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Human Rights and Animal Rights: Differences Matter

Tine Stein*

Abstract: »*Menschenrechte und Tierrechte: auf die Unterschiede kommt es an*«. This critique of Sue Donaldson and Will Kymlicka's important book, *Zoopolis*, asks in what respect humans and animals categorically differ and to what extent this difference counts in a moral sense. Second, the text explains why it is illegitimate to equate human victims of racial discrimination and murder with tormented and killed animals. Finally, it is demonstrated why the conceptual analogies to animals presented in this book, namely 'co-citizens' as a term for animals that live in companionship with humans, 'denizens' for those animals that cross borders between human and natural living spaces, and 'sovereign nations' for wild animals, have to be interpreted as overstretched analogies. The main thesis is that the promise of the book – to develop a political theory of animals' rights – remains unfulfilled.

Keywords: Zoopolis, citizenship, human-animal relations, animal rights, human rights.

1. *Zoopolis* and the Restructuring of Human-Animal Relations

Zoopolis is a large-scale outline of a political theory based on human-animal relations (Donaldson and Kymlicka 2011). The authors' intention in developing discussions on animal ethics and rights, which usually stagnate in moral-philosophical statements on a political level needs to be acknowledged. Donaldson and Kymlicka aim to restructure human-animal relations fundamentally and apply their conclusions, derived from insights in moral philosophy, to the political sphere. In particular, the authors aim to show how changing the political status of animals can change human behaviour towards them; such behaviour ought to comply not only with negative (omission) duties but also with positive (performance) duties. They group animals into three categories based on their relations to humans: (1) domesticated animals which live together with humans, (2) wild animals which live in their natural habitats (often limited by expanding human civilisation) and finally (3) liminal animals, which immigrated into human living spaces and live as commuters between the wilderness and

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human dwellings. Donaldson and Kymlicka assign political concepts to these three groups: domesticated animals are associated with the concept of citizenship, meaning that the animals should be considered as co-citizens; wild animals are connected with the concept of sovereignty and are to be understood as independent communities outside human units, commanding respect for their territorial integrity; and finally liminal animals are linked to the concept of denizens, who as migrants should be able to profit from basic rights without being citizens and, therefore, carrying the associated rights and duties. Applying these political concepts to animals leads the authors to make claims regarding the arrangement of human-animal relations that can also be found in the “traditional” animal rights movement. For instance, they demand that commercial use of animals is renounced, and in general replace the idea of a utilisation of animals by the notion of bilateral cooperation. Moreover, the authors’ demands regarding the freedom of animals, especially freedom of reproduction and freedom of movement, as well as their demands for a consideration of wild animals in their habitats when building human living space and infrastructure, are well-known in the traditional literature on animal rights.

With reference to the numerous specific suggestions relating to the organisation of human-animal-relations, such as the ban on cruel and unethical intensive livestock farming for meat, egg and milk production, the authors will receive wide approval. Furthermore, the demand for the preservation and defence of animal habitats against human interests, which has always been a core element of the conservation movement, will convince many readers. The authors could even have demanded more extensive changes in human behaviour which threatens animals, since the modern industrial way of life and its consequences for natural resources have put wildlife areas at risk. The changes in the habitats of polar bears due to climate warming constitute a famous and telegenic example. Indeed, thousands of animals are struggling to adapt to changing natural surroundings, which more often than not means that they will face reduced living spaces and thus decreased opportunities to find adequate food. Moreover, for decades zoologists have reported on a singularly serious historic extinction process of species. These aspects are – surprisingly enough – hardly considered in *Zoopolis*. However, the main critique that I will present in the remainder of this contribution will not address missing reflections for those demands which do find wide approval anyway. My main point is about those other demands that seem to preach to the converted and will convince people who already believe, with the authors, in the fundamental equality between humans and animals and, therefore, accept the transfer of political concepts to human-animal-relations. The author of this comment does not agree with the premise of equality, considers it implausible and, consequently, cannot approve the resulting demands.

In the following, I will first present some reasons that speak against awarding equal moral status to humans and sentient animals. By ‘equal moral status’

I refer to the assumption outlined in *Zoopolis* that there is no categorical difference between sentient living beings which can bear the burdens of proof of a different moral status (Donaldson and Kymlicka 2011, 24-32). Moral status in general refers to a quality that is defined in one's having universal rights (not necessarily moral duties). This controversial topic has often been the subject of discussion, for some to the point of indifference, but will nevertheless still need to be addressed here. As a result, the analogy between the oppression, killing and exploitation of humans and the suffering of animals is to be viewed critically. The transfer of political concepts to human-animal-relations, especially to wild animals, is to be rejected. A political theory of human-animal relations should consider further aspects.

2. Contesting the Presumption of Equality between Humans and Animals

Animals have an intrinsic value as sentient beings. Thus, as humans, we have duties towards animals, even extensive duties, which not only involve omissions, such as preventing suffering through intensive livestock farming, but may also include positive duties in terms of providing services for animals. For example, humans have to protect animals' living spaces and their developmental capacities. However, animals do not have the same moral status as humans. What is the difference? Let us first summarise the similarities between humans and animals. As ethological animal research has shown (confirming what many non-scholars experience with animals in their households), animals are social creatures which communicate, are capable of showing empathy and on this basis cooperate socially, even with other species. They are capable of behaving altruistically and sometimes also appear to have a kind of self-awareness. Nevertheless, a categorical difference from humans exists: animals are not capable of adopting an "eccentric position." By this formulation, the philosophical anthropologist Helmuth Plessner means that humans are characterised by, among other aspects, awareness of their centre as distinct from their environment and that they can refer to this middle of the self in a reflexive manner (Plessner 1985 [1928]). Animals do not have the ability to "see themselves from the outside" as the German philosopher Robert Spaemann, drawing on Plessner, has put it (Spaemann 2001, 471).¹ On this basis, they cannot relativise their own interests and set general rules which fulfil the criteria of moral generalisability. This leads to an argument put forward by the American philosopher Christine Korsgaard. With recourse to Kant, she states that humans have a

¹ It is worth noting that Spaemann is strongly in favour of an ethical treatment of animals. However, he does not base his arguments for animal protection on equality.

normative self-image which makes it possible to question one's own behaviour and to judge whether one's actions are justified or not (Korsgaard 2014, 263 et seq.). This capacity for normative self-determination, i.e. the ability to behave autonomously, is the core element of being a moral creature, in other words, a person, and – as far as we know – animals do not have this ability.

It is essential to highlight two aspects of this controversial, sometimes even polemical, debate. (1) If one insists on this categorical difference, it does not, at the same time, indicate that animals do not have intrinsic moral value. Additionally, it does not lead to denying animals' individuality. Animals are individuals too; they have interests – to live, to reproduce, to eat, to move, to play, to cooperate – but they cannot be considered as persons in terms of the philosophically and historically developed meaning of this concept. We do have duties to animals as sentient beings, but not because they are persons as humans are. (2) A second aspect concerns the objection from what is sometimes called the non-paradigm argument. According to this argument, an important question should be posed. Given that we consider the capability to act along the lines of normative self-determination as the embodiment of the unique human dignity in the personality of humans: Does this entail that individuals who have not yet shown this capability, such as toddlers, or cannot exhibit this behaviour any longer, such as dementia patients, or cannot display this capability at all, as in the case of some handicapped people, cannot be regarded as persons? If this were the case, it would mean that these individuals would be humans without human dignity status. However, according to Korsgaard as well as Spaemann there is a difference between those who belong to a particular species that is defined by personhood in the above mentioned sense and those who belong to a different species. In the case of the various species of non-human animals, their inability to develop a normative self-image is not a divergence or defect, as it would be for a young, sick or handicapped human being, but follows from their nature.

To sum up, it can be argued that being human and being a person fall into one and the same category through their joint affiliation with the same genus. This view cannot be criticised to constitute an instance of 'speciesism.' This objection is based on the assumption that there is in fact no relevant difference between humans and animals which can justify a differential treatment. According to the critics of speciesism, emphasising a specific feature of human beings in order to explain their priority over animals cannot be anything but a purely ideological argument and thus has to be seen on the same level as the arguments of those who believe differences in human 'races' to justify slavery. However, stressing the categorical difference between humans and animals does not inevitably lead to the assumption that animals do not need moral consideration and thus does not justify their unethical treatment. Moreover, this objection opens itself up to critique, because those who deny the categorical difference between humans and animals and who instead draw a line at the criterion of sentience cannot help but categorise themselves. In terms of hu-

man-animal-relations' composition, the significance of being a person is greater, because it shows us the responsibility we have as humans for animals.

3. Illegitimate Comparisons

The different moral status of humans and animals entails that there is a difference between the killing and exploitation of humans and animals. In order to avoid misunderstandings here, it needs to be stressed that this does not mean that the killing and exploiting of animals is generally legitimate. Rather, animals have to be treated in a just way, more specifically, a species-appropriate way. However, if one group of people intends to kill and exterminate another group of people, and for this purpose discredits them as subhuman or nonhuman beings, as was the case during the Holocaust, their criminal behaviour is of a different order than that of causing animals harm and pain, or of confining them permanently in tiny cages until they are finally killed. Whereas the Nazis murdered other human beings for the most abhorrent reasons one can imagine, namely to extinguish a specific group of people of equal human status, the killing of animals for the production of food is not led by hatred and the will to extinguish equal members of humankind. Thus, cruel as these battery hen units are, they should not be described as manifestations of an "eternal Treblinka"; this comparison is not just polemical but illegitimate. Moreover, the equation of the mass murders of the Holocaust with battery hen units is apt to trivialise the unparalleled/singular event of the Holocaust.

The comparison of animals exploited for the production of food or for medical purposes and enslaved Africans is illegitimate in the same way, and the same holds for the comparison of the victims of ethnical cleansing with the displacement of rats from human domiciles. Furthermore, following the case of a campaign by the animal rights organisation PETA a couple of years ago, if photos of Holocaust victims and photos of battery hen units are placed side by side,² the degradation of the people pictured in concentration camps is exploited for the purposes of animal protection. Although in a lesser way, the same holds true for all similar kinds of comparisons, not only for visual representations, where the remembrance of human victims serves to illustrate animal suffering. In all such cases, the equation of human and animal suffering is highly problematic.

² Wikipedia. *Animal Rights and the Holocaust* <http://en.wikipedia.org/wiki/Animal_rights_and_the_Holocaust> (Accessed June 1, 2015).

4. Overstretched Analogies

The most important critique from a perspective of political theory addresses the conceptual analogies that were chosen in order to substantiate this frame of just human-animal relations theoretically. To categorise the animal kingdom in three groups is very enlightening. However, the correlation of the three political concepts of citizenship, denizenship and sovereign nationhood with these groups fails to convince. First, it is not clear at all whether this attribution of political terms is meant metaphorically and implemented for heuristic reasons in order to shed light on the possibility of human-animal relations based on equality, or if this attribution is intended as a genuine ascription (rats like refugees or rats as refugees). The plausibility of this conceptual transfer without further explanation makes sense only for those who go along with the assumption of an equal moral status for humans and animals. For all those who do not, the conceptual transfer remains a metaphor, which can at best lay open some similarities between the relations among humans and the relations between humans and animals. However, the original justification of this transfer cannot be readily deciphered.³ To give an example: the statement that wild animals build a “community” raises the question of whether or not “community” is used here in the sense of thick relations, or if alternatively the reference is to a society whose members are, in comparison, loosely connected. What is meant here with regard to the classical sociological differentiation between the terms “community” and “society,” as well as in many other cases where social theory has created specific definitions for its concepts?

This question needs to be asked more specifically with regard to the concept of “political community,” a type of communality which, according to the authors, is to be formed between humans and domesticated animals. The authors’ use of the term “politics” has to be scrutinised carefully. Does “politics” here refer to fulfilling the interests of those who live within a state, and to the process of how conflicting claims about the respective interests are to be resolved? In the tradition of normative political theory, such a notion of politics can appear very restrictive. For modern conceptions of normative political theory, politics is the process of citizens acting together by means of communication, governing themselves on an equal footing and setting up rules for public affairs. However, the authors do not see a problem in the fact that animals by themselves are incapable of being independent actors in the political community of discourse and consequently need to rely on collaborators who translate and represent their interests. In their view, this is also sometimes the case with some handicapped people who are also dependent on support in order to claim their interests. Nevertheless, this is not a convincing line of argument with

³ See for this critique also Kazez (2012).

regard to the aforementioned characteristic of personhood that belongs not only to some humans, but to all humans, and thus to handicapped people as well.

As argued above, personhood embodies the capability of normative self-determination, which, in a specific sense, is relevant in the political sphere too. When we come together in the political community in order to assign ourselves rules that aim to fulfil the criteria of a just arrangement in public affairs, then we do this presuming that primarily we do not all have our own interests and our particular good (welfare) in mind, but that we all argue for laws that uphold the criteria of generalisability – in other words: laws that are fair and regulate public affairs as defined by the public good. This is at least the claim from the perspective of normative democratic theory. We cannot demand the realisation of this normative standard from animals because they do not have the capacity to act according to normative self-determination that is associated here with the political sphere. Consequently, this cannot be demanded from their trustees either and we cannot, therefore, build a political community with animals. A political community can be composed only of equal members based on personhood. This does not mean that all members necessarily have the same rights all the time. For instance, children do not have all the rights of adult citizens. Further, even if we grant ‘rights’ to animals, these rights do not represent the rights of equal members of the political community. Animal rights are of a different character – they reflect the duties we have as persons towards sentient beings but do not correspond with membership in a political community. With the inclusion of animals, the normative standard of democracy would become bizarre. This holds true even if animals would not be entitled to vote. The picture that is painted in *Zoopolis*, illustrating the political representation of animals, remains vague (Donaldson and Kymlicka 2011, 153 et seq.).

A further problem that goes along with this ambiguous transfer of concepts is that concepts may lose their distinctive character. That we can shed light on the relations between humans and animals with the help of social theory terminology should in general terms not be questioned here. Evidently, different kinds of communities exist between humans and animals, even communities with social interactions as is the case with human-animal companionship. And as already stressed, in such social relations we owe duties to animals, e.g., fair treatment. However, these kinds of community relations cannot be considered as political. We do have to acknowledge animals’ interests in our political decision-making-process. But we owe such duties to animals not because they are equal members of a political community, as shown above, but for several other reasons, e.g., because they are sentient living beings, they might be partners in a social coexistence, and the like. In sum, the political analogies used by Donaldson and Kymlicka, especially of those operating with notions of citizenship, seem overstretched and, therefore, unhelpful.

5. Conclusion

In conclusion, *Zoopolis* presents a plausible outline of human-animal relations only to those who are already convinced that humans and animals do not differ in a morally relevant way. In light of this fact, the question has to be raised about whether the human community would not be overburdened by the responsibility for a political community of humans and animals – not only politically but also economically and culturally. How could the motivational energy and the moral resources for this new form of solidarity which humans owe animal citizens in the eyes of the authors be nourished – in societies within which solidarity for “fellow human citizens” must already be repeatedly reactivated, not to mention solidarity for citizens of the world, as demanded in recent theories of cosmopolitanism? Thus, *Zoopolis* can be characterised as a utopia with all the promises and burdens that go along with such a political outline. Its promises can be seen to lie in the fundamental challenges the book presents to commonplace experiences, here: the cruel way in which we treat animals. However, the burden of utopian thinking is that it may lead to excessive demands and thus to the permanent de-legitimation of a political reality that can never reach its ideal.

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