

Of Mosquitoes and Men: The Basis of Animal and Human Rights

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This article discusses the status of animal rights, and more particularly whether these rights may be defended from a natural rights perspective or from an ethical perspective. I argue that both options fail. The same analysis applies in the case of mankind. 'Mankind' does not bring with it the acknowledgement such rights, nor does a focus on what is arguably characteristic of mankind, namely, reason. Reason is decisive, though, in another respect, namely, the fact that reasonable beings can claim and lay down rights. It does not follow from this that animals should have no rights, since human beings may be motivated to constitute such rights, while this provides the most solid basis for them.

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Introduction

In the wake of an ever stronger relativization of the differences between human beings and (other) animals, it has become increasingly difficult to separate a domain of rights to which only human beings should be entitled. It seems difficult to deny that human rights should be acknowledged without also granting the relevant rights to animals, 'relevant' indicating that some rights, such as the right to vote, are of no use to them. Indeed, if one seeks to take a moral stance, this distinction has come under pressure. It is possible to focus on what presumably uniquely characterizes mankind, namely, reason, but it remains to be seen whether this position is tenable.

In section 1, I present an important argument for those who plead acknowledging rights for animals, or, similarly, treating animals well on the basis of moral considerations, namely, the argument from marginal cases, after which I indicate why focusing on mankind as such, i.e., without it being clear which criterion or criteria would purportedly warrant a special treatment, is a cul-de-sac.

Section 2 presents reason as a potential candidate. Kant's view of practical reason as a special faculty is contrasted with an account of reason that does not treat it as something the existence of which *eo ipso* warrants a certain treatment for those endowed with it, but starts from the more realistic and better supportable perspective that reason is simply a faculty that cannot be ignored when granting rights is concerned. The interests of human beings must be taken to heart (by those same human beings) since not doing so would either be inconsistent or unfeasible, or both.

The third section discusses the consequences of this outlook, taking into consideration alternatives such as Singer's. A position that starts from moral dictates is not outright dismissed, but such dictates cannot be decisive as long as it is unclear how they might motivate actions.

1. *Animals vis-à-vis human beings*

The issue of whether animals are entitled to a certain treatment on the basis of the acknowledgment of animal rights or moral considerations is an important one, which has been answered in the affirmative by many, from diverse considerations. There are differences of opinion whether animal *rights* or rather animal *interests* should be the focus of attention, but this is in fact a minor issue as long as their arguments to promote these rights or interests stem from the same motivation for the reason that those who plead animal interests would, presumably, want to transpose those interests into rights. The crucial issue would then be whether things like (natural) rights may be said to exist irrespective of their being realized through a process of legislation. While those who focus on animal interests are not plagued by the justification problem of proving that such rights exist, at least if their claim is that animal interests consist in something that can be demonstrated relatively easily, such as their suffering being ended or prevented, they, too, face the burden of proving on what foundation a moral appeal to those who might remove such suffering should be based. I will return to this issue below.

In any event, if one starts from a moral appeal, the argument from marginal cases (Narveson 1977: 164), meaning that the dividing line between animals on the one hand and cognitively impaired people (and maybe children) on the other cannot consistently be maintained, those clinging to it being accused of 'speciesism', seems difficult to dispel:

[...] those who think moral status does depend on capacity X are forced to draw one of two conclusions. Either they will have to admit that marginal humans do not have moral status because they do not have capacity X. Or if they wish to maintain that marginal humans have moral status they must admit that it depends on something other than capacity X. If this something else is a feature which animals share it must be admitted that animals have moral status too. (Tanner 2005: 53, 54)

There appear to be three options. It may be argued, first, that hu-

mans have natural rights (or moral status) while animals do not; second, that both humans *and* animals have such rights; and third, that *none* have such rights. Those who take the argument from marginal cases seriously would not prefer the second option to the first, but it does not follow from that given that the third option should not be preferred to both. Indeed, there are reasons to consider it the superior alternative, which are persuasive enough to do so, as I will argue.

A strategy to remedy this problem may be to shift the focus from the individual to the species to which it belongs, which includes even individuals who have lost the presumably relevant characteristic or have never had it to begin with. Kateb maintains such a position, by distinguishing between the status of individuals and the stature of the human race (Kateb 2011: 6). Human dignity is defended by Kateb by pointing to both aspects (Kateb 2011: 9). No human beings are thus excluded, providing Kateb with the opportunity to state: “There are people who are so disabled that they cannot function. Does the idea of dignity apply to them? Yes, they remain human beings in the most important respect. If they cannot actively exercise many or any of their rights they nevertheless retain a right to life, whatever their incapacities (short of the most extreme failures of functioning).” (Kateb 2011: 19).

The difficulties become apparent from the following:

I am not saying that when we regard any particular individual we should see in him or her an embodiment or personification of the whole human record, and by that conceit inflate the person into the species, or even allow the full range of demonstrated human capacity to bestow its aura on any given human being or on all human beings equally. No, we deal here with the stature of the species, carrying with it a past that grew out of other species and will be extended indefinitely into the future. But the fact remains that every individual has all the uniquely human traits and attributes that the human record shows. The human record shows and will show, however, a cumulative display of these traits and attributes that surpasses any individual and any particular group or society. (Kateb 2011: 125–126)

The issue resulting from the argument from marginal cases is not, then, resolved by Kateb.¹

Even if the argument from marginal cases is disregarded (if only *arguendo*), those who argue that special moral duties should apply in the case of human beings compared to animals may not, or at least not yet, consider their distinction justified, for they are still faced with the burden to prove, first, *what* makes human beings special, i.e., what quality or qualities single them out, and, second, *why* such a quality or qualities should be sufficient reason to be treated in a special way. In the next section, I will discuss a candidate that has often been preferred: reason.

¹ Besson’s position is equally void: “[...] *human* rights are universal moral rights of a special intensity that belong to all human beings by virtue of their humanity. Human rights are universal moral rights because the interests they protect belong to all human beings.” (Besson 2013: 97).

2. *The import of reason*

Reason seems to be the only quality that can consistently be presented as the relevantly distinguishing one between animals and human beings. Kant is perhaps the most important promoter of such a position. It must be said that Kant does not consider understanding, or reasoning power, the decisive feature: for him, ‘reason’ in the sense of *practical* reason is what distinguishes man in the decisive respect from animal; understanding does lead to a difference, but this is a relative difference (Kant 1903 [1785]: 434–436; Kant 1907 [1797]: 435, 436), which is primarily important in private law. The role of practical reason becomes clear from Kant’s remark that one is to be considered an end in itself on the basis of being autonomous (Kant 1908 [1788]: 87),² which is (supposedly) possible in the domain that one cannot reach on the basis of—theoretical—reason (e.g. Kant 1911 [1781/1787]: A 532 ff./B 560 ff., A 702/B 730, A 800 ff./B 828 ff). (Since this limitation is in place, I say ‘supposedly’.) So the understanding (or reasoning power) does not constitute the decisive ground for man to be considered an end in itself; a being rather has ‘dignity’ on the basis of its capacity to act morally (Kant 1903 [1785]: 435). Autonomy is the basis of the ‘dignity’ of man, and of every reasonable creature (or ‘nature’, in Kant’s words).³

Rather than elaborate on the problems involved with Kant’s defense of practical reason in particular, I will focus on what is decisive for the present discussion, which is the issue of the connection between being endowed with reason (or another quality) and being treated in a special way.

Such a connection is not evident. For example, it may be argued that those who are endowed with reason and who are in addition especially intelligent may use their abilities to display skills where others are unable to do so, resulting in, for example, different incomes, but that situation must not be confused with the present one, which is concerned with the question of whether different treatment should follow from the quality *eo ipso*, and on what *such a connection* would be based, if anything, is unclear.

McGinn rightly adduces the contingent factors that have led to human domination over animals while not being dominated by other beings (McGinn 1993: 147–149), but while this may necessitate a reassessment of mankind’s special position vis-à-vis animals, or at least some of them, it is not clear why a moral obligation towards such be-

² Elsewhere, Kant defines autonomy (of the will) as “the quality of the will by which it is a law to itself (independently of any quality of the objects of volition).” (“[...] die Beschaffenheit des Willens, dadurch derselbe ihm selbst (unabhängig von aller Beschaffenheit der Gegenstände des Wollens) ein Gesetz ist.”) (Kant 1903 [1785]: 440).

³ “*Autonomy* is the basis of the dignity of human and every reasonable nature.” (“*Autonomie* ist [...] der Grund der Würde der menschlichen und jeder vernünftigen Natur.”) (Kant 1903 [1785]: 436).

ings would follow from that consideration. Self-interest may provide a more compelling foundation here: one imagines oneself oppressed and would want to avoid certain experiences that accompany such a situation. In practical terms, this may alter some of mankind's relations with (some) animals, as will be indicated in section 3, but that does not touch upon the present issue of the supposedly moral foundation.

Jamieson's position is similarly problematic. He says: "[...] the community of equals is the moral community within which certain basic moral principles govern our relations with each other; and these moral principles include the right to life and the protection of individual liberty." (Jamieson 1993: 224). A community of equals may be defended: different beings should be treated equally, at least in some respects, on account of the fact that their differences should be considered irrelevant. The step from that given to a supposedly 'moral community', however, is in need of justification. By contrast, if the appeal to equal treatment may be based on self-interest, no such elements need to be added.

The same consideration applies to what Regan⁴ and Francione⁵ observe. As is clear from these quotes, the present considerations apply irrespective of whether one starts from a rights-based approach or from an interests-based one. In both cases, a moral criterion is put forward as decisive, without indicating what this means, let alone on what this would supposedly be based. The first part—i.e., what this means—*may* be said to be clear: isn't it morally right to keep other beings, among which animals, from suffering? To this I would respond that one may at best appeal to something as vague as an 'intuition'; perhaps more troubling, moral appeals may simply be dismissed, as no means to *enforce* such appeals are available lest those appeals not be moral, of course: it is in the nature of such appeals that one should not act upon them from exterior considerations.⁶ What an alternative, 'interior' appeal, perhaps

⁴ "It is [...] the capacity to suffer itself that seems to provide the only adequate grounds for attributing the right in question to those humans, including morons, to whom we wish to attribute it. It is because, like us, morons can suffer, that they, like us, seem to have as much claim as we do to the right not to be made to do so gratuitously." (Regan 1977: 186).

⁵ "[...] if we are to make good on our claim to take animal interests seriously, then we can do so only one way: by applying the *principle of equal consideration*—the rule that we ought to treat like cases alike unless there is a good reason not to do so—to animals. The principle of equal consideration is a necessary component of every moral theory. [...] Although there may be many differences between humans and animals, there is at least one important similarity that we all already recognize: our shared capacity to suffer." (Francione 2004: 121).

⁶ As Kant says: "Insofar the laws of freedom only refer to purely external actions and their conformity to the law, they are called *juridical*; do they also demand that they should themselves be the determining principles of the actions, they are *ethical*; and then one says: the conformity to the former is the *legality* of the action, while the conformity to the latter is its *moral*ity." ("So fern [die Gesetze der Freiheit] nur auf bloße äußere Handlungen und deren Gesetzmäßigkeit gehen, heißen sie *juridisch*; fordern sie aber auch, daß sie (die Gesetze) selbst die Bestimmungsgründe der Handlungen

doing the right thing ‘for its own sake’, may mean I do not profess to know, and remains, I would add, a source of confusion and obscurity. The alternative to argue from self-interest appears to provide a more solid ground to reach the same effects.

This alternative leaves room to distinguish between human beings and animals in some important respects. Reason is, in this approach, the decisive factor, although reason is not a decisive *moral* characteristic, as it is with Kant. It is rather the feature that makes it possible to realize an outcome efficiently, the outcome in the present case being the alleviation of one’s own suffering, and that of other beings, if one has an interest to do so. Crucially, reason is not only the faculty on the basis of which one recognizes that suffering must be alleviated (and the fact that such suffering may in fact remain to a great extent takes away nothing from that observation), but it is arguably simultaneously the decisive characteristic to be granted certain rights, on account of two, possibly related considerations.

First, those who have reason would, if they were oppressed by others (who themselves act on the basis of reason, oppressing those others out of an interest, such as an economic interest⁷), have an interest to rise up against their oppressors, which may result in upheaval or even a civil war. This is sufficient reason for those in power not to oppress others. Slavery was admittedly not abolished in the USA because slaves themselves protested against their treatment, but black people still being treated unequally with white people thereafter, to which they responded with nonviolent *and* violent protests, did contribute to the Civil Rights Act of 1964. The policies of segregation that had been installed had been shown to have become corrupted, since it had become clear that black people were powerful and endowed with reason, both characteristics being intertwined in the sense that pure physical power would not have been sufficient, as some animals are far more powerful than any human being, while this is apparently no reason to grant them any rights. Before black people had the resolute to stand up for themselves or were simply not in a position to be able to do so, they were not treated equally. It might have been possible to leave the policies resisting equal treatment in place, as similar policies would remain in place in South Africa, but that might have resulted, in the worst case, in civil war.⁸

sein sollen, so sind sie *ethisch*, und alsdann sagt man: die Übereinstimmung mit den ersteren ist die *Legalität*, die mit den zweiten die *Moralität* der Handlung.”) (Kant 1907 [1797]: 214; cf. pp. 219, 225).

⁷ This is no academic issue, as slavery is an important historical institution, having been abolished in the U.S.A. as recently as 1865, while black people were oppressed until far into the 20th century.

⁸ I do not discuss here the criticism from other countries (such criticism being directed, incidentally, at South Africa in the 20th century, of course). After all, the fact that they would protest the policies would merely shift the question and would not provide an answer to the fundamental question that would still remain, namely,

Second, for those who have reason to claim certain rights on that basis—in this case from the consideration that reason would *eo ipso* be the relevant moral characteristic to be granted such rights while excluding other beings lacking such a characteristic—would mean their contradicting themselves. This is sufficient to counter Singer’s remark that reason (or rationality) would be an arbitrary characteristic (Singer 2011: 50). It may be considered thus in moral terms, but I have already addressed that option, not starting from any supposedly moral characteristic.

I mentioned that these considerations are possibly related. By this I mean to say that they may together constitute the most plausible explanation in indicating why reason is the crucial factor. It does not by itself command respect for those who are able to act on it, unless respect is taken to mean simply that those who are endowed with reason cannot be overpowered, at least not easily. ‘Power’ has a broad meaning here, for those who are physically handicapped or weak are relevant beings, just as those who are potentially rational⁹ (most children) or fictitiously so (the mentally handicapped, including extreme cases such as anencephalic children). In the latter case, of course, the power is vicarious in the sense that the power of those that protect them is what is decisive; the protection need not be provided by individuals (such as the parents of mentally handicapped or even ‘normal’ children), since on the basis of the foregoing analysis anyone may be said to have an interest in protecting them, so that it would be provided collectively.

This argument may be leveled against those who present the argument from marginal cases. It must be granted that the fictitious cases can be extended to include animals; whether the same consideration may in future times apply to the case of potentially rational beings I cannot say—if certain animals should at some point become (potentially) rational, what is argued here applies to them *for that reason*. Incidentally, reason is not to be equated with intelligence, since a certain degree of intelligence is sufficient to constitute reason and thus being eligible to the right under discussion—the right to be treated equally, which not only prohibits discrimination but protects citizens, or, more generally, legal subjects, against being killed, while various degrees of intelligence may lead to being treated justifiably differently in some cases; for instance, those who have an above average intelligence can, *ceteris paribus*, earn more money than those that have an average or below-average intelligence.

Applying the fiction not only to mentally handicapped people but to animals, too, is certainly possible (if only because a fiction does not refer to a real state of affairs but is, *ex natura rei*, a product of one’s own making), but apart from cases such as one’s affection to a pet it would

why those countries that oppose the policies would do so, and not implement them themselves, instead of acknowledging equal treatment as they have done.

⁹ ‘Reason’ and ‘rationality’ are identified here. They may mean many things, but I will not needlessly complicate matters.

be difficult to see what would be a consideration here, while in the case of mentally handicapped people, such a consideration is evident:

While species, as such, has nothing to do with the case at the level of foundations, there are reasons of a straightforward kind for extending the ambit of morality to infants and morons, etc. We want to extend it to children because most of us want to have our own children protected, etc., and have really nothing to gain from being permitted to invade the children of others; we have an interest in the children of others being properly cared for, because we don't want them growing up to be criminals or delinquents, etc. (and we do want them to be interesting and useful people). And we shall want the feeble-minded generally respected because we ourselves might become so, as well as out of respect for their rational relatives who have a sentimental interest in these cases. (Narveson 1977: 177)

Only those who believe in reincarnation may be motivated to apply the fiction more broadly than this. A similar stance is presented by Posner: "It is because *we* are humans that we put humans first. If we were cats, we would put cats first, regardless of what philosophers might tell us. Reason doesn't enter." (Posner 2004: 67)

Since reason is both the characteristic of those who may decide to treat beings in a certain way and the characteristic they consider crucial (on the basis of self-interest, if I am correct), reason is significant in two respects. First, it is what the beings who are able to assert rights share in common (which is an actual given, so that this may be called 'factual equality', and more specifically 'basic equality', in order to specify the decisive characteristic, which is reason, so that basic equality may in turn be specified by 'basic rationality'), and, second, it is the characteristic that is decisive in determining the extent of equal treatment (which may be called 'prescriptive equality'). So the same beings that are able to decide which beings should be treated equally are those to whom equal treatment is applied. Singer seems to overlook the fact that these two levels must both be acknowledged.¹⁰ He says: "Equality is a basic ethical principle, not an assertion of fact." (Singer 2011: 20). Yet a little further on, when the prescriptive level is addressed, he observes: "The essence of the principle of equal consideration of interests is that we give equal weight in our moral deliberations to the like interests of all those affected by our actions." (Singer 2011: 20). After all, this means that 'equality' is not only used at the prescriptive stage, but has a descriptive component: 'all those affected' are apparently (in the relevant respect or respects) equal, in order to be considered for equal treatment. When Singer subsequently states "What the principle really amounts to is: an interest is an interest, whoever's interest it may be." (Singer 2011: 20), this still presupposes (basic) equality. It just means that one abstracts from all traits save the ability to suffer.

¹⁰ I do not mean to say by this that reason must also necessarily be the decisive element, since I may simply be mistaken, but rather the fact that a descriptive level must be in place before certain behavior is prescribed. Incidentally, in my alternative, prescription does not imply moral prescription, or normativity in that sense.

I will readily grant that mine is a ‘minimalistic’ position, and that only the *necessary* conditions for such beings to live peacefully together have been outlined; one may argue that (some of) the obligations towards reasonable beings should also apply to beings that lack reason. This will be discussed in the next section.

3. *A realistic perspective*

In the previous section, I argued that reason is the feature on the basis of which rights should be granted, and that this feature has also been decisive in realizing legislation to grant and protect rights. This accounts for the different treatment of animals and human beings, the first not being protected in the most basic sense of being killed.¹¹ For example, I know of no instance in which killing a mosquito is punishable. (Those who consider this example misleading on account of the fact that mosquitoes may be a nuisance or even harmful may exchange it for another animal, to which this does not apply.) Still, it seems I have overlooked an important issue. Is the reason why some animals may be killed or even treated cruelly while others should be left unharmed not simply that the first kind does not suffer, lacking a central nervous system, so that the issue of harming them would be moot in the first place? Perhaps, but that merely specifies the question: do those animals which *are* capable of experiencing harm have natural rights or moral status?

It may be useful to first consider the position of human beings. ‘Mankind’, or ‘humanity’, is arguably an invention, a notion to encompass all human beings (without it being always clear what it means to qualify as a human being), so as to reach a stage where divisive characteristics, such as religion, race or gender, are not decisive to be granted certain rights.¹² There does not seem to be a compelling reason, prior to this invention, for those in power to extend the rights to those not in power, and it is not surprising to find such changes realized only (shortly) af-

¹¹ There are, admittedly, some exceptions to this rule, laws being in place that protect animals from being treated cruelly, but, first, a lesser sentence applies in being cruel towards an animal than in being cruel towards a human being (*ceteris paribus*), and, second, such legislation is arguably drafted with the interests of human beings in mind (for example, the owners of pets or farm animals, who have an interest in their being protected). The German Constitution provides a clear example from another perspective. Article 20a starts thus: “Der Staat schützt auch in Verantwortung für die künftigen Generationen die natürlichen Lebensgrundlagen und die Tiere...” (“The state protects, mindful also of its responsibility towards future generations, the natural foundations of life and animals...”) Animals are obviously (at least partly) considered as means (for future human beings).

¹² While *homo sapiens* is a species (with the subspecies *homo sapiens sapiens*), determined on the basis of biological criteria, ‘mankind’ (or ‘man’, or ‘humanity’) has become an honorific in law. Biology describes the characteristics of human beings while law prescribes that human beings should be treated in a certain way. Still, the link between being a (human) being and being treated in some way is not evident and, not coincidentally, construed by human beings themselves.

ter the power balance has shifted. In the cases where this was not, or not necessarily, a consideration, such as in the case of the abolition of slavery in the USA, it is clear that one would act inconsistently by allowing conditions one would not oneself find acceptable or agreeable to live under to apply to other beings that are not in the crucial respect or respects different from oneself. In the case of black people being held as slaves, this situation is clear once one realizes that they are rational beings (in the sense of basically rational indicated in the previous section) just as white people are, and that this would be sufficient to grant them the same rights they—i.e., the white people—have established for themselves. The same consideration applies, *mutatis mutandis*, to the extension of suffrage to women, one's gender now acknowledged not to be a relevant characteristic here.

The foregoing analysis does not point to any moral elements, and both the original allotment and the extension of rights may more convincingly be argued to be based on self-interest. 'Humanity' is not, then, something special on the basis of which rights should be granted or one should be treated in some 'morally acceptable' way. In fact, 'humanity' is such a general, and even vague, word that it hardly has a meaning, or if it has one, it may be linked to, ironically, arbitrary traits, such as the human body; the difficulties a position such as Kateb's faces¹³ were indicated in section 1, while reason is not really the decisive characteristic, since mentally handicapped people are fictitiously considered to be reasonable beings, simply because it would apparently be unwelcome or unacceptable not to do so and to treat them as things. It is clear that such a course of action does not constitute a reflection of reality but is rather a moral appeal or a political solution, while I have argued that the former, a moral appeal, is not decisive here.

Those who defend animal rights,¹⁴ or moral treatment of animals (e.g. Singer 2011: 50), would further abstract and might use 'animality' instead of 'humanity'. Depending on how one deals with matters such as the argument from marginal cases discussed above, 'animality' would be more consistent than 'humanity' (because of the fact just mentioned, that a characteristic such as the human body is obviously no serious candidate to be used as a criterion for some treatment), and in that respect Singer's contribution is valuable. This still raises the question, though, why one should take the interests of animals to heart. Singer maintains: "If a being suffers, there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that the suffering be counted equally with the like suffering—in so far as rough compari-

¹³ Kateb (rightly) dismisses a focus on bodily traits (2011: 133), but does not prevent a viable alternative.

¹⁴ E.g. Donaldson and Kymlicka 2014: 25: "The basic premise of ART [animal rights theory] is that whenever we encounter [...] vulnerable selves—whenever we encounter 'someone home'—they need protection through the principle of inviolability, which provides a protective shield of basic rights around every individual."

sons can be made—of any other being.” (Singer 2011: 50). What he says is perfectly understandable, but being capable of suffering is merely a criterion to determine whether interests may be relevant: those who may suffer have an interest not to. It does not necessitate those who understand this given to abstain from causing their suffering, or to alleviate it. This given does not, in other words, entail the motivation to act in accordance with it. This motivation *is* clear in the case of human beings: allowing harmful behavior would be undesirable as one might oneself fall victim to it and in the most extreme scenario, living together peacefully might cease to be possible.

Supposed animal rights, prior to their being included in man-made law, are no more and no less difficult to substantiate than supposed human rights, and an appeal to acknowledge animal rights on the basis of the fact that human rights exist is nothing other than the extension of a starting point that has not been justified itself.¹⁵

The foregoing does not necessarily lead to the conclusion that human beings should be allowed to do with animals whatever they want, animals being treated as things in this regard. What was decisive before in forestalling animal rights or some treatment on the basis of supposedly moral considerations, namely self-interest, may now be appealed to in order to prevent this outcome. Self-interest in a narrow sense may not reach this result, for if ‘self’ is taken to refer only to the person who acts, it may be in one’s interest, e.g., to eat meat, while some may even have an urge to harm animals for their enjoyment, the fulfillment of which would conflict with laws forbidding such behavior. ‘Self-interest’ may, however, alternatively be taken to extend to a greater domain of subjects, and if animals are considered to be such subjects, there would be sufficient reason to take their interest into consideration.

This use of ‘self-interest’ may be considered a rhetorical trick, simply utilizing a definition of my own making to reach an outcome that is counter-intuitive. This line of reasoning is not, however, as strange as it may be taken to be. In fact, what has already been said does not deviate from it. I have already pointed out in section 2 that the fiction of rationality is applied to children, ‘normal’ children being potentially rational, and may be extended to some animals (such as pets) on the basis of the same consideration why it applies to children for some people.¹⁶ I would argue that ‘indirect self-interest’ is at stake in cases where one’s own interest (i.e., ‘direct self-interest’) is not an issue, while the interest of another being one seeks to serve is relevant, experiencing some

¹⁵ Cf. Bentham (1843: 500): “How stands the truth of things? That there are no such things as natural rights—no such things as rights anterior to the establishment of government—no such things as natural rights opposed to, in contradiction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error, and to that sort of error that leads to mischief—to the extremity of mischief.”

¹⁶ I say ‘for some people’ because other considerations, discussed in section 2, may be decisive for all people, including those who do not themselves have children.

bond with that being.¹⁷ Parents make certain, sometimes great, sacrifices for their children. (This consideration applies *a fortiori* to some animal species, although this may be fully contributed to instinctual factors.) Some people may experience a bond with their pets similar to that of children. This does not warrant the same treatment that applies to children (as other considerations apply to the case of children), but it does provide an argument to take their interests seriously.

The foregoing gives rise to two problems. First, a ‘popularity contest’ may ensue: the cutest or cuddliest animals should be treated well, while other animals, which do not incite feelings of affection, should continue to be treated as mere things. Second, a demarcation line between various sorts of animals seems difficult to draw. Perhaps dogs should be protected from harm, but what about, perhaps in descending order of importance, a seagull, a mosquito or an ant?¹⁸ (I have already remarked that the nuisance or harm some animals themselves produce may be a relevant factor.) Both issues may be dealt with from the perspective of those who decide which rights should be granted, and to which beings. Those who make such decisions are those who are basically equal, and, more specifically, basically rational; their interests may, as was indicated, follow from the idea of indirect self-interest. One may on that basis, for example, distinguish between domesticated and non-domesticated animals: “What distinguishes DAs [domesticated animals] from other animals is that we humans have brought them into our society.” (Donaldson and Kymlicka 2014: 204). However, Donaldson and Kymlicka qualify the relationship in terms of duties and the extension of citizenship (to the domesticated animals) (Donaldson and Kymlicka 2014: 204, 205), and even remark: “[...] domestication makes the extension of citizenship both morally necessary and practically feasible.” (Donaldson and Kymlicka 2014: 205). The latter—the practical feasibility—is defensible, but the substantiation for the former—the moral necessity—is not provided, and may not be forthcoming as the burden of proof may be too great.

In *practical* terms, no great differences need arise between my position and one that starts from moral appeals, and animals themselves will, presumably, not care on what basis they are treated in some way. In both cases, legislation may be implemented on the basis of which animals, or at least some animals, are protected. The underpinnings of such legislation are wanting, however, in the latter case, which is an important reason to exchange it for a more viable alternative, such as the one I have defended.

An approach such as this does not solve the problems mentioned above, and may not even confront others that have remained undis-

¹⁷ The demarcation line between direct and indirect self-interest is difficult to draw. I will not explore that issue here.

¹⁸ Taking the interests—or supposed interests—of the latter animals seriously would effectively mean resorting to actions such as those performed by Jains, such as sweeping the ground before walking on it.

cussed here, but the alternative of clinging to moral terms without their meaning having become apparent, let alone how they might compel one to act in one way rather than another is less appealing. Should the role of such terms become clear at some point, I would be willing to substitute this alternative for my own position, but it seems safe to say that, at least for now, such a skeptical—or pragmatic—stance is the most acceptable, to which I would add that the desire to be able to make a moral appeal on the basis of natural rights is not the same as the proof of their existence.¹⁹ The same reasoning applies to a moral appeal.²⁰ If people are motivated, on the basis of indirect self-interest, to end the suffering of (some) animals, it will not be a problem to realize legislation that protects their interests, and such legislation will in that case even be desirable.

Conclusion

It is difficult to maintain that human beings should be granted the most important rights while these should be withheld from animals if one bases one's claim on an account of natural rights or on an ethical theory. It does not follow from this discrepancy, however, that animal rights must be acknowledged, as human rights have been acknowledged, for such a basis for human rights is wanting, their defenders' accounts. Arguing that animal rights should be acknowledged as natural rights would only compound to the justification problems natural rights theorists and ethicists face. Still, concluding from this that the opposite result should follow, and that animals should not be protected in any way, attests to an obvious false dilemma, since a third option is available. I have defended such an option, maintaining that rights are generally realized on the basis of self-interest, in the broad sense of indirect self-interest, and that the protection such rights provide may be extended to include (some) animals. The practical results need not significantly differ from those reached on the basis of an approach such as Singer's, but their foundation is arguably more stable, self-interest providing a more solid starting point than a moral appeal.

¹⁹ Cf. Bentham (1843: 501): "In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights;—a reason for wishing that a certain right were established, is not that right—want is not supply—hunger is not bread."

²⁰ Bentham is known for his focus on suffering, relativizing in light of the fact that (some) animals share this ability with human beings the other characteristics (i.e., reason and the—related—ability to speak) that distinguish them (Bentham 1843 [1789]: 143, Ch. 19), but this may also be construed as a demonstration of what consequences would follow from a consistent line of reasoning. Bentham's straightforward outlook and his view on morals invite such an interpretation: "The whole difference between politics and morals is this: the one directs the operations of governments, the other directs the operations of individuals; their common object is happiness." (Bentham 1843 [1789]: 12, Ch. 2).

References

- Bentham, J. 1843. *Anarchical Fallacies*. The Works of Jeremy Bentham, vol. 2. Edinburgh: William Tait
- Bentham, J. 1843 [1789]. *An Introduction to the Principles of Morals and Legislation*. The Works of Jeremy Bentham, vol. 1. Edinburgh: William Tait.
- Besson, S. 2013. “International Human Rights and Political Equality: Some Implications for Global Democracy.” In E. Erman and S. Näsström (eds.). *Political Equality in Transnational Democracy*. New York: Palgrave Macmillan: 89–123.
- Donaldson, S. and Kymlicka, W. 2014. “Animals and the Frontiers of Citizenship.” *Oxford Journal of Legal Studies* 34 (2): 202–219.
- Donaldson, S. and Kymlicka, W. 2011. *Zoopolis. A Political Theory of Animal Rights*. Oxford: Oxford University Press.
- Francione, G. 2004. “Animals – Property or Persons?” In C. Sunstein and M. Nussbaum (eds.). *Animal Rights: Current Debates and New Directions*. Oxford: Oxford University Press: 108–142.
- Jamieson, D. 1993. “Great Apes and the Human Resistance to Equality.” In P. Cavalieri and P. Singer (eds.). *The Great Ape Project: Equality Beyond Humanity*. New York, NY: St. Martin’s Griffin: 223–227.
- Kant, I. 1903 [1785]. *Grundlegung zur Metaphysik der Sitten*. Kant’s gesammelte Schriften. Erste Abtheilung: Werke, Band 4 (Kant’s collected writings. First section: works, vol. 4). Berlin: Georg Reimer.
- Kant, I. 1907 [1797]. *Die Metaphysik der Sitten*. Kant’s gesammelte Schriften. Erste Abtheilung: Werke, Band 6 (Kant’s collected writings. First section: works, vol. 6). Berlin: Georg Reimer.
- Kant, I. 1908 [1788]. *Kritik der praktischen Vernunft*. Kant’s gesammelte Schriften. Erste Abtheilung: Werke, Band 5 (Kant’s collected writings. First section: works, vol. 5). Berlin: Georg Reimer.
- Kant, I. 1911 [1781] *Kritik der reinen Vernunft*. Kant’s gesammelte Schriften. Erste Abtheilung: Werke, Band 4 (Kant’s collected writings. First section: works, vol. 4). Berlin: Georg Reimer.
- Kant, I. 1911 [1787]. *Kritik der reinen Vernunft*. Kant’s gesammelte Schriften. Erste Abtheilung: Werke, Band 3 (Kant’s collected writings. First section: works, vol. 3). Berlin: Georg Reimer.
- Kateb, G. 2011. *Human Dignity*. Cambridge, MA/London: The Belknap Press of Harvard University Press.
- McGinn, C. 1993. “Apes, Humans, Aliens, Vampires and Robots.” In P. Cavalieri and P. Singer (eds.). *The Great Ape Project: Equality Beyond Humanity*. New York, NY: St. Martin’s Griffin: 146–151.
- Narveson, J. 1977. “Animal Rights.” *Canadian Journal of Philosophy* 7 (1): 161–178.
- Posner, R. 2004. “Animal Rights: Legal, Philosophical, and Pragmatic Perspectives.” In C. Sunstein and M. Nussbaum (eds.). *Animal Rights. Current Debates and New Directions*. Oxford: Oxford University Press: 51–77.
- Regan, T. 1977. “Narveson on Egoism and the Rights of Animals.” *Canadian Journal of Philosophy* 7 (1): 179–186.
- Singer, P. 2011. *Practical Ethics*. Cambridge: Cambridge University Press.
- Tanner, J. 2005. “The Marginal Cases Argument: Animals Matter Too.” *Think* 4 (10): 53–62.