

Animal rights - politicised, but not humanised: an interest-based critique of citizenship for domesticated animals

Ladwig, Bernd

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

GESIS - Leibniz-Institut für Sozialwissenschaften

Empfohlene Zitierung / Suggested Citation:

Ladwig, B. (2015). Animal rights - politicised, but not humanised: an interest-based critique of citizenship for domesticated animals. *Historical Social Research*, 40(4), 32-46. <https://doi.org/10.12759/hsr.40.2015.4.32-46>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY Lizenz (Namensnennung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:

<https://creativecommons.org/licenses/by/4.0/deed.de>

Terms of use:

This document is made available under a CC BY Licence (Attribution). For more information see:

<https://creativecommons.org/licenses/by/4.0>

Animal Rights – Politicised, but not Humanised. An Interest-Based Critique of Citizenship for Domesticated Animals

Bernd Ladwig*

Abstract: »Tierrechte – politisiert, aber nicht vermenschlicht. Eine interessenbasierte Kritik der Staatsbürgerschaft für domestizierte Tiere«. Sue Donaldson and Will Kymlicka argue for a political theory of animal rights. However, their vision of *Zoopolis* is political in the wrong way, because it deviates from an interest-oriented conception of rights. This argument is explicated by examining the model of citizenship that Donaldson and Kymlicka employ to sketch out just relations between human beings and domesticated animals. This model disregards the fact that animals are incapable of understanding the normative content of citizenship. Animals have no concept of themselves as free and equal citizens and cannot intentionally influence political communities as such. Their objective interest encompasses the aspect of membership that is part of the status of citizenship but does not include a further aspect – active political participation.

Keywords: Animal rights, interest theory, citizenship, Zoopolis.

1. Introduction¹

Sue Donaldson and Will Kymlicka want to expand animal rights theory with regard to politically relevant relations between humans and other animals. By virtue of its primary focus on the moral status of individual animals, they argue, animal rights theory has to date not taken such relations seriously enough. Hence, it has failed to formulate principles for a more just regulation of our

* Bernd Ladwig, Otto Suhr Institute of Political Science, Free University Berlin, Ihnestraße 22, 14195 Berlin, Germany; ladwig@zedat.fu-berlin.de.

¹ This article is a revised and translated version of: Bernd Ladwig. 2014. Tierrechte ohne Staatsbürgerschaft. *Mittelweg* 36 23 (5): 27–44. It was written during a visiting research fellowship at the Max Weber Centre for Advanced Cultural and Social Studies in Erfurt (Germany). I am grateful for the friendly reception and excellent working conditions there. Thanks also to the participants of the conference *Animal Politics* at the University of Hamburg, of the colloquium for doctoral candidates in legal theory at the University of Zurich and of the philosophical-political colloquium at the TU Dortmund University. Finally I want to thank the participants of the joint colloquium of the professorships for Political Theory at the Free University Berlin and at the University of Hamburg.

interactions with other animals – if it did not even presuppose that a just world would be free from any such interactions whatsoever.² In order to overcome this deficit, Donaldson and Kymlicka propose to transfer political norms of citizenship, denizenship and sovereignty to human-animal relationships (Donaldson and Kymlicka 2011).

I agree that sentient non-human animals (in the following: animals) have moral rights. Moreover, I appreciate Donaldson and Kymlicka's having opened up the issue of animal rights for political philosophy. What is questionable is only *how* they have done so: the genuinely political concepts with which they aim at just human-animal relations miss those interests of animals that could ground their moral rights.

The very idea of animal rights will constitute the basis of this discussion rather than its issue. Hence, I will just recall the standard argument usually employed in their justification. This argument is most effective within an interest-based conception of moral rights and it points to our political responsibility in more than one respect. However, the theory of animal rights laid out in *Zoopolis* is misguidedly political by virtue of its deviating from an interest-based justification of rights. Donaldson and Kymlicka use concepts with normative content tailored to political relations among human people and collectives in order to characterise just relations between us and other animals. But animals are incapable of grasping the normative content of such concepts. The conception of *Zoopolis* humanises non-human animals. In order to make that case, I will take a closer look at the example of citizenship.

Donaldson and Kymlicka use the citizenship model in order to determine rules of membership for domesticated and bred animals. In doing so, they intend more than merely a reframing of the common good. The interests of domesticated animals ought to count not merely on the recipient side of our collectively binding decisions; rather animals also ought to figure as active co-creators of the very norms that govern our co-existence in mixed human-animal communities. However, this proposal rests on a misguided understanding of animals' intentionality. While animals causally influence our public spaces through their activities, they do not refer to them intentionally. Thus, while animals have an objective interest as members in falling under the responsibility of one particular state, this interest does not include the active dimension of citizenship.

The paper proceeds as follows. I start by sketching an interest-based conception of moral rights that is open to animal rights but at the same time indicates which kinds of rights-grounding interests animals lack (Section 2.). I will then show that Donaldson and Kymlicka ascribe interests and capacities to animals that these creatures do not have, drawing on the example of citizenship (Section 3.). I end with a brief conclusion (Section 4.).

² Donaldson and Kymlicka associate this latter position with the philosophical veganism of Gary Francione; see for instance Francione (2008).

2. Outline of an Interest-Based Theory of Rights for Humans and Animals

The basic idea of an animal rights theory is straightforward; it starts from the minimal consensus we have reached with regard to human rights (cf. for instance Regan 2004; Pluhar 1988). At least every living and not (entirely) brain-dead human being deserves moral concern for their own sake. Every such being has valid claims including rights to live and protection against cruel treatment. But what is so special about all those rather differently endowed members of our species? Trying to justify their moral status with recourse to specific human features such as the capacity for reasoning or morality would pose the problem of ‘marginal cases’: small children are not yet capable of reasonable, morally responsible judging and acting, elderly people with senile dementia are no longer capable, and people with severe mental disability are not capable at all. Some fellow members of our species are not even potentially normatively accountable persons. Yet, they nevertheless have other morally relevant properties: they are at least able to experience pain and pleasure.

But the same can be said of all other sentient beings. Why not ascribe to them, in consequence, essentially the same moral status as rights-holders that we ascribe to human beings irrespective of their individual capacities? Because their genetic make-up is of a different kind? Why should this mere biological fact matter morally? As a rejoinder, some philosophers argue that because *typical* humans have higher capacities of reason and morality, these capacities characterise the species as a whole (cf. for instance Machan 2004). But this solves the problem of marginal cases at the cost of an ad-hoc manoeuvre: quite obviously, the *only* motive for this transition from a normatively individualist to a collectivist justification of our moral status is to avoid a socially exclusionary conclusion to the detriment of some fellow members of our species. The more honest move would instead be to ground the justification of rights upon a basis broader than mere reason and morality. Yet, such a basis would then also provide a place for many other animals.

The concept of a ‘moral right’ expresses that an individual is owed concern by virtue of valid moral considerations. In not giving this concern to a particular individual, we do not act wrongly simpliciter; we act wrongly because we wrong the individual in question. This holds independently of whether the victim herself is able to recognise and lament the wrong as an instance of moral disrespect, or whether she requires advocacy from a third party in this regard. While all rights need to be claimable, either before a court of justice or at least before the court of conscience, the possibility of making a claim for the sake and in the name of another individual suffices for that individual to qualify as a right holder herself (Feinberg 1980). Again: otherwise, not only animals but also many marginal humans could not be subjects of moral rights.

What then is specific about the idea of moral rights if not necessarily the empowerment of responsible human persons to express their will by making their own claims? The answer provided by an interest-based theory, as opposed to a will-theory, of rights is the following: rights are socially protected interests. Or more specifically, drawing on Joseph Raz: subject X has a moral right if and only if an interest of X (an aspect of her well-being or flourishing) constitutes a reason that is morally weighty enough for a different party, Y, to bear an obligation that is owed to X and whose violation justifies moral sanctions like blame and indignation against Y (Raz 1986, 166).³

2.1 The Pluralism of Morally Relevant Interests

The term ‘interests’ in the definition above refers to aspects of well-being or flourishing that presuppose the possibility of subjective experiences. This is why ‘higher’ animals can have rights but not protostomes or plants.⁴ The well-being of animals can even be entirely determined in terms of their sentience. This clearly includes pleasant sentiments and enjoyable experiences. Animals can be harmed in that regard if they are inflicted physical or mental suffering.

Additionally, certain activities constitutively contribute to animals’ well-being. Freedoms of movement or action can have a twofold value for them: instrumentally as a condition for obtaining other goods, and intrinsically as a source of satisfying and joyful experiences on their own.⁵ This is why we can also harm animals by preventing them from engaging in activities that they would have found joyful. The possibility of harm through the infliction of *suffering* is complemented by the possibility of harm through *deprivation*. In the case of social animals, a further cause of suffering and a genuine instance of deprivation is to withhold from them the appropriate conditions of cohabitation, for instance by tearing apart cows and calves, or locking up thousands of chickens in a room in which they cannot build stable social collectives.⁶

Does killing also usually inflict harm? Direct reasons count against killing if it happens in a distressing way. But what about an entirely surprising and painless act of killing? Whether or not such an act harms the victim herself depends on the further life prospects she could have had. Given that living is a precondi-

³ Raz’s definition however is not limited to moral rights. It also does not indicate that duty fulfilment is owed to the right holder herself.

⁴ It may remain a matter of dispute where precisely we should draw the boundary here. But surely, all vertebrates including fish and also some cephalopods like octopuses are among the sentient animals.

⁵ This last aspect is neglected in the otherwise excellent reasoning of Alasdair Cochrane in Cochrane (2012).

⁶ This pluralistic view of animal interests is inspired by Ursula Wolf (Wolf 2012, 92-4); a similarly manifold picture is drawn by Martha C. Nussbaum with her list of basic animals’ capabilities (cf. Nussbaum 2006, 392-401).

tion for positive sensations and experiences as well as joyful activities, we can ascribe to sentient animals a genuine interest in their own continued living. Again, in order to do so we need the theoretical possibility of harming someone not only through the infliction of suffering but also through deprivation. By killing an animal, we deprive it of the remaining time of an existence that could have been on the whole prosperous for the individual in question.⁷

To be sure, sometimes the future prospects of an individual animal are so terrible that the most humane solution would be to kill it painlessly. And one might argue that this is precisely the case with many animals under conditions of industrial farming. But even if the premise is true, it would be wrong to draw the conclusion that a painless killing of animals kept in intensive livestock farming would mean no harm, given the alternatives of liberating individual animals and of abolishing the system of industrial farming altogether.⁸

Interests more or less directly related to sentience, or, in other words, experiential interests are shared among animals as well as humans, and the specification of these interests depends on the kind as well as the personality of the respective being. At least complex animals are not mere representatives of their biological species but distinctive individuals, and the same holds for humans regardless of how severe their mental disabilities may be. The case of normatively accountable human persons is complicated by an additional important aspect though: they are position-taking animals in the sense that they can refer to their ordinary life goods by way of strong evaluations (Taylor 1985). For instance, they can regard a severe or sustained pain as religiously or morally required. Normatively accountable persons do not only have experiential, but also critical interests.⁹ Moreover, their critical interests are expressed, *inter alia*, in how they interpret and weigh their experiential interests.

But is this the point where an interest-based theory of rights, with its focus on well-being and flourishing, reaches its limits? Does it reduce responsible humans to mere recipients of goods and services defined by others? Alternatively, we can and should enrich our understanding of well-being or flourishing: to the level of ordinary life goods we should add higher order interests in autonomy and one's own moral status. Responsible humans rationally¹⁰ value

⁷ This view is contested in moral philosophy. But is it not an entirely obvious intuition that of two animals whose life would have proceeded equally well, the one who is able to enjoy it for longer is better off? On the justification of the right to life, see Ladwig (2007).

⁸ If a right to life can be justified on the ground of animals' interest in their own continuous existence, we cannot release ourselves from the corresponding duties by arranging the living conditions for animals in a way that makes it impossible for them to enjoy their life. On the contrary, we are first and foremost obliged to overcome such harmful conditions of keeping.

⁹ This distinction is employed by Ronald Dworkin (1993, 179-217).

¹⁰ "Rationally" because this is a normative statement; as a matter of fact humans could get into depressing life circumstances that prevent them from recognising and confidently bringing to bear their interest in autonomy.

their capacity to develop, pursue and also revise their own conception of the good. Moreover, as free and equal persons capable of self-determination, we seek to be morally acknowledged and respected as such. Given that we can grasp our own moral status, self-respect matters to us. Hence we are also symbolically vulnerable through acts or living conditions suggesting that we are morally inferior or deserve no respect at all (cf. Margalit 1998).

The image of rights-grounding interests resulting from these considerations is pluralistic. Surely, responsible humans can dissociate themselves with good reasons from all kinds of life goods and even question their own continued living. Yet, this does not just rid them of these ordinary goods. As normatively accountable persons we are irreducibly both: *position-taking* animals as well as position-taking *animals* (Ladwig 2014a). And our animal nature substantially limits the extent to which we are free to interpret and weigh our experiential interests. Severe and sustained pain, for instance, is bad in itself. At times we may think of our having 'higher' order reasons to bear them nevertheless. But choosing pain for its own sake would almost be as foolish as sacrificing one's life for a frivolity (Gert 1998).¹¹

2.2 Interests that Animals do not Have

We clearly share an interest such as avoiding pain with other animals: Like us, they experience severe and sustained pain as bad in itself.¹² What is more, many animals are intentional and active beings with an interest in experientially rich environments as well as freedom of movement and action. The interests of animals are 'basic' only in the sense that they are not capable of normative evaluations and judgments. A multidimensional understanding of well-being suffices to identify those interests of animals that are worthy of rights protection. Moreover, as I have indicated, we should consider life itself as worthy of protection, given the possibility of continued flourishing.

In contrast, what animals do not have are interests in autonomy and self-respect. As far as the latter is concerned, it is obvious that animals are incapable of grasping their own moral status. Hence, in such terms they are not symbolically vulnerable. When it comes to autonomy, 'higher' animals may be capable of volitional acts and omissions as well as conscious self-correction tied to particular situations. What it means to be an autonomous agent though is not just to act as one sees fit, but also to account normatively for one's own willing. This essentially includes the ability to defend one's volitions in the face of others' objections. Autonomous agents are, in the important aspects of their life at least, led by those

¹¹ Bernard Gert argues that responsible humans can decide against all kinds of goods, but against some of them only if they take themselves to have compelling reasons against them.

¹² To me this seems to be a conceptual truth that is independent of the *precise way in which* another animal experiences pain; in so far as we ascribe to it any pain at all, in doing so we ascribe to it a condition that is intrinsically bad for the animal.

justifying reasons that they themselves consider good and valid. That is why, with regard to these reasons, they are generally open to being questioned and criticised by competent others. A normatively accountable person can refer to and modify her own thinking and willing from insight into the justifying reasons offered by others. In doing so, she makes use of the normative leeway created by her capacity for self-distancing – and clearly only a normatively accountable agent in that sense can also bear moral responsibility.

A reasonable test for whether or not we take someone to be capable of autonomy and morality is to ask if we consider it sensible to blame her for a normative mistake that we impute to her. This implies the assumption that the counterpart could have acted otherwise and could thus also do so in the future – from insight into the wrongness of the act that I charge her with.

On the positive side, by blaming others, we take them seriously as accountable agents. And again: responsible humans have a reasonable interest in this kind of recognition. Evidently though, other animals do not share such an interest. We would be outraged if somebody was seriously outraged about a lion's behaviour – and we read reports on historical court decisions about animals with a mixture of amusement and disconcertion (cf. Sykes 2011). After all, no animal is able to comply with a moral or legal norm from insight into the good justificatory reasons that speak in its favour.

Given that animals have no higher order interests, some of the rhetoric of the animal rights movement is at least misleading: it suggests that the activists are conceptually humanising animals. Some, for example, criticise the mere fact that humans are keeping animals as an instance of illegitimate domination. Now, keeping animals is problematic either by virtue of its consequences for ordinary interests such as life and well-being or because it subjugates individuals or groups who should be self-determined to alien rule. This latter case presupposes the essential capacity to live, individually or collectively, a self-determined life. However, where this capacity is completely lacking a being that is kept by others is at least not directly being harmed by that very fact (cf. Cochrane 2012 for this and what follows).

What matters then is only how human rule over other creatures is exercised: with or without taking into account the ordinary interests of animals. While mentally healthy humans are entitled to reject heteronomy, this is due to their interest in being recognised as autonomous persons, which even includes the right to make serious mistakes and severely harm oneself. Denying this right to a responsible person also amounts to an assault on her self-respect. In contrast, the liberation of animals from destructive forms of keeping in captivity should not aim at an autonomy that is of no use for them, but at their well-being that, to repeat, entails certain liberties of movement or action. However, an absolute abolitionism, the complete end of any animal keeping by humans is not a demand that follows from the rights grounding animals' interests (cf. in contrast Francione 2008).

This is not to say that the ends, means and methods of current animal keeping are essentially in good order. They are certainly not. After all, we violate basic and crucial interests of animals for the sake of satisfying comparatively trivial human interests. We torture and kill animals for purposes that we could easily do without or pursue by different means. We neither have to consume meat, eggs or cows' milk, nor do we need furniture or shoes made of leather. Mere taste preferences of humans do not suffice from an impartial point of view to outweigh the basic needs and fundamental interests of animals who have valid claims against us. They certainly cannot legitimise keeping animals in cramped and low-stimulus barns and cages, truncating horns and tails without anaesthetisation, separating cows and calves, shredding chicks, the horror of livestock transports and slaughterhouses, where every day thousands of pigs are drowned, in full consciousness, in boiling water because pieceworkers failed to 'stab' them properly.¹³

All these and many other practices¹⁴ are morally wrong, because animals are not inanimate tools, but creatures with rights of their own. This substantially limits our normative options to keep and use them, but it does not categorically rule out animal keeping as such. Cows that provide us with dung or preserve grasslands from desertification, dogs, cats or pigs that accompany humans as companions are not victims of injustice by virtue of the mere fact that their lives are ultimately controlled by humans. What is normatively relevant is only that the owners fundamentally understand themselves as guarantors of the animals' well-being and life and provide them with what they need for a pleasant and flourishing life. In accordance with this requirement it can even be advantageous for animals if their owners have a legal power to exclude third parties from using them, for instance in order to protect the animals from abduction or death caused by poaching.¹⁵

¹³ Hilal Sezgin (2014, 120) writes: "Out of 60 million pigs that are slaughtered every year in Germany, 500,000 reawaken because they have not been properly 'stabbed.' To be more precise, they reawaken in 62 degrees hot scalding water and have to drown in it excruciatingly. The veterinarians that later on examine the slaughtered animals can detect this through the water in their lungs" (my translation); Sezgin takes these figures from a question by the German Green Party addressed at the Federal Government in the 'Bundestag' on "Protecting animals in slaughtering" <<http://dipbt.bundestag.de/dip21/btd/17/100/1710021.pdf>> (Accessed March 5, 2014).

¹⁴ One could think of hunting and other kinds of 'sport' that cause suffering and death of animals, of the keeping of giant and lively animals in zoos and circuses or of torturous and life-shortening animal experiments.

¹⁵ This right to exclude others constitutes a basic function of property rights. Nevertheless, the category of 'property' is – even if not on a purely conceptual level so – misleading here. It suggests that we are entitled to bring animals into the world, use them for our purposes and also transfer them as we see fit. For the sake of conceptual delimitation we should stop conceiving of animals as our 'property': alternatively, we could introduce a genuine legal category of the "animal husbandman." A fundamental critique of the legal status of animals as property is offered by Francione (2008).

3. The Political Nature of Domesticated Animals' Rights

3.1 Unavoidable Relationships and Institutionalised Injustice

It is the last point made above, the critique of abolitionism, where I concur with Donaldson and Kymlicka. This applies for the result of the respective reasoning, although not for the complete route taken to arrive there. Unlike me, Donaldson and Kymlicka also ascribe to animals autonomy-related interests. Otherwise, it would be mysterious why a status of citizenship which includes some forms of political agency could be good for domesticated animals. As I want to show, in doing so Donaldson and Kymlicka humanise non-human animals and thereby misinterpret animals' interests and capacities. Nevertheless, they also envision some kind of just relation between humans and animals.

In contrast, abolitionism in their view embodies an example of the *unpolitical* nature of animal rights theory prevalent today. This prevalent theory does justice neither to the phenomenon of 'synanthropic' animals¹⁶ nor to the plurality in forms of cooperation and dependencies within which we have implicated animals. Hence, Donaldson and Kymlicka argue, it also conveys a curtailed view of the obligations we have towards other animals. We would in no way serve all animals by 'leaving them alone,' as suggested by large parts of the animal rights movement using the analogy of slave liberation.

Furthermore, the answer to the injustice of slavery was not the end of all relationships, but their transformation in accordance with more just principles. The descendants of black slaves were not meant to go back to Africa just because whites and Arabs had displaced their ancestors. Analogously, Donaldson and Kymlicka argue for shaping the *unavoidable* relationships between us and domesticated animals in ways less destructive and considerably more just. They also strongly resist Gary Francione's suggestion that we should let animals die out that depend on us constitutively because we have reared them for human purposes. Rather we should turn relationships that are exploitative at their expense into truly cooperative relationships for mutual advantage (Donaldson and Kymlicka 2011, 79-81). Only where such a transformation is impossible, as in the case of downright torture breeding, we cannot help but at least stop the procreation of animals suffering from their own existence.

A theory of animal rights is political if it aims at just principles for potentially conflictual relationships that we cannot change or terminate at random (Alhaus and Niesen 2015, in this HSR Forum). This leads us, in my view, to a further advantage of Donaldson's and Kymlicka's theory. The authors assume

¹⁶ Synanthropic animals are following humans and occupy ecological niches unintentionally offered by us, for example in settlements or along traffic routes; but they do not display any interest in human companionship or in entering truly cooperative relations with us.

that we will unavoidably continue to influence the living conditions of animals in the future. Our causal impact on the world irreversibly reaches too far and too deeply in order just to leave animals alone. Even the most considerate growing of plants implies the death of many animals, let alone urban construction, factories, transport infrastructure, power plants and wind turbines.¹⁷

A political theory of animal rights is also required due to the fact that the injustices which literally countless animals experience through us are *institutionalised*. Human lawmakers are responsible for them. They have legally framed the use of animals and thus created new opportunity structures as well as constraints. For instance, a young neuroscientist just does not have the choice of whether she wants to carry out research using the brains of living animals or not; and the professional training of chefs in Germany unavoidably includes dealing with meat and fish, regardless of whether or not they want to do vegan cooking later on. These are just two examples of restrictions that could not be disposed of without collective action and more just laws.

To express it more generally, the use, exploitation and killing of animals is part of the basic structure of society for which we are jointly responsible.¹⁸ For reasons of efficiency and reasonableness we have to bring about fundamental changes jointly and back them with new laws. This is also the only way to compensate fairly the many people, for instance in agriculture, whose economic existence depends on the use of animals, and assist them in the transition to ways of farming that are no longer reliant on their exploitation and killing.

There is yet another reason why animal rights should also, and particularly, be a concern for political philosophy. In our system of a moral division of labour *states* play a crucial role. With regard to territorially bounded collectives they bear primary responsibility for the realisation of rights (cf. Ladwig 2014b). That includes concretising the content of rights as well as determining the corresponding duties temporally, substantively and socially. Because this is also objectively important for domesticated animals, we should count them *as members* of specified states.¹⁹

This is not just to say that a respective state is responsible for the implementation and enforcement of animal protection laws. The membership of animals would rather have to transform the basic understanding of collectively binding decision-making which should be tailored to a community that includes humans *and* animals from the outset. The common good at stake therein cannot be reduced to the mere good of the human members. As a matter of principle,

¹⁷ However, all this can also provide a new niche for other animals – which Donaldson and Kymlicka account for with a distinct *theoretical* niche, namely their conception of denizenship.

¹⁸ The view that the basic structure of society is the actual, or at least the primary, subject of a political philosophy of rights and justice goes back to John Rawls (Rawls 1971, 7–11).

¹⁹ In this I draw on Rhea Niggemann's excellent master's thesis *Tiere in der politischen Gemeinschaft*, Otto Suhr Institute for Political Science at the Free University of Berlin, unpublished.

the flourishing of animals deserves basically the same concern. This holds at least for those animals that we have taken to us or reared, brought into the world and made dependent on us in the first place.

Those who are responsible for the living conditions of animals in a comprehensive and profound way are accountable for far more than just the prohibition of intentional harm. They also owe animals positive benefits, certainly in terms of those that they are unable to provide for themselves.²⁰ And in that regard it matters that a particular state ensures the effective compliance of certain agents with their moral obligations. It also has to guarantee that animals in any case do not lose their membership without substitution, thus being pushed into a no man's land of incompetence without anyone being identifiable as responsible to protect them from harm and to guarantee the fulfilment of their positive claims.

3.2 Animals as Citizens?

Nevertheless, membership for domesticated animals is not equivalent to citizenship as envisaged by Donaldson and Kymlicka. As far as the question of membership is concerned, I agree with the authors. But for Donaldson and Kymlicka, membership is only one brick in the complex building that is state citizenship. Citizenship in the full sense includes an entitlement to contribute actively to the very set up of the community. One may immediately object that animals are incapable of doing so given that they lack the necessary conceptual capacities. Active citizens must be able to interlace their own perspectives with that of others for a civic 'we'; and they must be capable of grasping institutional facts concerning authority, representation, voting, running for office and the like. However, Donaldson and Kymlicka argue that such an approach of active citizenship demands too much even from many human members of our societies. Alternatively, they bring to bear a notion of 'dependent agency' that they borrow from disability studies (cf. Donaldson and Kymlicka 2011, 107-8).

The basic idea seems to be, first, that domesticated animals are able to communicate with us and, second, that through their activities they also take part in shaping those public spaces in which we form and develop our self-understanding as citizens. Domesticated animals can tell us how they are and what they prefer; all they need for that purpose is the assistance of sensible and sympathetic interpreters. Moreover, they are active beings that influence the community's shape and substance through their, in part normatively regulated,

²⁰ The idea of a state funded pension scheme for guide dogs or a health insurance for domestic pigs may sound ludicrous: but to my mind, the only normatively acceptable alternative seems to be not to turn these animals into our companions or train them for our purposes in the first place. Once these animals are there, we cannot just say that it is their own business how they get along when it comes to sickness or mature age.

agency.²¹ In this second respect also, domesticated animals need more than mere advocates that provide them, for instance, with access to parks and represent their interests in public debates. Again they need interpreters that manage to open our eyes for the myriad ways in which they actively influence our communities and our sense of citizenship.

I have no doubt that Donaldson and Kymlicka themselves have proven, through many fascinating thick descriptions, to be that very kind of sensible and sympathetic interpreters of animal welfare and agency they are arguing for. These descriptions alone suffice to make *Zoopolis* a worthwhile read. Nevertheless, to my mind a fundamental objection on the theoretical level remains unanswered. Take the following summary statement: “Citizenship is a cooperative social project, one in which all are recognized as equals, all benefit from the goods of social life, and all, according to their ability and inclination, contribute to the general good” (Donaldson and Kymlicka 2011, 137).

The right to membership at least covers the recipient side of the general good mentioned in the quotation. The legal status of membership matters for domestic animals even though they cannot grasp it conceptually. Hence it is only objectively or indirectly significant for them. However, what animals are lacking completely is an interest in actively contributing to the general good as such. The political community itself is no possible subject of their intentional aspiration and action. They do not have the capacity to grasp it as a normative order throughout and beyond particular institutions and practices. Consequently, they cannot take a subjective interest in the generally advantageous and just succeeding of the political project of ‘their’ citizenry. Those communities that directly matter for them are much smaller; in the case of dogs, for instance, they will hardly transcend the human ‘pack’ and a few further acquaintances.

Symbolically integrated or ‘imagined’ communities are beyond dogs’ social horizon of orientation as well as that of other animals, no matter how intelligent and sociable they may be. The same applies to the corresponding notion of a citizen. Neither do animals benefit from being recognised as active citizens, nor are they capable of recognising others – humans or animals – as such. In the dog’s eyes, the owner will always remain the master and the neighbour’s cat will remain the flight animal, which the master thus has to protect from her dog. No civic training for dogs and cats could ever turn this natural relationship – accounted for by humans – into a genuine political relation of mutual respect.

²¹ Donaldson and Kymlicka here mainly refer to research results by Frans de Waal (2009) on fairness among cooperative animals like capuchin monkeys. Furthermore, they argue for an understanding of norm regulated action that is less cognitivist than the one prevalent in current moral theory. Yet, the results of de Waal and their interpretation are empirically highly contested: see for instance Brauer, Call and Tomasello (2006). And even a notion of moral agency that is not narrowed down cognitivistically should give weight to the fact of normative accountability. The importance of this fact, however, is consistently underestimated by Donaldson and Kymlicka.

Hence, there is a significant difference between ordinary human co-citizens and domesticated animals. Animals can benefit from their membership only objectively, while human persons can also contribute to it actively *and intentionally*. And this refers to more than the mere factual impact upon the ways in which we perceive our public spaces. Donaldson and Kymlicka provide examples of the latter, writing:

The dogs themselves, by their presence, are agents of change. They are not deliberate agents. But they are agents – leading their lives, doing the things they do – and because this agency is exercised in the public realm it serves as a catalyst for political deliberation (Donaldson and Kymlicka 2011, 114).

Donaldson and Kymlicka themselves recognise the difference but misjudge its normative momentousness: between beings that only causally contribute to and incite our political deliberation through agency that is actually oriented at *something else*, and citizens that purposefully refer to this deliberation and self-consciously participate in it (cf. also Hinchcliffe 2015). Only the latter are political agents in the proper sense of the word: it is only they who make the civic ‘we’ subject of their contentious intervention. Political agents in that sense take themselves to be jointly responsible for a symbolically integrated collective that has to regulate its matters of common concern in a normatively acceptable way. For that reason they reciprocally recognise each other as free and equal (active) citizens, which is also a source of their self-respect.

As a matter of fact, domesticated animals are a part of this ‘we,’ and through their activities they also causally contribute to its character in various ways. They might, to take some of the author’s examples, “serve as ice-breaker to conversation,” “increase community members sense that they live in a vibrant, cohesive, and safe neighborhood” and thereby “actively foster contact, trust, and reciprocity within communities – the essential glue of citizenship relations” (Donaldson and Kymlicka 2011, 115). But they bring about all of this non-intentionally. A reference to the political community as such does not form part of animals’ intentionality, just as it does not form part of their interests to be included in relationships of mutual recognition among free and equal citizens.

It is up to us, and only us, to shape the community that humans and animals belong to as one that is as just and well-ordered as possible. Domesticated animals are not normatively accountable *co-designers* of the community that they affect and within which they move and act. They are not even interested in the community as such. Consequently they cannot conceive of themselves as citizens. Hence to recognise them as such does not follow from an interest-based conception of animal rights.²² The objective interests of domesticated

²² Yet, Donaldson and Kymlicka additionally use an entirely different argument to justify citizenship for domesticated animals than the one just discussed: they resort to a version of the argument from ‘marginal cases.’ Given that it is out of question to regard small children and mentally severely impaired adults as citizens, we should not operate with requirements

animals extend only to the membership aspect, but not the participation aspect of our citizenship status.

4. Conclusion

My fundamental problem with *Zoopolis* is the following: Donaldson and Kymlicka use normatively substantial concepts that are tailored to political relations between human beings and groups in order to characterise just relations between us and other animals. But unlike us, the animals are incapable of grasping the normative content of such concepts. This applies to ‘citizenship’ as well as to ‘sovereignty’ and to the intermediary status of ‘denizenship.’ *We* have coined these concepts in order to come to grips with the responsibility that we have as normatively accountable persons in the political contexts of our shared responsibility. However, these very concepts are inapt when trying to capture the interests of animals that are not normatively accountable.

For animals it matters only objectively that we account for our responsibility with regard to their valid claims. They are afflicted by our form of life, almost always involuntarily incorporated in it and often suffering from it tremendously. Alleviating this harm as far as possible, transforming exploitative into truly cooperative relationships and protecting wild animals from harm, are all genuinely political tasks. In that respect *Zoopolis*, as a political theory of animal rights, was a necessary and fruitful endeavour. However, a consistently interest-based political morality for humans and other animals is still pending.

for this status that are too cognitivist. With an appropriately modest understanding, however, these requirements could also be fulfilled by domesticated animals (2011, 104). But this argument can be countered. To be sure, normative accountability and the capacity to participate as a citizen are matters of degree, but only above a certain threshold. Whether a particular human, while not fully mature, nevertheless reaches the threshold level is often difficult to decide. As a consequence, we have commonly reason to grant a ‘benefit of the doubt.’ In contrast, other animals are constitutively unable to reach the threshold. *They are not of a kind* that could constitute imagined communities, grasp institutional facts and interlace their own perspective with that of others for a civic ‘we.’ As concerns those humans that clearly cannot reach the threshold due to, e.g., senile dementia, it might be best to simply bite the bullet and to accept that they also cannot act as citizens proper – without questioning, of course, their equal membership status. But this is exactly the status that domesticated animals can and should also enjoy.

References

- Ahlhaus, Svenja, and Peter Niesen. 2015. What is Animal Politics? Outline of a New Research Agenda. *Historical Social Research* 40 (4): 7-31. doi: 10.12759/hsr.40.2015.4.7-31.
- Brauer, Juliane, Josep Call, and Michael Tomasello. 2006. Are apes really inequity averse? *Proceedings of the Royal Society B* 273: 3123-8.
- Cochrane, Alasdair. 2012. *Animal Rights Without Liberation. Applied Ethics and Human Obligations*. New York: Columbia University Press.
- Donaldson, Sue, and Will Kymlicka. 2011. *Zoopolis: A Political Theory of Animal Rights*. Oxford: Oxford University Press.
- Dworkin, Ronald. 1993. *Life's Dominion. An Argument About Abortion and Euthanasia*. New York: Alfred A. Knopf.
- Feinberg, Joel. 1980. The Rights of Animals and Unborn Generations. In *Rights, Justice, and the Bounds of Liberty*, 159-84. Princeton: Princeton University Press.
- Francione, Gary L. 2008. *Animals as Persons. Essays on the Abolition of Animal Exploitation*. New York: Columbia University Press.
- Gert, Bernard. 1998. *Morality. Its Nature and Justification*. Oxford: Oxford University Press.
- Hinchcliffe, Christopher. 2015. Animals and the Limits of Citizenship: Zoopolis and the Concept of Citizenship. *Journal of Political Philosophy* 23 (3): 302-20.
- Ladwig, Bernd. 2007. Das Recht auf Leben – nicht nur für Personen. *Deutsche Zeitschrift für Philosophie* 55 (1): 17-39.
- Ladwig, Bernd. 2014a. Human Rights and Human Animals. In *Human Rights and Human Nature*, ed. Marion Albers, Thomas Hoffmann and Jörn Reinhardt, 23-42. Heidelberg, New York and London: Springer.
- Ladwig, Bernd. 2014b. Menschenrechte, Institutionen und moralische Arbeitsteilung. *Politische Vierteljahresschrift* 3: 472-92.
- Machan, Tibor. 2004. *Putting Humans First: Why We Are Nature's Favorite*. Oxford: Rowman & Littlefield Publishers.
- Margalit, Avishai. 1998. *The Decent Society*. Cambridge, MA: Harvard University Press.
- Nussbaum, Martha C. 2006. *Frontiers of Justice. Disability, Nationality, Species Membership*. Cambridge, MA: Harvard University Press.
- Pluhar, Evelyn. 1988. Is There a Morally Relevant Difference Between Human and Animal Nonpersons? *Journal of Agricultural Ethics* 1: 59-68.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Regan, Tom. 2004. *The Case for Animal Rights*. Berkeley: University of California Press.
- Sezgin, Hilal. 2014. *Artgerecht ist nur die Freiheit*. München: C. H. Beck.
- Sykes, Katie. 2011. Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us About Justice for Animals. *Animal Law Review* 17 (2): 273-311.
- Taylor, Charles. 1985. What is Human Agency? In *Philosophical Papers I*, 15-45. Oxford: Oxford University Press.
- Waal, Frans de. 2009. *The Age of Empathy. Nature's Lessons for a Kinder Society*. Toronto: Broadway Books.
- Wolf, Ursula. 2012. *Ethik der Mensch-Tier-Beziehung*. Frankfurt a. M.: Klostermann.