutional arrangements do the best job of both protecting the rights of nonhuman animals and incorporating their interests into our political decision-making *and* at representing the rights and interests of human citizens. As they do so, they can adjust these levels based on periodic reviews of how well their legislature is working to achieve these goals. There's only so far we can go in answering this question without evaluating actual reforms that attempt to do this.

Nevertheless, while I do not think that the moral claims that animals have to forms of political representation call for a specific level or proportion of a state's legislative seats, I do think that some of the underlying practical concerns are important for how we might approach this question and where we might set our initial targets or goals. One of the implicit assumptions of my argument for extending various forms of institutionalized, political representation to other animals is that humans are somewhat limited or reluctant altruists. Humans often care and are concerned for the welfare of other humans and other animals, but these cares and concerns do not always generate the actions and practices that our reflective selves think are our moral duty. Examples are easy to come by. We care about the lives and well-being of humans living in extreme poverty, and most of us are committed at an abstract level to the claim that all human lives are equally important, yet we give relatively little to organizations working to fight extreme poverty even though this would save lives. Most of us care (at least at an abstract or principled level) about the suffering of chickens or pigs and are opposed to making these animals suffer in factory farms, yet we soon forget about the video or description of their living

conditions that made us recoil and go back to purchasing eggs and pork and other animal products with little thought.

This assumption is important to my argument because it is one of the reasons why I am skeptical that future more enlightened humans could adequately uphold and protect the rights of nonhuman animals in our current political systems. Humans may someday come to view other animals as bearers of moral rights and as political subjects. But even if a majority, say, of a state's human citizens come to adopt this view and accept it, they are likely to, at times, still discount the interests of other animals, or care more about their own perceived self-interest, or forget about the ways that policies may affect other animals, and so on. Humans can be tribal in our allegiance and loyalties. While most humans are committed to abstract claims of human equality, many still discount the interests of foreigners, minority groups, and others. This problem, and the underlying biases, are likely to be even greater in the case of animals. Therefore, it is important to find ways to represent the rights and interests of nonhuman animals in different institutions and with humans occupying different roles in this process.

Why does this matter to our present issue of the number of seats? If humans are limited altruists with significant tendencies to favor certain in-groups, then we need ways to focus our attention back on the interests of animals and A-representatives are one way we can do this. We cannot rely, simply, on the hope that more enlightened humans will be better at this. Animal representatives are one way our more reflective selves might choose to manage our own biases and prejudices towards other animals. However, while we might someday recognize this, it is unlikely that enough humans would agree to give A-reps a very significant percentage of the legislature's seats (in the realm of 50%, say). Moreover, the higher the percentage of representatives gets, the more their role as representatives of nonhuman animals and not as proxies for the priorities of other political parties, comes into jeopardy. The incentive to find ways to infiltrate and steer Animal Parties – at least in the short term when some humans are

still opposed to representing the interests of other animals – becomes greater with the larger number of seats that are reserved for these representatives.

Finally, it also is not clear that a large proportion of a state’s legislators would need to be Animal Reps to effectively represent the rights and interests of other animals. Perhaps practice will prove otherwise. But I suspect that what really matters is providing nonhuman animals with a voice in our legislatures, in part to continually remind and call attention to the ways policies can affect their rights and interests, as well as a healthy dose of legislative power.

For these reasons, I am inclined to think that somewhere around 10 to 15% of a legislature’s seats should be reserved for representatives from Animal Parties. This would give these representatives a significant say in a state’s legislature, without creating a strong of incentives to turn the Animal Parties into proxies for human political parties. Further, while Animal Reps would only be a small minority within a legislature, there are important ways we could enable them further to protect the interests of animals by granting them certain special legislative powers.

### 8.5.3 Counter-majoritarian Powers

One way we could help ensure that Animal Representatives, despite being a minority within a state’s legislature, can effectively protect and promote the rights and interests of nonhuman animals is by granting them specific, counter-majoritarian powers. Counter-majoritarian powers or devices are specific powers that give “defined minorities of legislators certain procedural rights.”<sup>359</sup> As Vermeule notes, these sorts of powers or rules are found in a range of legislatures, courts, and democratic institutions.<sup>360</sup> Some examples include the “Rule of Four” in

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<sup>359</sup> Ekeli (2009), p.440.

<sup>360</sup> Vermeule (2007), p.86.

the U.S. Supreme Court, which allows a minority of four Justices to decide to put a case on the Court's agenda. Other examples include rules governing direct democracy, such as rules that permit a minority of a state's electorate to put a question on the ballot in a citizen's initiative.<sup>361</sup>

Counter-majoritarian powers have been proposed to help protect the interests of future generations or important environmental interests and I believe they could prove particularly effective at protecting the rights and interests of nonhuman animals.<sup>362</sup> One example of a counter-majoritarian power is the ability to delay legislation. This would be a special power given to Animal Representatives. If a majority or perhaps a super-majority (60%, say) of the Animal Representatives in a state's legislature were opposed to a piece of legislation and believed it would be particularly detrimental to the interests of nonhuman animals, they could delay further consideration of the legislation by a year. Doing this would serve several purposes. It would allow further debate on the issue at hand and it could allow the Animal Representatives to increase public awareness and knowledge of the issue. It would also allow Animal Representatives to prevent legislation from being passed quickly, without the full effect on other animals being known or considered. And by requiring a super-majority of Animal Representatives, you can limit the likelihood that this counter-majoritarian power will be abused.

Alternatively, Animal Representatives might be enabled to constrain the will of the majority, if it is considering legislation or policy that is detrimental to the rights or interests of other animals, by mandating that legislation receive judicial review by the Supreme Court. This could work in a state that extends certain constitutionally protected rights to nonhuman animals (such as a right to life and a right to not be unjustly confined). In such a political system where

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<sup>361</sup> Vermeule (2007), p.86.

<sup>362</sup> See Agius and Busuttil (1998), Ekeli (2009), Stein (1998).

animals have constitutionally protected rights, judicial review of a piece of legislation could happen before it goes into effect, if a supermajority of Animal Representatives believe it likely violates their constitutional rights. One worry about this counter-majoritarian power is that it could lead to a greater politicization of a state's courts or Supreme Court. This is an important worry, but one that can be averted by limiting appeals to Constitutional rights and by requiring a super-majority of A-reps.

The counter-majoritarian powers discussed above represent two ways Animal Representatives might be enabled to protect all nonhuman animals (wild, liminal, and domesticated) whose rights and interests are implicated by the decisions of the state. The last counter-majoritarian power I want to focus on represents a way we could enable Animal Representatives to incorporate the interests of domesticated animals into our broader conception of the public good and into specific pieces of legislation.

In Chapter 6, I argued that while other animals are likely not capable of political agency, there are some circumstances where their preferences ought to matter to the law and public policy. One way to address this issue would be to give Animal Representatives the power to call for animal consultation or participation on a piece of legislation. Imagine, for example, that the federal legislature is considering legislation on a National Transit Strategy that would direct funding to transit projects across the nation, as well as address important issues relating to transit. On such a piece of legislation, a majority of the Animal Representatives might specify ways in which the needs and preferences of domesticated animals should be considered, ways we might study how transit affects the interests of domesticated animals, and areas where we might solicit their participation to learn about their preferences. If the legislation included funding for new streetcars or subway cars, the Animal Representatives might instruct the Department of Animal Rights and Welfare, or a sub-set of a Ministry dedicated to Transit, to solicit and seek out ways to better accommodate the interests and preferences of

domesticated animals when it comes to transit. Here, Animal Representatives would be given the power to make sure that important interests of nonhuman animals are understood and solicited, before legislation moves forward.

The legislative context of every state is unique and this might call for unique solutions and proposals in different states and at different levels of government. I have argued here that domesticated animals are owed political representation in national legislatures, and that the most promising way to do this is by creating a system of designated Animal Representatives. These representatives would be reserved a small but still sizeable number of seats within a state's legislature (such as 10% or 15%). Distinct political parties focused on the interests and rights of nonhuman animals would field candidates, and a state's citizens would vote for Animal Representatives, in addition to the regular representative or party that they vote for in an election.

## **8.6 Objections**

As we have seen, there are many ways states may try to incorporate the interests of nonhuman animals into their legal and political institutions. Here I focus on objections to the idea of electing designated Animal Representatives, the most controversial of my proposals.

### **8.6.1 Will Animal Representatives Represent the Interests of Animals?**

The first objection challenges my claim that a system of designated Animal Representatives would be effective at representing the rights and interests of nonhuman animals in a state's legislature. Lurking here are a variety of worries, some of which have already been noted. One worry is that this system relies on humans to act as proxies, in their role as Animal



Representatives, to represent the interests of nonhuman animals. If, as I have suggested, humans are generally limited in their abilities to act altruistically towards others, how can we count on them to adequately represent the interests of nonhuman animals? Are all attempts to introduce proxy representatives doomed to fail?

This, I believe, is not so much an objection as a restatement of the central challenge that confronts us. Of course, any attempt to represent the interests of nonhuman animals in our political institutions will rely on human actors. An understanding of this challenge, and of the ways in which humans can have somewhat limited concern and desire to act on behalf of others, supports a system involving designated Animal Representatives. Having specific individuals tasked with the role of only representing the interests of other animals clarifies and sharpens their focus. It also opens up Animal Parties, and specific representatives, to the charge of blatant hypocrisy if they stake out positions or arguments at odds with what is in the interests of other animals. There is no guarantee, of course, that every Animal Representative will adequately represent the interests of other animals living in her state, but this fact applies to all representatives in a legislature. Nothing is guaranteed. What matters is whether the system I am advocating will be more likely to create some accountability, and to do better than our current system at representing the interests and rights of animals, without introducing negative effects into a legislature that outweigh these gains. I think it clearly would.

### **8.6.2 An Epistocratic Amendment?**

A different challenge asks whether the solution to the inadequate representation of nonhuman animals in our current political institutions is more democracy. Instead, we might consider an epistocratic amendment to the system of Designated Animal Representatives I have presented that would limit the electorate of Animal Representatives in ways that are likely to improve

electoral outcomes for animals. Epistocracy refers to rule by the knowledgeable. As Jason Brennan writes, “a political regime is epistocratic to the extent that political power is formally distributed according to competence, skill, and the good faith to act on that skill.”<sup>363</sup>

The argument I have made for Designated Animal Representatives is quite amenable to an epistocratic challenge, as it appealed to the likely consequences such a reform would have for the lives of nonhuman animals. This type of reform would do more to incorporate the rights and interests of nonhuman animals into political decision-making, to reduce the rights violation of nonhuman animals, and to incorporate the interests of domesticated animals into our understanding of the public good and policymaking. Since I have argued animals are not political agents, any case for proxy representatives will involve claims that such a system will (eventually) lead to improved legislative outcomes. If the case for this reform rests on its likely results, then one way to challenge this reform is to argue that an epistocratic reform would fare better. These proposals should be taken seriously.

What might an epistocratic reform look like? An example of this type of proposal has been put forward in the literature on political representation for future generations. One proposal would modify the proposal of special, F-reps by restricting who is given a vote.<sup>364</sup> According to Dobson, votes for these representatives should not be extended to all citizens, but only to those who are members of organizations and groups that comprise the ‘environmental sustainability lobby.’ This sort of proposal is an epistocratic proposal because votes for F-representatives are restricted to specific citizens that are believed to be more likely to act in good faith when it comes to voting for F-reps and to have greater competence to vote for F-reps.

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<sup>363</sup> Brennan (2016), p.14.

<sup>364</sup> See Dobson (1996), p.132-133.

Similarly, we might restrict the electorate for A-reps to individuals who are members of animal rights or animal welfare organizations. The justification for this restriction would appeal to the likelihood that members of these groups would (a) have more expertise when it comes to the rights and interests of nonhuman animals and (b) vote in good faith to advance these interests. Alternatively, we might restrict the right to vote for A-reps to individuals who have passed a competency exam about the needs and interests of nonhuman animals or to individuals selected by a lottery who then take classes lead by experts on these needs and interests.

The case for some form of epistocratic reform appeals to the likelihood that it would do better at advancing the rights and interests of nonhuman animals than the democratic reform I have put forward. One way to defend this claim is to note the ways in which voters tend to be rather ignorant and misinformed about politics.<sup>365</sup> If voters tend to be ignorant when it comes to voting for current representatives, then they appear likely to be more ignorant when voting for Animal Representatives. Voters have a greater incentive to research candidates and issues that they care about or that affect their own lives. But they have less of a personal incentive to research candidates' positions on issues more removed from their lives, such as the ways certain transportation policies affect the lives of wild animals. Further, as I have noted multiple times, there are likely to remain some humans who will wish to vote against the perceived interests of other animals, or vote for candidates who they think discount their interests, or who give greater weight to human interests.

In these respects, the case for some type of epistocratic amendment to my proposal appears stronger, in certain ways, than the case that can be made for epistocracy in general. Not only are voters generally ignorant, but they have less of a personal incentive to combat their ignorance when voting for A-representatives and a greater likelihood to be prone to anti-animal biases.

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<sup>365</sup> See Brennan (2016), Chapter 2.

These epistocratic reforms are also not open to the same democratic challenges that epistocratic forms of government face when limiting the rights of humans to vote. Even if one grants that individuals have something like a fundamental or basic right to vote – and that forms of epistocracy that deny this are not justified – it is not clear that limiting who can vote on behalf of Animal Representatives violates this right. The goal, after all, in creating Animal Representatives is to represent our fellow domesticated animal citizens and the other animals (wild and liminal) who can be harmed by our laws and policy. Human citizens still have a vote for their regular representatives.

With this, two of the strongest objections against epistocracy for human representatives are not clearly applicable to epistocracy for Animal Representatives. The Demographic Objection argues that many forms of epistocracy could lead to an electorate that has less representation from historically marginalized groups, and would therefore be unjust, either because unequal representation is inherently unfair or because it is likely to lead to bad outcomes for marginalized groups.<sup>366</sup>

These concerns appear less pressing when applied to the electorate tasked with electing Animal Representatives. For example, it is not clear that if an electorate for Animal Representatives does not match the electorate at large, this is a problem. If the animal electorate has a greater percentage of women, or a smaller percentage of a certain minority or religious group, it is not clear this is an injustice. Here, too, the distinct legislative purpose of Animal Representatives undercuts the claims of injustice that might be applicable in the human case.

The second challenge that confronts forms of epistocracy for human representatives concerns how we understand voting competency. This is a serious worry. Presumably, any plausible and fair understanding of the competency of voters should not rule out various political ideologies

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<sup>366</sup> Brennan (2017).

that fall within the scope of reasonable disagreement. One possibility, then, is that we could understand voter competency in terms of knowledge of their government, basic features about the electoral system and the system of government, how it works, and perhaps some basic and relevant facts from economics and the social sciences. This understanding of voter competency may run into the Demographic Objection. In the United States, for example, higher-income earners do better in these respects than low-income earners, people living in the West do better than those living in the South, and African-American women do worse than white men on questions relating to political knowledge and economic literacy.<sup>367</sup>

It is not clear this is the only way, or even the best way, to understand the competence of voters. Recent political events in the United States point to a convincing challenge to this measure of voting competency. Black women had the lowest percentage of individuals who voted for Donald Trump in the 2016 US Presidential election, compared to other similar demographic groups (white men, white women, etc.).<sup>368</sup> It is not clear why this is not a better measure of voter competency than basic knowledge of the government. In any case, what this suggests is that there are serious challenges when it comes to how we understand and measure voter competency in many epistocratic electoral system.

However, these challenges appear less pressing when it comes to epistocracy for Animal Representatives. Efforts to improve the competency of the electorate, by ruling out bad faith voters and voters who are ignorant of the needs and interests of other animals, appear easier to accomplish, and less contestable, than in the human case where questions of competency run into more fundamental problems.

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<sup>367</sup> Althaus (2003), p.11-12; Delli Carpini and Keeter (1996), p.135-177.

<sup>368</sup> Agadjanian (2017).

Further, one way to avoid this challenge altogether would be to follow Lopez-Guerra and use a Lottery System to select the electorate for Animal Representatives.<sup>369</sup> A small percentage of a state could be chosen to vote for A-reps, 1% say, and then would undergo classes and education efforts over a period of time to improve their knowledge of animals, their basic interests, and policy issues that affect them. These issues would still be contested, but there are likely a decent number of ways we could improve the competency of the voters selected by lottery that would garner widespread agreement, particularly in a state where most of the citizens have some commitment to making a system of Animal Representatives work.

I am committed to the forms of political representation for nonhuman animals that will achieve the best results at representing their rights and interests, without undermining or significantly hindering the system of representation for human citizens. My argument is thoroughly instrumental and if an epistocratic amendment to my proposal proved better at representing animal interests, then it should be implemented. The theoretical case for limiting the electorate in an epistocratic way is strong enough that I believe it will warrant some experimentation in the future.

Limiting the electorate of Animal Representatives faces some important challenges. Not all of the possible epistocratic amendments I noted above are equally promising. Consider the proposal to limit the electorate for A-reps to members of animal rights or animal welfare organizations. It is not clear this would best identify those most likely to vote in good faith. We can easily identify other voters who would likely act in good faith and who have knowledge about the rights and interests of other animals: animal ethicists, animal ethologists, many veterinarians, etc. Similarly, we might worry that limiting the electorate to members of animal welfare or rights organizations would only select those who have time to participate in these organizations. Even if we put these worries aside, there are a variety of difficulties when it

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<sup>369</sup> Lopez-Guerra (2014), Chapter 2.

comes to implementing many of these epistocratic reforms. If the electorate was limited only to members of animal rights and welfare groups, we can imagine the membership of these groups (and the creation of others) would quickly change. The political difficulties with limiting the electorate in these ways seem difficult to surmount.

More promising, I believe, is an epistocratic amendment to my proposal that limits the electorate to those who pass a basic competency test related to the interests of nonhuman animals, or selecting voters through a lottery and requiring them to take competency classes taught by animal experts. This could be coupled with other efforts to weed out ignorant or bad faith voters, such as excluding individuals who have committed crimes against animals from voting for A-reps (at least for some time).

These epistocratic reforms hold promise, but it is worth highlighting a broader worry about restricting the electorate for A-reps in this way. One of the arguments I made for introducing designated seats in a state's legislature for Animal Representatives was that this would draw greater attention, among human citizens, to issues affecting animals. The presence of designated representatives for animals, and of parties, platforms, and campaigns on these issues, could over time influence much of the electorate. One possibility is that this might spill over into how voters think of their own interests and how they vote not simply for Animal Representatives but for other representatives as well. If the electorate for A-reps is too severely restricted, the extent to which many citizens might be influenced by this change will be more limited.

In any case, I think that states can and should experiment with different ways of electing A-reps, including epistocratic ways. At the outset, it is hard to know what systems will be the most effective at representing the interests of other animals. I think there are important worries that confront attempts to pick out only the most knowledgeable and good faith voters. But other ways of improving the electorate, by weeding out voters who would likely vote in bad

faith, or by mandating various types of competency tests or animal education classes prior to voting, appear more promising.

### 8.6.3 Representation for Citizens Only

A different objection takes issue with my claim that Animal Representatives ought to represent the rights and interests of all nonhuman animals living in the territory of a state, as well as those who are affected by the state's actions, and not just the domesticated animal citizens living of a state. One way to challenge this claim is to hold that only citizens of a state have a claim to political representation. Put another way, if we are right to think that human non-citizens should not be allowed to vote or run for office, why should Animal Representatives represent non-citizen animals?

This objection, at least as presently stated, is not promising. First, I am not sure it is accurate to say that resident, non-citizens do not have any claim to political representation. This somewhat abstract way of putting the point might obscure more than it illuminates. I am a permanent resident of Canada, and at the time of writing currently reside in British Columbia. Despite not being allowed to vote, it would be incorrect to say that as a resident of British Columbia, I do not have a representative. I do. I can call my Member of Parliament with my opinion on a piece of legislation, and my MP will not refuse to listen to my concerns simply because I am not a citizen of Canada. Legislators are often responsive to the needs and interests of permanent residents, even though in some states they cannot vote.

Further, while it is true that I and other permanent resident non-citizens are often not allowed to vote, and this undermines the extent to which representatives will be accountable to non-voting permanent residents, the moral legitimacy of this restriction faces important



challenges.<sup>370</sup> At the very least, there is no simple *reductio* that can be made here. We should not conclude that it makes no sense to suggest non-citizen animals deserve political representatives simply because human, non-citizens are not allowed to vote in some states.

There are some important disanalogies between resident human non-citizens and the situation facing conscious animals whose rights are implicated in the actions of a state. Even if one is skeptical that human permanent residents deserve the right to vote for legislators, there are good reasons to think that we should try to represent the interests of animal residents who are not citizens. We have already noted one important disanalogy: human non-citizens can voice their interests, including to their representatives, to the media, political parties, and non-profit groups. If important rights are violated that individual can speak up. This is not the case with animals.

Second, and relatedly, the argument I made for the need to represent wild and liminal animals living in a state appealed to the importance of protecting their rights and the claim that only if we incorporated various forms of political representation would we be likely to protect and uphold the rights of other animals. This is not obviously true for many human resident non-citizens. Part of the reason for this, and a further difference, is that the internalization of human rights is far more expansive, in most democracies, than the view that nonhuman animals have basic rights. This is likely to persist even if many more citizens come to see animals as rights-bearers. Finally, civil society presently underrepresents animal interests. While there are a handful of groups that are organized around the welfare of wild and liminal animals, these groups are vastly outnumbered by non-profits and NGOs that focus on issues of justice relating to humans. Taken together, I believe the differences between these cases support my position that some form of political representation, on behalf of all conscious animals, is needed to

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<sup>370</sup> See Lopez-Guerra (2014), Chapter 4.

protect and uphold the rights of wild and liminal animals, even for those who are skeptical that permanent residents have a moral claim to political representation.

#### 8.6.4 Other Underrepresented Groups

Another objection challenges the fairness of ensuring or guaranteeing representatives specifically for one group of underrepresented and marginalized individuals. Animals, after all, are not the only group of individuals whose interests are underrepresented in the legislature of many states. In the United States, for example, many different groups are underrepresented in Congress. The U.S. Congress is overwhelmingly rich, male, old, white, straight, heterosexual, cis-gender, and Christian. Poor people, women, younger generations, racial minorities, LGBTQ individuals, and religious minorities are underrepresented as legislators, relative to their percentage in the overall population. If there is something wrong or unfair with guaranteeing seats in a legislature to members of these underrepresented and historically marginalized groups, then perhaps there is also something wrong or unfair with doing so for nonhuman animals.

Again, this does not follow. First, if we think the underrepresentation of certain marginalized groups is a problem, there are better ways to address it than by reserving seats in a legislature based on race, gender, and other group characteristics. One way to address this issue is by mandatory quotas for any political party. These quotas can be voluntarily adopted by a party, or enforced by the state. Second, and more importantly, the ability to represent, and be appropriately responsive to the interests of a diverse group of constituents, is not limited to those who share the exact same demographics as the groups we listed of ahead. Part of the motivation for having special representatives reserved for nonhuman animals is to create a special mechanism for accountability and a special voice for nonhuman animals that would

otherwise not exist, or would exist in a much more diminished form. Further, I argued that focusing the role of these representatives, and of the electorate, are needed to improve accountability that would serve the rights and interests of animals.

The underrepresentation of the other groups is a problem, but it is not clearly the same problem as the lack of representation given to nonhuman animals, or that a similar solution would be most effective. Groups that are underrepresented in a nation's legislature still have an equal vote, and can use that vote to hold politicians accountable. Nothing similar exists for nonhuman animals and this can explain why unique measures are justified in their case to represent their interests. The ability of underrepresented groups to organize, to voice their concerns and objections, and to exert influence in these and other ways is another important difference between these groups of humans and nonhuman animals.

Finally, my argument for Designated Animal Representatives involved a balancing between the ways A-reps are likely to improve legislative outcomes for other animals with the effects this might have on the functioning of mainstream representatives and a state's government. In the case of underrepresented human groups, creating designated representatives for various groups threatens to exacerbate the differences among human groups and decrease the accountability of regular representatives to these groups. Given that there are better ways to increase the representation of underrepresented groups, these methods should be preferred. Thus, the underlying rationale for Designated Animal Representatives does not entail that other, underrepresented groups of humans have a moral claim to designated representatives.

#### **8.6.5 A Fragmented Legislature?**

The case I have made for designated, Animal Representatives can be (and has been) made for other groups that cannot represent themselves. If the case I have made for Animal

Representatives works, then we might think the case for these groups would also be strong. Perhaps there should be designated representatives for children, individuals with severe cognitive disabilities, adults with very severe dementia, and future generations. If designated representatives were extended to multiple groups, we might worry that this would fragment a state's legislature in problematic ways.

It is worth noting that the extent to which a compelling case can be made for each of these groups is not necessarily the same. Here, I wish to consider what might follow *if* a legitimate case can be made that each of these groups are deserving of special designated representatives. Would this pose a problem for my argument that animals deserve designated reps? The potential fragmentation of the legislature in this way raises a few different issues.

The first potential problem centers on the knowledge and attention of the electorate. If a state's legislature is divided up among regular legislators as well as special representatives for animals, children, individuals with cognitive disabilities, and future generations, one worry is that voters will be unable to give sufficient attention to the platforms and issues raised by these distinct candidates. With so many races to follow, voter ignorance and inattention would hurt the quality of candidates who are voted in, reduce accountability for these candidates, and potentially hurt the legislative outcomes for the groups that these designated representatives are intended to represent (as well as voting human citizens).

To some extent, existing political realities mitigate the forcefulness of this objection. Special designated representatives for groups that cannot represent themselves will only become possible when a majority of human citizens care enough about these groups and the interests of their members to radically reform their legislatures. If this ever happens, it is likely that the citizenry will care much more about these groups and that they will run candidates and parties that will genuinely advance their interests.

With this, this objection overstates the extent to which adding a few more representatives would overburden voters. In many states, voters already vote for different representatives, at different levels of government, in different positions, and on different issues. Adding designated representatives might complicate things a little more, but not to a troubling degree. Finally, if future voters did lack sufficient knowledge on the issues confronting different groups represented by designated representatives, a solution might be to consider some of the epistocratic reforms we noted earlier. This seems like a straightforward way to handle the problem of voter attention and knowledge. For example, one possibility is for a small percentage of a state's citizens (1%, say) to be randomly selected to vote for each designated group. These individuals would focus on the issues affecting these groups, undergo an education process, and then vote for the candidates.

A second set of worries concern other possible negative effects a more fragmented legislature might have on the legislature's ability to legislate well. If the legislative scope of the different designated representatives is limited (perhaps in line with my suggestion for A-reps) this could lead to rather complicated coalition-building within the legislature. If this happens, we might worry it will eventually hinder the performance of the legislature, by making it difficult for voters to know who should be held accountable for failed policies.

A different worry concerns an effect a fragmented legislature might have on the regular political parties and regular legislators. If a large number of seats are reserved for animal reps, children's reps, future-generations reps, and so on, we might worry that regular political parties and regular legislators would have less of an incentive to be knowledgeable about these issues. More worrisome, it is possible that some political parties and legislators might take a more antagonistic stance towards these reps and come to see their role as advocating for the interests of voting human citizens, and not these other groups. If that is the case, then these legislative reforms might not have the effect of advancing the interests of these groups.

I doubt, however, that regular political parties and legislators would take a more antagonistic approach to the interests of groups that cannot represent themselves. One reason to doubt this has already been noted earlier: the legislative reforms we are considering are likely to only become possible when a much greater percentage of the electorate cares about the groups in question and comes to view them as deserving of greater political representation. Because of this, I doubt that these reforms would drastically change the incentives of regular political parties and legislators towards these groups and their representatives.

Further, even if it was the case that a more fragmented legislature negatively affected the legislature's ability to represent the interest of voting humans in some ways, this must be evaluated along with potential ways these reforms would improve the representation of the groups in question. When this is noted, I find it doubtful that any detrimental effects would not be outweighed by significant improvements in the representation (and legislative outcomes) for these groups.

#### **8.6.6 Enlightened Future Representatives?**

We might think that only when a sizeable plurality or perhaps majority of a state's citizens come to see other animals in a fundamentally new way – as valuable individuals who possess rights and, in the case of domesticated animals, as our fellow citizens – will it be possible to enact reforms that aim to give them political representation in a state's legislature. Assuming this is the case, we might worry that a system with designated Animal Representatives treats them as different members of our society in a way that is objectionable. If the views of a society towards animals were changed in such a fundamental way, then why wouldn't these future, more enlightened citizens be expected to represent their fellow animal citizens (and their wild and liminal neighbors)? The objection I wish to raise here is not the redundancy concern

discussed earlier. Instead, the idea is that, in a future world where a state's citizens hold quite different views about the value of animals, there is something wrong with having separate and distinct representatives for their interests. This would suggest that they are not full or equal members of our state. Or, perhaps, that it is not crucial or an important priority that the other representatives care about and focus on issues affecting nonhuman animals.

This is an important worry. However, I do not think that my proposal suggests other animals are not equally valuable or that regular, human representatives have no responsibilities when it comes to their animal citizens or other animals. Creating an electoral system with special, reserved seats for Animal Representatives does suggest that other animals are different, but the difference it recognizes is that they cannot represent themselves or voice their interests and preferences by voting. Central to this proposal, then, is an effort to find some way to create a measure of accountability for the humans tasked with representing the interests of other animals. The idea is that by narrowing the focus – both of the representatives and parties that represent other animals, and of the voters who vote for these Animal Representatives – the legislative representatives would be held more accountable to the way their actions affect the rights and interests of other animals, then representatives otherwise would in our current democratic institutions.

#### **8.6.7 Animal Parties Would Reduce Influence on Mainstream Parties**

A different worry is that animal parties might perform worse than the current legislative design, by limiting their influence on mainstream parties. With regular political parties fielding candidates in separate elections that focus on different issues, we might think this would undercut their incentive to adopt animal-party issues. If these issues are largely being debated among animal political parties, regular legislative candidates might ignore these issues. The

worry, then, is that this type of legislative reform might fare worse than other alternatives. One possible alternative is a world where humans form animal political parties but lack any designated seats for animal representatives. Although they might lack much influence initially, if their numbers grow and these parties start to take votes from larger political parties, those parties have a strong incentive to adopt parts of their platforms. The claim, then, is that animal parties would have more influence and do more to represent the rights and interests of animals by fielding candidates and running in the same legislative races. No changes in institutional design are needed. Just the formation of animal advocacy political parties and the hard work of getting human citizens to care about the rights and interests of other animals.

I am not convinced. The problem, as I see it, is that this objection ignores the political realities that will likely shape the motivations and incentives of mainstream political parties in a future where the reform I put forward is likely to be implemented. Imagine the unlikely scenario that the legislative reform I have proposed was somehow imposed by judicial fiat. It is possible that in this world, where many of a state's citizens do not share the goal of finding better ways to represent and incorporate the interests of nonhuman animals into political decision-making, the mainstream political parties would lack an incentive to adopt or take on the platform of any animal political parties. But this is an unlikely scenario.

The world we are imagining, instead, is one where a majority of a state's citizens share the goal of better representing the rights and interests of other animals, and seek to find ways to do this effectively. If mainstream parties still voted on animal issues – as I have suggested they should – I do not think they would have a strong incentive to ignore the platforms and ideas of animal political parties and candidates. Progress is unlikely to be inhibited in this way. Moreover, even if there was some incentive for this, it must be weighed against the greater legislative power that A-reps would provide for the interests of animals, the greater presence within a legislature



(to draw attention to various animal issues), and the greater accountability these reps could provide by primarily focusing on animal issues.

## **8.7 Conclusion**

In this chapter I have considered, in greater detail, some of the ways humans might go about trying to institutionalize various forms of political representation on behalf of nonhuman animals. The moral demands or grounds for these reforms are multiple. I have argued that only by finding various ways to institutionalize political representation for animals will we be likely to protect and uphold their basic moral rights. With this, in the case of domesticated animals, their membership in our society, and the citizenship that should follow from that membership, demands that we include their interests in our conception of the public good and in the making of law and public policy.

This chapter represents an initial step to think through some of the political mechanisms and reforms we might pursue to achieve this goal. I have little doubt that if, in the future, humans seriously undertake the goal of reforming our legal and political institutions to better represent the interests of animals, a great deal of experimentation and continual evaluation will be needed to assess how we can best incorporate and represent the interests of other animals.

Some of the reforms to our political institutions that I have put forward may be realizable, in some states, in the near future. It is not too hard to imagine, for example, the development of federal or state ministries focused on the welfare of animals. Other reforms – particularly the legislative reform I put forward - I suspect, are much further off. It is my hope, however, that with a somewhat clearer understanding of the need to represent the interests of animals, and a better idea of the ways humans might eventually do this, progress can be made in the pursuit of these goals.

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