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M2 dissertation - Philosophy - master Contemporary Philosophy

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Toward a politically appealing egalitarian ethics of animal rights

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Introduction

If the expression "citizen chicken" makes you smile and if you judge the full proposition that "domestic chicken should be considered as our co-citizens" ridiculously false, it is pretty normal. Yet, this work will be a combative propaedeutics for a political theory of animal rights, developed by philosophers Sue Donaldson and Will Kymlicka, who argue for a group differentiated approach to our obligations toward animals. Different relations with different groups of animals entail different positive obligations on our side. If the connections between humans and nonhumans are very rich and omnipresent (like those we have with our dog companions), the obligations we will have toward them will be more important. The originality of their approach is that they believe that the political categories of liberal nationalism (citizenship, denizenship, sovereignty, borders, State, etc) are the most relevant to make sense of our different relations with different groups of animals (domesticated, wild, liminal) and to offer guidance on how to shape our positive relational obligations toward them. In this work, I will only talk about this theory applied to the group of the domesticated animals (companion and farm animals) but the logic of this whole work (or a much longer one) could be repeated and extended by considering the wild animals living in truly wild environments apart from human settlements or those who live in the liminal spaces - at the margins or in the core of human communities (liminal animals).

And indeed, they argue that the particular set of relations arising from the fact of domestication implies that domesticated animals (chickens included¹) be considered as our co-citizens, as full members of the communities where they happen to live. Anyway, if you find this idea ludicrous, you must admit that domesticated animals are already, and *de facto*, members of our communities, sharing more or less the same space, sharing our lives, and being subject to our governance. And this fact is fixed, for those animals have been brought into our communities and bred to be dependent on us (and have made us dependent, indeed in some sense addicted to them) through the process of domestication. This has foreclosed any option to completely and hermetically separate human from animal communities (whatever that would mean) by rewilding animals we have deliberately

¹ It is funny, and quite revealing, that in the mind of many people bird meat is often not even considered as meat or as incompatible with a vegetarian diet.

modified to be unfitted to live apart from humans. According to our authors, these two facts matter morally, but the fact that truly generates the need for urgent reforms of our relations with domesticated animals is that domesticated animals are considered and treated as a subgroup, dominated and exploited without any consideration of how their interests could be counted politically into determining the public good. Domestication (its purpose and process) has been a moral catastrophe in itself, but since no drawback to a time where animals could live in the wild is possible in the foreseeable future, then justice demands that we try to correct the daily injustices done to animals by replacing exclusionary relations of exploitation by “relations of citizenship and its accompanying ethos of equality, participation, consent, and cooperation” (Donaldson & Kymlicka 2014: 23-24). Basically, justice requires equal membership, and, historically, membership has been given through the status of citizen. Whether citizenship is accessible, whether it truly helps to define what positive relational obligation we have to them, and whether it is generally desirable to give the status of citizens to domesticated animals are issues that will be sketched in this work. The thesis of our authors, which I fully endorse, is that the best conception of citizenship is one that seeks to include animals within it and that this normative conception does better than any other ethical approach to human-animal relationships to offer guidance to the content of our positive obligations to domesticated animals. They also claim that this conception and inclusion of animals offers the potential to imagine new inclusive practices of citizenship beneficial for humans as well, and a new exciting picture of our society as a mixed human-animal *Zoopolis*.

I implicitly said it already, but their argument (presented very schematically here) for domesticated animals' citizenship rests on the claim that relations with animals are inevitable. It is then of the utmost importance to prove that we can reshape our relations with them under just terms, and that is not obvious to all animal rights activists and theorists. The most radical of them indeed seem to maintain that animals cannot be adequately protected within our communities but could only be protected from our communities, from our contact. Since, as I said, the dependency of domesticated animals made them unable to be free from us, the only way to “let them be” according to those theorists, is to make them go extinct, to actively seek their extinction. In addition to being practically impossible, except maybe with an incredible amount of coercion, this perspective is terribly sad and dismisses all the

value of human-animal relations, thus alienating many animal lovers to join advocacy for animal rights. Yet, paradoxically, it seems that the burden of proof is on the theorists who believe that our relations with nonhumans can be reconstructed under just terms since historically those interactions have been deeply exploitative. The citizenship approach offers an alternative in relational ethics to this extinctionist approach. It is then of the utmost importance to show that it is feasible to give justice to animals without annihilating them. In this realm of relational ethics, the citizenship approach then builds on accounts that valorize many interspecific relationships, that value the consideration of some animals as friends or family members, and that encourage people to love animals and feel compassion for these sentient beings when they are poorly treated. Using moral emotions to reshape our relationships with them is then essential to be able to think of nonhumans as co-citizens. Nevertheless, a more acute moral concern for animals is not sufficient for endorsing the idea that they should be citizens. The problem with relational ethics of love and compassion is that they often lead to results very different from those of citizenship and to far less demanding changes in our interactions with animals. An ethics of love can be compatible with killing animals for meat when this killing characterizes or results from loving relations. It can already be said that relations of co-citizenship are quite incompatible in our national liberal democracies with killing another for tasty food. Then, for the approach I endorse, it is necessary to argue that the right mobilization of moral emotion toward animals ends up endorsing the idea that relationships with animals should be regulated by justice and by displaying the virtue of justice for animals in our personal interactions with them and in our institutions.

Even with this strong claim, we do not yet automatically meet the citizenship approach, for those in favor of an ethics of justice do not believe that justice requires citizenship for domesticated animals. How so? First, they probably endorse the traditional and highly intellectualist conception of citizenship, which requires, to qualify as a citizen, that a person be able to reflect on his or her conception of the good and communicate it linguistically, that he or she complies with the laws for the right reason (i.e. by understanding their purpose), and that he or she be able to participate in the co-governance of the society through the traditional processes of political participation (i.e. engaging in public reason, in democratic debate, voting, exercising political functions, etc). Indeed, an argument in favor of justice for animals need not and anyway cannot be conditioned to this. Nevertheless, I will maintain that

one of the reasons why a famous contemporary attempt to theorize justice for animals within the same framework that is used in the human case, namely the capability approach of Martha Nussbaum, does not advocate for domesticated animals citizenship, is that it sees animals as pure patients of justice, unable to communicate their good so to participate in shaping their relations with us². According to many theorists in animal ethics, it cannot then make any sense to think of domesticated animals as citizens if they cannot, in any sense, communicate their individualized interests and exercise some form of agency in their relationships with humans. Again, animals are seen as completely dependent and justice cannot require including them as “framers of justice” (Nussbaum 2006) but, at best, as persons to whom the principles of justice also (in some measure) apply, as moral patients, as wards. An objective view of their interests will have to be taken to frame how animals should be treated. For Nussbaum, this objective criteria will be what she calls “the species norm”: some kind of normative concept of species will then be used to determine what we owe to individual animals. The difference between this and the citizenship approach is enormous, for in Nussbaum’s approach, the relevant moral subject of justice switches from the individual to the species. The citizenship approach, while being a group differentiated approach that then takes groups as bearers of rights, still is, by its very nature, focused on justice for individuals. Giving citizenship to a group of animals because of the kind of relations they entertain with us means that the moral goal is to try to enact the individual good of animals through their communication of this good in human-animal relationships. Citizenship is about enacting individual agency and participation.

I will nonetheless maintain that the difference lies even deeper than the idea of justice itself. What lies in the conception of animals as pure moral patients is the idea that animals are not beings of equal dignity with us, and that it is the fact of their dependency that entails this moral inequality. The citizenship approach, on the contrary, rests on a deep commitment to moral equality. This debate on the abstract comparative question of the intrinsic moral value is the locus of the neverending flow of academic disputes in animal ethics, and indeed the citizenship approach is

² Another reason is that Nussbaum fails to recognize the fact that we have significantly different relations with domesticated animals and with wild animals so that our obligations toward the two groups are substantially distinct. Indeed, as Kymlicka and Donaldson recognize, it is useless and meaningless to characterize wild animals as our co-citizens.

situated on the losing side of the debate (the egalitarian one). What the egalitarian side maintains is merely that some animals (including all domesticated animals) are sentient beings who have a subjective good, an inner life, and who are harmed by being encaged, tortured, and killed. This fact requires that we treat them as equals for the purpose of not being sacrificed for the benefit of others. The result is that animals ought to have their interests equally protected by some inviolable rights. To defend the citizenship approach I will then need to claim that, as in the only-human realm of political morality, any theory of justice for human and nonhuman animals needs to be interpretable as sincerely trying to be impartial, to endorse an ideal of equality. One minimal way for a theory of justice to pass this test of equality is to be committed to realizing politically a theory of basic (or fundamental) inviolable rights. I will then review and endorse the arguments for egalitarian ethics of basic rights for sentient animals while endorsing the claim of Donaldson and Kymlicka that such a theory underdetermines the full scope of our positive obligations to domesticated animals, thus necessitating the complementation of the citizenship approach. Indeed, to treat someone fairly it is not sufficient to be content with not violating his or her right to life. Animal rights theorists have yet traditionally postponed “for a much better world than ours” (Sapontzis 1987: 86) what we positively owe to animals besides the respect for their basic negative rights. This is understandable given that the respect for these fundamental interests would put an end to most of the current practices of animal exploitation, and that is arguably the most urgent of our moral tasks concerning animals, a task yet heavily contested within animal ethics. More “moderate” theorists indeed believe that our use of animals is morally acceptable when great efforts are made to improve animal well-being and reduce their suffering. Again, I will argue that the crux of the disagreement between these theorists and the proponents of animal rights is a different assessment of animals' intrinsic value.

The most abstract thesis of this work is that citizenship theory is built on a strong commitment to the moral equality of all sentient beings, but also, helps make compelling and desirable such egalitarianism through an exciting mobilization of our moral imagination and our sense of justice. The strategic goal of this approach in expanding the logic of animal rights through political categories is indeed to make talks of animal rights gain attraction both in the animal movement itself and in political discussions in general.

This work is merely a preparation for the citizenship approach. In this introduction, I started from the argument for domesticated animals' citizenship to unfold all its presuppositions, its theoretical structure in the sphere of relational ethics, and questions about the fundamental intrinsic value of animals. In the development of this work, I will proceed with the opposite sequence to end with the citizenship approach, since it is the largest extension of the animal rights theories and has been intended to remedy flaws within this branch of animal ethics. However, wherever the starting point is established, it will be possible to derive the other parts of the theory from it, since all are deeply integrated. If for strategic purposes, it is better to start with a political argument for citizenship to generate public interest and support, then anyone wanting to build on this approach might be wise to do so. Yet, I will start with the classical argument for equality through a theory of basic rights (chapter 1), then move on to the need for more relational ethics of positive obligations which have to take the form of an ethics of justice (chapter 2) to finally claim that the best way to reshape under just terms the human-animal relationships is to include domesticated animals as full members of the demos through citizenship (chapter 3). In between chapters 2 and 3 I mobilize a novel to make vivid the case against the conception of interspecific justice given by Nussbaum and the need to imagine another picture of a just human-animal society.

I choose this order because, for the propaedeutic function of this work, ending by sketching the citizenship approach applied to domesticated animals seems to invite further research within Donaldson and Kymlicka's works. Theoretically, it is also the most natural normative order to unfold and expand the theory of rights, to show what it could positively imply beyond the respect of negative fundamental rights not to be sacrificed for the benefit of humans. I try to make compatible (at least) and mutually enriching (at best) the goal of normative comprehensiveness and the goal of generating a desirable picture of a just human-animal society, capable of generating public support. Of course, I do not claim in this work that the citizenship approach successfully merges these two goals and will by itself generate a huge shift in our treatment and consideration of animals, but I still believe that it represents an important step (in moral and political philosophy at least) in the right direction.

1. Animal rights and moral equality

1.1 What is meant by “a right” ?

The distinction between the questions “what is a right ?” and “what is usually meant by ‘a (human) right’ ?” is quite real. Indeed, many philosophers start their theory of human rights by this detour to the ordinary language. Ronald Dworkin tells us that “we must be careful because people use the word ‘right’ in so many different senses.” For instance, “politicians often say that people have a “right” to something— a more restrictive immigration policy, for instance— when they mean only that the public wants that policy or that, in the politicians’ view, the public would be better off having it.” (Dworkin 2011: 328-329). But the right meaning of having rights, that is, how the theorists I am interested in traditionally conceptualize it, gained currency during the second half of the previous century, a period sometimes called “the rights revolution” (Sunstein 1990). Indeed Dworkin goes on and notes that “sometimes, however, people use the idea of a political right in a stronger and more discriminating way: to declare that some interests particular people have are so important that these interests must be protected even from policies that would indeed make people as a whole better off.”³

To clarify their idea and show its appeal, human rights philosophers traditionally feel the necessity of demarking themselves from utilitarians. Since the moral end of an utilitarian ethics and politics is to maximize the overall utilities⁴ (or valuable consequences), one strategy to aggregate more efficiently the sum-total of utilities could be to sacrifice some individuals. An example of a (caricatural) thought experiment often invoked is the case in which, on utilitarian grounds, we would find morally acceptable to kill one person to use his or her organs to save twelve (more or less) other persons. Dworkin’s definition of political rights clearly shows why for utilitarians, there cannot be apriori a framework of rights that would constrain the pursuit of the improvement of society as a whole. Utilitarianism bears, in principle,

³ Amartya Sen would replace talks of “interests” with the concept of “liberties” but I do not want to go on these distinctions that are theoretical details for my purpose. Let’s only say that a deflationist interpretation of the distinction would consist in taking the respect of important liberties to be in the basic interests of people. Indeed the basic requirements of respect of people’s dignity is to grant them the liberty (or responsibility) to shape their life. For the debate on dignity and interests see (Sen 2009: 376-379)

⁴ The utilities, that is the unit(s) or concept(s) to pursue maximally as valuable consequences are for instance: pleasure(s), happiness, interests, preferences, liberties etc.. (On principle it could be anything really)

the risk that if in a democratic process, the majority has rightly decided that a policy would in fact increase the well-being of the society (defined in terms of overall happiness for instance), then we have decisive reason to apply that policy even if it implies that some people will see their basic interests (or rights) violated by it. Hence, for utilitarians, there is no such thing as inviolable human rights unless they work as the best way to move toward some kind of ideal society (as conceived by utilitarians).

I must say, some of these strategic dismissals of utilitarianism as a moral and political theory are clearly not charitable and do not give it the credit it deserves. First, the moral importance of consequences and results of actions is forcefully captured by utilitarianism. Even if there should be a plurality of sources of value and of parameters to consider in an ethical reasoning, no ethics can be right unless it gives consequences and concrete realizations some weight, some value in themselves. If a pedestrian crossing the street gets killed by a car driver, there is a sense to say that the action of the car driver is bad because it killed the pedestrian. Or more precisely, the result of this action is a strong parameter to evaluate the action. The concrete consequences are probably the main source of reaction to such an event. Indeed in any car incident, we first try to know if the people involved are fine or not before investigating the responsibilities of the parties. The event is in itself bad and so is the action partly for that very reason, i.e., because it has provoked this tragic state of affairs.

In fact, the reality of particular situations is far more complex compared to caricatural thought experiments and the aggregation of utilities is subtle and lies more in an evaluative judgment rather than in simple math. Concerning the problems of the real world, many utilitarians have come to the right conclusions, and I am convinced that a utilitarian form of argument can be used to arrive at the right conclusion (the right action, the right policy) for any ethical problem even if there is sometimes simpler, more economic and more convincing forms of ethical reasons that can be advanced or added to the utilitarian ones to decide a particular problem. Historically, utilitarian considerations have come to identify many injustices. As Kymlicka and Donaldson note, “extending political rights to the working class, say, or to women, or to overseas colonies, advanced the interests of the numerical majority at the expense of a privileged minority, and hence fit well with utilitarian forms of argument.” (Kymlicka & Donaldson 2018: 322). The language of rights can then arise

on utilitarian-like grounds and the justification for rights to be respected would be an utilitarian judgment of the form “to respect some basic rights for all humans is, all things relevant considered, the most efficient way to attain the moral goal, say the greatest satisfaction of people’s informed preferences, than any other way of treating people. Therefore rights must be respected.”

The most important thing has yet to be noted. In this way of formulating the utilitarian or consequentialist goal: “the maximization of the informed preferences of each people”, it is clear that each person is considered to be of equal objective value (or dignity) with any other person. On the best utilitarian theories we are all moral equals and are hence entitled to equal consideration.⁵ The moral goal hence contains the necessity to consider each person’s perspective impartially. The last advantage of utilitarianism is therefore a strong commitment to equality.

Yet, rights theorists are right over utilitarians and we must altogether maintain, if we believe in the strict *inviolability* of individual rights, that utilitarians “got the right answer for the wrong reasons.” (Kymlicka and Donaldson 2018: 322). Our objection to utilitarianism is principled, for if in practice utilitarian-liberal politicians have given reasons to ensure the interests captured by human rights, it remains possible, in principle, to produce a utilitarian reasoning that could violate the interests of some persons to the benefit of others. Historically, some utilitarian-ish conceptual mess (or failure to recognize rights), invoking ideas of general interest, has served as rationalization of atrocities that goes very oddly with a commitment to moral equality.

The theoretical move of the rights theorists has then been to postpone or constrain any moral goal and idea of maximizing its pursuit with equal individual rights that need to be secured for all. Therefore each potentially and partly utilitarian justification of an individual action or of a public policy can only occur into a “secure framework” of rights that cannot be violated for any purpose under conditions of justice (or fair interaction)⁶. Each trade off, each give and take of social life, has to respect the rights of individuals if it wants to have a claim to fairness, to moral rightness in general. It is now easy to understand the right-talks when they state that rights are “trumps” (Dworkin), “side-constraints” (Nozick) or again “safeguards”

⁵ For this interpretation of utilitarianism see (Kymlicka 2002: 32-37)

⁶ To say that rights are inviolable does not mean that they are unconditional. Cases of self-defense or ‘life boat cases’ are often brought up as possible worlds where rights do not have to be respected. At least, what would normally be considered as a fundamental violation of human dignity is in those sad cases compatible with a fair attempt to respect that dignity. See (Ogien 2012)

(Donaldson and Kymlicka, Sen). They trump, or constrain any other consideration and hence are safeguards for individuals.

This detour to utilitarianism is necessary for my purpose, for the fate made to animals is one of the cases where it is utilitarian reasoning that grasped first and most forcefully the extent of the ongoing “catastrophic moral horror” to use the words of Nozick, or at least that our treatment of nonhumans was (and still is) unjustified. In any work of animal ethics it is customary to pay tribute to utilitarian animal ethics as well as to position yourself about it. Tradition demands to go back to Jeremy Bentham’s famous text and to mention Peter Singer’s preference utilitarianism in *Animal Liberation* but I will rather emphasize some abstract distinctions. If utilitarian considerations have served to cast light on the condition of the nonhuman subordinated groups in our societies, they have done so in manifold ways. Indeed, if all agree that animals matter, few actually advocate for moral equality between humans and nonhumans⁷. In any case the point here is to reject utilitarianism for the same reasons we rejected it in the human case. Even when explicitly aiming at moral equality, utilitarians fail to give a correct conception of this end, because they fail in principle and also in practice this time to give inviolable rights to protect individuals’ fundamental interests. A conception of animal ethics like the one I endorse, which is committed to moral equality between sentient species, is a conception that must advocate at its basic framework that individuals (humans and nonhumans) have inviolable rights that constrain what can be done to individuals.

So I want to argue that the same logic of rights, coming from a commitment to moral equality, applies equally to all humans and to many nonhuman animals. This is why I started this work with a short description of moral and political rights theories. This whole chapter is intended to state what I take to be the correct theoretical starting point to any theory of animal ethics. It will nevertheless end with the troublesome claim of Kymlicka and Donaldson about animal rights theory as it is constructed in contemporary animal ethics. According to them, such a starting point remains a “political nonstarter” to create either public support or actual laws of rights-protection. Even worse, in their opinion, a theory of basic rights of animals and respectively of negative duties of humans (toward nonhumans) is doomed to fail in generating adhesion. I will fully develop their reasons for such a claim. Here I want to

⁷ Peter Singer, in his earlier work, is a good example of an utilitarian philosopher insisting of equality of objective value between human and nonhuman animals, see (Singer 1973)

test an hypothesis I have yet great difficulty to apprehend and that may well reveal to be a veil of smog. But I believe that part of the reason why a logic of rights applied to animals remains unappealing is because the claim that individuals have inviolable rights is a moral axiom, an obvious postulate in the human case, the formalization of a moral basis really. Very few positive arguments are to be found for the moral basis of equality and these by themselves have little power of conviction. Hence were one to have doubt on the validity of the claim of moral equality of humans between them or of animals and humans (here I will focus on the animal case), I believe that even the best presentation of an abstract argument for it would not convince that person. Very abstractly and theoretically, it could be said that my thesis is about emphasizing the claim made by Donaldson and Kymlicka that, rather than to be satisfied with a very limited theory of basic rights, a more pluralistic and holistic form of advocacy is morally and strategically required to advance the struggle for animal rights. I hope to make clear what I mean (and what I do not mean) by that throughout the work.

To bounce back on my hypothesis that rights advocacy and more precisely advocacy for moral equality rests on a very straightforward and unconvincing-by-itself reason, it is worth noting that it seems very popular to condemn right-talks to be very vague and elusive. As Amartya Sen rightly notices, the idea of basic human rights

is seen by many critics as entirely without any kind of a reasoned foundation. The questions that are recurrently asked are: do these rights exist? Where do they come from? It is not disputed that the invoking of human rights can be very attractive as a general belief, and it may even be politically effective as rhetoric. Skepticism and anxiety relate to what is thought to be the 'softness' or the 'mushiness' of the conceptual grounding of human rights. Many philosophers and legal theorists see the rhetoric of human rights as just loose talk – well-meaning and perhaps even laudable loose talk – which cannot, it is presumed, have much intellectual strength. (Sen 2009: 355)

Other questions such as “what are precisely those basic rights? Are we to include other rights such as citizenship and economical rights in this category of basic interests to be protected? Is there a finite number of rights, and can we make a list of them? How are we to protect them? Are they conflicting over individuals?” and

so on and so forth, participate in this impression of theoretical mushiness in a subject that yet concerns the moral basis of all relationships. For instance, we would expect it to be extremely clear and well founded why killing people is bad, why it is a fundamental right violation. Yet it is hard to give precise and convincing reasons that are not authoritative or circular to a child who would not be convinced by his or her own means⁸. The problem is of course that people's rights are still violated around the world and so unfortunately it might still be not useless to try to give positive arguments for governments and people to stop their terrible doings.

The manipulation of the concepts of "human rights", "moral equality", "equal dignity", "equal value", "basic justice" is very tricky. However, it is crucial to fight on this level and to ground our moral theory as well as we can, even if it means biting the bullet and posing the thesis as a postulate, as a moral judgment almost evident in itself and defensible only indirectly, by responding to counter-arguments, by clarifying the misunderstandings, but mostly by developing a full theory of rights, even a full theory of justice, able to treat convincingly concrete ethical problems. As I said in the introduction, in ethics, the proof is in the pudding.

There is however one problem I want to go through in theories of human rights, and it concerns the human part of it. Sen talks of human rights as rights people have "simply because they are human". Not all justifications of rights and of moral equality are overtly speciesist but they all appeal to criteria that are supposed to include all humans but only humans as we will see later in this work with the examples of Rawls and Nozick. This goes with the old human habit to give value mainly (if not only) to those characteristics that are supposed to be held mainly (or only) by humans (to a sufficient - because above the animals - degree to be valuable). Against this, proponents of animal rights claim for another basis of equality and for an entitlement to inviolable rights to both animals and humans. According to them, this new basis for equality is not only better because it includes some nonhuman animals but also because it works better to include all humans and hence better grasps what is really valuable in humans, or at least, what justifies treating each and everyone of them as a person. In the next section I will rapidly go through the positive argument for animal rights.

⁸ Such a child would maybe have some moral defect in his or her psychology and emotional responses.

1.2 What is meant by ‘an animal right’ and the positive argument for equality

The distinction between the utilitarian and the right-based way of protecting an interest still holds when we turn to nonhumans. But in the field of animal ethics, it is even truer than in the human case that the talks of animal rights are used in a loose manner and for rhetorical purposes whenever one is proud of a measure allegedly in the interest of animals. Indeed the respect of animal rights is invoked in supporting baby steps’ improvements “such as increasing the size of cages for chickens raised and killed for food, or enriching the cages of laboratory animals raised and killed for medical research.” (Kymlicka and Donaldson 2018: 320). The prestigious rhetoric of rights is used to increase the impression that something significant is really being done for animals and that these measures are enough for the purpose of respecting their rights when in fact, they are at best a drop in the bucket, at worst a veneer intended to make exploitation acceptable and to make (too) easy for people the support to ‘animal rights’, as if the main goal was to make people feel good about their practices instead of changing them.

However, an advocacy for this kind of measures is not strictly speaking sufficient to discredit their proponents from being worthy of being real animal rights supporters. The means, the road toward the adequate respect of animal rights can vary if the end justifying any act remains the same. Following the logic of human rights, the goal of advocacy for animal rights is to give animals an equal concern, an equal respect for their interests. The point is to treat them as beings of equal dignity with us, to treat them as moral equals. If one endorses this goal, he or she is a priori a defender of animal rights. But to give a more explicit meaning to this endorsement one must also take a basic position about the actual status of animals in our societies. As Dworkin rightly emphasizes (for the human-only case) “some judgments— those that match the world’s consensus about the most basic human rights— will be obvious. Nothing could be a plainer violation of the first principle of dignity than acts that exhibit blatant prejudice.” (Dworkin 2011: 336)

Therefore what constitutes basic domination, basic exploitation must be condemned by rights theorists, for one who is exploited cannot be said to be treated as an equal. Domesticated animals are exploited, they are brought into existence

only to serve human's interests. They are a totally subordinated group. Of course, some animals are luckier than others. We are using companion animals (pets) for company and friendship (in the ideal case) and this, because we are not sadistic monsters, will not entail too much confinement and killing but (ideally) quite the contrary, i.e., care, love and inclusion within a family. One may think that, in a right-based perspective, the treatment of these animals will not vary much from a welfarist/common-sense approach. Nevertheless, the structural treatment and consideration of these animals are exploitative. For instance, it is widely known that violence and domination are exercised in selective and mass breeding in puppy mills or in pet shops. Companion animals generally have the legal status of property and are hence not entitled to strong legal protections, making companion animals' fates even more dependent on the goodwill of their owners who are perfectly aware that their animals are theirs and that they have many rights to choose how to treat them. Rights theorists can recognize that a companion animal is treated decently while still being considered a member of a dominated subgroup. But the goal for us is not animal well-being in itself but equality of rights to guarantee for good reasons and the right way animals' flourishing. I hope to make clear what a fully developed theory of animal rights will imply for companion animals. They are an important case for the theory I will present in chapter three because indeed their close relations of friendship with us will brightly exemplify how to change our perspective on domesticated animals in general. Granting animal rights to pets is the easiest part, for most are ready to do so.

The minimal requirement of an ethical theory to pretend rightly to be a theory of rights is then to condemn animal exploitation, to defend abolition of all grossly unjust practices on grounds of moral equality. Or, the other way around if one prefers, to be said to defend moral equality one must propose abolition. Were a theory of ethics to fail in one way or another to defend the goal of a rights-theory, his or her theory would not, in a fundamental way, be an animal rights theory as I understand it, along with the animal rights philosophers I will study: Gary Francione and Anna Charlton, Will Kymlicka and Sue Donaldson, and, in a certain measure, Martha Nussbaum.

As Francione emphasized it, were concrete propositions of reforms to fail grossly in advancing that end, it would be very difficult to interpret an ethics that

proposes such reforms as a rights theory (or an egalitarian theory) despite a formal commitment to equality of objective value or to its most basic implication, a commitment to abolish exploitation. In that regard, were empirical evidence solid enough to prove the baby-steps reforms such as the enlargement of cages to be completely inefficient to promote that end, they'd have to be rejected from rights advocacy.

Really however, a lot of animal ethicists or activists involved in public advocacy do not endorse that egalitarian end and often do not even endorse the rhetoric of rights. They think that exploitation of domesticated animals is acceptable if it is done humanely or with compassion, that is, if enough care is accorded to the well-being of animals, if we use and kill them more or less painlessly. The main goal, loosely defined, is animal well-being, or animal welfare. Indeed, this family of theories - the most prominent strand in animal ethics - is called 'Welfarism' and it is opposed to 'Abolitionism' or 'Animal Liberation Theory'. There are many welfarist conceptions and each of them has its own set of arguments and justifications. I do not wish to refute each welfarist theory one by one but only to positively argue for a strong animal rights theory (from now on referred to as AR or ART). Such an advocacy still demands to address two welfarists reasonings:

- a) Animals, because of their very limited cognitive faculties, do not have an interest in continuing their life, they cannot feel exploited and do not suffer intolerably from exploitation if it is not directly and physically painful. Happy exploitation is possible and really, such a humane treatment of animals cannot be called exploitation and has nothing to do with the historical exploited human groups. Bringing animals to life, using them and killing them only to serve our purposes is then not an infringement of their 'rights' if it implies no real harm to them, that is, no (or not too much) mental and physical traumatism. Animals, even when their interests are equally considered with the one of humans, only have a right not to suffer too much from direct pain. Equal respect of animals only entails pursuing their well-being but not to end exploitation if it is not contrary to the pursuit of their well being.
- b) Even if sentient animals have a continuing interest in life and have some identifiable interests that require more (to be fully and fairly respected) than to

not inflict them direct suffering, it must be recognized that human beings are more valuable and are the only species entitled to have inviolable rights. The natural basis of human intrinsic value lies in the very fact of belonging to human species in general, or, more specifically in the possession of all the intellectual faculties that are not possessed in as high a degree by other animals. That being said, we still need to establish criteria under which the violations of animals interests in favor of humans are acceptable or even morally required. For instance, the interests of animals can be violated for human purposes as long as the animals' lives are still worth living, or if the benefit for humans is considerable.

A proponent of ART needs to respond to welfarist a) that he or she is empirically wrong about the nature of animals, and to welfarist b), that he or she is wrong about the basis for moral equality. I hope that in this work, through the presentation of ART arguments and the presentation of an achieved AR theory, I will be able to satisfactorily cast light that these welfarist assumptions are mistaken.

As promised, I will now present succinctly, because it is succinct, the positive argument for granting equal inviolable rights to animals.

POSITIVE REASON FOR MORAL EQUALITY

1. Domesticated animals are part of a moral community with humans in the most essential way. One individual is a being of that community because, for him or her, “the struggle for life and flourishing matters, whether or not the being in question has a reflective sense of which things matter or how they matter” (Steiner 2008: xi-xii). This ability to feel that we are the “subject of a life” (Regan 1983), and that our life can be better or worse off is called *sentience*. Most if not all domesticated animals and all humans are sentient. At least all humans and domesticated animals ought to be considered as sentient.

2. Sentience is the basis for moral equality (or moral personhood) and all sentient beings are equals for the purposes of seeing their lives respected no matter

if society would be better off were some of these lives not equally respected, were they sacrificed or treated merely as resources.

3. Therefore domesticated animals, being sentient, are minimally to be included in the sphere of basic justice, they must be inviolable-rights bearers. The most obvious consequence is that the actual domination of animals needs to be abolished altogether.

I have given an argumental form to this thesis, but it really is just a basic moral claim along with “all humans are equals (for the purpose of not being harmed/killed)” or “torture is wrong” or “some things are really bad in themselves”. Indeed, other ways (more or less habile) to formulate a similar claim are constantly made by animal activists. Thereby, we may find in public discussion on animals allegedly extreme claims (sometimes so much taken as extreme that they are used to ridicule any claim to rights for nonhumans) of various forms and orientation of content, e.g, “animal and humans are naturally equals” (orientated on the natural basis for equality) or “being vegan is a moral imperative” (orientated on the personal essential way of enacting justice) or “animals cannot be used anymore” (orientated on the structural consequence of giving rights to animals).

All these claims are clumsy, too harsh, incomplete but they all try to grasp the basic thesis of ART.

But the fact that these claims are too clumsy is not essentially due to their conciseness, for a good way to formulate the starting point of ART can be put in this way : “animals are sentient just like us and this is why we all have the same basic rights”.

As I have already said before, it seems to me unlikely that this “argument” will suffice to convince anyone who is not perfectly ready to accept it or who has not on his or her own formulated a similar argument by his or her own means. If this thesis has no power of conviction in itself in the current state of affairs of humano-animal relationships then the AR thesis needs to derive its desirability from somewhere else. The rest of the chapter will be about the usual ways to advocate for AR, i.e. to use other argumentative tools to make the positive thesis and its most basic (and abstractly formulated) consequence desirable.

1.3 Usual argumentative approaches for animal rights

Challenging our incoherences

Often, direct speciesism is invoked as the reason why (only) humans need to be treated equally (in the attribution of basic rights at least). But some, willing to be more rational, would also refuse the AR argument by invoking another, and “higher” basis than sentience to grant moral equality, and to grant it only to those beings (humans) who possess the characteristic(s) that justify equal and inviolable respect of their basic interests. In Robert Nozick’s words

The traditional proposals for the important individuating characteristic connected with moral constraints are the following: sentient and self-conscious; rational (capable of using abstract concepts, not tied to responses to immediate stimuli); possessing free will; being a moral agent capable of guiding its behavior by moral principles and capable of engaging in mutual limitation of conduct; having a soul. (Nozick 1974: 48)

Nozick goes on to show that it is only a combination of these characteristics that may constitute a sufficient basis. The result of the combination, according to him, would be something like this:

a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behavior in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on (...) the ability to regulate and guide its life in accordance with some overall conception it chooses to accept. (49)

It is clear that such an intellectualized conception of what is required of a being to be considered as a moral equal is not shaped to include most nonhuman animals. Merely trying to insist on the complexity of animals' cognitive faculties would not be enough, for only some human-like animals could be said to have made the shot, to be sufficiently human-like. Here, AR theorists have to advocate against this way of defining the basis of equality. Instead, one strategic argument often used has been designed to refute this view of moral equality (as elitist intellectualism) not so

much because it does not include most animals but also because it does not include some humans and indeed, fails to grasp what more significantly and universally constitutes human life. This is why I talked about a negative or derivative advocacy for AR. Indeed the goal here is only to challenge the inconsistencies and inaccuracies of those in favor of a differentiated status based on intelligence. The argument of animal ethicists is usually called “the marginal cases argument” (Vilmer 2008: 65). It says that if these highly rational abilities were what is needed for granting equal basic rights to a being, then many humans would (or should) not be endowed with equal rights. Indeed, whether due to a temporary condition (childhood, old age, disease) or to a permanent one (strong mental handicap) some human beings can be said not to meet the threshold of cognitive and moral faculties designated by the description of Nozick. This is a challenge of consistency. If one wants to be coherent he or she has to choose between renouncing to his or her basis of moral equality (and choosing another that includes all beings he or she wants to include), or accepting the consequences of his or her adherence to this conception of personhood and claiming that some severely handicapped people do not deserve the same moral status and the same basic rights than other human beings.⁹ The goal of animal ethicists is of course to make clear that sentience is what we value in those disabled humans and hence that we should measure rightly its importance in animals who are endowed with it.

As I will more fully argue in chapter 4, there is also a strong sense to say that the moral life of humans does not primarily consist in abstract reflection on how we should live and treat others. The point is not so much that morality arises in emotions, but that, most of the time, we act decently in a totally unreflective and habitual way. To characterize what is the most essential feature of humans with these very high capacities to have a very rich and rationalized moral life seems then to inaccurately encompass actual people’s moral lives.

I believe that it is very important to mingle the logical argument of the marginal cases with a more positive advocacy for sentience as the moral basis of equality. If we simply depict this consistency challenge by letting people face the dilemma of either changing their criterion or leaving severely disabled people at the gates of the

⁹ In fact, the proponents of such a conception usually manage to avoid this conclusion. Or as I said, they make intellectual contortions to include only the beings they want to include and exclude those they want to exclude. But their escapes are deeply unsatisfactory, see (Ogien 2012: 76-82)

moral community, we may obtain the opposite of what the argument was intended for. To recognize that it is not easy to find a characteristic (or a set of characteristics) that constitutes the necessary and sufficient basis for moral equality should not lead to a kind of profound pessimism about the possibility of finding such a basis.

Before I move on to another way of derivatively advocating for AR, I think it is worth noting another logical-moral argument for showing the inadequacy of the intellectual criteria. The argument is (yet?) counterfactual and goes like this: if it is our superiority in cognitive and moral faculties that justifies treating all humans as equals but dominating and using animals, then if a race of aliens claims to be highly superior to us in cognitive and moral powers (even if maybe, we would not be able to understand their superiority), would it be acceptable for them to enslave us and to use us for their purposes with no inviolable limits of what they may do to us?¹⁰ Following the logic we are currently following with animals in our societies, it should be acceptable for the aliens to exploit us as mere resources.

This is another challenge to our consistency in our moral positions. Here again, since it is counterfactual, it might be easy to bite the bullet or to find other escapes (e.g. that it is not superiority in moral faculties but a certain level of them - reached only by human animals - that suffices to grant equal and indivisible intrinsic dignity). These arguments are usually very interesting and I believe they may provoke some thoughts in readers; but they need to be complemented by (or complementary to) a more comprehensive advocacy. Nevertheless, they challenge the theoretical core of the opposition to animal rights.

Above all, these are parts of a strategy to appeal to consistency as a core component of our personal (and group) responsibility. Some animal rights thinkers (Kymlicka & Donaldson 2011, Cavalieri 2009, Clark 1984) remark for instance that to defend the violability of animals' (and inviolability of humans') basic interests on the basis of their less developed moral life (and on our significantly more developed one) is incoherent and "particularly perverse". Indeed, we humans are moral beings, moral agents able to do good, to come to know through sympathy the interests of others - including animals, and for that very reason we would be entitled to ignore their interests? In other words "we are absolutely better than animals because we

¹⁰ This consistency challenge that calls out our moral responsibility can for instance be found in (Nozick 1974: 46-47)

are able to give their interests some consideration; so we won't" (Clark 1984: 107-8).¹¹

Conceptual clarification

As I said earlier, we are manipulating loaded and vague concepts and it is of the utmost importance that animal activists and philosophers be good pedagogues and try their best to clarify their concepts and intentions. When wondering why the case for animal rights is so often rejected, it is very important for us to address all the reasons invoked by the reluctant parties. Of course the main reason is that "granting moral standing to animals would require drastic changes to human habits and privileges" (Kymlicka & Donaldson 2007); and theories of animal rights should seriously address this worry and make efforts toward making desirable a society free of animal exploitation. But the mushiness of our philosophical language, i.e. talks of "moral equals" of "beings of equal dignity" who are "equally entitled to full respect of basic rights" has also been the source of many misunderstandings that have turned into arguments for rejecting altogether any claim for animal rights. Because only this strongly egalitarian vocabulary can encompass the full proportions of the changes required instead of diminishing the moral urgency of the task, I think it is necessary to continue to use this vocabulary. But again, we need to reply to the anxieties it creates.

When I say that a nonhuman animal is anyone's "moral equal" or has the same "intrinsic indivisible dignity" for instance, I only mean that they share the characteristic (call it "sentience", "selfhood", "personhood") that grants all the value necessary for having their interests equally protected. Rather, sentience, or being the subject of a life, is so valuable that it constitutes the reason why being killed, tortured, or being deprived of a sufficient degree of basic liberties (e.g. freedom of movement or of choice) are moral horrors that should not be tolerated for any purpose. What animal rights theorists say is that it is equally wrong to kill an animal than it is to kill a human. This is "radically egalitarian" (Cavaliere 2001: 134, Kymlicka & Donaldson 2007: 197) and this may seem unsound. Indeed, "some people think it is simply self-evident that the death of a human being is more tragic, and more of a

¹¹ Another popular contest to our moral consistency is to point at the strong (and unjustified) contrast between our relationships with pets and with farm animals. Francione calls it "a moral schizophrenia".

loss to the world, than the death of a baboon, and that killing a human being must therefore be a greater wrong than killing a baboon” (Kymlicka & Donaldson 2011: 21). Here though, one big confusion is being made. We find more tragic the death of a talented teenager than the death of an old person but it does not make it acceptable, or more acceptable, to kill the old person than to kill the teenager. For the purpose of not being killed (or tortured, or confined, or let to starve) these two persons are equals. Judgments about the “wrongness of death” have to be distinguished from those about the “wrongness of killing” (Kymlicka & Donaldson 2007: 197). The former deals with the sphere of morality that seeks a better world in general, the latter judgements deal with what is minimally required of people in their treatment of others, they deal with the moral imperatives owed to persons as persons, i.e. as sentient beings. It could be said that the value of sentience is necessarily objective, or intrinsic, because it is what give to persons (human and nonhuman) their value as persons (that is, as inviolable beings) while other characteristics of particular individuals might be valuable insofar as they mark what one think to be good in one particular person. I might prefer to bond with my co-citizens for instance, and hence take a person’s life to be more valuable to me because he or she is my co-citizen. But he or she is more valuable to me because she is my co-citizen, not more valuable as a person. In the same way one can recognize the equal intrinsic value of animals while having his or her most meaningful relationships with humans and hence valuing more humanity on this basis. But a human is not more valuable than an nonhuman animal as a moral person, as a rightful bearer of rights. There may be (and there are) sad situations where the infringement of basic rights may be unavoidable. In those situations (lying outside the scope of the normal circumstances of justice) moral agents may take these subjective parameters to act. Confronted to this this very stupid thought experiment in which you would either have to kill a human child or a puppy, an animal rights thinker would not altogether think to be wrong the decision to kill the puppy. Nevertheless, when decisions that have serious impact on people are taken, they must be interpretable as having taken into account the objective value of each party and as having exhausted the investigation of all the potential outcomes that would not have violated people’s basic rights. In our very simplistic case, if, for one very strong reason (e.g. some lunatic is threatening you with a gun and will pull the trigger if you do not kill either the puppy or the kid) you have to make that terrible

decision, and if you consider the puppy and the kid as equal for the purpose of not being killed, then whether you choose to kill the puppy or the kid is morally indifferent *from the perspective of an egalitarian theory of basic rights*. From any more comprehensive moral theory though (including one held by most animal rights theorists), it is less of a moral tragedy to kill the puppy than it would be to kill the kid, although killing is invariably wrong.

I fear I have, to some point, failed in my clarification purpose, but my point was merely to claim that actual right theorists (not master students) had to clarify the content of their theory (and I do not have a theory of my own). I shall then cut short this indigest conceptual handling. However, before I pursue, it must still be said that most infringements on animals' basic rights cannot be reasonably interpreted as reflecting equal concern. Most of the time, there are simply reasonable other options that would not imply the killing of an animal. Take "mice problems"; people often solve these with poison or traps while other solutions are possible (e.g. transporting the rodents in an adapted wild environment). If most of these solutions are often not even considered (or are thought to be too costly), it is because the beliefs accompanying animal exploitation and abuses are deeply entrenched in our (distorted) moral landscape.

The last worry comes from the confusion between equal basic rights of animals, (or "an equal right not to be sacrificed for the greater good of others" (Kymlicka & Donaldson 2011: 22) and equal rights with humans. It is not the case and indeed it would be ridiculous if animal rights doctrine implied that animals had the right to vote (in a normal process), to choose and practice freely their religion and so on and so forth. These are rights that owe their meaning to the relationships and activities they regulate (e.g. religious practices) and to the capacities they necessitate from the right-bearers. Even within the human case, a tourist has no right to vote because he or she does not enter into the relevant relationships (of membership of a given political or associative community) for being granted these rights. More generally, what concretely requires the respect of rights will significantly vary according to the relevant parameters. Just as children and adults have different rights, human and nonhuman animals have different rights in practice. A mentally handicapped person and a cow do not have a right to a post-secondary education while I have the right to such a thing and this is obviously compatible with

equal respect. But the respect for our inviolability requires that the three of us be protected against physical assault, torture, starvation etc. Again, and to conclude on this, what moral equality requires is a matter of interpretation. If differences of treatment, of particular rights or of the way to respect rights occur, they need to be reasonably interpretable as reflecting honest attempts to treat people as equals.¹²

Responding to objections from other animalists

If responding to common objections and worries of people outside the field of animal ethics and/or activism is useful to better formulate an animal rights theory that may thereby become more convincing, I believe that to answer objections to animal rights inside the field of animal ethics is even more important to produce a compelling advocacy. Many animal ethicists still find the doctrines of animal rights too radical in their implications (such as the complete end of the killing and enslavement of animals for food, clothing, experimenting medicines and cosmetics etc) and therefore are more in line with the common sense morality about our relationships with animals. They also produced principled objections to animal rights theory. Again, I believe that arguments to reject these principled objections will be easier to produce and will be more effective than to directly challenge their claim about the more plausible concrete measures they propose instead of the more radical ones proposed by rights theorists. A direct advocacy for veganism is more likely to fail to convince against a clever claim for “a more humane consumption of meat” or “semi vegetarianism”. On the contrary, fighting welfarist claims and responding to their objections on the theoretical level of the justification of the moral status of animals will be easier. The (utopian) goal is that, once the theory is well set and made desirable, the practical consequences will appear less of a burden. To demonstrate that it is possible to convincingly address the principled objections, I will go through some of them here and in the next chapter and try to show how unfounded they are.

The first objection is that rights are anthropocentric. Theories of animal rights would be responsible to take human beings as the moral standard. For animals to be

¹² This conception of practical reasoning as an interpretative activity of that sort is forcefully developed by Ronald Dworkin in *Justice for Hedgehogs* (Dworkin 2011)

included in the moral community, they should be sufficiently “like us”. This objection is unfounded. The logic of animal rights is to extend rights to animals, not because they are like us but because they need those rights (indeed like us). Basic rights do matter for humans, not specifically because of their humaneness but because they are sentient. They share this characteristic with many animals very much unlike them. It is wrong to say that it erases the specific difference of a nonhuman animal to claim that he or she has a right not to be killed and exploited by humans. In any case, if a chicken is treated more like a human if he or she is not enslaved and killed for food, that is not a bad thing. It is however true that some animal rights activists have strategically focused some of their efforts on human-like animals (e.g chimpanzees and other great apes) in the (founded) hope that it will be easier to win those legal battles in our human supremacist societies.¹³ It would be problematic if this strategy happened to “reinforce the idea that the value of animals is measured by their proximity to humans” (Kymlicka & Donaldson 2018: 327). But it may simply be a bad strategy, and to denounce it can hardly be a reason to question its theoretical core.

1.4 Rights gone wrong: the need to go beyond a theory of basic rights

Rejecting extinctionism as a consequence of ART

I may have brought in some confusion, implicitly suggesting that animal rights theory was a single, unified theory. Of course it is far from being the case (just as many different accounts of human rights exist). First, because, as I said, the term has manifold uses in nowadays’ talks on the animal question. “We are all ‘animal rights activists’ now, but little has changed for the animals we exploit” (Francione & Charlton 2015: 4). But inside the family of rights theories that extends the logic of human rights, there are still disagreements, a plurality of approaches. It would be problematic if a valid critic of one particular animal rights theory was to discredit the whole family only because we are ignorant of the distinctions within this family. Much of the disagreement is about the argumentative strategies and the nature of concrete means to make activism efficient. I have said a few words about these

¹³ “The Great Ape Project” is such an attempt to give rights to the primates. Primates are targeted because they are humanoids. For more information on the GAP, see (Cavaliere 2015).

already and it is a concern pervasive to this entire work. Nonetheless, what interests me the most here is a principled difference between two abolitionist approaches and their concrete consequences in what each of them thinks to be the correct picture of a just society towards animals.¹⁴

I said that to end animal exploitation was the most abstract formulation of the most necessary outcome of an egalitarian ethics of animal rights. The principled difference I want to examine in this dissertation is one which will lead to a different concrete view of what ending the exploitation of animals positively means. Claiming that we should stop practicing a fundamental injustice towards animals (here a violation of their basic rights) requires that we state what we should positively do instead. Rights set a secure framework of interpersonal relationships, but to denounce a relationship that is wrongly outside this moral framework involves suggesting instead a conception of what is a positive relationship within it.

This point is absolutely crucial. It points to what I have left implicit until now (in the first part of the chapter); an ethics of rights cannot be merely a theory of basic rights. Or, put in another way, an ethics of just relations between animals and humans cannot be merely a claim for the respect of their fundamental rights. This may seem obvious, but it is a controversy in the animal movement. Even if, in a sentient rights theory, animal basic rights are supposed to be the same as human rights - for we, being all sentient beings, have the same basic interests to be protected - the concrete and actual moral importance of this fundamental rights theory differ greatly when it concerns nonhumans (in general) and when it has humans (in general) as subjects. There is still a great deal of injustices suffered by too many humans nowadays, and some of these injustices are so blatant that they constitute violations of human fundamental rights (e.g. genocides, mass-hunger, slavery). Yet in our western modern democratic societies, fundamental rights are not blatantly violated on a large scale, and, in the moral landscape of most members of these societies, the logic of rights is perfectly internalized. There was a time when much debate had to happen to prove that slavery was absolutely wrong (and an even earlier time when people had a strong sense that slavery was not a problem), a violation of human rights, but now people have a strong instinctive sense that those

¹⁴ I will try to show that this will partly influence some strategic disagreements (like whether or not we should promote welfarist campaigns). The two kinds of disagreements are only separable as being two for the sake of the abstraction I seek. As I said it already, I intend to remain on a theoretical level, made accessible, interesting and clear, for strategic purposes.

practices are wrong.¹⁵ Therefore, contemporary ethical thinking in western human affairs is not mainly directed against slavery as a moral crime for instance. At least “more advanced” problems are dealt with, e.g. social justice and bioethics. It makes sense in human case to advocate for the right to participate in the shaping of public policies, for the right to choose freely our sexual partners, for the right to have a decent healthcare and even more specific interests and liberties can soundly be fought for in the vocabulary of rights.

The state of our relations with animals is so degraded that it is debates about the ethics of fundamental rights (and intrinsic value of animals) that still make the frontpage. Since their basic rights, and the most basic of all maybe, their right to life, are constantly violated on an industrial scale, it is no wonder that proponents of animal rights have focused on our negative duties not to violate these few rights and have deferred “for a much better world than ours” (Sapontzis 1987: 102) other ethical questions concerning our relationships with animals. Will Kymlicka and Sue Donaldson’s claim, which I absolutely endorse, is that such a better world will not become real if animal advocacy remains stuck in debate about the intrinsic value and the basic rights of animals. We cannot expect some kind of “chrono-logic” of rights to unfold “as though the sheer reasonableness of ideas of animal rights had political agency” (Donaldson and Kymlicka 2018: 330). Not only do we need activists fighting for and with animals on the practical level¹⁶ but we need to complement our basic rights theory with some positive account of just interspecific relationships.

Yet for some abolitionists, the constant violations of animal rights have made very concrete what are the most urgent steps toward respect of these rights. In the particular theory of animal rights I am about to criticize, the case for theoretical necessity to positively treat animal as equals is made in a few pages and they instantly move on to the imperative to stop exploitation, which is to stop violating animal rights, which is to stop killing (and eating) them and to stop using them altogether for any purpose. The most urgent thing is to stop doing what we are doing. To abolish the exploitation of animals, period.

¹⁵ I will come back in chapter 2 on the confusion that can arise between the fact that the logic of human rights is internalized, and the other proposition that rights are not a proper way of approaching moral problems. To prove that we still live in a right-based society, I will use the work of Jonathan Haidt.

¹⁶ I come back to the possibility of animal political participation in the last chapter.

The personal moral guidance offered by an uncomplemented theory of basic animal rights is just that; duties not to X animals (in which X is a form of exploitation or rights violation). The only positive guidance is “veganism as a moral imperative” (Francione & Charlton 2015: 70). Even if, strategically, such a demanding theory will fail to gather adhesion, it could still grasp the truth (a truth that most would never want to hear), especially if it was complemented by a positive account of an ethics of fair and flourishing human-animal relationships. What I mean by a correct relational ethics will be clear by the end of this work, but here I intend to show that some abolitionists have completely failed in such a task.

To point at a right violation is not enough to offer a good guidance into the respect of rights. If to respect the right to stay alive, it is enough to refrain from killing, what is needed, for instance, to respect the right to have a decent life? Certainly to abstain from killing is necessary, but not enough.

These abolitionists denied the very possibility of this task in a dramatic way. Gary Francione and Anna Charlton (among a few others) are the perfect example of the possible ill-development a theory of basic animal rights can suffer from. They recognize that, in the human case, a theory of basic rights is not satisfactory to treat humans fairly, and that other demands of social justice are justified. It is needed to fully develop our moral status within our society. Or put in another way, they acknowledge that to treat humans as equals, to fully respect all their rights, we need a detailed and positive account of what it requires. The richness of daily human interactions calls for an infinite ethical, political, philosophical and aesthetic enquiry. We write books of personal development, of bioethics, of distributive justice, we write love stories, existential philosophy, we make movies, etc. All these are considered to have value. Yet, when developing their theory of animal ethics, Francione and Charlton write this:

To say that an animal has a right not to be used as property is simply to say that we have a moral obligation not to use animals as things even if it would benefit us to do so. With respect to domesticated animals, that means that we stop bringing them into existence altogether (Francione & Charlton 2015: 24).¹⁷

¹⁷ This thesis is very important in the works of Francione and Charlton. It can be found in many many articles and blog posts of them. See for instance this claim “ Should we “liberate” animals and let them wander freely in the streets? No, of course not. That would be as irresponsible as allowing small children to wander around. We should certainly care for those nonhumans whom we have already brought into existence but we should stop causing any more to come into existence.”

Or this:

We love our dogs, but recognise that, if the world were more just and fair, there would be no pets at all, no fields full of sheep, and no barns full of pigs, cows and egg-laying hens. (Francione & Charlton 2016)

It is important to grasp what it means. According to them, to abolish the exploitation of domesticated animals requires to put an end to any relationship we share or could share with animals in making all these animals go extinct. According to these authors, extinction is not a goal in itself nor is no-relation the best sort of relations between all sentient beings. Humans should seek many relationships with their conspecifics and many of them can be constructed (or reconstructed) in just terms. Moreover, justice demands the possibility for flourishing relationships; it is a right.

They also do not doubt that love and family bonds can also characterize human-animal relationships, for they even maintain that “you would probably not find two people on the planet who enjoy living with dogs more than we do” (Charlton & Francione 2015: 27)¹⁸. Extinction of domestic animals is only required because, sadly, none of the possible interspecific relationships can be reconstructed upon just terms. And since domesticated animals are too dependent on humans to be “liberated” and to return to wilderness, we must gently make them go extinct.¹⁹ Needless to do more than to note that this theory will alienate all potential allies of the animal movement. Most have come to grow attention to the fate of animals by forming bonds with some domesticated animals (Donaldson & Kymlicka 2011: 79). Francione and Garner tell them that all these should stop to exist.

Francione and Charlton are wrong, and Donaldson and Kymlicka analyzed greatly where this bad development comes from. Yet it might be useful to rephrase this analysis, for Francione and Charlton have yet definitely failed to understand it.

¹⁸ “But if there were two dogs left in the universe and it were up to us as to whether they were allowed to breed so that we could continue to live with dogs, and even if we could guarantee that all dogs would have homes as loving as the one that we provide, we would not hesitate for a second to bring the whole institution of “pet” ownership to an end. We regard the dogs who live with us as refugees of sorts, and although we enjoy caring for them, it is clear that humans have no business continuing to bring these creatures into a world in which they simply do not fit.”

¹⁹ Some (Vilmer, Kymlicka and Donaldson) have noted rightfully the problematic lack of some clear account of how we are to realize a purposeful “humane” extinction of these billions of animals.

For our two extinctionists, the exploitation of domesticated animals results from their domestication, their being and having been domesticated. The relationships involved in domestication are for them doomed to consider animals as property (instead of “persons” “equals”) which would indeed be unacceptable. Hence animals have a right not to “be used as property”, which could also be called a right not to be submitted to relationships involved by the past and ongoing unjust domestication. Domestication is then to come to an end. For them, this means a right not to be in contact with humans but this also happens to imply their extinction, since they cannot survive without human care (because of domestication). In conclusion, domesticated animal rights require their extinction. Let’s try to disentangle some of the presuppositions and arguments in all this.

What exactly is domestication? It is the process of making animals (and plants) adapted to life in close association with, and to the benefit of humans.” There are several aspects of domestication. Its *purpose* is to benefit us and to benefit us always more, its *process* is to completely control animals and to commodify them through selective breeding. This has resulted, more or less voluntarily, to animal complete *dependence* on some human care to survive. (Donaldson & Kymlicka 2011: 74-75)

It is clear that we have to stop bringing domesticated animals into the world for the sole purpose of indefinitely increasing the benefit we draw from that. But Francione and Charlton hold that all kinds of instrumental motives in our relationships with animals are exploitative. Each relation with animals that would happen to benefit us in any way would be exploitative. Even simply drawing pleasure from the companionship of our pets is morally unacceptable. Here let me simply note that, fortunately, we do not think that in the human case. Instrumental motives are acceptable under the condition that we respect the intrinsic value of the parties of the relationships. I am not exploiting my baker even if I go to his or her shop merely because he or she has something that benefits me (bread). The purpose of domestication has clearly been unjust but all uses of animals are not doomed to be exploitative for that reason.

For the same reason, i.e. because it is incompatible with the respect of animals (as equals), we should stop selective breeding leading to their dependency because it violates fundamental interests of animals and we should stop using coercive means to breed them. But this does not mean that animals already

domesticated would not have interests in breeding. To “stop bringing them into existence” will certainly not imply their extinction, for many domesticated animals can still manage to reproduce on their own and it may be our responsibility to apply some control over their reproduction. But, extinctionism, because it does not recommend to stop caring for animals already born, however, will require a huge amount of coercive control over animal reproduction, which will certainly not match their will to continue to breed. Here, it is only paternalistic control which leads to extinction, and we are until now failing to see why this paternalism is justified.

It is also sure that all the commodifications that have been done in the history of domestication are immoral inasmuch as they have been done solely in humans’s futile interests with no regard to human fundamental interests. Worst are those who had bad consequences on animals (e.g. on their health or their ability to reproduce). The resulting dependence on animals is then the result of a fundamental injustice. Causing an increased level of dependence is itself wrong, and it is all the more so when it is solely to serve human’s interests.²⁰ Yet, the fact of animal dependency does not preclude relationships to be structured in just terms. Relationships of power, however asymmetrical, are not necessarily unfair. Persons more dependent or less autonomous than others are indeed vulnerable to exploitative relations, but now care theorists of different branches have shown how flourishing relations of interdependence could be constructed in just terms. Francione and Charlton still need to prove that it is not possible in the case of human-animal interactions. They pessimistically think that these are not possible and hence advocate for the abolition of these interactions. But I prefer to check their pessimistic assumption before endorsing their drastic “remedy”. I believe that involuntarily, Francione and Charlton, when denouncing the injustices of domestication and its selective breeding, are sometimes dangerously close to some eugenistic subtexts. See this passage:

They [domesticated animals] remain perpetually in a netherworld of vulnerability, dependent on us for everything that is of relevance to them. We have bred them to be compliant and servile, and to have characteristics that are pleasing to us, even though many of those characteristics are harmful to the animals involved. We might make them happy in one sense, but the relationship can never be ‘natural’ or ‘normal’. They do not belong in our world, irrespective of how well we treat them.

²⁰ Caused dependence, in the form of making animals compliant to their exploitation, is surely a very useful feature to increment on animals.

This is more or less true of all domesticated non-humans. They are perpetually dependent on us. We control their lives forever. (Charlton & Francione 2016)²¹

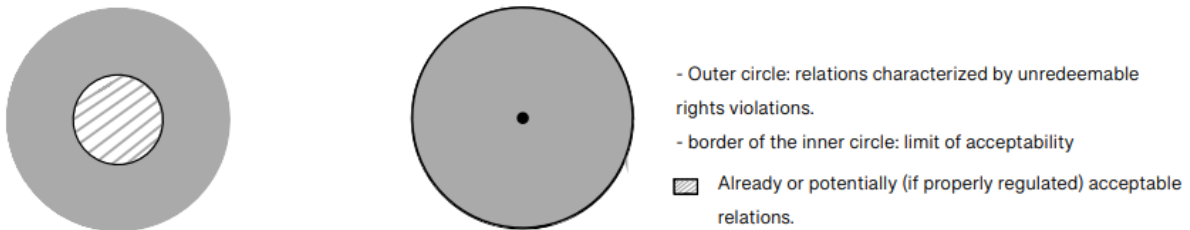
They seem to be somehow disgusted by the dependency of animals. Just like Deleuze despised cats for being needy, they regard domesticated animals as “servile”. But this is a grave mistake. This is simply in contradiction with the doctrine of sentient fundamental rights. All sentient beings, irrespective of their special cognitive or physical characteristics, bear intrinsically the same dignity. To respond to animal agency by disgust is their problem, not animals’. Any feature of a sentient being is compatible with his or her dignity. Here again, I plainly meet with Donaldson and Kymlicka claiming that alleged servility or “alleged indignity is in the eye of the beholder, not the intrinsic nature of the domesticated animal” (Donaldson & Kymlicka 2011: 86).

The relationship of codependency (and our modern societies depend in many ways on the structured exploitation of animals) between humans and nonhumans originated and perpetuated by domestication is still deeply unjust nowadays. Nonetheless, it is the way things are. Factually, animals belong in our world whether Francione and Charlton want it or not. Neither their state of dependency, nor the fact that it is the result of huge injustices both in the purpose and the process leading to it, justify going back to a state where these injustices had not yet arisen. I hope to have made it clear why. The only option we have is to accept the fact of the current state of our relations with animals and to try to build on it to achieve full justice.

To move on to the next chapter, let’s try to sum up the task ahead of animal advocacy. Decades of debates between welfarists and abolitionists have definitely end up by our defeat in the cultural and political arenas. Talks of rights, no matter how clear, how serious in their responses to critics, are still political nonstarters unless we cut them from their content to fit welfarists agendas. I claim that rights theory is still right and fully captures the extent of the wrongness of our current treatment of animals. If it has failed, it is because it is uncompleted by a more comprehensive ethical theory that would frame positively the picture of relationships within the secure framework of rights. Worst, as we saw, some rights theorists have denied the possibility of such relationships.

²¹ This is an extract from a web article. I therefore cannot add the page to the quotation.

Moral landscape of the sphere of interspecific relationships with domesticated animals in non extinctionist rights theory (left) and in extinctionism (right)



If we want to avoid the liquidation of domesticated animals, we need to prove that some relationships we currently have or could have with animals, and which are not blatant rights violations, are non-exploitative or at least contain the possibility to be reconstructed on fair terms. The hope is that pointing at those just, mutually flourishing, interspecific relationships will bring public opinion to accept the logic of rights, to see animals as persons that ought to be equally respected.

A large number of inventive theorists have tried to operate a change in the way we see animals. All appeal to some kind of shift in the use of our moral emotions, and advocate for some kind of awakening toward the unsuspected richness of the manifold ways of connecting with animals. I will very briefly expose those approaches but will not wait to claim that they are flawed with a defect opposed to Charlton and Francione. Indeed, the paradoxical tendency of those ethics of love is that they tend to see every relationship as acceptable (except the most cruel ones) and fail to recognize basic rights violations. On its own, love fails to properly frame our relationships with animals. It may appear that an investigation of this kind of relational ethics results in a conflict with a basic rights theory (instead of being a necessary complement or a motivational basis to it). Indeed, those theorists of animal studies are sometimes explicitly opposing animal rights. Nevertheless, these theories furnish some interesting insights on the necessity of working on emotions and moral imagination through new ways of doing ethics (such as the use of narratives and stories to complement rational arguments) to operate a deep change in the moral landscape of the public opinion. If we could borrow the method to serve the abolition of the exploitation of animals, it would be a great step toward the goal.

Chapter 2: Relational ethics: love, compassion, justice: the failures to find the *right* formula.

2.1 Capitalizing on animals lovableness

The task is clear and yet incredibly difficult. Animal activists and theorists need to motivate, to generate agreement on the urgent need to acknowledge and to act toward the abolition of the most blatant forms of animal exploitation, without over-moderating their claims to fit with the common-sense morality about animals. If the rhetoric of “animal rights” has to win, it has to really win and not serve as pure veneers to legitimize exploitation.

Yet, radicality in that sense must not go in direct opposition with common sense and can even hope to build on it. Most people have an intuitive sense of the value of animals, of their selfhood, and they get that sense from a variety of sources, from the unbearable images of their suffering or from their friendship with the family cat. Even Charlton and Francione believe that the rational arguments they use can be heard only when such a sense of kinship is truly developed. However, the logical conclusion of their theory undermines this claim since we should conclude from the logic of animal rights that no interspecific relationship can be moral. So logically, they press themselves to add that if moral concern for animals arising from the relationships we have with them is necessary “that would make no sense” to use the source of moral concern (e.g. friendship with pets) “to argue for animal rights” (Charlton & Francione 2015: 144). Therefore, for them, the source of moral concern does not matter as long as it leads to accepting the extinctionist conclusion, to accepting the removal of this source.

I want to avoid this self-defeating appeal to moral concern (and avoid the extinctionist conclusion with it), and for that it is needed to frame and specify the space of interspecific relationships which lies inside the secure framework of rights. I also want the framework of basic animal rights to be respected (basically I, among many others, want no animal to be killed in normal circumstances of justice). These two goals are mutually supportive in my view of things. The mere respect of our negative duties not to violate basic rights will not suffice to rearrange in fair terms all our ways of connecting with nonhuman animals (if we do not believe that to respect

these duties will require the extinction of all domesticated animals). And even if the biggest moral urgency is to end those basic rights violations purported on an industrial level, we have to recognize that most people differ with animal rights activists on the moral importance of putting an end to the killing of animals and that defending animal rights theory, as it stands, is a political non-starter. But a great number of people still claim to care for animals or even that they love them. Can we build on this? It seems that love and care can be a good guide to frame a new and just way of connecting with animals. If a picture of a just multi-species community can be rendered desirable (lovable) for most of us, then to move toward that society will put an end to the exploitation of animals.

Some theorists have developed an ethical account which concentrates its focus on the actual and potential richness of relations with animals based on our natural compassion and love for some nonhumans with whom we share our lives. I take the example of Kathy Rudy, who develops an animal ethic of love.

In *Loving Animals: Toward an New Animal Advocacy* (2011), Kathy Rudy claims that the animal movement, if it is to convince, needs to revise its priorities. Thus, before “changing laws” she is “invested in changing people’s hearts” (Rudy 2011: 202). Indeed, she rightly believes that some sources of moral motivation have been overlooked by traditional animal rights theorists, and some parts of our moral activity ignored and despised. Far from thinking that our emotional and spiritual ways to connect with animals should not be used to advocate for changes in the way we treat them (and should clear the room to let reason make its arguments), Rudy thinks that we should build on them to repurpose our relations to animals. Admittedly, the practical power of our emotions toward animals remains too weak to address the systematic oppression most domesticated animals suffer from, but it must not remain hopelessly the case. Indeed, she posits that nowadays animal lovers have good reasons to be discouraged to consider what they could do to help animals, to enter into more active animal advocacy, for they are told by the extinctionists that, on a personal level, they ought to be vegan to avoid being a part of animal oppression, and, on a global level, they have to agree that to abolish exploitation, all domesticated animals should go extinct. Then, to really unveil the potential of loving nonhumans, animal advocacy needs to give love a shot without frustrating it.

Rudy believes that many interspecific relationships can be rendered just if they are driven by love. What does she mean by that? A good starting point to

answer this question might be to look at the relations she thinks acceptable with animals. I focus my attention on one decisive example. Rudy believes that love can characterize, and hence can legitimize human-animal relationships that end with the killing of the animal. This is driven out by rights theories under normal circumstances. Yet, even in rights theories (human and animal), there can be debate on marginal cases, i.e. hopeless life-boat situations, cases of self-defense, euthanasia, capital punishment. However, Rudy thinks it acceptable to kill animals to use them for clothing, for experimenting medicines, or for food even when other alternatives exist. Focusing on food, she does not justify her view solely with the argument that a vegetarian diet cannot be suited for the health of some or all humans. Indeed, she agrees that “meat should be treated like a side dish, or maybe even a flavoring” (Rudy 2011: 82-83). Her view is that it is not incompatible with love to kill animals for food even when it is just a matter of flavor, or food diversity. That love for animals even requires that we keep breeding them and killing them for food is a stronger claim that is sometimes suggested. That is then definitely against animal rights (that Rudy dismisses as “extremists” (60) or ironically as “rightists”²²).

I will go straight to the core of my criticism. First, in this example, and in all the kinds of existing relationships she deals with in her book, she uses love as an excuse for making a relationship acceptable. If an interaction is truly characterized by love, it cannot be domination in Rudy’s comprehension. It might very well be true, but then a correct ethic of love would not allow for a lover to kill his or her loved one²³. In most of the cases true love does not end up in killing, and if and when it does, it might very well still be unjustified (e.g. in passion crimes). Rudy disagrees when it comes to human-animal relationships. Thus killing an animal, when it is done with love, or by people who love the animal, or when the animal has been loved during his or her life, is then acceptable according to her. Rudy’s project to change our hearts before changing our laws, if it succeeds, puts our heart in a state where it will never cry for law changes. If all that is required is to love, and all relations, even the one of killer-killed can be characterized by love, then the only thing that needs to change is our heart (or a law that commands a change of our heart).

²² Funny enough, she is surprised to share a common view of human animal relationships with a right wing conservative thinker. “This is quite ironic; on practically every other social issue imaginable—from abortion to homosexuality to war—Scully and I probably stand at opposite ends of the political spectrum. (I’m a queer, anticapitalist, academic, bleeding-heart liberal; he’s a leader in the Republican Party. I was brought up Catholic” (198) Who is the rightist then?

²³ A correct ethic of love would not tolerate rights violations in my view of things.

This is not entirely true of course. Rudy claims that loving animals will motivate some changes in the way we relate to them. If animal lovers love to eat meat, they will not tolerate to buy animal products coming from farm factories and instead buy from loving farmers that give a decent life to their animals. Then Rudy is right in a way to claim that “Inside that love and dreaming, we can transform the world for animals.”²⁴ (216). However, these changes are not enough and fail to repurpose and to transform the relations of power between humans and nonhumans. So much that from a rights perspective, Rudy’s account would fit in Tom Regan’s critics of the “cruelty-kindness” common sense animal ethics that makes the mistake of conflating the morality of the act with the value of the intention, in believing that loving is enough to make a relationship right, “supposing that the mental states or dispositions of agents (their motives or intentions) determine the rightness or wrongness of what they do” (Regan 1983: 228). Love is valuable, is a virtue, only if it is usually a motive for good actions. And the moral evaluation of an action can hardly reside only in the motives for that action. In any case we cannot call good actions, or good relationships, those who are shaped to end in tragic events, i.e., the death of a sentient creature (unless we wish, on spiritual grounds, to celebrate such a death).

Finally, she still has to address the problem of unilateral love. To correctly speak of a relationship characterized by love, both sides must feel love for the other. In her words, “this approach to advocacy is not only about humans loving animals but also about animals loving us back. It recognizes that animals have choices, and one of the choices many of them make is to become loving, to be loving animals.” (Rudy 2006: 14) But would it make sense to maintain that animals choose to love us to the point that they would accept to die for us? For Rudy it does make sense.

Sometimes love requires sacrifices. But those kinds of sacrifices? Sacrificing one’s own life for others has been done, but has it been done merely to please the palate of hungry humans? Rudy seems to believe that animals willingly sacrifice their lives for us. How to make sense of all that? She could, and to a certain extent, is claiming that sacrifices are made on both sides, and then can be conceived as fair and reasonable “deals”. In her words

²⁴ And it will in fact require legal change in the form of welfarists reforms (e.g Rudy talks of a minimal life duration before slaughter)

We make “deals” that inhibit our liberty; we need to eat, we work for money, we pay taxes, we live in houses with locks, and so on. The structures of our lives produce necessary compromises to these absolute freedoms. The “deal” that domesticated animals have made over time with humans is that some of their freedoms would be curtailed in return for food, shelter, belonging, and love. (Rudy 2006: 5)

But, she seems to withdraw from that rhetoric of deals, which cannot reasonably sustain her position. It is obvious that the deals between domesticated animals and us are not fair, and that, even as hypothetical contracts, their worth is null. Her conception of love, embodying this notion of *sacrifice*, is then highly spiritual. Indeed spirituality is the only sphere where her conception can still have some value, for it is clearly not reasonable nor displaying a sensible theory of moral sentiments. She recognizes just that when she claims that “without a sense of spirituality and sacredness, sacrifice has little value” (18). The term “affect” is used to specify this sacred dimension of love, and “the concept of affect is operating in a completely different realm from that of principled reason.” (20) From there anything is permitted. We can say that animals would be happy to sacrifice their life in return for all the love they received, which has made their lives “worth living” (99), i.e. better than non-existence. Fairness only occurs at a spiritual level, when nothing is unreasonable or unlovable.

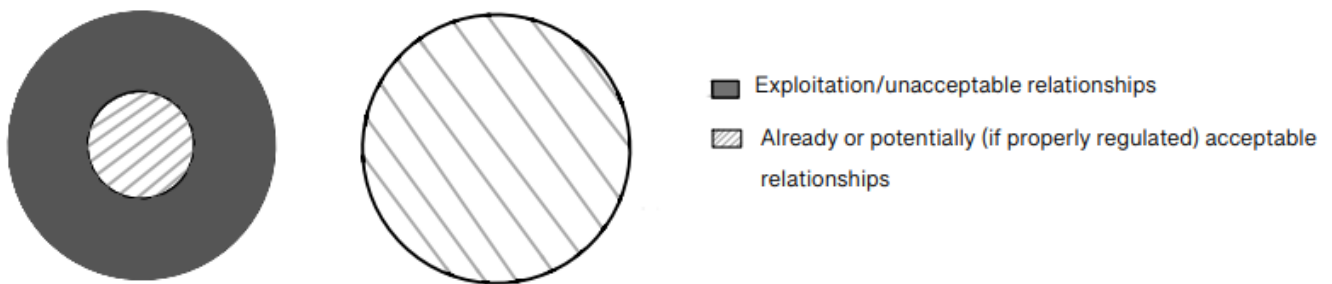
From there, all talks of going beyond human exceptionalism, enacting animals’ freedom and agency so that animals “can become their own advocates through the personal experiences humans share with them.” (113), all goals that should indeed be pursued, are unproblematically compatible with the actual structure of human-animal interactions and thus emptied of all their moral and political potential to make differences for animals.

Tony Milligan sums up Rudy’s failure in a way that is particularly useful for my purposes.

The conspicuous absence of restrictions about such matters in Rudy’s account of loving animals is at least partly the result of her decision to treat rights attributions and talk about love as mutually-hostile, competing rather than overlapping discourses. For Rudy, when love enters, negative rights (not to be eaten or experimented upon) simply drop out of the picture. (Milligan 2015: 9)

This is the opposite of what I was searching in relational ethics to complement an account of basic rights. Indeed, Rudy's theory contests the relevance of a secure framework of rights for all and situates the good human-animal relations potentially everywhere, provided that they are characterized by love, which, according to her, can arise potentially in every relationship, even the killer-killed one. Here is how we could schematize the situation:

Moral landscape of the sphere of human-animal relations in (non extinctionist) animal rights theory (left) and in Rudy's ethics of love (right).



I want to set up one thing straight. I reject Rudy's account of normative interspecific love but I do not reject the idea that an investigation of relations characterized by mutual love can help us specify the content of our relational ethics. Also, I think that such a propensity to love and to feel compassion for animals' fates can be used to open the eyes of the public to the extent of global animal exploitation and the necessity to grant animals some basic rights.

To make sense, a reliance on love must be reflexive, critical. The first implication is that moral emotions such as love and compassion must not be taken as antagonists to practical reasoning. Whether we see emotions as a part of practical reasoning or as intrinsically cognitive is a question I shall not deal with, but the point is that a normative concept of love or of compassion must be compatible with a theory of the equal intrinsic value of sentient agents. Evidently, it is impossible to reasonably interpret Rudy's account with such an egalitarian ethics.

Therefore, I will turn toward another theory of animal ethics based on a larger ethical approach of moral emotions such as love and compassion, but which seems

more compatible with an egalitarian basis.²⁵ This theory has been developed by Martha Nussbaum, and I will closely examine her account of animal ethics. She is interesting for my purpose for two reasons.

1. Even if she emphasizes in several books the epistemological role of emotions such as compassion and love and hence considers the impacts they could have in normative moral and political theory, she nevertheless operates a rhetorical switch when she deals with normative moral and political theory. At least, unlike Rudy, she is unwilling to replace talks of rights, capabilities and justice with talks of “duties of love” or “duties of compassion”. This suggests that Nussbaum would agree with Milligan’s claim (which I share too) that “rights talk and love talk work best when they work together, without an elimination of one by the other and without a reduction of one to the other.” (Milligan 2015: 9). It might be interesting to see what Nussbaum has to say about the normative role of emotions in the normative and applied sphere of animal ethics and about how they are connected to claims of rights and justice for animals. Indeed, I believe that the most effective way to produce a relational ethics that is both theoretically correct and illuminating, and which has a strong motivational potential is to base this ethics on the idea of justice toward nonhumans, or the more inclusive idea of global justice. People deeply feel the importance of demands of justice, for they concern areas of life in a community that are crucial for determining how our lives will go. If it makes sense to talk of a sense of justice, it must also make sense to say that we can work on that sense of justice, through enhancements of our moral imagination, or a better use of our moral emotions. Nowadays our sense of justice usually stops at the species barrier. I want to know how Nussbaum intends to expand it beyond its narrow boundaries.

2. However, and it is precisely why Nussbaum’s view is interesting, despite the promising direction of her approach, she fails in my view, to sketch the correct ethical basis of a political theory of justice well suited to include nonhumans as equal members of society. Her claim to expand her capability approach (a proto theory of justice, or an ethical theory of “basic justice”) to animals is good in principle, but I believe that the concept in which she promotes this expansion, “the species norm”, fails largely to address the basic requirement of equality to which each theory of

²⁵ In the realm of the large ethical theory of emotions, it has been doubted that Nussbaum's cognitive conception of compassion was compatible with considering individuals as “ends in themselves” See (Le Jallé 2014). On the normative and applied to animals part of her ethics, I will doubt as well that it is compatible with seeing animals as having equal intrinsic value.

justice should meet to be considered seriously. This last failure to sustain and develop a theory of basic rights will open the door for the citizenship theory I intend to defend.

2.2 Martha Nussbaum : special compassion to think about our relationships with nonhumans

Martha Nussbaum values emotions greatly in her moral and political philosophy. Compassion and Humanity play a central role in the functioning of a virtuous agent. It is no surprise that she finds it necessary to mobilize them while thinking about our relationships with nonhuman animals. It would be strange from her part to reject altogether the idea that "compassion is very important in thinking correctly about our duties to animals." (Nussbaum 2006: 337)

In a paper written in 2012²⁶, Nussbaum stresses the fact that although there is a tendency to compassionately sympathize with animals, there is however an opposite tendency to despise animality in general. Following the primatologist Frans De Waal²⁷, she calls this phenomena "anthropodenial", "the tendency of humans to define themselves as above the animal world and its bodily vulnerabilities" (Nussbaum 2012: 18). Actually, it is an implicit denial of all that is allegedly animal within humans. Since we are animals, anthropodenial could be defined as "the tendency to deny our humanity, or to hide from it." (27) According to Nussbaum, who also draws on works of psychologists and psychoanalysts, this comes from the frustration to recognize that we are not omnipotent but vulnerable and to attribute (rightly) this vulnerability to our bodily and animal needs. As shame of our animality arises, our bodily needs happen to disgust us, and to overcome this unbearable shame, humans tend to valorize capacities that appear to be discontinuities with animals.

²⁶ Entitled "Compassion : Human and Animal"

²⁷ De Waal, F., 2006, *Primates and Philosophers: How Morality Evolved*, Princeton: Princeton University Press, Appendix A, 59-67.

These include: the ability to choose not to act on some powerful desires; the ability to think about one's goals as a system and to rank and order them; the ability to think about the good of people (and animals) at a great distance from ourselves, the ability to test the principles of our conduct for impartiality and respectfulness to the claims of others. (6)

These are highly intellectualized descriptions of our abilities, so much that, under those terms, they cannot be said to be fully mastered by most humans. Under more realistic descriptions, it can be said that they are in fact, and to some extent, shared by some animals. But most importantly, as we have seen in chapter one and will continue to see until the end of this work, to attach the value of an individual to the possession and actualization of these rational capacities is a mistake. I hope to have convincingly presented in the first chapter the reasoning that claims that the possession of one or all of these rational capacities does not entail the objective value (to be fully respected) of a person as a person. Yet if one is still convinced that ability in abstract reasoning is necessary for having one's life respected by others, Nussbaum offers another argument to prove the contrary. She tries to demonstrate that the possession of a high degree of these intellectual capacities is not in itself the most valuable part of our humanity. To show that, one strategy, adopted by Nussbaum here, is to show "the pathologies of intellectualism" or the "moral distortion" of anthropodenial.

One indirect but powerful reason not to over valorize intellectual abilities is the perverse consequences of anthropodenial. Valorizing and idealizing the allegedly non-animal features of our nature is not enough to dismiss our animal vulnerability and the disgust that goes with it. Thus anthropodenial has led to oppression of some groups, animals of course, but also women for instance. Continuing to explore the morally distorted psychology of humans (here mostly white men), Nussbaum explains the consequence of anthropodenial on the consideration and treatment of women as follows

Woman, because of her obvious connection with birth and sexual intercourse, comes to emblemize animal nature. The person who is desperate to deny animal nature must not only deny that he is a woman, he must also deny all commonality between him and the woman, imagining himself as sharing none of the inconvenient traits that make woman an object of disgust and shame. But he cannot avoid contact

with women, as he may be able to avoid contact with Jews, or blacks, or Muslims. Indeed, he finds himself strongly desiring such contact, and repeatedly engaging in very intimate forms of bodily exchange, involving sweat and semen and other signs of his own true nature. So disgust (as so often) follows this descent into the animal, and the only way out of the disgust is to blame it on the woman, to accuse her of luring the otherwise transcendent being into the animal realm. (21-22)

According to Nussbaum this psychological phenomenon plays an important part in the misogyny of our patriarchal societies and directly explains many abuses on women. Those links between animal and women's subordination and reification have very clearly been shown in Carol Adams' work (Adams 2000). So if we think that men and women are moral equals, there is a powerful external reason to try to undermine anthropodenial and the intellectualism going along with it, and indeed the correct and theorized belief in gender equality is itself a sufficient and convincing reason to reject anthropodenial as a moral fault and to revalorize animality. (along maybe with the rejection of the idea that women display more animality than men.)

Another more direct reason to revalorize animality is to observe that anthropodenial (and its perverse consequences) is this time really exclusively human and, as a result, that animals do far better to respect animality within each of us. So, although "it is conceptually possible for a different sort of animal to have a related flaw, denying that it is the species of animal that it is (...) in fact, however, this sort of denial appears to be present only in our species." (27) The constatation and comparison of non-discriminative behaviors in the display of compassion from nonhuman animals (who have the ability to display to some degree such a moral emotion) to the inability of humans to do the same due to anthropodenial is a good proof of the fruitfulness of looking and valorizing animality. Nussbaum exposes cases in which animals do better than humans in their moral responses in virtue of their undistorted compassion. The most compelling is drawn from *Effi Briest*, a novel from Theodor Fontane, in which Effi, forced to marry very young, has been found guilty of adultery. Being repudiated by her husbands and children, Effi dies alone and miserable. Her own parents fail to feel sorry for her, to grieve and display compassion for their child's poor fate. But Effi's dog is infinitely sad to have lost her friend. Nussbaum describes the parent's reaction as a mark of anthropodenial. Indeed the parents refuse to recognize that Effi being married too early (at sixteen) without being in love, resulting in a great sadness and resistance, is a valid excuse

for their daughter's behavior. At least, it should be recognized that it is a mitigating circumstance. But, trapped in the disgust associated with adultery as a gross and beastly behavior, they completely fail to recognize that Effi is just as much a victim as she is a sinner, and fail to display the correct emotional response for her death. Effi's dog, Rollo, while not searching for explanations for her behavior, still does better than the parents in displaying the correct emotional response to the situation.

It appears that we tend to focus on favorable (for us) discontinuities between humans and animals but deliberately forget to consider bad-looking discontinuities, those in which animals appear to do better morally. David Hume, in his *Essays* and especially in "Of the Dignity or Meanness of Human Nature"²⁸ already emphasized this point. We feel the need to diminish, to bestialize nonhuman animals to assert the value of humans. But in fact, since what is really properly human - anthropodenial (or excessive intellectualism) - is the source of diminished compassion and of the wrongful consideration of animals and some human groups as inferiors, it is then probable that to better grasp what is valuable in humanity we will be wise to look at our animal sides. A compassionate attention to animal lives might teach us things about the true nature of morality and human worth. Conversely, a less intellectualized conception of human worth might make more convincing the arguments I presented in chapter one for the equal respect of animals (because they are our moral equals). I also believe, with Nussbaum and Adams, that a correct advocacy for gender equality must denounce anthropodenial and will coincide with a revalorization of animals and raise better compassion toward them, that is, a compassion resulting in, as much as coming from, a better comprehension of their subordinated status and of the immorality of such a status.

Beyond Rawls within political liberalism

If compassion toward animals is then necessary to reshape our relations with them on more equal terms, Nussbaum knows very well that the affirmation: "compassion matters to grasp what is owed to nonhuman animals" is way too vague, for one who heard it still has to figure what sort of compassion is required or what concretely is implied by the idea of a duty to treat animals with compassion.

²⁸ in (Hume 2003: 43-49)

Indeed in *Frontiers of Justice*, Nussbaum addresses three problems in John Rawls's theory of justice, one of which being his half admitted refusal to think about giving justice toward animals. It is widely known that Rawls has been criticized for estimating that "it does seem that we are not required to give strict justice anyway to creatures lacking this capacity [for a sense of justice]" (Rawls 1971: 512) and that morality regarding animals involves merely on our side "duties of compassion and humanity" (512) without stating what these precisely imply in practice. Nussbaum builds her own theory of animal ethics against this Rawlsian position. I shall say a few words about Rawls's reasons to exclude animals from being subjects of justice. I think Nussbaum's reluctance to believe in the possibility of amending social contract doctrines to include nonhumans is too hasty.

One way to explain Rawls's rejection of animals of the sphere of justice is his adherence to Hume's account of the circumstances, external and psychological, in which justice is possible and would even necessarily arise (traditionally called "the circumstances of justice"²⁹). These are supposed to explain why animals have not been treated justly and why justice is still thought to be a ludicrous idea when we think of how to shape our relationships with nonhumans. Rather, some fact has to be found to furnish an explanation of the domination of humans over animals. Rawls partly agrees with Hume on this explanation. In Nussbaum's reformulation, for justice to arise, in addition to all other circumstances relevant for justice among humans "no one party to the contract" can be "strong enough to dominate or kill all the others" (Nussbaum 2006: 335), otherwise it is domination and not justice that will prevail. And of course, if we take the picture of a bargain for shaping interspecific relationships, the human group (providing that members of this group are not under a veil of ignorance about their species membership) will dominate the "rest of the world group" instead of framing rules of mutual respect (of justice). Yet I believe that Hume and Rawls further explain this condition differently. Or more precisely, I think that Rawls cannot justify his exclusion of animals in purely Humean terms, and indeed it seems that he is taking a different path.

²⁹ See section 27 of *A Theory of justice*, where Rawls clearly states his affiliation with Hume. It is also interesting to note that in the section 23 of *Justice as Fairness, A restatement*, itself identically entitled "Circumstances of justice", Rawls drops the reference to Hume and gives a very different account of these circumstances. Most notably, he drops the reference to the condition of relative equality of physical and mental powers. See also Hume, *An Enquiry concerning the Principles of Morals*.

For Hume, humans can only display a limited benevolence which will simply not be enough to refrain from dominating and exploiting animals. Humans pursue their personal interests and try to improve their lot. The (mutual) advantage we gain by structuring our relationships with other humans through the creation of rules we call “rules of justice”, becomes desirable in itself because a sense of justice that values (mutually advantageous) cooperation fully develops itself with time. However, this sense of justice comes from a more primal motivation to improve (one could say maximize) his or her own interests. With animals, it appears that pure domination is way more advantageous than this kind of fair cooperation. Therefore, Hume does not really try to normatively justify domination; it is just a (sad) fixed parameter of our world (Hume 1991 [1751] 85-95).

If I am a bit out of my depth here, for my reading and comprehension of Rawls is not sufficiently advanced, I still want to argue that things are different in Rawls. Although Hume is factually correct, for self (or group) rational interest is the main *explanation* of why animals are really dominated, it is perfectly possible for Rawls to maintain that domination is unjustified. For Rawls, one can be rational, that is, guided through the functioning of instrumental reason (itself guided by passions) in wanting or desiring or doing one thing, while being unreasonable in wanting or doing that thing. This is because Rawls believes in the power and in the priority of a strong pure practical reason, delivering reasonable and hence right conclusions on practical matters, over instrumental rationality seeking to maximize personal interests. In his theory “there is no thought of deriving those principles [of justice] from the concept of [instrumental] rationality as the sole normative concept.” (Rawls 2001: 82). This leads me to believe that, if Rawls follows Hume in maintaining that justice is only possible between rough equals, he must be making a very different kind of proposition. Indeed Rawls is truly saying that justice ought to be (or “should take place”) only between beings roughly equal in mental and physical power. Since the reasonable outcome of pure practical reason offers a normative constraint to purely instrumental interest, to claim that animals are outside the circumstances of justice is to make the normative claim that they should remain outside strict justice, or that to exclude animals from social justice is morally indifferent from a political point of view. Since this exclusion of animals is a matter of course, largely perceived as unproblematic nowadays, Rawls does not dwell long on the reasons to justify this exclusion from the sphere of justice. I believe that he offers no convincing reason to

say that if a relation to the mutual advantage of the parties does not maximize the personal advantage of the strongest one, the idea and principles of political justice should not hold between unequal parties.

In an enigmatic section of *A theory of Justice* entitled “the basis of equality”, Rawls nevertheless seems to try to connect inequality of mental powers (factual inequality) with inequality of intrinsic value (moral equality). Rawls claims that animals lack the “moral power” of having, to a sufficient degree, “a sense of justice”. For that reason, they *should* not be considered as moral equals and bearers of rights; hence they are not owed “strict justice”. This is more a moral claim than anything else. Animals cannot frame contracts, but many humans are in the same case and are still considered as our moral equals, as having equal intrinsic dignity. For the severely intellectually disabled, the state has a duty to enable (through the care of trustees) their agency in the field of political participation.³⁰ All humans are moral equals. But for Rawls, this is not the case for nonhuman animals. A reason is offered (they lack a sense of justice), but it is a sufficient reason only in the case of animals, and for that no reason is offered. I believe that if Rawls had written on animals he would have maintained the same things that one of his greatest interlocutors, Robert Nozick. On the basis of moral equality, Nozick writes

in virtue of precisely what characteristics of persons are there moral constraints on how they may treat each other or be treated? We also want to understand why these characteristics connect with these constraints. (And perhaps, we want these characteristics not to be had by animals; or not had by them in as high a degree.) (Nozick 1974: 48)

The honesty of Nozick honours him. All his remarks on animals pose in a remarkable way the political and moral challenge for proponents of animal rights.

As Nussbaum notes, it is possible to argue against Rawls by claiming that some animals have some sense of justice, some sense of reciprocity at least. Nonetheless, she does not try to give empirical evidence for the range of agency and

³⁰ In this section, Rawls is quite unclear whether people with severe mental disability are owed strict justice or not. But he explicitly excludes animals from the sphere of justice because they do not meet the basis of equality (i.e., the moral powers of a reflexive conception of the good and of a sense of justice.) For animals, the alleged fact that they do not meet this basis is “sufficient” to exclude them from the sphere of justice, but embarrassed with the case of “scattered [human] individual”, he refrains from the stronger claim that meeting the basis of equality is a necessary condition for justice.

reciprocity animals are capable of. In her own approach, it is not a problem if animals are not considered to be framers of principles of justice in any sense, because she does not conflate « the question “Who frames the principles?” with the question “For whom (at least in the first instance) are the principles framed?”» (Nussbaum 2006 338). It is a mistake in my opinion because insisting on animals' capacity for reciprocity, norm acceptance and agency in general is a good way to make sense of the idea that animals's interests are to be dealt with within the political sphere.

Indeed the point against Rawls is to claim that animals are our moral equals and we could use all arguments we have used in chapter one for example. But I, unconvinced by Rawls' argument for the natural basis of moral equality and his claim that animals do not have a sense of justice, can still adapt Rawls's theory to include animals. Nussbaum would disagree with me. She thinks that “the whole idea of a contract involving both humans and nonhumans is fantastic, suggesting no clear scenario that would assist our thinking” (Nussbaum 2006: 333). Indeed the contract might not be the best fictional tool or image with animals who are incapable of engaging in this highly intellectual activity. Yet the contract-making in the Original Position in Rawls is only “an intuitive test of fairness” (Kymlicka 2001: 63) and to add species membership under the personal circumstances erased by the veil of ignorance is an interesting thought experiment. I do not find the idea more ludicrous when animals are included than when they are not. If a contract-making is inaccessible for all animals, the fact that they are able to communicate their interests and to comply with social norms (as I will emphasize in chapter 3) makes the fictional abstraction sensible. If Nussbaum disagrees, I think it is because she minimizes the role and importance of animal agency.

Anyway, Nussbaum does not claim that a liberal theory of justice for animals is impossible, only that Rawls's contractarianism is not the best suited to do so. She then tries to sketch such a theory with her own approach to political morality: the capabilities approach. The chapter I shall look at is entitled "Beyond Compassion and Humanity: Justice for nonhuman animals", and this title really makes clear that giving justice is in some way thicker and more demanding than compassion. Understanding Nussbaum's view on this distinction is one of my goals here, yet I shall also argue that her account of justice toward nonhuman animals does not really go much further in its concrete prescriptions than a reasonable interpretation of what compassion or love requires. I attribute this failure not so much to a typical and

exasperating moderation of the great liberal thinkers on the solutions needed for dealing with sensitive issues but on a flaw proper to her liberalism. Her insistence on a "species norm" as the evaluative guide to the capabilities approach is what makes her account of animal rights unique and interesting, but this poses many theoretical and moral problems. It is also the main reason for the weakness and vagueness of her concrete propositions to regulate our relationships with nonhuman animals.

'Justice' is the appropriate term

For several reasons, including mainly the sentient nature of some animals and the relationships (sometimes involving love and compassion) we entertain with them, "it seems plausible to think that these relationships ought to be regulated by justice." (Nussbaum 2006: 326) It is thus a particular way to interpret the nature of animals and the relationships we hold with them that give some significance to the idea of calling "just" or "unjust" actions done to them or generally to the idea that the condition they currently are in is an injustice. Some animals really are sentient beings with a conception of their own good, and some relationships we entertain with them, in addition to involve direct personal duties, really are the objects of "collective duties of the community as a whole rather than particular individuals" (Dworkin 2011: 328) and therefore are the objects of political morality. But to come to this conclusion, one has to feel or perceive that it is the right interpretation through sympathy and compassion for the fate of animals. Hence, on the level of moral sentiments, humans have to feel compassion for an animal who is being wronged or neglected. However, "one may have compassion for the victim of a crime, but one may also have compassion for someone who is dying from disease (in a situation in which that vulnerability to disease is nobody's fault)." (Nussbaum 2006: 336) In order to come to the correct moral conclusion in a deliberation one must then insist on the first kind of compassion: compassion toward a victim. Therefore, as Nussbaum acknowledges "a duty of compassion would not be just a duty to have compassion, but a duty, as a result of one's compassion, to refrain from, inhibit, and punish acts of the sort that cause the suffering occasioning the compassion." (336)

Hence, one would be justified to ask: "what exactly does it mean to say that these are issues of justice, rather than issues of compassion?" (336) While it appears at first sight that the answer would be obvious, and the distinction clearly marked, it is far from being the case in Nussbaum's work despite her explicit thesis that compassion is "too indeterminate to capture our sense of what is wrong with the treatment of animals" (338), while justice is the appropriate political virtue to deal with these issues. Indeed it is no help to dismiss compassion as a sentiment not universally shared among humans or too unstable; and Nussbaum, in other works, spent a great deal of time to prove that compassion had a powerful epistemological role for moral activity. Also, this dismissal would not make sense, for justice certainly is currently just as lacking in human societies as compassion. The mere fact that many wrongs are still done to animals does not refute a theory of compassion as an animal ethics. Furthermore, Nussbaum (and Rawls) speaks of "duties of compassion", showing a normative usage of this virtue, which, not unlike justice as a virtue, ought to be cultivated.

Nussbaum's moral psychology really only claims that *it is possible* for humans to "begin from an ethically attuned wonder before each form of animal life" (403) or that it is possible, through kind sympathy, to see animals as having a good and to conclude from this picture that "that they are entitled to pursue that good." (337). Where is the distinction between compassion and justice in all this?

Let's kill the suspense to move forward. Justice "is the sphere of basic entitlements" (337), it has proper scope for it deals only with wrongs done to an individual that damage in a fundamental way her possibility to pursue her own good. Giving justice thus consists in ensuring that these basic entitlements of individuals are not infringed. But if justice is to be distinguished only by the importance of the wrongs it has to prevent, then one can say that it is only a "compassion of a special sort" (338). A defect in giving justice is a fault way worse than a defect to act with compassion in other areas of social life. So much that in liberal theories, what justice requires - the equal respect of individuals' fundamental rights - is thought to be the only thing morally permissible to enforce on everyone whatever their substantive view about the good, whatever the incorrectness of their compassionate and loving attitudes in other domains. Political power in liberal democracies cannot force people to be compassionate when their lack of compassion does not infringe on one's rights. This is why a liberal animal *ethics* of compassion is thought to be much weaker than

a *political* theory of interspecies justice. If animals are owed compassion but not justice, basically it is not morally acceptable (and politically possible) to enforce through the use of political and legal mechanisms that what animals are owed (the same thing in both theories) is really given to them. In the sphere of basic entitlements (the sphere of justice as a realm of compassionate moral activity), the moral demands, because of their importance, have to be guaranteed by a political power.

There is no justice without compassion since without it, grasping what justice requires would be impossible. But compassion without the moral and political recognition that some of its objects are matters of justice, is morally too weak. Embodying an animal ethics theory that denies justice towards animals is equivalent to make the explicit claim that it would be bad (or unjust or unliberal) to make whatever we figure (out of compassionate moral judgments and private and public deliberations) to be animals' valuable interests to be protected by political rights. It supports the claim that there can be good reasons to violate the fundamental interests of animals, which would clearly show that animals, though worthy of compassion, are not our moral equals. Hence, in my view, and here following Will Kymlicka and Sue Donaldson, any commitment to give justice to nonhuman animals must be linked to a moral and political conception of a world shared with animals that are considered to be of "equal dignity" with us. I want to look at the sketch of the theory of animal rights (or entitlements) that Nussbaum gives in this chapter and try to evaluate if it succeeds to go "beyond compassion", to be a political theory of justice.

Yet, as we have seen, one cannot grasp what justice for nonhuman animals means without sympathy for their joys and griefs. To cultivate this sympathy, a profound attention to the growing set of scientific knowledge about the extent of animal capacities is primordial. Nussbaum also insists on the critical use of moral imagination to widen the range of unexploited relationships we could have with nonhumans. "It does not seem impossible for the sympathetic imagination to cross the species barrier—if we press ourselves, if we require of our imaginations something more than common routine." (355)

Realistically utopian imaginings of what new societies we could form with a better integration of animals is also very important for Nussbaum. One way to enhance moral imagination that has been particularly stressed by Nussbaum is the

critical reading of narratives. In this chapter, she states that it can also be used to think about what we should look at to build an account of justice for animals. However she does not, in this chapter, make use of novels to defend her account. I want to take this methodological thesis of her about the role of literature in moral activity very seriously and try to discuss her theory of the species norm by commenting and quoting a novel. However, in the first place, I will present her theory.

2.3. A normative concept of “species” to think about interspecies justice

Our author is not writing a book on animal ethics, nor does she systematically attempt to deduce strict and concrete moral rules or necessary politics to sort out for the best our relationships with animals. I mentioned that her approach was a criticism of the contractarian - but also utilitarian - ways to deal with the treatment of animals, but even this critical side is merely a means to promote her own theory of justice. Indeed she expects to show that her approach is better suited to deal with issues of justice toward nonhuman animals, and believes that it is a sign that her approach is better in the general case. This theoretical move of expanding the abstract theory of justice to animals is necessary in my view if the idea that animals are our moral equals is to be taken seriously. This makes the approach of Nussbaum very promising.

The Capabilities Approach is a liberal theory of basic justice, which aims at ensuring the equal entitlement to the minimum opportunity to enact the most central capabilities of the subjects of justice. Nussbaum differentiates her view from procedural theories of justice that are more neutral toward the good. In contrast, she qualifies her view as "outcome-oriented" (or teleological), meaning that it starts with a conception of the good. She argues that it is necessary to shape a part of this conception as entitlements ensured by society's institutions. One other way to put it is that it "starts from the notion of human dignity and a life worthy of it" (346) and identifies "species-typical ways of flourishing" (364) to frame a list of human central capabilities that need to be ensured to offer the possibility for each human subject of justice to flourish according to the way of flourishing of her species (*homo sapiens*).

This vision of things makes it apparent that the theory has not been framed to include animals. It is a problem with every theory that produces a list of basic goods to find objective or at least intersubjective criteria for those. But this is not so much a problem if the criteria apply to animals! Here however the criterion is clearly not meant to fit since it is human typical (or normal) ways of functioning that stand as the guide for framing the list of capabilities. Again it would not be a big issue if animals had the same typical ways of flourishing and there is a broad sense in which this assertion is true (for sentient animals). Therefore using the same list of capabilities might make sense and Nussbaum stresses this point. In a section of the chapter, she states what could mean the application of each of the ten capabilities to animals and concludes that "it seems that the big general categories on the list offer good guidance." (393)

She nevertheless seems to think that this account of what is owed to animals is not specific enough (no pun intended). The correct locus of rights and fair political efforts in a liberal theory of justice is not the species, even less a group of species (the animals), but individual persons. And "as in the human case, the focus should be the well being of the individual creature." (357) But here is what I find striking. Nussbaum thinks it morally false that "only the capacities of the individual count" to determine what needs to be ensured to this individual by basic justice. According to her, to give justice to individuals, to offer a reasonable possibility to each to pursue his or her own conception of the good, requires in practice to enable every individual to be a normal member of the species he or she belongs to. The norm explicitly followed by Nussbaum to serve as a restriction of what kinds of conceptions of the good are to be protected by rights is what she calls "a species norm." It is against this idea that I want to argue. Species norm is not a practical nor a descriptive claim of the form: most humans live like most humans and most animals like animals of their own kind (whatever that means) and hence guarantying persons' central capacities will often happen to be the same as granting to most people what most people want in virtue of their nature as members of a species.

Species norm as conceived by Nussbaum is not a heuristic tool to approximate a general response to the question "what is due to each?". It is a normative view that takes the typical functionings of the species to which an individual belongs to shape what capabilities need to be secured for her flourishing, independently of what this person might think to be good for her and

independently of her actual capacities. This last part would be less of a problem if the aim of justice was merely to give individuals the possibility, the choice, to use or not a capability. Every liberal theory supports some degree of a right to free speech for example, and most liberal thinkers would agree that it is morally wrong to never make use of this right (for several reasons) or that to make use of it is a part of being a good citizen or a good person. But no liberal thinker would think it acceptable to force someone to use free speech (quite apart from the fact that "forced free speech" is a contradictory idea) if she *can choose* not to (quite apart from the fact that to choose not to use free speech, even in a nonlinguistic way can be interpreted as using it). Nussbaum agrees with this. State paternalism is not justified for individuals who possess the minimum degree of autonomy and capacity for choice. But (375) "paternalistic treatment is appropriate wherever the individual's capacity for choice and autonomy is compromised." In those cases then, we need to enact, for such individuals, the functionings of the good capabilities proper to their species-typical way of flourishing, even if their actual capacities seem incompatible with what "good" or "typical" members of their species are. For a human being with severe intellectual disability (SID), her handicap creates "impediments to species-typical ways of flourishing" and hence "a moral imperative for society: such impediments should be treated and cured, where possible, even if the treatment is expensive." (364)

We now get that for Nussbaum it makes no sense to say that a SID person can thrive as a SID person since she is not acting as a paradigmatic member of her species. If she is to thrive, it is only through the care of a guardian that will succeed to enable to a sufficient degree what is expected of her as a human being living in a human community. The supporting idea is that this person lives in what Nussbaum thinks to be a human community, along with humans expecting certain things from her. She has no other option but to manage to live in that society and to interact primarily with humans. Eventually, she will flourish in it or not, but to flourish would necessarily mean to live to some degree as it is expected that a typical member of that community would live. Will Kymlicka and Sue Donaldson put very clearly in one sentence what I've tried so hard to explain in three pages: on Nussbaum's approach, the question is not "what does this individual require in order to flourish, but what do individuals of this type (i.e., species) typically require in order to flourish?" (Donaldson and Kymlicka 2011: 96). Or rather, the two questions are thought to be

the same since for Nussbaum, one cannot flourish but by functioning as a normal member of her species.

For nonhuman animals of different species this is the same idea as for a SID person. But what matters the most for Nussbaum is the differences between humans and all other nonhuman animals. Put grossly, if animal species norms require less care and political protection than the respect of human species-norm we have a ground for legitimizing treatments of animals that would be thought intolerable for humans. Indeed her view could be seen as an extension of an individual logic to the species level. For many thinkers of animal ethics, "differences of capacity affect entitlements not by creating a hierarchy of worth or value, but only by affecting what can be a good or a harm to a creature" (Nussbaum 360) For instance, it is generally thought that a dog who is denied citizenship status and rights (whatever they may be if they are more than basic rights) is not going to feel wronged by this denial she is anyway unable to grasp. Hence dogs, as dogs, are not owed citizenship. But were she really coherent, it should be for Nussbaum the other way around. Were a dog to possess the capacity to be wronged by the denial of citizenships rights, if it is not in a dog species-norm or in the typical (and hence best or only) way to flourish to be able to be wronged by such denial, hence we would need to help the dog to not feel abused anymore by this denial instead of granting her citizenship rights.

The species norm of a particular species does not conflate with the DNA or the biological, psychological, or behavioral nature of that species. Again it is not descriptive even if it arises from the compassionate feeling that "there is something wonderful in all the complex life forms in nature" (348). For the perfectionist Martha Nussbaum, it is in a horse species norm to be broke at the age of three and to become the best ride for her human master. If it happens that the horse does not thrive on such activities, and *ceteris paribus*, or, provided that the humans in charge of her did nothing wrong, it would not mean that riding this horse is wrong but only that we need to keep trying to make her enjoy her work (or functioning) as a ride. So really it seems to me that what is in the species norm would vary according to what we think valuable (I would dare to say useful) for such an animal to be and to do. It is not a particularly uncharitable interpretation to think of species norm not as a criteria to decide what justice requires toward each species but as a rationalization or a justification of what, independently, we believe justice requires or does not require for each species. The only restriction is that the chosen capability needs to be a

typical way of functioning of individuals of the species we are concerned with. Here "typical" has both a normative sense and a descriptive sense and the two are almost conflated. I take the result to be some kind of conservatism. This interpretation can be supported by the almost indecent moderation of her concrete recommendations so that for instance, tigers can live a good life in zoos if we provide them with some big cat games.³¹

2.4. Adequacy, equality, equal moral dignity: what is the aim of justice?

Now that the bases of Nussbaum's approach are more or less explained, I can try to answer two questions. First, according to our author, what is the goal of justice towards animals? Second, is that way of thinking about justice really a reasonable theory of justice?

I have already said that for normal humans, one of the impediments of a theory of justice was to respect the autonomy of subjects of justice considered as moral agents and that this respect in capabilities approach was taking the form of granting people what is needed to make the choice whether to make use or not of the fundamental capabilities. Each normal human being is allowed to pursue her own conception of the good even if her life is thought to be not valuable or not religious enough for instance, and always providing that she is not infringing on the possibilities of others to use their capabilities.

But for beings who lack a sufficient degree of autonomy and a capacity for choice, justice requires that we promote an objectively defined good by paternalistically (through "guardianship") enacting their species' typical capabilities.

³¹ See (375) "the only decent alternative to complete neglect of tiger flourishing is a policy that thinks carefully about the flourishing of tigers and what habitat that requires, and then tries hard to create such habitats." and that creation would be a big cage in a zoo; "in many cases, the intelligent and careful use of zoos and animal parks may well be part of a policy aimed at giving members of these species decent lives. Many animals will do better in an imaginative and well-maintained zoo than in the wild, at least in present conditions of threat and scarcity." "Zoos, when well designed, can also build interspecies friendship by promoting education of young human beings. The long-term goal of policy should always, however, be preservation of at least some part of the creature's original habitat, and there is no way of doing this without consistent human intervention." (376) Here Nussbaum is clearly self-picking and this example alone suffices to dismiss her theory from the pretense to be a theory of justice.

And for Nussbaum, it makes no doubt that "this principle suggests that paternalism is usually appropriate when we are dealing with nonhuman animals" (375) How is this compatible with the claim that animals are sentient beings that have some conceptions of their good? Of course, most domestic animals are dependent on human care, but does this mean that they are not agents capable of co-framing their relations with humans, capable of making decisions about their lives when we give them the possibility to do so? How can an animal constantly under paternalistic treatment benefit from capability 10 or "Control over One's Environment" (400)?

I believe that Nussbaum's focus makes herself seem very unliberal. Of course, she insists on the necessity to carefully observe animals and to be very cautious in what we impose on them to avoid domination. She acknowledges that some agency and freedom for sentient animals is necessary in order to collect knowledge to frame the species norm and an "intelligent" paternalism. Still, some passages are really hard to interpret charitably to maintain coherence in her argument. After what I have just said, how to make sense of this for example: "it also seems obvious that even hypothetically we should not try to imagine what animals would "reasonably" agree to" (388) to give animals justice.

Indeed it seems impossible to think that in this theory, animals are integrated as *equal* members of the people, as *equal* subjects of justice. Nussbaum herself qualifies her account of interspecies justice as a "threshold approach". What does that mean? In the human case the approach of Nussbaum to basic justice is aiming at the equal and adequate fulfillment of a minimal threshold of capabilities. But for some capabilities, this equal treatment will not take the form of strict distributive equality. In those cases, justice does not require equal distribution but only adequate distribution or minimally sufficient distribution. She gives the example of "housing rights and employment rights" (381). However, for civil rights, justice requires strict equality; or we could say that adequacy is only met through equality. An unequal repartition of those political liberties "compromises equal respect and reciprocity", and they are the core ideas of any theory of justice that takes its members to be of equal dignity (or moral equals).

For animals "all that justice requires" similarly, is to meet the minimum threshold of each capability (proper to their species), but, according to Nussbaum, justice never requires an equal threshold of some capability for all species. And as it happens, the minimally adequate threshold, always unequal between humans and

nonhumans, is always more demanding for the former than for the latter. The main reason for this is that there is no "nonhuman analogue, in which unequal distribution of a capacity compromises equal respect and reciprocity." (382) We should be very careful about what this claim means. Is it that animals cannot feel humiliated by being shown less respect or because they are incapable of reciprocity such that they cannot feel wronged by unequal and unfair (or unequitable) give and take in social life? Is it because they are unable to be citizens or at least to care about being citizens (with all the rights it brings) and to perceive this denial as a lack of respect? If Nussbaum means one of these two alternatives (which in a sense are really close ideas but formulated differently) she might be wrong (for some animals at least³²) but were she right, it would not be such a problem since it would remain compatible with the abstract idea that humans and animals have equal dignity. It would only be that to ensure the "typical ways of functioning" for animals happen to never require equal distribution of any right. Still, some difficulties arise. What is a minimally sufficient securing of a right to life (capability 1)? Are we not facing a case of a capability that needs to be equally secured for it to be adequately secured? Yet Nussbaum claims that killing animals for food might not be an unfair infringement of the minimum threshold of the right to life defined by the species norms of all nonhuman animals. On this issue, she goes on like this

The use of animals for food in general is a much more difficult case, since nobody really knows what the impact on the world environment would be of a total switch to vegetarian sources of protein, or the extent to which such a diet could be made compatible with the health of all the world's children. In this case, it appears that the best solution might be to focus initially on good treatment during life and painless killing, setting the threshold there, at first, where it is clearly compatible with securing all the human capabilities, and not very clearly in violation of any major animal capability. (402)

³² There is some evidence for the existence of a sense of justice in some animals. "Capuchin monkeys are a highly social and cooperative species in which food sharing is common; the monkeys carefully monitor equity and fair treatment among peers ... Brosnan first trained a group of capuchins to use small pieces of rock as tokens of exchange for food. Pairs of females were then asked to barter for treats. One monkey was asked to swap a piece of granite for a grape. A second monkey, who had just witnessed the rock-for-grape trade, was asked to swap a rock for a piece of cucumber, a much less desirable treat. The short-changed monkey would refuse to cooperate with the researchers and wouldn't eat the cucumber and often threw it back at the human. In a nutshell, the capuchins expected to be treated fairly. They seemed to measure and compare rewards in relation to those around them. A single monkey who traded a rock for a cucumber would be delighted with the outcome. It was only when others seemed to get something better that the cucumber suddenly became undesirable." (Bekoff and Pierce 2009: 127-8)

The coherent way for her to stand against vegetarianism as a moral imperative would have been to maintain that it is not a violation of the right to life for animals, either because animals do not have such a right according to their typical ways of functioning (she could argue that it is in a species norm of a cow to get eaten for instance) or because painless death by human hand is not an infringement of such a right. But she does not fully commit to that and tries to reinforce her claim by an insistence on the fact that some humans might be endangered by the complete respect of the right of animals to not be eaten. She points out a potential conflict between humans and nonhumans to justify a lower threshold of animal rights without any assurance that this conflict is real and without any reference to a solution that could be compatible with the respect of animals' right to life. Her reasoning is overall dubious and to justify it by being pragmatic or realistic is not acceptable without any empirical evidence.

The difference really lies in this more abstract ethical domain and debate about equal dignity. Her insistence on species norm allows a language of animals' dignity as living creatures of course, but mainly as creatures of their own kind. For the political purpose of this theory of interspecies justice, in which the species is the relevant locus of dignity, equal dignity among members of the same species is therefore enough. Nussbaum thinks it is not appropriate to advocate for equal dignity (and equal respect of that dignity) among all sentient beings at the political level, as what a theory of justice should aim to reflect. For her, an interspecies equal dignity is a "metaphysical" belief that is incompatible with many comprehensive conceptions of the good. This is why it should not be a stated political principle. I want to make two final remarks on this point. Some human religious or cultural comprehensive doctrines do not take all humans to be, *per se*, or objectively, of equal dignity. But, in liberal democracies, the persons convinced by such doctrines need to treat every human being as *if* they were all their moral equals because it has been politically justified that justice requires to respect each equally. Of course this justification is not entirely neutral toward substantive conceptions of the good, as Nussbaum recognizes it, but does not force people to give up on their convictions if they can treat people as if they were equal in objective value. This is some kind of moral tour de force from liberal theory of justice, but that humans are all of equal dignity is a

moral judgment fundamental to hold true in itself. Justice requires to make the respect of this equal dignity universal.

So, in my view, to claim that animals are to be given strict justice must be to claim that they are to be respected as beings of equal dignity. I agree with Ronald Dworkin that it is a fundamental requirement of all liberal theories of justice and of all other reasonable theories of justice³³. Equality is the fundamental value of justice. In Nussbaum's account of her interspecies theory of justice, not only does she refuse to claim that her theory is aimed to reflect the idea that animals are of equal dignity with us, but in any case it is impossible to interpret the few concrete propositions of animal policies as reasonable attempts to treat animals as equals. For again, she does not believe in the possibility for animals to be something more than passive receivers or subjects of human power and decisions. And because she is wrong, because unilateral power cannot be interpreted as respecting animals as equals, therefore it cannot be correctly said to be a just exercise of power.

To conclude, I have to say that I have not particularly tried to give the most charitable reading of Nussbaum's work on animal ethics and I shall even allow myself a last criticism in this short conclusion. The insistence of Nussbaum on species norm demonstrates a false perspective of our communities. For if "the

³³ In fact I doubt that Dworkin believed animals are to be given strict justice, but if it is established that they are subjects of justice, then how they are treated could be possibly interpreted as a reasonable attempt to be treated as moral equals.

For this idea in Dworkin see for example these passages from *Justice for hedgehogs*

"No government is legitimate unless it subscribes to two reigning principles. First, it must show equal concern for the fate of every person over whom it claims dominion. Second, it must respect fully the responsibility and right of each person to decide for himself how to make something valuable of his life. These guiding principles place boundaries around acceptable theories of distributive justice—theories that stipulate the resources and opportunities a government should make available to people it governs." (2)

"The third takes political equality to be a matter of attitude, not mathematics. It demands that the community divide political power, not necessarily equally, but in a way that treats people as equals." (388)

"Political equality is a matter not of political power but of political standing. Democracy confirms in the most dramatic way the equal concern and respect that the community together, as the custodian of coercive power, has for each of its members." (391)

"Political equality requires that political power be distributed so as to confirm the political community's equal concern and respect for all its members. Reserving power to any person or group through birth or the spoils of conquest or some aristocracy of talent, or denying the emblems of citizenship to any adult (except perhaps in consequence of a crime or other act against the community), is unacceptable." (392)

relevance of the species norm is that it defines the context, the political and social community, in which people either flourish or do not” (Nussbaum 2006: 365), then to insist on the idea of “species” suggests that we, as the species *homo sapiens*, and other animals, as other species (than ours) live in separate communities and should mainly enter in relations with conspecifics. This view “that our most significant relationships must be with other humans, as opposed to individuals of other species” (Kymlicka & Donaldson 2011: 98) is closing “ourselves off from the potential richness of interspecies sociality.”

Nevertheless, Nussbaum’s account still manages to condemn the cruel and most unfair practices that any good theory of compassion should condemn. Her attempt to extend an existing theory of justice toward nonhuman animals is still an interesting theoretical move toward equality. Finally, her analysis of compassion compared to justice casts some light on the challenges to integrating the spheres of the personal conceptions of the good, personal morality, and political morality.

Interlude: Dog boy, a philosophical commentary

A novel resisting the species norm

Nussbaum shares the idea maintained, among others, by Kymlicka and Donaldson, that realistically utopian imaginings of what new societies and new personal relationships we could form with better integration of animals are very important. One of Nussbaum's particularities is that she claims that the critical reading of narratives is necessary to properly enhance moral imagination, for only in narratives can one find the complex and subtle descriptions of these morally realistic imaginings rooted in particular stories and situations. To confront our theory of animal rights in such rich situations is thus a good way to test its reasonableness and desirability.

In the chapter I discussed above, she then naturally tells us that critical reading of narratives can also be used to think about what we should look at within our relations to animals in order to build an account of justice for them. And indeed she believes that "this complex holistic method [of doing ethics], with its inclusion of narrative and imagination, does ultimately support the choice of the capabilities approach over other theories in the area of animal entitlements" (Nussbaum 2006: 355). However, probably to avoid a rupture with the philosophical prose used in *Frontiers of justice*, she does not make use of novels to defend or test her theoretical account of justice for nonhuman animals. But I want to take this methodological thesis of hers about the role of literature in moral activity very seriously and try to discuss her theory of the species norm by commenting and quoting a novel that seems to resist her ideas on animal ethics.

The novel I shall discuss is, as I just said, one in which, I believe, some of the values embedded in the idea of a species-norm may seem very unattractive and are leading to tragic events. Like empirical data, a good novel furnishes a starting point for moral reasoning, i.e, it furnishes a good occasion for interpretation.

And so, I will advocate that some events in the book are better interpreted as a depiction of the dangers and the falsity of Nussbaum's view about the relevance of species membership for determining how an individual should be treated. If my

interpretation is judged convincing, it would constitute another reason (although with no pretense to be a sufficient reason) to reject her view. I will also claim that the events of the novel are difficult to interpret with Francione's view and that they cast even more light on the need for a new frame to think about our duties toward animals.

Commentary

Can one be both a human child and a dog, a *dog-boy*? This question is stressed through a novel by Heva Hornung. In *Dogboy*, we follow the story of Romochka, a poor Russian kid in Moscow at the end of the Soviet Union. Romochka, 4 years old, gets abandoned by his mother and uncle. On the brink of starvation, he is adopted by a small clan of feral dogs, living in the basement of ruins in the periphery of Moscow. For four years (and four cold winters) of this feral life, Romochka becomes a dog. He is aware that he is different, a dog and a boy. No wonder he has some existential troubles, but really he overcomes them with ease. He accepts and understand who and what he is. He feels at home with his dog's family, living proudly from begging, stealing, hunting, scavenging. He has his own strengths and weaknesses and understands how to aggregate his dogs' skills with his own to make his family flourish as a feral clan.

Here already, Nussbaum and Francione could stop me and say "No we do not believe that it is possible. Either you are understanding the novel wrongly, or it is an unrealistic piece of literature, useless to deal with our real moral problems." Nussbaum may then go on like this: "a human boy cannot thrive with dogs"³⁴. Here I could prove her wrong by quoting passages of the book showing moments of interspecies happiness, fruitful communication and cooperation, I could (and will) quote passages of Romochka's healthy doubts and adequate answers about his identity but she could still reply: "ok but Romochka cannot thrive as a normal human boy". She would be right to answer that. In his situation, if things had remained like this (as we will see they have not), Romochka would very likely not have ended up a

³⁴ And Francione: "dogs cannot live happily and voluntarily with humans. Or if they do, it is because many generations of dogs have suffered the injustice of being bred especially for human purposes and then to be desperately servile and dependent. So in a deep sense this boy living with feral dogs is the proof that even the freest dogs are still subjected to humans" I will discuss very briefly the difficulties in which fall Francione's theory of animal rights at the end. Now I will only focus on Nussbaum.

“normal” or “typical” human. But I think she would be wrong to further add that “for a human to not thrive as a typical human is to not completely thrive” because she thinks wrongly that to completely flourish, every human person needs to have most of his or her relationships (or his or her most meaningful ones) with other humans. For that matter, I think the case of Romochka strongly suggests that she is wrong even if I will not further try to prove it by quoting the text. Yet she would be right to deplore the lack of the possibility for Romochka to live with humans. Indeed the boy’s situation is the result of an injustice, which is equally the work of his mother and uncle’s bad behavior and of society as a whole, for he has been abandoned and has not been helped by any human³⁵. But the point I want to make is not about the initial injustice but, to look at things as they are, and to question the value of the life Romochka lived with his dog family. Even more importantly, I want to stress the point that the actions taken to “help” Romochka, and based on a moral view close to Nussbaum’s, are moral faults.

As I said, I will not give any more positive evidence that Romochka’s life with dogs was a good life given the circumstances (that is, compared to the other lives available for him after he had been abandoned³⁶) and had the potential to become a sufficiently good life for Romochka to flourish without radical and brutal changes of the way he lived from 4 years old to 8 with his dog family. I am not fighting species-norm by defending a dog-like life as ideal. It is only in the last chapter that I will draw the picture of fair interspecific relationships and what kind of society it requires. Here, it is only derivatively and negatively that I want to stress that Nussbaum’s moral landscape about interspecific relationships is flawed. I will maintain that what has been done to Romochka has been done out of an attachment to species-norm and to the moral beliefs and conservative attitude that accompany it. I will also maintain that what has been done to Romochka was wrong in several ways and that this is what the novel suggests. But first I have to tell a bit more about the story of our Dogboy.

³⁵ Indeed, in the Moscow represented in the book, there seems to be huge inequalities, a lot of orphans forming gangs of street kids, a lot of homeless people in general, living in disastrous conditions.

³⁶ The only other option depicted is a life among violent street kids clans, and such a life is described as way worse than what Romochka lived with the dogs, involving rapes, fights, harassment, diseases, malnutrition etc while Romochka has never been raped, had the protection of strong dogs against strangers, and grew an exptionnally strong and healthy body from living and eating like a dog.

One day, Romochka's dog mother, "mamochka", brought a human toddler into the lair, "Puppy". Puppy grew during two years purely as a dog - since he had not experienced much of human life - but was soon captured by the "Militzia" and sent to a "Rehabilitation Center". Romochka managed to find him and decided to visit his adoptive brother at the center. Puppy and Romochka were unprecedented cases, even in this center dealing with orphans and street kids. Among the doctors attending to the center's kids was a couple, Dmitry, a behavioral scientist, and Natalya, a pediatrician. They were in charge of Puppy (whom they named "Marco", for a boy has to have a name, were he a dog) and were also studying Romochka, who was free to go in and out of the center to visit his brother. Both doctors had great scientific interests in the two dogboys, especially Dmitry whose research was highly praised among his peers. They also progressively grew sympathy for the kids.

Sadly, Puppy got ill and died. Romochka felt betrayed by Natalya and Dmitry, for, in his mind, they were in charge of Puppy. This is where things start to be interesting for my purpose. Let me insist on the fact that Dmitry and Natalya never tried to keep Romochka inside the center. Even if they were biased by their scientific interest in Romochka and rightly thought that they would learn more about Romochka's life by getting him to trust them and letting him be, never at one moment it has been thought to be in Romochka's interest to be "rehabilitated" - partly because they believed it was impossible at his age, partly because they did not think he needed it.

Yet soon after Marco's passing, Dmitry declared the famous³⁷ dogboy hunt open.

Dmitry waited for a week and a half, then alerted the authorities and initiated the dogboy hunt. He did it without talking to Natalya, or indeed thinking of Natalya at all in the moment he made the call. He was sitting at his desk, his third coffee cooling in his mug, when the unpleasant churning of feelings that had troubled him since Marko's death clustered suddenly, powerfully, at his anus, and rose like a hand through his belly to his throat. He swallowed. He didn't think at all, just reached for the phone and dialled the number." (...) "How could he explain to Natalya that this involved no thought? He was conscious that he had done a *volte face*, and was presenting as insupportable something they had both been happy to tolerate for months. (Hornung 2010: 251-252)

³⁷ It is worth noting that Romochka had not completely remained under the radar in his four years of hunting and living with dogs. He had already been captured by the police a year before the upcoming events I shall relate but after having been severely abused by the men, he managed to escape.

After a fight with Natalya who rightly made Dmitry face his irrationality, shouting “Have you *thought* about what you have just done?” Natalya then raised the right questions that followed from the first: “Dmitry! How *could* you! Of all the poncy, do-good, gutless...I know this boy, Dmitry: you *don't*. What will he think of us now? What is his future? How will I ever *help* him?” (252)

I have no intention to deny that it is perfectly reasonable and not a proof of speciesism to believe that Romochka needs help, even less to contest that Natalya and Dmitry had really good intentions toward the boy - even if they had no clear understanding of Romochka's life, for the dog-boy remained pretty mysterious about his situation. I find too hasty the unspoken background about why Romochka needs help, i.e because he is a human living as a dog, but I could still agree with the fact that he needs some help from humans. The node of the disagreement then relies on the justification of the necessity of helping the boy and this will lead to the disagreement about what that help consists in. If both, as scientists, are amazed looking at what Romochka is, their vision of what he should become remains the same as what they think any kid should become, a well-behaved boy. Helping Romochka, according to them, does not consist in accepting him as he really is, in simply trying to protect him from external threats, or providing him with other life options and getting him, through dialogue and education, to be able to see the different options he has, the different things he can be and do, so he can freely choose to be what he wants to be. If you follow the species-norm you a priori disregard all these sorts of help as pure ineffective fantasy. Indeed you would not even have thought about them for they are not even desirable. I believe, unlike Nussbaum, that species-norm, in addition to being theoretically conservative, also dries up our moral imagination about the kind of solutions to ethically difficult cases of human-animal relationships.

The reason justifying the necessity to help Romochka will, in the story, serve to excuse ways of “helping” him that are very contestable, indeed leading to tragedies that could have been avoided with other intentions behind the will to help the dogboy.

But even if I disagree with the goal of getting Romochka to be a “well-behaved boy” or a “typical human”, it cannot be said that the means used to “help” Romochka are necessarily implied by this stated end and I believe that

Nussbaum would largely condemn them. Even so, it remains that the actions done to Romochka are not as evidently ruled out by an ethics of the species norm as they are with an ethics more sensible to individual flourishing. To grasp more clearly what I am talking about, here is the end of the story.

It was a win-win situation, he said: track the dogs and you find the boy, hopefully capturing him with minimum trauma. At the same time some idea of the life and territory of the feral clan could be established for scientific purposes (259)

The first step to help Romochka - who, feeling betrayed, was not coming to Dmitry and Natalya on his own will anymore - was then to capture him, to get him out of his lair and to tear him apart from his dog family. How to help a boy who lives at the margin of the human world, with dogs and among shattered people, if not first by getting him inside the civilized part of the city? How to help a free and autonomous boy, not searching for their help, but by depriving him of his freedom and to paternalistically help him? After all, he is an eight years old child, he cannot decide for himself what is good for him and what is not. Everything in his situation is tragic and so to help him one must make a radical change happen in his life. Since everything is now wrong, all need to be erased for managing the space of a fresh start for Romochka as a boy.³⁸

I find this whole set of beliefs implicitly used to explain and justify the decision to capture him highly contestable. By failing to have a more nuanced view on the value of Romochka's life, the decision to capture him becomes evident. More importantly, the decision to capture him at all costs, becomes evident. Indeed, the pernicious technique that will be mobilized, to use the dogs to capture the dog-boy, while, we will see, very effective, is a nest of moral tragedies. For starters, it is based on the idea that Romochka considers the dogs to be his family, and will be ready to take all the risks to protect his family. Dmitry and Natalya know very well how deep is the connection between Romochka and the dogs, how attached he is to them. Indeed this passage adequately sums up Romochka's attachment:

He felt truly grown up, even feeling, as he once had, that he owned these creatures, the grown and the new, his mother and his brothers and sisters and all her children; but this time it was different, because he also felt that they owned him. All of him, to

³⁸ We have seen a similar moral perversity in the idea of a complete "fresh start" in the doctrine held by Francione and Garner of the extinction of all domestic animals.

the very last gristle of his strength and intelligence; and they had a right to demand of him sustenance and safety for every breath they took. (264-265)

This passage takes place after many capture attempts. Indeed, Romochka felt this strong sense of responsibility after several attacks by the police and several weeks of being tracked by police dogs who tried to smell Romochka and his family. One other attempt had been to capture one dog of the clan and to implant a tracking device in his skin (neutering him without anesthesia while they were at it) that had then to be removed by Romochka, occasioning a fight between the two brothers that got Romochka badly injured. It is worth noting how all along, the dogs, whether Romochka's or the police's, are totally instrumentalized and subordinated to human purposes. Really, and it will be crystal clear soon, in the quest of getting Romochka to be a boy, they count for nothing. They are barely evoked as having scientific value, but this scientific interest functions only as a mere rationalization of the dog-hunt to capture the boy. The passage quoted also demonstrates that the constant pressure and stress imposed on Romochka by his kidnappers were doing the opposite of what the kidnapping was supposed to serve, namely, the path from dog-boy to fully human, the reorientation of Romochka most meaningful relations to be with other humans. Indeed, the capture attempts have resulted in Romochka having perfected his sense of belonging to his dog family, a virtue that most typical boys do not possess in as high a degree.

However, during the time Black Brother had the tracking device on him unnoticed by Romochka, the police, under the command of Dmitry, had been able to mark out some regular paths of the clan. One of them was a very long and dangerous walk to the frontier of the clan's territory right inside the city. The target of the walk was one of Romochka's friendly human relationships, Laurentia. She is the owner of a small Italian restaurant and had grown deep affection for the boy and his dog family, affection and trust shared by Romochka who really enjoyed and strived for the help she was willing to give to both him and his clan. Indeed, Laurentia's sympathy and recognition of Romochka's need for human help took a very different form from that of Dmitry and Natalya. Laurentia was fairly poor and probably could not adopt the boy, but the thought never crossed her mind because she did not feel that it was the right way to help such a particular being. Or rather, she never thought that it would be a good idea to force him to live under her roof. Instead, she provided

Romochka and the dogs with warm leftovers of the evening rush. She also gave Romochka decent clothes (notably a coat which Romochka was really proud of) and gave him the possibility to exchange with her in an environment of trust and love. Her smile and loving eyes were really a welcoming opening gate to the human world. She was really a safeguard for Romochka's feral life, ready to help him in so far as he was asking for help.

After weeks of having to hide in the lair to escape the police, the clan was very hungry, and Romochka, in need of filling food and of a change of routine, decided to lead the pack to Laurentia. But once they were there

Laurentia looked pale and unhappy. She handed Romochka the bowls in silence. He placed them on the ground in the alley in front of Mamochka and then signed everyone out of the shadows. Laurentia handed him his meatballs and spaghetti, and stood back in the shadowed doorway, face averted. She wasn't singing. Something was wrong. He started to eat but with a bad feeling in his chest, in his stomach. All over his skin. He glanced up. Tears were rolling down Laurentia's cheeks. His neck hair stood on end.

'I am sorry, bello. So sorry. The militia...they give me big trouble.'

He stopped chewing, his mouth half-filled and trailing spaghetti, and stared at Laurentia. His pulse picked up. She was sobbing, now, in heaving, messy gusts. He heard a strange, soft thud behind him and turned.

Mamochka had fallen.

His bowl dropped to the ground and smashed.

He is at Mamochka's side, on his knees. Everything is silent, except his pounding heart. Mamochka shaking and crying through clenched teeth, his arms around her neck, his mouth open, but he cannot hear himself. Her faint whimper comes from far away, up in the sky. He holds her chest to his chest and lifts his eyes unwillingly to the others.

The whole world slows—one beat, then the next, then the next, measuring everything. The beats rock him, slow, slower, Golden Bitch staggers, tries to run, falls. Black Dog almost reaches him and Mamochka, tumbles, begging, slow, slower, his bewildered eyes fix on Romochka's face. White Sister heaves, stumbles...Grey Brother, Little Gold, Little Patch each...crash...slow, slower. Black Sister, eyes intent, staggers forward, falls, against his thigh. The world is filled with whispers. Their voices all leaving him in sighs, silent yelps...Slow... slower. Their coats, black, grey, gold, white, shine in the streetlamps and moonlight. Their beauty is unbearable. Their eyes glitter. They blink at him, asking, asking.

He is losing them all.

Romochka's heart burns in his chest and throat; he is crying unawares. Slow...slower...Slow...slow...Still.

Mamochka is dead in his arms. A frightening smell seeps from her in a last slow rush. Militia, like a nightmare, like a dream, are tumbling in from the corners of his mind. He closes his eyes and begins to slow-lick Mamochka's dead face.

'Get him off! Get him off! He might get some of it in his mouth!'

He is wrenched off by many hands. He waits, feeling deep for his upwelling rage, feeling for his strength. He hangs limp for seconds, like a meek human child, like

Puppy, then he explodes like a cat with all the fighting strength that he has in him.
(266-268)

Dmitry and Natalya knew about that, they knew and even commanded the killing of the dogs. So many things are so obviously wrong with all this that they are barely worth mentioning. The end of this commentary is dedicated to making visible the link between this murder to a set of beliefs that underline the speciesist ideal of humans having to flourish as a typical human. The main thing to note is that the killing was not necessary for the simple purpose of capturing Romochka. To simply put the dogs and Romochka asleep with sleep pills rather than lethal poison would have been perfectly enough to capture Romochka with “minimum trauma” as Dmitry wished. Two reasons are then produced to explain the mass murder. Note that the decision to kill the dogs reveals that the scientific interest of the life of feral clans was simply a veneer to feel a bit better about what was about to be done.

The first reason for the murder is simply a rationalization of a feeling of disgust. It involves no reflection to be produced and, as it stands, can only be poorly justified to be a good reason in the form of a slippery slope argument. This reason is given by the militia (the police) but can also be said to be one motivation of Dmitry and Natalya. It is also a bias of a species-norm theory of interspecific relationships. This “reason” can be perfectly summed up in these words “you can’t have feral dogs terrorizing the district and you can’t have homeless kids becoming canine” (269). This rests on the species norm in two ways, on the one hand, the strong prejudice that a boy being also a dog is intrinsically bad, disgusting; on the other, the species-norm affiliated prejudice that humans and undomesticated nonhumans should not share a common space, or the idea that societies should be hermetically unispecific.

Let’s consider the idea that you cannot have feral dogs terrorizing the good people of Moscow. In fact, it can be said that the feral dogs are not causing more problems than any non-integrated, or marginalized groups. But this would not make much difference in the society represented in the book to reply such a thing because the other marginalized groups (street kids, homeless persons, drug addicts) are also hunted and terrorized by the state instead of helped. Yet it can still be said that the dogs have some positive impact; they kill rats and reduce their sources of food, eating the leftovers and reducing by the same occasion the amount of uncontrolled

human waste. They saved from a certain death two human children and protected them when no one was ready to do the same. I do not claim that feral dogs do not pose problems just as I do not claim that Romochka's life was ideal, but by failing to recognize the value of these dogs, the fault in the decision to kill them is probably even more serious.

The second reason is more strategic. It is very rational, although strongly speciesist and attached to a Nussbaum's type of species-norm. The goal of Dmitry and Natalya was not just to capture the Dogboy (although it was the only job of the militizers who only needed to rationalize their action by the first "reason") but to make a boy of him, to "rehabilitate" him. To let the dogs be or to foster the dogs with Romochka inside Dmitry's condo, in addition to being impossible, would have "hold him back" in his dogginess according to Dmitry. In the text below we will see the full extent of this reasoning.

I am afraid I am a bit repetitive right now, but mostly I fear I have portrayed Dmitry and Natalya too crudely and ill-disposed. To redeem my biased imprecision, partly due to the rules of paraphrasing and of ethical prose, I will quote the full end of the book. In it, I hope the reader will get a fuller picture of Dmitry and Natalya, who might genuinely be seen as doing their best, who engage in moral reasoning, who have doubts about their actions and motives and about their chance of success. Indeed, even if they sometimes take things not seriously enough, being more interested in the advancement of their personal goals, and in the future of their couple - goals which seem to be able to justify anything in the end - they seem to also want Romochka's happiness. Unfortunately for them, as I have repeatedly emphasized, I think they are wrong. Wrong in the kind of help needed for Romochka, wrong in the means to enact that help. And the thesis of this commentary is that all their mistakes come from their conservative moral background of the species norm, the idea that out of a dog-boy we must, at all cost, make a boy. As Nussbaum maintains "impediments to species-typical ways of flourishing create a moral imperative for society: such impediments should be treated and cured, where possible, even if the treatment is expensive" (Nussbaum 2006: 364). For Romochka the treatment is expensive in so many ways, and it is derived from this kind of common-sense moral theory about interspecies relationships.

Here is the end of the book: to each the responsibility to judge if the treatment has been too expensive.³⁹ I removed some passages but the story takes place in two different scenes. The first is in the lair where Romochka and the dogs lived. Natalya and Dmitry went there to save the newborn puppies that had not been killed in Laurentia's restaurant. They thought Romochka would feel better if he knew that all his family had not been slaughtered. The second scene takes place inside Dmitry's apartment. Romochka had been here for a day, watched by the servant of Dmitry, and Dmitry and Natalya were just coming back from the lair.

[The lair]

The floor underfoot was sticky. The smell was disgusting, overpowering: the air was thick with the rankest dog smell she had ever experienced, and more. Death and decay. She switched on her torch and breathed in sharply as its yellow light played over the mess around her. There was a huge pile of rags in a corner, covered in dog hair. Plastic bags everywhere. She noticed bones lying here and there at her feet, then the torch picked out the splayed and dismembered carcasses of some large animals—a glimpse of ragged skull holes and an intimate dirty grimace. These bones were brown, not white. She counted three skulls and several shredded lengths of desiccated skin and hair. A rib cage with a battered plastic sword was threaded through it.

She shuddered. They looked like big dog skulls. Did they eat each other? That idea pulled another out of the tumbling darkness in her chest. She tried not to look further into the shadows, suddenly fearful that there might be human bones here too.

She was both shaken and affronted that a human child had lived here among these ghastly things, and had most probably taken it as normal, invisible.⁴⁰ Nothing could have said more starkly that they lived here on the very brink of death. Against the far wall she picked out the supine form of Lenin, staring upward in blank-eyed serenity, and shuddered. It all seemed to have some deranged meaning. Worst of all, wherever she looked there were children's toys. A broken pedal car was upturned against Lenin's shoulder. Large red, yellow and blue building blocks lay scattered around, all half chewed.

She looked down. She was standing on two battered peacock feathers. There were more of them, lying all about. She stared at them stupefied for a moment, then remembered when Khan had escaped from the Moscow Zoo. So this is where that prized jewel had ended up. There was something terrible about that. Frightening. Nothing lost was ever really lost. A peacock was once here, had lived and died rigidly a peacock. It died purely from being a fraction out of line, a fraction outside the

³⁹ I shall only add a few short footnotes to comment on some passages of the text.

⁴⁰ This compassion from Natalya clearly reflects the "judgment of seriousness" arising with and causing compassion according to Nussbaum, especially this part of the judgment "If we think, on the other hand, that a person is unaware of a predicament that is really bad (e.g. an accident that removes higher mental functioning), then we will have compassion for the person even if the person doesn't think his or her situation bad." (Nussbaum 2012: 9) It can easily be seen that this judgment can be a serious source of paternalistic mistakes.

boundary of where a peacock in Moscow should be. A boy was here—two boys—lost but not-lost, with nothing so firm about their weird jelly selves.

(...) “She touched the edge of this bed, feeling that with every breath, every touch, she was being contaminated by something far worse than a dog-den church cellar. What had they been thinking, that they could rehabilitate an eight-year-old boy who had slept in this for three or four years? They were the experts, for God’s sake. They knew full well that he was past the plastic stage, incapable of any kind of grafting into life. She avoided Dmitry’s eye, dreading the moment he would scent her rising fear and begin to crumble.

She felt a touch at her waist, and Dmitry put his arm around her. He was no longer holding his nose. He looked at her in the gloom and breathed in deeply, as if savouring it. ‘What a boy, eh Natalochka? What an amazing kid—he was king here.’ He grinned. ‘He’ll have to learn how to be a pauper, now.’

She knew Dmitry didn’t for a moment really mean this. He was nothing if not a realist. She laughed, shakily.

‘He’ll be pretty unhappy, I should think.’ Her voice sounded thin. Of course Romochka was unsaveable. Clever, yes, but irredeemable. The same as any experienced bomzh child beyond the age of reclamation. Really, she thought then, they should kill these puppies too, put them out of their misery. Then wash their hands very thoroughly so Romochka didn’t smell it on them. Romochka probably couldn’t get the care he needed except in a specialist institution.

(...)

“He is human. All this is because he is human. There is no turning back, Natalochka, either for him or for us.’ He reached for the snarling mites, shoved them into his overcoat pockets and led her stumbling out of the revolting hole.” (282-283: emphasis added)

[Dmitry’s apartment]

On the landing of their floor, despite padded doors, they could hear Romochka screaming in alien shrieks and growling riffs. There was no time to feed or wash the puppies.

‘Let him do it,’ gasped Natalya, rushing up the stairs, handing two of the puppies back to Dmitry.

They let themselves in quickly and locked the padded outer door. Better not let the neighbours hear much of this shrieking. Outside the door of their spare room they paused, looked at each other, then walked in.

The room stank of fresh faeces. Konstantin Petrovich was standing by the door looking harassed. He had bites and scratches rising in raw welts on his arms, and it was clear that Romochka had thrown shit both wildly and with excellent aim. The sight of the boy was a shock to Dmitry. He barely recognised him. Romochka’s hair was shaved off, leaving an unexpectedly small face, a small child with a red raised scar across his scalp. He was naked and, like Marko, quite hairy. He had been dressed in a white shirt and some sort of white pyjama pants, but these lay at different corners of the room, shit-smearred. Konstantin had cuffed the boy’s hands behind his back.

Romochka looked at Dmitry, disoriented. His rage and feeling of nakedness receded and he was overwhelmed with confusion. How could this be? He could smell a cold hint of Mamochka. He could smell home and more. How? How? He could sense Dmitry’s excitement and nervousness. He was bewildered, fuzzy headed. Raw sound hurt: his ears were new roaring air tunnels deep into his head. He was terribly exposed without his hair. Dmitry had betrayed him, but what now? What had he done,

where had he been? The teeming pain of it all welled up and he screamed with fury and grief, squeezing the terrible tears from his eyes and shaking his head to clear them.⁴¹

Dmitry was horrified. This unrecognisable Romochka snarled and shook himself from side to side. The pale face was twisted, his teeth prominent in an animal grimace, his body held low in an inhuman form. The scarred simian body, the tear-stained cheeks, bared teeth and wild eyes, this posture, all added to a most alienating appearance. His torso, criss-crossed with terrible scars, was awful to see. He seemed wolf-like but at the same time unnatural: truly degraded, worse than any wolf.⁴² Dmitry could see the shock and revulsion in Konstantin's face. He waited until Romochka had stopped screaming and was looking at him with dull black eyes. He signed to Konstantin to release the boy.

'Romochka, Romochka,' Dmitry talked while Konstantin reluctantly snipped the plastic cuffs at the boy's wrists. The boy growled all the while. 'You know me. I am here to help you. Remember Mar...Schenok.'

Romochka lunged but, before Dmitry could stop her, Natalya had stepped in front of him and was roaring at the boy with a spectacular and savage snarl from all her adult height, at the same time pulling a suddenly mewling puppy from her coat. Dmitry saw her as if in a painting, frozen: a goddess or witch, with a helpless beast in hand, arched over a cowering caliban.

'THEY ARE NOT ALL DEAD!' she was roaring into Romochka's shocked, young-boy face. 'We found three for you.'

Romochka dropped back to the wall, his face suddenly blank and truly eight years old. He covered his ears with his shit-smearred hands, cradling his own face. No one moved or spoke. There was a silent tableau in the room as two tears rolled down his cheeks. He reached out his hands for the puppy, wagging one hand in a strangely demanding gesture that was made all the more odd by him simultaneously dropping his eyes and averting his face. The hand wagged and flapped imperiously as if independent from the rest of his body. Dmitry pulled out the other two puppies, tears prickling his own eyes. The boy reached greedily for the yabbering babies and buried his nose in them, breathing in deep, licking their faces, tongues, open mouths, whimpering now into their dirty fur, worrying his fingers over their hungry bodies.

Romochka sat on the floor with the wriggling, yelping puppies scooped to his belly and chest, sobbing, head down.

Dmitry squatted down next to the boy and began stroking the black stubble of his head, avoiding the red welt. Romochka didn't stop him.

'They are yours, all yours, and safe if you stay here,' Dmitry said softly. He had an inspiration then. He could never have said how, but he knew, in that moment, exactly what he should say and what it meant.

'We are the only dish on the table.'⁴³

⁴¹ Original emphasis.

⁴² The horror and disgust toward the animality of Romochka shows that Dmitry is a victim of anthropodenial. In the whole story, Romochka might be the most human(e) character, for only he truly embraces his animal nature as a part of what makes him human. The passage below on the tamed, well behaved dog Dmitry wants to have as a pet clearly demonstrates that Dmitry is truly uneasy with what is animal.

⁴³ Dmitry reuses an expression Romochka had used when he was trusting Dmitry and was regularly and voluntarily talking to him. This utterance had made a strong impression on Dmitry and Romochka was pretty proud to know how to use it. At that time Romochka used it to mean that his human brother Puppy only had the dog family to take care of him. And this was true. Here however, if Romochka had Dmitry and Natalya as his sole dish, it is because they had made his dog-family killed. This expression aims to the acceptance of a factual and non ideal situation as necessary and fixed by the reality of the world. In Dmitry's use, the non-ideal situation to be accepted can be directly said to be

Romochka held his breath. He looked up sideways at Dmitry with a large, quiet, child's eye. His scarred wet cheek rested in his armful of puppies. His rather fine-featured face was pale and gentle. He smiled, his eyes sliding from Dmitry's face and focusing on nothing. His face was transformed, mysterious, alight behind the pallor. For a moment Dmitry was reminded of Marko.

Dmitry motioned to Konstantin, who was leaning against the wall grinning, weeping, shaking his head. They left Romochka alone with the door open, Konstantin first, hands outstretched for the bathroom, Dmitry following. Natalya glanced at Dmitry, then raced to the kitchen to prepare some bottles of milk.

Dmitry was sure Romochka would stay, even if this was the softest moment he would ever see in the boy. He was buoyant with the success of it all, charged with electric happiness at Natalya's glance. She was surprised, admiring. Impressed. It was the right thing, and it was well done—and not just because now he felt that he and Natalya were a true team: lovers and partners. Parents. A family, now, with a child and three dogs. He couldn't wait to clean him up, straighten him out and see what sort of boy he made, what sort of boy they had. If they formally adopted him, Romochka would even be able to go to school, eventually—especially if Natalya got up to her usual tricks and faked his papers. Romochka would have the best, with a behavioural scientist for a father and a paediatrician and scamming queen for adoptive mother!

He looked around his stylish lounge room. The chipped old matrioshka on the sill was a new addition—one of Natalya's few things. After their big fight she had, without a word, moved in properly and he had been surprised and humbled to find how few things she had, and that these were precious to her not for their own sake, but for the sake of the person who had given them or the use she had made of them. She brought her piano, all her slightly gypsy clothes, her matrioshka; and everything he had ever given her. This last made him suspect her of uncharacteristic tact, but then he gave up analysing it all and just felt grateful.

He'd need a new vacuum cleaner for the dog hair. Perhaps even a Kirby. Yes, there would be quite a shopping list, and it would be a long while before they could have a dinner party again. His friends and colleagues would talk about this for months, years, that was certain. Most would say he was a fool; but some might think it was noble of him. And of course: all would think it was Natalya's influence.

He smiled to himself, savouring the feeling of being at last a family man. They were going to be a very unusual family. Maybe Romochka and Malchik next door would get along.

Three dogs. Perhaps eventually they could wean him onto one. One was enough for the purposes of this transitional phase; and after all, what boy ever has more than one dog? Three dogs might hold him back. Make him yearn for the old life. No, it would have to be one dog, and it would have to go to obedience classes. He had a sudden vision of himself at the dog school by the Krylatskoe line, a charming, well-behaved dog at heel beside him, commuters whizzing by, looking on. He'd have to watch to see which was the most intelligent. No, the most loyal, or perhaps the most docile and least boisterous. A single dog that was gentle, smart and loyal like Malchik, but not boisterous or drooly, would be ideal. One that would tip its head back to look at you the way Malchik did. (284-289)

(...)

[Romochka's choice - last two pages of the book.]

Dmitry's fault. Whether it was morally necessary (or even acceptable) to put Romochka in that situation is the whole question. It is a complex one. In this context, Dmitry reusing this expression seems to be a cynic manipulation of the child.

If you were to look now through the window—while on the other side of the thin wall Dmitry takes his turn in the shower, while Natalya in the kitchen farewells Konstantin and begins slicing onions with verve, cooking up a dinner to mark their new lives—you would see Romochka alone in that room still cradling the three puppies. The empty milk bottle stands beside him.

His face is in profile. He strokes the pups until they sleep. Then he stands and begins to weep, his shoulders tense and shaking. He turns. His face is raised towards you now, and he is sobbing in earnest, mouthing a scream. He stays like this, his body stiff, his fingers outstretched.

He stops. His breathing stills and he stands limp at the window for a while, his eyes huge and dark in a white face. Then he turns swiftly and, bending down to the puppies, bites through each of their skulls in turn.

He has chosen to stay. (289, 290)

Conclusion

By reading the novel, one can clearly get to feel the need for a new and just way to think about the integration of animals into our societies. It is clear that the society pictured in *Dogboy* is deeply unfair, and this partly explains the bad personal decisions taken in it. I said it before and will say it again: we need a theory of justice for nonhuman animals. But this book makes it clear, that the theory cannot be abstract, it must not take the form of what Amartya Sen calls “transcendental institutionalism”, that is, it cannot be a theory that aims at perfect justice through the shaping of perfectly just institutions. What we need is more than a theory of personal ethics but far less than a new Rawlsian theoretical tour de force and far less than a perfect result. Any liberal theory of justice properly amended will do, i.e., will eliminate the most blatant injustices that animals suffer. What constitutes this amendment is a society in which Romochka’s clan would not have been hunted and slaughtered. If members of our societies could just judge slightly better than Natalya and Dmitry on the value of animals and of human-animal relationships so that no tragedies of that sort would occur, then there would be enough room to learn how to progress toward the full requirements of justice. I believe that the piece of theory to clarify what is expected of our societies has already been produced, and lies in the works of Sue Donaldson and Will Kymlicka. Only their theory of citizenship can put us out of the inability of current animal rights theory to globally and positively think about what justice requires right now within our imperfect societies.

Chapter 3: Toward an active role of domesticated animals in our societies

To sum up where we stand in the development of this work, we saw that egalitarian animal rights theory was the sole moral basis under which we could hope to make right our treatment of animals. Yet, most animal rights theorists have been unable to develop what is next in the path of strict justice, i.e. an account of a relational ethics, i.e., an account of our positive relational obligations towards animals. This is a major flaw because a theory of basic negative rights “to not be sacrificed for the greater good of others” (Donaldson & Kymlicka 2011: 22) leaves a strong ethical underdetermination when we are faced with the task of telling what we positively owe to animals (and potentially, what they positively owe us). Indeed, blinded by the moral horrors done to animals through domestication, some theorists believe that it is impossible to reconstruct under just terms a relationship between humans and sentient beings of different species. They maintain that the only positive obligation that a theory of justice for animals should contain is a duty of non-interference, a strong guideline of *laissez-faire*. I have emphasized the disastrous consequences it had in the case of the billions of animals we have bred to be dependent on us. But disgusted by this dependency because of its criminal origin, these theorists dream of a drawback to a hypothetical time where humans and animals lived in hermetically separate societies. The way toward this golden age is full of violations of animal rights in my opinion: completely denying the possibility to exercise the valuable freedom to reproduce, and this by coercive measures equally violating many valuable animal interests. I believe that we have the responsibility to investigate a third way between domination (however humane or loving) and extinction, which would take the form of a theory of relational ethics within an inviolable rights framework that would work out with the actual state of co-dependency of human-animal (unjust) interactions in order to reconstruct them in just terms. But I thought it was important to emphasize that, if a relational account of human-animal relations is both theoretically and strategically necessary (since it unfolds the exciting possibility of mutually flourishing interactions), it ought to complete rather than replace and undermine a theory of basic rights. Calls for a better use of moral emotions to reshape our relationships with animals have to be

very demanding (while still being attractive) since the animal condition is a catastrophic moral horror rooted in the deep functioning of our societies. Therefore, very promising was Nussbaum's claim that emotional concern for animals should be so demanding on the ethical realm that, like humans, the relations an individual has with all others should be regulated by justice, i.e., by an inclusive theory of global, interspecific, basic justice that a wise political community (a more or less "Well Ordered Society") would indeed be wise to adopt. Yet the sketch of the actual content of her theory is too weak to be consistent with an egalitarian basis, which Nussbaum explicitly postponed to a better world. I also spent much effort criticizing the concept she used to articulate her theory of justice, which embedded a rather poor view of animal individuals as "tokens of species" (Kymlicka and Donaldson 2014a: 211) who lacked the relevant agency to be co-framers of just relationships with us. This poor view of animals and the very secondary importance they can take in our schemes of co-operation results in an impoverished inclusion of animals in the demos, as pure patients of justice. It is not surprising that Nussbaum then failed to concretely propose measures to respect animals as equals for the purpose of not being sacrificed for us. She was right to point out that our treatment of animals was a wrong frontier of justice but her attempt to include them falls a bit short. Yet, in Kymlicka's words, it is Martha Nussbaum's book which "inspired Sue and [himself] to take up the animal question." (Kymlicka 2021). To cross this frontier of justice we need another direction, another picture of a society of just animal-human interactions, subtler and richer than Nussbaum's account. For Kymlicka and Donaldson

Justice requires a conception of flourishing that is more sensitive to both interspecies community membership and intraspecies individual variation. It should also be open to evolution, as new forms of interspecies community emerge, opening up new possibilities for forms of animal and human flourishing. (Donaldson and Kymlicka 2011: 99)

Following Donaldson and Kymlicka, (although in a much much more condensed and abstract way⁴⁴), I want to argue that what is lacking until now is the

⁴⁴ The form taken by this work only allows me to sketch a small part of their view, without many enlightening concrete examples and clear arguments.

recognition of domesticated animals as full and equal members of our societies, that is, as co-citizens.⁴⁵ The main argument in a nutshell is that we owe citizenship to animals because they can be agents of their relations with us in a way that allows them to exercise citizenship. Refusing to recognize their political agency is an injustice (typically characterizing tyranny) symptomatic of an intellectualized and therefore exclusive conception of citizenship based on a “capacity contract” (Donaldson & Kymlicka 2019: 282) which, as we have seen in the debate on moral equality, is dramatic both for animals and humans. Here we will see that, in addition, this cognitivist model is at odds with the best interpretation of our democratic and civic practices, with our usual display of social virtues, and with the function of citizenship itself.

I will bring this thesis of Kymlicka and Donaldson with a different normative route, more directly linked to ethical rather than political arguments, but I take my approach to be just the sketch of an alternative defense of their theory. Also, I will only mention their thesis concerning domesticated animals, but it is of course obvious that a comprehensive theory of animal rights must not leave sentient nonhumans aside and the authors have produced one of the most comprehensive pieces of theory in the field to date. A relational ethics is based on the claim that different relations generate different obligations (beyond the respect of basic rights). We have different relations with different groups of animals, varying with many parameters (geography, history of interactions, codependency etc). Kymlicka and Donaldson believe that we should distinguish between wild animals living in the wild, wild animals living in liminal spaces and thriving on the opportunity given by human environments (also called “liminal animals”) and domesticated animals. Since the political side of their theory is that our obligations of justice toward these different groups are best enlightened by characterizing our relations with each of them by the categories of a theory of citizenship, they believe that (truly) wild animals are best seen as sovereigns of their own (sovereign) communities while liminal animals are best seen as denizens, or as “permanent residents of our communities” (Donaldson & Kymlicka 2011: 228). Their argumentation is too dense and the best I could do in a chapter would be to make an oversimplified and unconvincing summary. I only choose to insist about the underlying relational ethics of their theory to see how it

⁴⁵ And the recognition of non domesticated animals as sovereigns of their own communities for those living in the wild, and as denizens of our communities for those living in the liminal spaces.

connects with a theory of basic rights, and how it does better than the previous accounts (extinctionism, love, and species norm) presented in this work.

I start to reformulate and comment Donaldson and Kymlicka's theory by setting the moral agenda of a rights based relational ethics in claiming that because agency is a value that is best understood when it is not opposed to dependency, we should see animals as agents to be able to know the actual extent of their agency in their relations with us (section 1). Then, in opposition to the traditional conception of citizenship, I argue that granting citizenship to animals is both possible (section 2) and useful as a model to offer guidance toward enabling the full potential of animal agency in order to offer a better view of how to address their needs and interests, and toward framing a theory of interspecies justice that is good for democracy in general (section 3). To conclude I come back to the strategic concern of the animal advocacy movement and I will claim that the citizenship approach is very promising to move emotionally and politically our societies toward the kind of Zoopolis hoped for in the book.

3.1 The basis of a human-animal relational ethics : agency beyond dependency

For Martha Nussbaum animals are subjects of justice. They are therefore members of the "people" of a society in at least two ways even if she never bothered to state them. (1) They are in the first place our co-nationals, which means that they belong here within a State with us and therefore justice has to protect them *inside* a given human society and not *from* our societies.⁴⁶ Animals have, as our authors, following Avery Kolers (in the human case), "a right to place", that is, not "an equal right to the whole world, but an equal right, individual or collective, to possess a particular place—possibly, but not necessarily, the place where you happen to find

⁴⁶ This is the first and most significant difference between an extinctionist animal rights approach and the relational approaches. See (Dunayer 2004: 117-119) for the extinctionist point of view on this issue: "Animal rights advocates want laws that will prohibit humans from exploiting and otherwise harming nonhumans. They don't seek to protect nonhumans within human society. They seek to protect nonhumans from human society. The goal is an end to nonhumans' 'domestication' and other forced 'participation' in human society. Nonhumans should be allowed to live free in natural environments, forming their own societies ... We want them to be free and independent of humans. In some ways, that's less threatening than giving rights to a new group of humans, who then share economic, social, and political power. Nonhumans wouldn't share power. They would be shielded from ours." Dunayer, like Francione and Charlton, is a radical extinctionist.

yourself” (Kolers 2012: 3).⁴⁷ (2) Animals are also members of the people in whose name the State acts. It means that their interests should be taken into account in the actions of a State if this State is to have political legitimacy. Of course, animals are not treated that way nowadays. They are our co-nationals in some weak sense (even if they have the most meaningless control over their mobility and where they are to live) but are not at all subjects of justice in that second sense. I also claimed that Nussbaum's account of the way to take care of animals' interests was too weak to qualify animals under her approach as equal members of the people. Yet, theoretically, to be a subject of justice means that we should have this political status. Can we call animals—considered as subjects of justice in that sense—our “co-citizens”? Provocatively, Donaldson and Kymlicka say that we can and should view this fact of membership to a State that governs for the interests of all its members as sufficient to qualify as citizen. But “her [Nussbaum] account of citizenship in that book is quite thin” (Kymlicka 2021) and indeed, any theory of justice, however efficient to improve animal condition, may miss an important point if it is unwilling to be complemented by a full theory of citizenship. To be a subject of justice in that passive sense is not enough to be a full member of a society, a full citizen, for citizenship is “an active role, in which individuals are contributing agents and not simply passive recipients of benefits.” (Donaldson & Kymlicka 2011: 103).

This is the crucial theoretical difference between Nussbaum's theory of justice and Donaldson-Kymlicka's animal citizenship. For Nussbaum, animals are only patients of justice, and their agency is only recognized and pursued in a micro level of the capabilities enacted within a scheme of interaction fully paternalistic, in which we should not even try to let animals choose whether or not they want to enter in relationships with us for some purposes. Animals are not full citizens in Nussbaum's approach but wards paternalistically cared for through some designated guardians.

I believe that the crux of the debate on animal justice and membership rests mainly on different positions on animal agency and dependency and on the normative implications of these differences in the field of the right based relational ethics of human-animal interactions. I will try to make things clear in that field, for

⁴⁷ The “right to place” is the national liberal version of the strong cosmopolitan unlimited right to mobility. For a cosmopolitan version of animal citizenship, see (Cochrane: 2013). I talk about that shortly in section 3.

otherwise the debate over the idea to grant citizenship to domesticated animals may not make a lot of sense.

*position 1: dependency without agency*⁴⁸

It is true that if animals were moral agents and not just patients then this fact would require thinking of justice for animals under a less paternalistic framework. Yet the facts are that animals are not really agents since they cannot even communicate their subjective good, either because they do not have one (they have only a species good) or because we cannot understand each other and hence we have no access to their inner lives. Even if there are what seems to be displays of agency, it is often, if not always, the sign of immature and unreasonable desires (such as escaping a farm or an equestrian center) that are not in their best interests. Then we should not look at those behaviors as attempts to reshape (under just ways) their relations with us, as demonstrations of agency worth considering. They are therefore perfectly dependent on us in all areas of their existence.

In those circumstances, justice demands that we secure a set of basic rights for animals and, within this framework, to work out an objective model to reshape our relationships with them. Some choose the model of wild animals and try to transform our relations with domesticated animals to make them similar to those we have with the wild ones in order to diminish their dependency and increase their agentivity. But, because they have a conception of wild animals as beings entirely independent from us, and such a negative view of animal dependency, they soon turn on toward extinctionist conclusions in front of the failures of the rewilding attempts.

But others, like Nussbaum, frame a concept of a threshold of acceptability such as the concept of “species norm”, which functions to grant to all individuals the capabilities that any typical member of their species should have. We have seen how arbitrary or self-serving those threshold concepts were when such a poor conception of animal subjectivity and agentivity were held. Yet, with this approach, justice requires, or is achieved through a wardship or guardianship model rather than a non-paternalistic citizenship model. Until we are able to know the interests of

⁴⁸ I caricature this position slightly in order to have in a few lines a clear idea of the spirit of the opponent to the views I think are true. But still, no one maintains in those caricatural terms such a position.

individual animals, and to know them through inputs of their agency, of their ability to communicate with us on these matters, then “we are blocked from moving towards a guardianship model for companion animals” (Rollin 2006: 10).

position 2: dependent agency as a value rather than an achievement

Of course I disagree strongly with position 1. Here is what I think to be a more promising view.

Since domesticated animals are dependent on humans to survive and flourish, they can only be agents through their relationships with humans. Stated differently, it is only through human agency that a potential animal agency can be enabled. It would be quite unwise to dismiss this “dependent agency” (Donaldson and Kymlicka 2011: 59) as a purely human agency, because all of us depend on some social conditions to be able to develop our capacities to form and communicate a conception of the good. Difficulties to communicate, to cooperate, to trust others are usual impediments of agency that former neglected children suffer and that could have been avoided with better assisted development of agency through better care. Anyway, it is widely acknowledged that the picture of social relations of cooperation between fully autonomous beings is flawed. Dependency does not preclude agency. Therefore, Donaldson and Kymlicka’s thesis is that if humans set out the good conditions of interspecific relationships then we might come to discover animal agency.

Let’s not forget that our authors are liberal-egalitarians and their position cannot be to diminish the value of agency or to value dependency in itself. Dependency and interdependency are not bad or undignifying in themselves but the goal should always be to enhance agency (while not trying to “cure” a dependency when the cost for individuals would be too high). It is just that

Acknowledging the facts of dependency should not be seen as an embarrassment to theories that stress the moral importance of autonomy and subjective identity, but as an opportunity to enrich such theories, by highlighting the many ways in which social relationships and social structures either enable or inhibit these values. (Donaldson & Kymlicka 2011: 107)

This means that we have the possibility to seek agency through a better understanding of the way agency arises through and from dependency. And if we have this possible method to look for agency, which is expressed through social relations, and expresses individuals' unique identity, we absolutely ought to seek it and try to enable it. Because agency is the paradigmatic capacity to express and act toward the realization of a personal conception of the good, and because justice demands that this conception be taken into account to decide what actions a State should lead, because paternalism is a vice when such a power on the direction of one's life exist, then justice demands that we seek to enable animal agency through reshaping our relations with them both at the personal, familial (or private in general) and on the political level. Just as the claim that no relationship with animals can be reconstructed upon just terms and that the idea that we should seek their extinction is premature (in addition to be terribly depressing), the position that, a priori, animals are either unable to communicate their personal interests or deprived from such unique individuality and hence are to be treated as "instances of some generic category" (Donaldson & Kymlicka 2011: 107) is a premature, and impoverished conception of justice for animals.

For Amartya Sen⁴⁹, a right is not properly respected when the freedom (or "interest") that this right ought to protect is protected in the wrong way. What he calls "the process aspect of freedom" (Sen 2009: 370) is, in my view, the essential requisite of relational rights and of justice in areas of recognition in general. If a twenty years old woman wants to go out dancing with a friend and that luckily enough, her father accepts, her freedom to go dancing will be enacted. But, if her father gives her the order not to stay at home tonight because "we have important guests and we do not want you to embarrass us with your disgusting provocative dress"⁵⁰, we see that the objective opportunity for her to go out (and indeed to do what she wants in that situation), even if maintained, has nothing to do with a just recognition of her personhood and of her right to lead her life according to her conception of the good. Because she is an agent, a unique individual, who does not lost her dignity because of her manners and clothes, justice requires more than the strict enactment of "objectively" important capabilities, it requires to recognize her full

⁴⁹ And for Nussbaum too, and indeed for any liberal theorist, in the normal (that is adult and abled) human case.

⁵⁰ I slightly modify the example Sen gives to exemplify the importance of the process aspect of freedom (Sen 2009: 370-371)

membership in a community as a unique and free agent, able to choose for herself which capabilities she wants to use.

The same holds for domesticated animals. If we make no effort to seek the ways in which they could participate to their governance by humans, and if they can have meaningful agency for that purpose, then the process-aspect of relational obligations would not be respected and we would deny them justice in paternalistically framing objective relationships that might also very well appear not to be the best way to make individual animals flourish. To really treat an animal as a person, as a moral equal, humans need to accept that animals can, in theory, shape the purpose and the process of the relationship. But, and here is the originality of the approach of Donaldson and Kymlicka, this means that *we ought to look for* displays of animal agency.

It has remained implicit until here, but their thesis is even stronger. I said that agency was *enacted* through our relations with one another, and that is particularly true for beings more dependent on others to care for themselves (animals, people with disability, the elders, children) but agency is also “*created* through relationship not deducible from the innate capacities of individuals” (Donaldson Kymlicka 2011: 122)⁵¹ and indeed is not a capacity that we “discover” or “fail to find” in another. Of course they believe that animals *are* agents, and I will give some examples in the next section, but animals could not be agents if we did not treat them as such. We have good normative reasons to want animals to be able to express through their agency their subjective good, and suspicious reasons to be content with “treating them according to some list of objective goods or capacities decided without reference to the person’s own expressed wishes” (107). If we start our reasoning in animal ethics by being skeptical about animal agency and personhood, it happens that this bias might become self-fulfilling. Imagine you are a prisoner (wrongly imprisoned), quite poorly treated by your jailor, who thinks that you have dementia, or that you are a worthless idiot and monster, and who, because of the way he perceives you (or because he is simply a wicked guy) ignores all of your demands (of getting out because you do not deserve your fate, or simply of more diverse and healthy food, of clear water, and of opportunity to socialize etc). After months in that filthy little cell of being ignored, would you still try to communicate with him? I believe

⁵¹ I emphasize.

that you would not, and our authors think it is the same with domesticated animals in their relationships with us. So “we must keep an open mind about the potential scope of animal agency, recognizing that it will always be highly variable, and dependent on individual, contextual, and structural factors” (122). Ignoring (yet) the full scope of animal agency does not justify, like Rollin said, that “we are blocked from moving towards a guardianship model for companion animals” (Rollin 2006: 10). Quite the contrary, where seeds of agency and seeds of human methods to enable it through our relations with nonhumans⁵² exist, we have a duty to go further, “a duty to foster their agency” (Donaldson & Kymlicka 2011: 122). It is only when we are committed to this goal that we will be able to know what are the individualized interests of individual animals. Remaining in a paternalistic framework that applies objective norms to animals because we do not know animals' personal interests is a conservative move that is not justified. Maybe one concrete example is necessary to clarify what I said. Traditional farmers who raise hens in cages for their eggs believe that hens are not picky about what they eat, and that a highly processed mix of cereals, provided that all the nutrients they need are in it, can satisfy the majority of the hens. This might well be true (even if I do not believe so) but anyway justice is interested in every individual and cannot be content with the majority. Plus, if hens are only given cereals, they will not expect that they can eat something else and the farmers will then be (wrongly) confirmed that choosing what they eat is not important for them.

It could also be argued that even if they can prefer to eat the leftovers of the family dinner, or to eat the fresh plants and insects they can find in a green space, we should impose the cereal diet because we know better what is really good for them. But with a better trust in hens' capacity to care themselves for what they eat, we indeed discover that not only do they have tastes that vary among individual hens⁵³ but that they are able, through trial and error, to discriminate between what is good for their health and what is not. I once offered small pieces of raw potatoes to my red hen and it made her sick. Now when I accidentally let some potatoes in the mix of vegetables I offer them she does not touch them. My black hen runs on the grass to

⁵² For such methods, our authors look at works from disability theorists or in the movement of children's rights. Care, trust, and open mindedness are the key values of building a fruitful model of dependent agency and all these values are best embedded politically by a citizenship framework.

⁵³ The intraspecific variations are even more important in the example of Kymlicka and Donaldson with their dogs. But I wanted to talk about my hens.

eat it when she wakes up in the morning while the red ones are more interested with the cereals. Iris Young has made great observations of this food agency with the cows of her farms. Here is a compelling extract, also exemplifying the open minded sensibility required to investigate animal agency.

For many years we have noticed that if you give cows the opportunity and the time to choose between several alternatives-for instance between staying outside or coming in for shelter, or walking on grass or on straw or concrete, or a choice of diet-then they will choose what is best for them and they will not all choose the same thing ... The decision-making process animals are constantly involved in includes choosing exactly what to eat. Nibbling and browsing all sorts of different grasses, herbs, flowers, hedges and tree leaves gives them vital trace elements in their daily diet in the amounts they feel are appropriate: such decisions could not be made so effectively by us. The animals are all individuals. Mass 'legislation' for the entire herd in terms of feed might suit the majority but we have always been concerned with minorities. We have watched cows and sheep eat extraordinary plants in prodigious quantities. Cows will eat dark green, vicious-looking stinging nettles by the cubic yard and sheep often choose pointed, spiky thistle tops or tall, tough dock leaves, particularly after parturition when their energy reserves are depleted ... One particularly satisfying fact we have discovered is that if the animals have sustained an injury they like to eat quite large quantities of willow. We hope that this is connected to the origins of aspirin. (Young 2003: 10, 52, cf Kymlicka & Donaldson 2011: 111)

Since our obligations toward animals are a matter of public morality, since they are members of our societies, relational animal ethics is an ethics of justice. It then requires that political theory should deal with this role of enabling animal agency by creating a framework where human-animal relations can be co-framed by animals, each of them seen as a unique individual agent. They believe that granting citizenship for animals will offer guidance to move toward building a theory of justice that treats animals as agents and therefore allow animal agency to weigh on decisions about how to relate to them. I will argue now in section 2 that to make citizenship theoretically possible for domesticated animals, we need to reinterpret what sort of agency is relevant to be a citizen, especially when it comes to the agency necessary for political participation. This will obviously imply a reconception of citizenship itself, of its prerequisites, but mostly of its function. In section 3 I will try

to evaluate the potential results, or concrete implications of the citizenship approach to animal rights. Is citizenship really what we owe to animals?

3.2 The role and nature of (animal) citizenship

Let us assume that position 1 has been amended, and that their proponents believe that our goal as particular individuals, enmeshed in relationships with animals, and as a society (as citizens), is to look for animals' insights to reform the structure and nature of their relationships with us. This will surely imply more careful and open-minded public and private guardians (and hence some political representation of animals) but will this entail that we see animals as citizens? Surely we have to see animals as persons, and then, the particular affective relations we have with them make it relevant to consider them as friends, neighbors and family members, even as members of our society entitled to justice, but is it possible to have a relation of co-citizenship with animals?

position 1 amended on citizenship: let's not push it too far

No. For one simple reason. Citizenship serves a highly human political function that the agency of animals cannot be close to serve. Animals simply cannot be citizens and their membership in our community cannot be expanded to a common citizenship. In a strict sense, the wardship or guardianship model still holds.

A citizen needs (1) to have a subjective good and to be able to communicate it but, for the purpose of citizenship, they must have the capacity to reflect on it, to reconsider it, especially in light of public reasons that might conflict with it. (2) A citizen also has to be able to comply with rules and social norms, to be able to cooperate, that is, to display reciprocity. (3) And a citizen needs to have all this capacity because his or her role as a citizen is to participate in the co-governance of the society, the "co-authoring of laws" (Donaldson & Kymlicka 2011: 103). To achieve this role he or she must be able to engage in public discussion in dedicated political spaces, and to give public reasons to sustain his or her views on how the terms of the social cooperation should be revised. Indeed, it is not sufficient to be able to comply with the norms of social life, because "the basic rules are always provisional,

subject to ongoing negotiation through the democratic participation of all citizens” (153).⁵⁴

Animals fail in these three respects, whatever the agency or personalized conception of the good we attribute to them. If they have a good that is not fixed by the nature of the species to which they belong and which changes according to the experiences of their respective lives and encounters, and if they can (provided that we try to listen) communicate that good to us, they are nevertheless unable to reflect on that good. This means that if they comply with and respect social norms, they cannot do it for the good reasons but simply because this “respect” has been made a part of their good through some kind of habituation or training. They do not know why it is good to respect those norms and laws. Obviously then, and for more practical reasons, because they cannot vote, or exercise any traditional political role in the dedicated political spaces (parliaments, city halls, tribunals etc), and because anyway they are concerned with trivial “political” matters (their diets, their walks, their play times, their sexual and romantic partners), they cannot effectively participate to the co-governance of the State in any meaningful form.

position 2: rethinking citizenship through reaffirming its inclusive function

Donaldson and Kymlicka agree with the three conditions for citizenship but challenge their highly intellectualized formulation and the interpretation coming with them. It is important to maintain that these capacities for citizenship do not need rational reflection (even if it is necessary that some citizens reason while displaying those capacities). Concretely, to be a citizen, it is enough to have a good (instead of a reflective good) and to be able to comply with social norms (while not knowing why) and it is not necessary to want to shape the society in engaging in public reason to have an impact on how the result of a good democratic process will end up in moving toward more social justice. An expansion of the way to grant citizenship is necessary for several reasons. First if the traditional liberal (indeed Rawlsian) view of citizenship uses the concept to affirm membership in a community, to offer guidance on how to treat the moral relevance of individuals’ membership to a shared community, and on

⁵⁴ If I quote Kymlicka and Donaldson here, it is precisely to show that their vision of citizenship is not totally different from this traditional vision to which they are opposed. Also, they are not adopting this clear dichotomy between their adversary (whom I called position 1) and their position. I create this adversary to mark the differences. This adversary is in big line the unconvinced reader.

how to run democratically such a community, it is formulated in such an intellectualized way that it also has an exclusionary function (intentionally when claims of animal citizenship are made but unintentionally in the human case⁵⁵). In the human case, it is now widely recognized by liberals that children, or people with severe mental disability were wrongly excluded from full membership by not being considered as real citizens, able to have their own impact in political decisions about them. Yet those humans might not (or not yet) have the cognitive abilities to be rational and reasonable citizens.

We are in the same situation, only one step of the ladder higher, than with the debate about the basis for moral equality and the argument of the marginal cases, related in chapter one. Consistency demands that we commit with the exclusive or the inclusive functions altogether. If a strict dichotomy between people with severe mental disabilities and domesticated animals is maintained, it needs to be justified. But, just as with the debate on the intrinsic moral value, let's not stop with this challenge of consistency (for it unfortunately has no power of conviction, like all the parsimonious attempts in animal ethics, since speciesism is widely accepted).

Exercising moral agency, the kind of agency required for a flourishing life in tight relations with many other groups and individuals will then imply the respect of some responsibilities. Indeed, individuals need to be able to engage in "various forms of self-restraint—in terms of their actions, and their demands and expectations—in order to foster mutual cooperation and trust" (Donaldson & Kymlicka 2011: 113). They will need to learn to respect some norms of social life in order to be accepted as full members. That being said, I do not believe that, most of the time and most of us, use pure practical reason to manage to exercise the self-restraint necessary to respect basic social norms. If this is true, wouldn't it be unfair to require from animals that their moral agency be only about rational reflection? Additionally, is it particularly good for promoting a healthy social life to pause before each possible action to check, through reasoning, if what I intend to do is moral or not? Can we say that the experts in moral reasoning (moral philosophers and psychologists) are the best or even better moral agents than the rest of the population, some kind of elite citizens?

⁵⁵ Intentionally even in the human case when the concept of citizenship is used by populist parties, appealing to racist and xenophobic ideals of nationhood, to exclude all pretensions of immigrants to become members of the society.

Should we give up any claim to make our interests heard and let this elite shape the rules of social life for us?

Donaldson and Kymlicka appeal to works in moral psychology that have shown that our daily moral life was largely unreflective, and claim that a well-oiled civic society was composed of citizen who engage in good behavior (respecting others' rights and general rules, displaying basic civility) out of habit rather than constant reflection. On basic moral matters, citizens are completely "morally dumbfounded" (Haidt 2001), and that means that things obviously right (e.g., to help someone in immediate need of direct help) or obviously wrong (e.g., cannibalism) are indeed thought to be obvious, so much that we will struggle to "give reason" for why we should or should not do these things. For our authors "this should not be seen as a failing—a kind of moral dumbing down—but as the necessary embedding and embodying of citizenship" (Donaldson & Kymlicka 2014b: 31). If the ability to challenge the state of the rules shaping the society through reasoned scrutiny can be very important to move toward more social justice (e.g., to advocate for the inclusion of animals in the demos), it does not exhaust the means to exercise good moral agency and can hardly be a necessary and sufficient condition of citizenship. Everyday moral agency is way richer than impartial reasoning; and to diminish the value of sources of moral behavior is to misconceive the interdependent, culturally structured ways in which agency arises, and in which most of our social relations are constrained in the right way. The truth is that

For most of us, most of the time, our role in upholding moral practices doesn't rest on our capacity for rational deliberation or conscious commitment but on our moral emotions, intuitions and pro-social tendencies (such as our desire to love and be loved by others, to be helpful, to be co-operative, to follow the rules, to fit in). (Donaldson & Kymlicka 2014b: 31)

Perhaps more gravely, the contempt for animal preoccupations—like a dog expressing the desire to drink some milk and not only water, or his or her desire to choose the direction during a walk—being judged unworthy of being communicated in virtue of being a citizen, in addition to be totally misplaced (since domestic matters are now widely acknowledged as political and to be dealt with by justice), is a sign of a lack of interest in what is not highly abstract political doctrines. Not only the public

debate should get closer to what actually matters for the citizens (and food and drink choice or the relations of power within the family are such urgent matters) but it may be wise to remind those who advocate for a more grandiose and reasoned public debate about political doctrines that such a blind commitment to a use of reason unchecked by moral emotions has been the source of great moral horrors in the past.⁵⁶

Thereby, the traditional view of citizenship, when rejecting the preoccupation of animals, seriously impoverishes the objects worthy of political participation. On the matter of political participation specifically (capacity 3 of citizenship), the rationalist view is also impoverished in the means it judges appropriate for political participation. If matters affecting animals can be communicated in the private sphere, then the inability to participate through the usual means for political activity and participation is not a sufficient ground to deny citizenship. In the movement for children rights and citizenship, a similar claim is made. Adult ways of participating (through voting for representative, organizing meetings and committees and so forth) are not suited for children to express what affects them, so “children sized space for citizenship” (Jans 2004: 35) are needed. The same is true for animals. Kymlicka and Donaldson use this brilliant example of the public park as such an animal-sized space for dog-citizenship, or farm sanctuaries for farm animals spaces of political agency. The work place has also been a great space of animal contestation (just like it is a space for human workers to constantly reassess the state of their working conditions). Anyway, here an even wider conception of political participation is worth accepting if we want justice to address the basic interests of all its members. Being represented politically in the traditional institutions of political participation is a way of recognizing the informal political participation in other areas of the society as a real, and worth debating rationally, participation. “Sheer presence” in the public sphere already “constitutes a form of participation” (Donaldson & Kymlicka 2011: 113) in informing the public debate on our interests and our way of living and interacting with others. A dog being a dog in a park where he or she is forbidden to play, where she is seen as a threat for the security of children, who behaves very nicely—either politely avoiding children to play with his or her human companion (he or she too being a co political agent in this scenario) or gently and safely playing with them—participates

⁵⁶ On this matter, Donaldson and Kymlicka, Sen, and Nussbaum are all discussing the book of Jonathan Glover. (Glover 1999)

(unconsciously but effectively) in demonstrating to people who believe that her presence in this park is dangerous and should be forbidden, that they are wrong.

In the end, I believe that we have good reasons to recognize that it is not necessary to be a perfectly rational agent to qualify as a citizen. We also have good reasons (good empirical evidence) to say that domesticated animals display the kind of subjectivity and agency necessary to be citizens in this wider sense. It is a false and very caricatural view of animals to see them as unruly beasts incapable of regulating themselves, incapable of respecting the obligations of shared social life. Large animals such as horses are perfectly aware of their strength and body size and can understand that they need to be careful about not bumping humans away. Dogs can be gentle when they play with very young infants. How cats can refrain defecating in houses, how dogs learn to display civility and to comply with all the informal rules and good manners during their walks, how they know they must not abuse their companion's patience, are all displays of their normal-responsiveness. There are millions of examples of animal everyday norm-responsiveness, altruism, and civic virtue.

Some studies even demonstrate some intuitive sense of fairness among social animals. Capuchin monkeys, exotic pets (wrongly) maintained in zoos, have demonstrated astonishing political dependent agency in relations with humans.

See this experience related in (Bekoff & Pierce 2009)

Capuchin monkeys are a highly social and cooperative species in which food sharing is common; the monkeys carefully monitor equity and fair treatment among peers ... Brosnan first trained a group of capuchins to use small pieces of rock as tokens of exchange for food. Pairs of females were then asked to barter for treats. One monkey was asked to swap a piece of granite for a grape. A second monkey, who had just witnessed the rock-for-grape trade, was asked to swap a rock for a piece of cucumber, a much less desirable treat. The short-changed monkey would refuse to cooperate with the researchers and wouldn't eat the cucumber and often threw it back at the human. In a nutshell, the capuchins expected to be treated fairly. They seemed to measure and compare rewards in relation to those around them. A single monkey who traded a rock for a cucumber would be delighted with the outcome. It was only when others seemed to get

something better than the cucumber suddenly became undesirable. (Bekoff & Pierce 2009: 127-8)

It would be naive to believe that no one would remain in position 1 after this short discussion, but anyway I believe there is a last argument, more or less implicit in Donaldson and Kymlicka's works, in favor of animal citizenship. It could be called the argument of "inclusive citizenship" (Kymlicka & Donaldson 2019). They say that "animals are best viewed as co-citizens" (Donaldson & Kymlicka 2011: 54). This means that applying a citizenship framework to animals is the best way to assess what justice requires in our relations with animals. If this is true, then we should try to apply a citizenship framework to animals, to view them as citizens, because citizenship should serve an inclusive function. Citizenship can be an inclusive tool to replace (by giving or seeking to give citizenship) a status of dominated individual and group to a status of full and equal membership.⁵⁷ A good conception of citizenship is one that rethinks citizenship as such an inclusive tool serving progressive values of integration. Therefore for individuals and groups that still lack it, citizenship, as a value or goal, ought to be sought (rather than expected). If shared membership in a peaceful, well governed, inclusive, interdependent, and multicultural society is an ideal then there is no sense to think about citizenship as an achievement that previously excluded individuals should autonomously try to attain. To think about citizenship in that conservative way is for the least suspicious and the burden of proof should weigh on those with exclusionary inclinations. Reluctant attitude toward animal citizenship is a sign of speciesist moral hierarchization and the proponents of such an attitude need to either commit to blatant speciesism (and sadly the bullet is nowadays still easy to bite) or to contest the arguments about the role of citizenship and the reinterpretation of the content of the capacities to exercise it.

So not only should we try to give citizenship to animals, but if it happened that we have good evidence that citizenship would indeed do better than the wardship approach to animal justice in articulating animal rights through reshaping interspecific relationships under more just terms, then we would indeed owe to make animals our co-citizens. Our authors address in big lines what could be the implications of animal citizenship in different areas of their lives in relation to us and to other domesticated

⁵⁷ It appears that right-wing populists nationalists have understood that quite well and give an exclusionary function to citizenship in refusing to give it to groups that they actively seek to exclude (e.g : immigrants)

animals. They claim that in many domains, it appears that the citizenship approach, even in its embryony state, offers better perspectives than the wardship paternalistic approach. I review and try to evaluate some of their most interesting materials about our positive obligations to animals in the next section.

3.3 Is citizenship what we owe to animals?

Let me insist on the difficulty to evaluate a theory of animal ethics that cannot be fully theorized until serious attempts to apply it are undertaken. Indeed, the scope of animal agency is still unknown, so the questions of the scope and content of animal participation in reshaping our interactions and how we should integrate their inputs in a legal system are yet doomed to remain unanswered. But without trying to apply a citizenship model we cannot even hope to answer those questions. Their theory is open-ended, open then to revision and reasonable disagreement about its concrete implications. The only thing I can do to determine if the citizenship approach is best suited to address fairly animals' interests is to evaluate the predictions on our positive duties toward animal citizens, which have anyway a "provisional status—open to appeal, negotiation, and ongoing evolution" (Kymlicka & Donaldson 2011: 130) and to evaluate them in view of what I think to be the function of a theory of inclusive citizenship. Such a theory for animals is still in progress, but it has been developed in the human case, which itself can furnish a relevant point of comparison. Really, evaluations here are pure moral commitments, because Kymlicka and Donaldson's theory seems and feels right to me, because they have managed to convince me that it is the most promising alternative in animal ethics to explore. They managed to do this on other grounds, other criteria of evaluation. Indeed, fully committed to follow Ronald Dworkin's general test for reasonable theories of justice, I believe that Donaldson and Kymlicka's approach best interprets what moral equality requires to change in our connections with domesticated animals. I have maintained in the first chapter of this work that the minimal requirement that a theory has to fulfill (to be sincerely interpretable as being committed to moral equality between human and nonhuman animals and as trying to sort out what this equality is requiring), is a strong commitment to an equality of basic inviolable rights. Even if I also claimed that an ethical theory of basic negative rights is not enough to constitute a comprehensive doctrine of animal ethics and justice, I also emphasized that such a theory is a

necessary basis to which a relational ethics of positive obligations has to build on, necessary basis that yet no theory of animal ethics (from extinctionism to the species-capabilities approach) has managed to interpret correctly, i.e., in concretely exemplifying moral equality. It will then be the result of a comparative assessment to endorse citizenship theory over other relational theories of animal rights, provided that citizenship offers a better interpretation of animal rights. Concerning the positive relational obligations I will examine, I will then use this comparative framework.

Duties of political representation

I will only sketch some of the contents of the book on some of the issues they treat. Perhaps the natural way to start is our duties to represent animals in political institutions through “institutional mechanisms that link domesticated animals and their collaborators to political decision-makers.” (Donaldson & Kymlicka 2011: 153). Humans designated to try to understand and respond to animal agency must have a voice in democratic institutions concerning all the areas in which animal interests are at stake. Basically, the goal is to make animals visible, for only in that way their agency is acknowledged as a form of political participation. This is the most abstract and uninformative positive obligation, and on this topic it is only normal to doubt that an animal citizenship framework can offer meaningful guidance. Yet, fundamentally, this framework is the most consistent with the crucial idea that animal interests ought to be represented politically. Indeed the goal of this theory is, through relationships with humans, to enact and unveil the scope of animal agentivity to know their interests better and in a more individualized way, all that with a view to integrate animals as full members of the people, the only means to give them justice since life in the wild is not an option. It is evident that the key articulating duty is to represent animals politically and that this representation will have to enact animal participation (political agency), for if they are capable of participating, to deny them the possibility to do so is unjust and constitutes a mark of sub-membership. The theory of justice guided by a citizenship approach is governed by what Amartya Sen calls “open impartiality” (Sen 2009), open to revision both by reconsidering whose interests are at stake in a debate for a political decision (here including the animals, a move Sen would not do), and open to broaden whose voices are relevant in a public debate

(here the voices of animals themselves and of their human collaborators, because they are the “experts” designated to master what are animals interests⁵⁸)

On the contrary, in a wardship paternalistic model, political representation of animals, because it is done without them, without trying to know what they, as unique individuals, communicate, becomes completely unfounded. Nussbaum believes that the question “who frames the principles of justice?” is independent from the question “for whom the principles are framed?” (Nussbaum 2006: 355). This is essentially true, but if someone can frame the principles but is denied the possibility to participate, then it is unjust and the principles of justice are not framed for him or her. If we politically represent animals as mere patients of justice, we are in fact representing nobody, in addition to being very vulnerable to self-serving conceptions of the interests of animals.

Duties of socialization: or the duties to teach how to respect citizenship duties.

Enough with the abstract and let seek implications that matter directly for domesticated animals. It is of course an implicit (because obvious) reason in favor of giving citizenship to someone who was formerly deprived of it that this individual seems to want to be a citizen, and to want not only its benefits (those coming with special rights such as full protection of the laws, healthcare or mobility rights) but also to comply with the responsibilities it involves. I have talked about it already, but a citizen needs to be able to behave appropriately with his or her co-citizens, i.e. to respect “the reciprocal boundaries of social life” (Donaldson & Kymlicka 2011: 130) in public and private spaces of a society. Concretely a dog has to be street smart and housebroken, and able to respect the private spaces of strangers in the course of their everyday life. That implies not to overtly bark or snarl at people or not to chase cats or rabbits (or not to kill rodents and birds), not to break into people's private property etc. Luckily enough, and quite ironically, the historical process of domination has made domesticated animals kin to live alongside humans, sometimes even searching for contact (just as most of us feel the need to bond with animals). Through selective breeding, neoteny and its set of pro-social, citizenship-ready behaviors

⁵⁸ Such collaborators are of course, the care-givers such as family members but also specialists in animal behaviors, all those who are rightly considered to know better about the interests of some animals.

have been enhanced. This has resulted in the fact that the domesticated animals that are the closest to us (companion animals), the most enmeshed in close and constant relationships, are also the most curious, the most eager to learn the rules, to fit in, and to express their agency through ongoing relationships of interdependency. This is particularly fitting a citizenship framework because it is the most present animals in our everyday interactions in private and public life who will have the most duties of displaying civic virtue. A horse in a large sanctuary who only seeks contact with humans for food and medical care does not need to be street smart. A city dog who wants to go for regular walks in public spaces needs to be street smart. If he or she is unable to comply with the reasonably demanding rules of city or park walks, either the norms will be reassessed (on the claim of being unreasonably demanding and then exclusionary) or he or she will have to be subjected to paternalist control (suffer leash or even muzzle for instance).

Since, just as in the human case, the goal is to include animals as cooperative and accepted members of the community through enabling their social agency, the human caregivers responsible for children animals have the duty to gently socialize them in respecting the rules of their practices of social conduct. Failing to give an animal the opportunity to be a citizen and to learn rules he or she is eager to learn is “a form of abuse”, just as with human infants.

It might still be obscure how this would differ from such a duty in a position 1 theory such as the species norm capabilities approach of Nussbaum. First, a proponent of such an approach is in favor of constant paternalism in the treatment of animals. Sure this duty to socialize involves some paternalism, but socialization, or taught socialization, is a temporary process in the citizenship approach, while it is more likely to be a lifelong process in the species norm model, viewing domesticated animals as “permanent children in this sense, subjecting them to continuous efforts at moulding well past the age when they achieve adulthood” (Donaldson & Kymlicka 2011: 125). The tension in the perfectionist view of species norm is that socialization through human moulding is almost seen as an end in itself rather than a means to “the emergence of agency and the capacity to participate” (125). It seems that the species norm justifies socialization not out of the interests of particular individuals to share a social life but because it is in the typical capacities of such animals to be *trained* that way. Hence, in my opinion, species norm gets vulnerable to the appeal of efficient but coercive and disrespectful methods of training.

The last attractive aspect of a citizenship model on matters of socialization is that it is able to open the range of the people suited for socializing according to the kinds of relations that a child will encounter in his or her life. The young horse in the sanctuary has most of her relations with other horses, it is then the older horses and other farm animals with whom she shares her life that will pass her on the skills required to live in her community. Her involvement in her human community is limited, and if she chooses not to look into closer contacts with humans, these humans have then no right to mould her into the social norms of a mixed community involving mainly encounters with other humans. To say it abstractly, the mixed human-animal community to which each is a citizen of, expects from each of its citizens different things according to the concrete relationship each chooses to have with the rest of the community. The more the community is mixed, the more our duty to socialize children (human and animal) into common social life with persons of other species will be important for co-citizenship to work.

Kymlicka and Donaldson give nine domains in which a citizenship approach could have a significant impact on animals' lives. They go on to great length and many compelling concrete examples both in their initial book and later articles. Political participation and socialization are two of them. But they also treat human and animal diet (i.e. issues of carnivorous diet and predation), human and animal rights to be protected (and the State's duty to protect all its citizen), i.e, to be entitled to the full protection of the law, acceptable restrictions on animal sex and reproduction or animals and humans' right to medical care. Since I have to pick my battles, I will talk about the elephant in the room, the question of the use of animal products and work under a citizenship framework. Evaluated through a basic right framework, their treatment of this question suffices to outscore all other approaches. I will also touch a word on the interesting implications of their views on the question of mobility.

Use of animal products and work force

It is barely worth mentioning that the basic rights of sentient beings impose that killing an animal, for any purpose other than self-defense (a matter of survival), be banned altogether from the citizenship practices of any community. But the

citizenship approach does not make the mistake of extinctionism to believe that all use (even companionship use) of animal products or labor is inherently exploitative and that we should not bring animals into existence with the slightest instrumental motive in mind. The view that any instrumental interest in engaging in relation with someone is incompatible with the respect for this person's dignity is false even in the human case. Then, our authors do not advocate for veganism as a moral imperative. The goal is indeed to include animals as full members of a *cooperative* society. To deprive them from the possibility of being useful is also a form of exclusion, and, as I said in the previous section, there is a sense in which animals want to participate in the give and take of social life.⁵⁹

Yet to determine if a form of animal use crosses the line of exploitation, it is dubious that using an "objective" threshold determined without any real attempt to enact animal agency on these matters and holding only for non-human animals will be consistent with full and equal membership. Yet, it is quite common in animal rights literature to bring some of those thresholds. Hence, for some, a form of use is non-exploitative if it offers animals a better life than they would have managed to work for themselves in the wild (DeGrazia 1996). But we are talking about domesticated animals, unable to survive in the wild, so any life within the exploitative claws of humans will be better than life in the wild. Another theorist uses the very metaphysical evaluative threshold of a comparison with non-existence (Zamir 2007). If animals have a life worth living (better than non-existence) then the benefits we derive from using them are legitimate. Imagine if we would hold this criterion as sufficient to protect children's rights. Translated in human cases these thresholds are not the result of moral reasoning but of self-serving excuses for exploitation.

The line between acceptable use and domination is crossed when the work demanded or the use derived from the animal is not sincerely interpretable as something we could reasonably ask from any other citizen. To precisely draw this line is yet impossible⁶⁰ but strong safeguards can be placed to avoid crossing (without imposing a no use policy). For instance, limiting the working hours of a police horse

⁵⁹ Think about how human children may truly be vexed and feel excluded when adults prevent them from participating in a collective work, or when their participation is denied any value. Whether similar feelings occur with animals would be a great empirical data playing in favor of the citizenship approach.

⁶⁰ Donaldson and Kymlicka use the funny example of the bald person. If it is not easy to tell the numbers of hair under which someone is considered to be bald, yet the distinction between a hairy person and a bald person exists.

and giving him or her a lot of free time where he or she can form social relations. But all propositions of working rights or limitations on uses of animal products are justifiable and to be discussed in public debate only if they are the concrete conclusions of a commitment to enact animal agency in their relationships to us. To be perfectly clear, the goal must be to offer animals the meaningful possibility to choose⁶¹ if they want to participate, in what way, and on what terms. We must seek to provide them with several life options including “a right of exit”, characterized by the possibility to reorient our way of participating or simply by the possibility to retire. If a police horse resists being harnessed in the morning, if a hen hatches her eggs, if a mother cow does not explicitly reject her calf, then these facts should seriously be taken into account when determining what could be legitimately expected of an animal citizen. The resulting general policies could be to strongly limit the commercialization of animal products (produced out of their working force or of what they produce naturally, e.g., wool, eggs, etc.) to limit the profit seeking that makes dependent individuals highly vulnerable to exploitation. Our authors rightly notice that:

In the human context, we see similar concerns about vulnerable groups. Is it best to prohibit children from working for money, or to carefully regulate this work? Or, in the case of people with severe intellectual disabilities, should employment be prohibited, not for profit, or profit-oriented? Prohibition denies individuals an opportunity for reciprocal citizenship. The profit motive generates a responsibility for enormous caution and oversight to protect vulnerable workers from exploitation. (Donaldson & Kymlicka 2011: 138)

Donaldson and Kymlicka argue for a right to be socialized, and a form of socialization may involve training individuals to master some capacities they are interested in pursuing. So this training should not be seen as some kind of moulding to enact the species’ perfection of the individual which is simply a veneer of respect hiding the intention to serve human interests. The fact is that if contribution is a duty of citizenship, a necessary way of gaining the respect of the co-citizens, we should be open to a much wider way of contributing. To uphold the respect of individual dignity, “what is important is that all be enabled to contribute in a way suited to them” (137). That may indeed allow some paternalistic coercion, but such coercion has to

⁶¹ That is, by not putting them in such poor conditions where their preferences can only be adaptive.

be justified in the terms of a citizenship framework. The comparison with human infants is again the best way to exemplify what all this could mean with the training of animals (e.g., training of a dog to become an agility athlete⁶²)

Dogs can benefit from a certain amount of 'stick to it' pressure from their humans, just as a child might benefit from parents who gently pressure her to give the piano lessons a few more tries before giving up. The parents may recognize musical talent, for example, and know that in the long term their child could derive enormous satisfaction from learning to play the piano, even if in the short term she might not see it that way. We trust parents to get this balance right because the overall context is one in which we know they have the child's interests at heart. We quickly lose trust in parents if we suspect that their intent is strictly to create a young performer to satisfy their own whims to hear live music, or to profit financially from the child's piano playing, or to enjoy bragging rights in conversation with other parents. These may all come to pass—that is, parents can benefit from their child's piano playing—but the primary motivation for education should be about the child's interests and development. (Donaldson & Kymlicka 2011: 141)

All these warnings against being self-serving mean in my opinion, that the commitment to a citizenship approach will make morally necessary major restrictions on uses of animal products as well as structural changes in the organization of animal work. I will come back to it in section 4, but if the concrete picture of a zoopolis cannot be fully drawn now because we cannot predict what new relationships with animal citizens will look like, it can still be said that on these issues the society will be quite radically different. It is safe to say that a vast majority of the world may be vegan or quasi-vegan as a consequence of these commitments to the respect of animal agency (not as a commitment to veganism as a direct moral imperative). Even if the theoretical commitment is to allow animals to contribute as citizens, since the practical necessity is to avoid to fall in exploitation by being self-serving, it will be better to err on the side of caution in the actual practice of human-animal instrumental relations.⁶³

⁶² Agility is a human-animal sport in which the human leads his or her dog through a variety of obstacles.

⁶³ The same is true with issues about the work of human children.

mobility rights

I believe that it is in this domain of mobility that the citizenship approach may unfold the most striking and major advances toward justice for animals. Taking seriously the idea that domesticated animals should be members of the community in claiming that they should be our co-citizens implies that animals be allowed to share the public space instead of remaining confined to the margins of the society. A citizen that is physically constrained in a myriad of ways, from being encaged to being muzzled, a citizen who is not allowed in a city or allowed in it only by being leashed even though he or she is capable of sharing the public spaces without causing unreasonable risks to others, is indeed the victim of blatant denials of the full benefits of citizenship. First, all sentient beings have an absolute right against direct physical constraint, only compatible with the application of such constraints when individuals are threatening the basic liberties of others. A paternalistic control over children is also justified until they learn to master their environment. Also, if an individual fails to be able to safely share the public space in some ways (failing to drive cars safely) we may legitimately limit his or her mobility accordingly. But a society must make sure that each of its members has sufficient mobility to lead a flourishing life (“sufficient option test”) and also that limitations are not direct markers of exclusion or indications that the way public spaces are shaped has been decided without considering the particular capacities and interests in mobility of certain groups; e.g., people on wheelchairs, children, animals (“the social inclusion test”). This involves overlapping duties to both reshape the public space to make it more welcoming for all citizens, to critically reassess the restrictions we impose on some to check if they are truly justified and not markers of exclusion, and to make our best to socialize all individuals to make them competent to share the public spaces they want to share (if they want such a thing). Perhaps more generally, it is worth to reaffirm the inclusive ideal of such a citizenship approach, which seeks to include as much as possible all individuals into our communities by enacting as much as possible their capacities and liberties to act upon the scheme of social life.

If all animal activists claim for some diminution on direct restrictions on animals’ mobility, few advocate for providing animals the possibility to reintegrate the

public spaces, and hence nor do they posit a positive duty to rethink public space to fit better the needs of animals. On the contrary, abolitionists-extinctionists tend to have a total cosmopolitan view that sees each and every limitation on animals' mobility as unjust. Indeed, sharing public spaces involves many responsibilities that limit mobility, so again, they claim that animals should live completely free of human socio-political limitations (as if such limitations were not existing between wild animal communities: a society without power relations seems indeed truly utopian). Anyway, against the cosmopolitan impulse we can deny that an unrestricted right to mobility is really what is valuable and instead maintain that mobility matters "because, and insofar as, it is necessary to provide us with access to a reasonable range of options for leading a flourishing life" (Donaldson & Kymlicka 2011: 127).

Again here, it is not totally decidable what a zoopolis will look like regarding animal mobility. Yet it is safe to say that cages will be banned and that the best efforts will have to be made to enlarge animal spaces to sufficiently meet their mobility needs, including way larger pastures for farm animals or enabling off-leash access to all parks for socialized dogs, imposing leash only to dogs unable to behave. If we need to really get concrete, I figured that, just like children need to be tested on their education, some national gradual test of socialization could be imposed on families composed of a dog to assess if the family dog can get access to a certain number of public spaces unleashed, or if he or she needs to be leashed on some places, or, if the dog is really not ready for social life, to be forbidden from some spaces. The test should be reconductible if incidents happen or, on the contrary, if progress has been made, to reassess the level of socialization of the dog family. We could also imagine that if clear signs of failure to socialize the animal are imputable to the neglect of some human, some measures (e.g mandatory classes) be taken by social services. Designing new features of public spaces to enable the agency of four legs members might also be necessary. Here, city planners, ethologists, and animal lovers, all hopefully enthusiasts about the citizenship approach, may be able to imagine many new devices to better include the animals who want to share some public spaces.

Anyway the most urgent stake here in confronting the theory to the actual world is to contest the actual invisibilization of animals and the underlying idea of who belongs to our communities. All of our restrictions on animal mobility are done "as a matter of course, with no sense that such extraordinary restrictions call for extraordinary justification." (129). Safety and hygiene are usual motives for limitations

on the right of animals to share a common space with human communities but when such motives are invoked, our duty is to reassess if they do not hide a discriminatory intention or unjustified “disgust reactions”. As Donaldson and Kymlicka say, signs signifying “no pets allowed” are closer to “No Jews allowed” than to “customers must wear a mask”. It appears that a majority of our restrictions, in addition to being unnecessary and disproportionated

function as social markers of hierarchy. They simultaneously bar certain groups from full citizenship and at the same time help to render invisible those who have been barred. In effect, we are back to the Victorian household in which the servants are restricted to the back stair-second class, and invisible. (Donaldson & Kymlicka 2011: 131)

On the issue of mobility weighs the full relevance of the citizenship approach. When considering public space, it is fundamental to answer the question “who belongs here?” by “all those who can and want to be here, providing that they are our co-citizens, and that includes some domesticated animals” if we want to pursue what justice demands, and what animals demand.

3.4 Is a Zoopolis desirable ?

What would a zoopolis look like? It would perhaps be easier to bet on what it would not look like to soothe some of the anxiety it could create. Plato was already very worried to see this full commitment to inclusion in democratic cities, which ended with this inclusion of domesticated animals into the *demos*.

No one who hasn't experienced it would believe how much freer domestic animals are in a democratic city than anywhere else. As the proverb says, dogs become like their mistresses, horses and donkeys are accustomed to roam freely and proudly along the streets, bumping into anyone who doesn't get out of their way; and all the rest are equally full of freedom. (Plato 1992: 563c).

This fear of animality within animals and men, and of the amoral freedom characterizing it, is an instance of anthropodenial still shared today (Plannic 2014). Indeed, the fear here is that including animals in the *polis* will end up with chaos, because animals are unruly beasts and because their example will weaken the moral

commitment of men to resist their beastly impulses and nature. Hence according to Plannic who draws on Plato, if including animals seems to be the natural extension of democratic ideals, it would in fact lead to chaos and potentially to the tyranny of the strongest. I hope that it is obvious why this worry is unfounded. In a sense, anthropodenial rests on this false view of moral agency which is supposed to work by rationally restraining our beastly and bodily passions. To avoid temptation, it is then normal to also restrain and control those who are thought to be desperately bestial, crucial to not let them interact with us on equal terms. These kinds of perverse conceptions have to be fought against without rest. I hope to have done my part by showing that a better way to capture the full scope of moral agency is by looking at animals' social capacities and propensities to respond to various social norms. There is no "unruly beast", neither among humans nor animals. On the contrary, weakening the effects of anthropodenial might require that we engage in community bonding with the animals that have no other options (but luckily sometimes no other desires) than to live with us.

The empirical evidence that animals do not threaten the civil peace of democratic societies but indeed contribute to its good functioning, notably by enlarging our dangerously narrow and cognitivist conception of moral and political agency, is a good general reason to be interested in theories of inclusive citizenship. Research is made to assess the positive impacts of the presence of animals in our communities . Public parks constitute an interesting "microcosm" "for theorizing about the polis" in relation to animals (dogs especially - who are an easy case I have to admit, yet it is seducible). Indeed:

Dogs provide what Sacks (1992) called "tickets" to start conversations between people who are previously unacquainted.³ Thus dog walking provides a means for owners to decrease their loneliness and social isolation through meeting other people while out walking. Under most circumstances city dwellers do not initiate conversations with people with whom they are unacquainted unless by way of some legitimate mechanism (Sacks' ticket) that provides a basis for a conversation (Laurier et al. 2006: 13–14)⁶⁴

⁶⁴ A "ticket" to start a conversation is a socially acceptable reason to engage in this unusual behavior to start talking to strangers.

Dogs are also said to have a positive impact on the health of their human family members and to increase a sense of safety in parks and neighborhoods, preventing unwanted liminal animal or park users (suspicious individuals, drug users, sexual predators) to settle in the park or to cause harm to other users. This is only one kind of example of practices of human-animal cooperation in relations of interdependent agency directed at improving life in public spaces.

Before I move on to claim how a zoopolis can be made desirable, one may be interested in asking what will happen in such a just society for domesticated animals that are usually killed for our benefits in our society built on the exploitation of animals. Indeed, it is highly probable that many farm animals will not choose, if given the opportunity, to enter in spatially and emotionally close relations with humans living in urban communities.⁶⁵ Yet, there are no (direct and immediate) rewilding options for those animals, so it is still up to us to determine, with them, what will happen to them. And indeed, in a zoopolis where these animals have been made citizens of mixed human-animal communities, it is likely that there will be way less farm animals than there is today. This is easily explained: if the intention to bring them into existence for profit (in itself acceptable) does not legitimize exploitation but must be compatible with the obligations owed to the respect of these citizens, then unless the maximum profit be somehow reoriented to the best respect of citizenship-compatible uses, there will be fewer people willing to breed those animals. Moreover, a citizenship-compatible control of animal's sex life will not tolerate the use of coercive methods of breeding (e.g the use of rape rack to breed cows) and the number of these animals will decrease drastically. The same reproduction rights will allow these animals decent opportunities of choice concerning their sex life so it is also likely that farm animals will not go extinct even if considerably less utility is expected from their existence. Yet, if no or very few acceptable use of these animals can make them cooperative members in a zoopolis, the burden of their existence might be considered too high and the result of a democratic debate on this issue might be a politics of diminution of the natality of such animals.

Hypothetically too, if science and time show that some domesticated animals cannot thrive in mixed human-animal communities, for instance if they cannot respect

⁶⁵ This is one more reason not to worry about seeing cities invaded by large animals.

the duties of citizenship (or if this respect is obtained through a too high price through a prolonged coercive training), or if the burden of the community to give them sufficient options to thrive as citizens is too high, then our authors seem to think that, in a zoopolis, the least evil would not be compassionate and loving exploitation but gentle coercion toward extinction. Cats may not be able to refrain from hunting except if their mobility is restrained so much that it cannot be interpretable as a rightful benefit of citizenship.⁶⁶ They may also not be healthy on a vegetal diet or at least they may never choose it when given the choice between it and a meat-based diet. All this might be problematic and if a citizenship approach reveals itself unable to find effective solutions (e.g., to equip them with bell necklaces, to refrain from feeding the birds in cat households, to feed them with the eggs of citizen chickens) then the extinctionist approach to animal ethics might replace citizenship.⁶⁷

But these problems and others are only potential problems that may not even happen to exist in a zoopolis. If theoretically, extinctionism is possible, one must not forget that our duty is to try everything to avoid it and make a citizenship approach work. If today you believe that a citizenship approach would entail the extinction of many breeds of cattle it may indeed be mostly because your moral sensibility and imagination regarding human-animal relations with those animals are framed by the exploitative society in which we all live today. Hence you cannot picture other motives than profit to breed cows, other uses than exploiting and killing them for cheap meat and dairies, and you cannot imagine the mutually flourishing relations that could arise with them. This is all quite normal, for these animals have been and are still so poorly treated by us, and yet so far from our daily urban lives that we have no idea of how to interact with them. We are complete strangers, but this must not remain hopelessly the case.

In fact, the thing I find the most exciting to imagine in a zoopolis is the moral character of the human inhabitants of the communities. The works of Donaldson and

⁶⁶ Cats have great interests in pursuing their hunting instincts, yet cats killing liminal and wild animals is very problematic in an animal rights framework. The citizenship approach's job is to offer cats a decent opportunity to exercise their hunting skills while avoiding that sentient beings get killed. If this happens to be impossible, then cats' status of co-citizenship would be problematic. As Clare Palmer notes cats are "problematic citizens" because to make them fit into the norms of a citizenship framework seems incompatible with their flourishing. See (Palmer 2013) and (Donaldson & Kymlicka 2013) for this debate about cats' citizenship and restrictions on mobility and reproductive behaviors of our beloved felines.

⁶⁷ It is also possible that the result of a public debate in zoopolis end up with adopting a wardship model of objectively determined justice (through a paternalistic threshold device) rather than an extinctionist model.

Kymlicka deeply activate our sense of justice and our moral imagination about justice. It is funny but not surprising to hear that they have been inspired by Star Trek “ethics for interspecies contact coexistence, and cooperation” (Donaldson & Kymlicka 2011: 257). The actions of the crew of the USS Enterprise and of other ships of the Federation have nothing to do with the way we have colonized and enslaved the earth and some of its conscious inhabitants (human or not). Indeed the diplomats of these ships are formed to a strict ethics of respect, containing many rules for deciding how to establish contact and “to assess the desirability of membership in the Federation’s political community” (257). But our authors then ask us to imagine what would happen if we found a “parrot-like” living being on a foreign planet? Would we seek how to use it? Or of how to enslave it? They believe that, were this to happen, we would be like Star Trek explorers, amazed by this new encounter, seeking to respect and understand it. The goal of a citizenship approach on the moral landscape of the human people of planet earth is to see each animal as such a unique alien, and to reestablish “first contact all over again”.⁶⁸

In a Zoopolis, the human members of the community will value life in more than human families, considering their nonhuman family members as entitled to top quality care from them and good protections (including medical care) ensured by the State. In a zoopolis, I would live in “Sheepville” or “Chickentown” with my fellow citizen chickens and sheeps, deriving pleasure to see sheeps grazing freely, being useful by keeping the grass short in the field of solar panels, preventing the weeds to casts shadow on them, feeding myself and my cat with the surplus eggs of free hens and providing them with large spaces and various leftovers.

Therefore, to come back on the issue of farm animals use, it is possible to imagine that many motives could still motivate people with the ability to properly care for large animals to bond with them and allow them to breed (e.g loving cows, caring for species diversity). Sheer pleasure to see an animal live his or her life freely is arguably a form of acceptable use of an animal (provided that he or she is treated as a full member of the community entitled to exist in and for herself (or himself). To

⁶⁸Of course, nonfictional works are also able to arouse our sense of justice. It could be said that any good theory of justice manages to mobilize our imagination about justice. One obvious example (other than *Zoopolis*) of a theory that has spectacularly managed to do so is Rawls’s theory of justice, with his very imaginative devices of the Original Position, of the Well Ordered Society, or his theory of reflective equilibrium.

finish this part, it might be useful to repeat once more that the biggest unknown is the input of animal participation in the shaping of the community.

In such a society, the idea of killing animals for food would be literally unthinkable. It will not be perceived at all as a sacrifice to refrain from eating meat just as to refrain from cannibalism is not perceived as a sacrifice of our interests. As Donaldson and Kymlicka say, “people do not think of themselves as having a self-interest in eating human flesh, because they do not think of themselves as the sort of people who would even want to engage in that behaviour” (Donaldson & Kymlicka: 254). What our authors show is that a change of moral sensibility can bring a change on how we perceive what our interests are. To change us in the profound sense the citizenship approach intends to change us will of course not be achieved by the theory itself, but the job of moral philosophy is to provide the theory and the arguments to serve as a tool for more holistic or diffuse forms of conscious or unconscious, human and animal, forms of activism. The theory offers guidance and meaning to the current proto-practices and ethos of citizenship. If a priori, it could be seen as way too demanding to frame a theory of positive relational duties in addition to the negative duties not to violate animals basic rights (which are not even close to be respected nowadays), it is actually quite the contrary. Those positive obligations—and the most general of those: to treat domesticated animals as citizens of our communities—are offering moral guidance and the occasion to mobilize our moral imagination around matters that affect us deeply. Indeed, most of us have had meaningful relationships with animals and have felt a sense of responsibility toward them. These are the experiences that the theory helps us to understand by unfolding their moral potential.

In my opinion, one of the great forces of the approach is to be a strong egalitarian rights theory that will not alienate all animal lovers already in or still on the margins of the animal movement, for it does not accuse them of being exploitative in their love relations, while still acknowledging that this love is the beginning of our collective moral task and not the end of it. It is also displaying a spirit of alliance with the Green movement in the case of wild animals, making respect of ecosystems and respect for the organization, practices and territory of wild animal communities concomitant goals while still recognizing individual animals as right-bearers with a unique individuality to be respected. Finally, Donaldson and Kymlicka inscribe their approach within the progressive multicultural struggles. It follows the logic of the

struggles for rights and for membership (through citizenship) that has been held by historically subordinated human groups. The great hope is to include animal activists within the social-democrat left. Only with such large alliances will ideas of strong animal rights be able to gain political traction in democratic societies.

The specific sense of justice mobilized by Donaldson and Kymlicka is widely widespread in the Western world, since it is built on the liberal-egalitarian ethics underlying most of our democracies. Agency and the development of an individualized conception of the good are much valued in such an ethics. Yet it is combined with a strong ethics of membership that takes for granted that particular relationships generate particular obligations. These two elements are part of the underlying set of ethical beliefs of most people living in western democracies. It has then the double advantage of empowering animals as unique individuals with a rich inner life but also as members of particular communities and willing to bond with us. Of course, both the commitment on liberal nation State and on political liberalism itself are contestable, but I agree with Donaldson and Kymlicka that it would be unfair and quite dishonest to claim that moving toward more justice for animals necessarily requires “to wait for a new eco-cosmopolitan order, or the demise of global capitalism” (Donaldson & Kymlicka 2013: 773). Indeed, other minorities do not have to wait for such a revolution to see their rights being improved. When there is injustice, the moral demand for justice is immediate.

I fear that I have not answered the question. Is a zoopolis desirable? It might be too early to say, but every effort made in this work has been to enliven the hope that such a just society is possible, and desirable insofar as justice is desirable.

Conclusion

This last section had something of a conclusion already, but the right way to conclude this work might be by restating what it was and what was its goal. It has been constructed as a propaedeutics to the citizenship approach sketched in the last chapter. The presentation of the approach of Sue Donaldson and Will Kymlicka has itself the role of preparation for a further inquiry into their theory and the related discussions around ideas of animal citizenship. I have only reviewed and commented on their arguments for domesticated animal citizenship (and even here, I only talked about some of their arguments and was nowhere close to the rich and enlightening concreteness of their examples); but they aim at systematicity or at least at comprehensiveness and extend their theory of political morality to other groups of nonhuman animals sharing different kinds of relationships with our communities of human and animal citizens. It is by identifying the relevant relationships with different groups through the scope of the political categories available in liberal nationalism, that they will articulate our particular relational positive obligations to these different groups (e.g., the relation between sovereign communities and sovereign citizens of their community with wild animal communities and individuals and the corresponding duties aiming at the respect of their sovereignty). This group differentiated ethics is always pondered by a commitment to enable the agency of the individual through his or her relations with humans⁶⁹ and this commitment comes from a profound commitment to an ethics of fundamental animal rights itself coming from the moral necessity— indeed the very basis of morality— to respect the equal dignity of all persons, human and nonhuman.

This is why I replaced their approach in the recent history of contemporary animal ethics debates, between equal value and moral hierarchy, between rights and well-being, between compassion and justice, and between wardship and citizenship; always moving from one step to another by advocating for the position which was

⁶⁹ Hence, if one domesticated animal, given a large game of life options, happens to be capable and willing to adopt a feral life, avoiding close contact with humans, his or her status might change in a citizenship approach. He or she is not seeking the full benefits and involvements of citizenship so we have to expect less of him or her and are not obliged to give him or her the full rights of citizenship. If a wild animal gets hurt and cannot resume life in the wild but has to be under the continuous care of humans then it may be established that we should include this animal as a full member of the community and try to enable a new form of agency in relations of cooperation with other human and nonhuman citizens. In a nutshell, relational obligations toward groups may be trumped by particular relationships with individuals.

functioning as a precondition to the citizenship approach - being then the fullest extension of an egalitarian rights theory. I obviously encourage and endorse their politically differentiated approach to human-animal relations. But this work has permitted that if you find yourself in disagreement with a particular political argument of theirs, you know that, in the last instance, their commitment is to moral equality between each human and nonhuman for the purpose of not being sacrificed for the benefit of others. Hence, any reasonable disagreement with their political approach needs to share this more abstract moral commitment. Correlatively, if you reject the “equal rights” premise or the necessity of a theory of relational ethics aimed at securing the conditions for animal agency and freedom, then I hope that their political approach might turn you on these capital moral issues. The rights, relational, and political frameworks (respectively treated in chapters 1, 2, and 3) are conceptually linked, but not necessarily in the order treated in this work to strategically construct a convincing theory. So to start with any of the three moral areas (basic rights, agentivity-seeking-relations, citizenship framework) will end up deriving the two others in a good animal ethics theory. This explains the strategic claim of the authors, aware that the debate over animal rights has lost the battle for political traction over welfarists accounts, that

many of the arguments [they] give for according citizenship to domesticated animals, sovereignty to wild animals, and denizenship to liminal animals do not depend on endorsing the idea of inviolable rights for animals. (Donaldson & Kymlicka 2011: 21)

But one could answer that there is no such rule of consistency regulating the power of conviction of moral arguments. This is true. But I believe that, in the end, dilemmas of consistency will arise. Thrilled by the idea of considering our dogs as family members, friends, and co-citizens, it may happen that the more seriously we take this idea, the more acute we will become to the inconsistencies in our way of relating to other animals. I repeatedly emphasized that good moral arguments were not enough to convince and motivate people to act better. It is crucial to acknowledge this fact in animal advocacy, for our societies are built on animal exploitation. However, no matter how restrained the power of arguments is, we still have to maintain that it is possible to produce in some way some kinds of arguments that will

have some impact on the public faced with these arguments organized in a book, a class, or whatever. If we give up this faith, we are doomed to claim that moral philosophy, with the pretension to be a practical discipline, nevertheless presents only theoretical interest. It would be hard to find a reason to even be interested in such a failed discipline, and I think it would be hard to have any faith in public reason, or in the very idea of truth in morality. When such moral panic invades a person involved in animal advocacy, the tip to regain calm might be as simple as to play a game of chase with your dog.

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