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## **The open society and its animals**

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### **Citation**

Vink, J. (2019, October 10). *The open society and its animals*. Retrieved from <https://hdl.handle.net/1887/79193>

Version: Publisher's Version

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**Author:** Vink, J.

**Title:** The open society and its animals

**Issue Date:** 2019-10-10

# 1

## The interspecies democratic theory

### Introduction

“Animals whom we have made our slaves we do not like to consider our equals,” Charles R. Darwin wrote in 1837.<sup>13</sup> Even centuries after his death, this observation is still striking. Although the conviction that non-human animals should be offered some kind of moral consideration has since become widespread, the actual treatment of non-human animals in current-day societies seems to reveal that this modern moral conviction is easier to subscribe to in theory than to put into practice. The omnipresent use and misuse of non-human animals in modern societies indicates that it is hard to relieve non-human animals—“our slaves,” according to Darwin—of the burdens that we have placed on them. It is not surprising that we find it even harder to see “our slaves” as our *political* equals. What on earth could animals have to do with politics? They cannot talk, they cannot reflect on conceptions of the good life, and they certainly cannot vote, it is claimed. Why should there be any reason to consider them as our political equals then? Is politics not an excellent example of a business that should be exclusively reserved for intelligent and rational humans? Reserved for the *political animals*, as Aristotle already called humans in his book *Politics*?<sup>14</sup>

The human-centeredness that is woven into the institutions of the most successful political model of our time, democracy, has often been accepted unquestioningly. This is understandable, as these institutions developed and evolved at a time when the idea of human categorical superiority was at its heyday. People generally saw no reason to formally involve non-human animal interests in their democratic theories and

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<sup>13</sup> Darwin, *Charles Darwin's Notebooks*, 228.

<sup>14</sup> Aristotle, *Politics*, trans. Ernest Barker, (Oxford: Oxford University Press, 1998), 10–11 (1253a2, 1253a7).

institutional frameworks, because until recently it was unclear that non-humans could even have interests, let alone politically relevant interests. It seems that leaving non-humans out of the political sphere was the only logical option given the knowledge at hand. With the scientific knowledge of today, however, we know that sentient animals have interests and that they can be harmed by political decisions. It therefore only seems fair to re-evaluate the anthropocentric character of today's democracies and the anthropocentric application of democratic principles. The realization that non-human animals have interests seems to beg the question whether an exclusively human political model can still be justified today. Should our modern understanding of sentient non-human animals lead us to assign them a formal political status, and is the human-centeredness of democracies a relic that should have been left behind in the pre-scientific era?

The main argument of this chapter is that, though undeniably politically incompetent, non-human animals are owed some form of political consideration of their interests. This claim rests on the fact that some non-human animals are entities with interests. In the context of classic democratic principles and democratic theory, the fact that sentient animals are entities with interests which can be harmed by political decisions means that they have a right to be considered. The purpose of this chapter is to demonstrate that uncontroversial democratic principles underpin this right, if only their blind spot for animals other than humans is removed.

The first section of this chapter notes that not everyone realizes that democratic theory is in need of an interspecies update. Many democratic theorists either ignore or do not realize that the current scientific understanding of animals puts the anthropocentric interpretations of classic democratic theories under pressure. The second section is dedicated to deliberate sceptics: three arguments that may undermine animals' claim to political rights are discussed and challenged. In the subsequent section, non-human animals are conceptualized as political patients. In other words, the Aristotelian contention that non-human animals are ultimately incapable of political acting is endorsed. This brings important challenges to the table, because the political position of political patients is a relatively grey area in

democratic theory. I will develop a theory to account for the position of political patients in general. It was previously unjustly and uncritically presumed that political patients cannot have political rights. I argue that political patients can have political rights, although not all of the rights that political agents enjoy. Political patients, such as children, are eligible for a passive political right, namely for what I call the *consideration right*. In what follows, it will be demonstrated that general democratic principles and important democratic outlooks support this theory. James Mill's classic view of democracy as a political model that enables the reflection of individuals' interests in state governance offers an outlook on democracy that supports the idea that political patients have a consideration right. Subsequently, it will be demonstrated that the view that some non-human animals are part of the political community (the *demos*) whose interests are eligible for political protection can also be underpinned from another perspective, namely by employing one of the central principles in democratic theory: the principle of affected interests. It is demonstrated that, since sentient animals are also affected by democratic state policy, they are also part of the *demos*. It will be concluded that there is sufficient support for the claim that sentient animals have a consideration right if we combine the fact that sentient animals have interests with classic democratic theory.

## 1.1 Cavalier agnosticism

Although evaluating non-human animals' place in political theory (more precisely democratic theory) has gained increasing attention in the literature in the last few years,<sup>15</sup> the majority of political theorists still appear to think that there is nothing odd going on when it comes to non-human animals'

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<sup>15</sup> For example (in chronological order): Robert Garner, *The Political Theory of Animal Rights* (Manchester: Manchester University Press, 2005); Alasdair Cochrane, *An Introduction to Animals and Political Theory* (Basingstoke: Palgrave Macmillan, 2010); Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2013/2011); Siobhan O'Sullivan, *Animals, Equality and Democracy* (Basingstoke: Palgrave Macmillan, 2011); Kimberly K. Smith, *Governing Animals: Animal Welfare and the Liberal State* (Oxford: Oxford University Press, 2012); Robert Garner, *A Theory of Justice for Animals: Animal Rights in a Nonideal World* (Oxford: Oxford University Press, 2013); Robert Garner and Siobhan O'Sullivan, eds., *The Political Turn in Animal Ethics* (London: Rowman & Littlefield, 2016); Alasdair Cochrane, *Sentientist Politics: A Theory of Global Inter-Species Justice* (Oxford: Oxford University Press, 2018).

position in democracies and democratic theory. The general trend in political theory still is that we can go about our normal businesses, despite the fact that the scientific and moral understanding of non-human animals has changed drastically recently.

This attitude many political theorists have is likely often caused by ignorance of the fact that the changed image of non-human animals may cause difficulties to an anthropocentric understanding of democratic theories. I label this attitude towards animals' role in political theory *cavalier agnosticism*, because theorists who have this attitude have simply never considered the option of involving non-humans in (their) political theory, or they regard the changed image of animals as trivial, not worthy of serious attention, or irrelevant to political theory. They often do not dedicate a single word in their works to the position of non-humans in democratic theory, or they write about it as if the democratic exclusion of non-humans is no important issue at all. The urgency of the altered view of non-human animals for political theory is just not felt or deliberately downplayed. This cavalier agnostic outlook is understandable, because it is best known to us. As stated before, for a long time, humans have not realized that ruling over non-human animals in an arbitrary way and without paying attention to their interests might be problematic—let alone inconsistent with democratic values. It is remarkable that, despite the steady rise of attention for non-human interests in ethics, many modern political theorists still hold this view today.

Illustrative in this regard is Hanna Fenichel Pitkin (1931–), a renowned political theorist specialised in the concept of representation. Pitkin, in her famous book on representation, divides the material world into (1) normal people, (2) children, (3) the insane, and (4) inanimate objects.<sup>16</sup> One can only wonder to which of these four categories non-human animals belong.<sup>17</sup> A similar disinterest in the political position of non-human animals is displayed by Bernard Crick (1929–2008), also a political theorist and

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<sup>16</sup> Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972/1967).

<sup>17</sup> This also has consequences for the (non-)position of animals in Pitkin's theory. The consequences of Pitkin's ignorance with regard to non-human animals has been criticized by Kimberly K. Smith, in: Smith, *Governing Animals*, 103–109.

author of the entry on *Democracy* in the *A Very Short Introduction*-series of Oxford University Press. In this work, Crick depicts the societal call for animal rights as a “big small cause,” just as unimportant and trivial as the call for banning genetically modified food or the call for saving whales, all of which he contrasts with serious and truly difficult questions of political theory, such as poverty and economic injustice.<sup>18</sup> By lumping the animal rights movement in with minor issues, and by not recognizing the animal rights movement as a serious and difficult political issue, Crick reveals that he either wishes to ignore or just does not realize the fundamental problem that the “big small cause” of animal rights might pose to democratic theory in general.

In a similar fashion, the political theorists Nadia Urbinati and Mark E. Warren portray the animal rights movement as a small issue not really of importance to democratic theory. In a paper on representation in, of all things, *contemporary* democratic theory, Urbinati and Warren equate representing animals with representing goods, as opposed to persons or beings. To them, animal representation is more similar to representing goods, such as “rainforests, community, spirituality, [and] safety,” than to representing persons, such as women, persons with particular ethnic backgrounds, and children.<sup>19</sup> Again, democratic theorists prove to be unaware or ignorant of the consequences of the modern view of animals for democratic theory. Urbinati and Warren do not seem to realize that animals are actual beings with actual interests, and that not offering them a political chance to have their interests considered may have serious consequences, such as suffering and death, whereas the equated “rainforests, community, spirituality, [and] safety” are vague constructs without intrinsic interests that cannot be harmed by underrepresentation in any way.

Lastly, even John Rawls (1921–2002), considered to be the greatest political philosopher of our time by many, failed to include non-human animals within the purview of his theory, which has been criticized as a

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<sup>18</sup> Bernard Crick, *Democracy: A Very Short Introduction* (Oxford: Oxford University Press, 2002), 111–112.

<sup>19</sup> Furthermore, representation of this kind is considered to be “issue-specific.” Nadia Urbinati and Mark E. Warren, “The Concept of Representation in Contemporary Democratic Theory,” *Annual Review of Political Science* 11 (2008): 403–404.

shortcoming of his work by the British political philosopher Robert Garner (1960–) and the Dutch moral philosopher Floris van den Berg (1973–).<sup>20</sup> Like many others, the political theorists mentioned here do not seem to realize, or wish to ignore the fact that the call for animal rights or political animal representation is not just another short-lived trend, but a movement that can form a real challenge to the way in which we understand democratic theory and democracies in the modern age. Apart from this cavalier agnosticism, however, there are, of course, also actual arguments opposing the idea of giving non-human animals political rights, to which we will now turn.

## 1.2 Opposing arguments

The idea that non-human animals are not part of the political community and that they have no claim to political rights is widely held but unfortunately not often explicitly underpinned. We can imagine, however, three possible types of arguments that may undermine or argue against assigning non-human animals political rights. These three types of arguments regard non-human animal interests.

The first type of argument claims that non-human animals have no interests. If substantiated well, this argument seems disastrous to non-human animals' claim to political rights. If animals have no interests, then obviously it is impossible to affect these interests with politics.<sup>21</sup> Distributing political rights among humans only would be completely logical. The second type of argument that may pose a problem to assigning non-human animals political rights claims that animals might have interests, but that we cannot know what these interests are. This argument would not directly affect non-human animals' *prima facie* claim to political rights, because one might still argue that all existent interests are to be weighed even if we do not know exactly what these interests are. Instead, this argument would mean that

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<sup>20</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 2005/1971); Garner, *The Political Theory of Animal Rights*; Robert Garner, "Rawls, Animals and Justice: New Literature, Same Response," *Res Publica* 18, no. 2 (May 2012): 159–172; Garner, *A Theory of Justice for Animals*; Floris van den Berg, "Harming Others: Universal Subjectivism and the Expanding Moral Circle" (PhD diss., Leiden University, 2011); Floris van den Berg, *Philosophy for a Better World*, trans. Michiel Horn (Amherst: Prometheus Books, 2013).

<sup>21</sup> Similarly, Alasdair Cochrane explains how this argument, if correct, would be devastating to Peter Singer's moral theory. Cochrane, *An Introduction to Animals and Political Theory*, 35–37.



even though animals may have a claim to political rights, it is impossible to put flesh on the bones of these political rights. It would be impossible to design institutions that are meant to reflect non-human interests if we cannot know what these interests are. The last and third type of argument against giving non-human animals a political status claims that although animals admittedly have knowable interests, these interests are irrelevant to politics. Non-human animals' interests are, in other words, considered to be a-political. Possibly, non-human animals only have basic needs that have nothing to do with the intellectually complex issues that are central to politics.

### *Animals have no interests*

The first type of argument against including non-human animals in the political sphere thus claims that non-human animals have no interests. On first appearance, it might seem rather unlikely that anyone would take the extreme view of denying that non-human animals have interests.<sup>22</sup> Is it not obvious that many animals have at least *some* interests? There have been philosophers who denied this, however, and since the arguments they have put forward in support of this view relate to how we define "interests," we need to elaborate a little on definitions of interests first.

In one of the clearest and most comprehensive accounts on this subject, political philosopher Alasdair Cochrane (1978–) explains how interests are generally and, to his idea, preferably conceptualized.<sup>23</sup> In the general account of interests, employed in not only utilitarian but almost all main ethical theories, interests are linked to sentience through the central ethical notion of well-being.<sup>24</sup> A being with sentience automatically has well-being, because his life will go better or worse for himself in accordance with his subjective experiences of, among other things, pain and pleasure. With well-being, in its turn, automatically comes the attribution of interests,

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<sup>22</sup> Cochrane, *An Introduction to Animals and Political Theory*, 36.

<sup>23</sup> Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations* (New York: Columbia University Press, 2012), 24–38.

<sup>24</sup> Admittedly, well-being plays a more prominent role in utilitarian ethics than in the other main ethical theories, but it is also a central notion in other main ethical theories. "Well-being," in Alasdair Cochrane's terms, "is what gets our ethical juices flowing." Cochrane, *Animal Rights Without Liberation*, 25.

namely the interest in maintaining or improving one's level of well-being. In other words, because pain and pleasure afflict our well-being directly, we have an automatic interest in either avoiding or pursuing the activities that bring about these experiences. Interests are thus linked to sentience. Being sentient is a necessary and sufficient condition for having well-being, and consequently a sentient entity also has interests in improving or maintaining the level of that subjectively experienced well-being.<sup>25</sup>

Non-sentient entities, on the other hand, by definition do not have experiences or awareness capacities. They therefore do not have well-being but merely a *condition* that can either improve or deteriorate. Examples are plants and trees, whose conditions may improve, for example, after being watered. We do not say, however, that they have an interest in being watered, because as far as we know today, plants and trees feel no subjective or experienced relief when being watered. It is merely their condition that improves. Similarly, Van Gogh's *The Starry Night*'s condition may deteriorate after coming into contact with water, but we do not say that pouring water over a painting affects the painting's interests. In short, the conceptualization of interests as defended by Cochrane focusses on the subjective element: is an entity able to experience his or her own life? This concept of interests is widely accepted, conclusive, and in accordance with how the term is generally used, and will be the one employed throughout this book.

There are, however, also philosophers who have a rather eccentric view of what interests are. H.J. McCloskey (1925 –) and Raymond G. Frey (1941–2012) both add extra requirements to the general welfare account of interests. These more demanding definitions of interests lead both thinkers to the conviction that non-human animals do not have interests. On McCloskey's account, having an interest in something does not only mean

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<sup>25</sup> Cochrane, *Animal Rights Without Liberation*, 24–28. Joel Feinberg puts it the other way around: "Without interests a creature can have no "good" of its own ... Mere things are not loci of value in their own right, but rather their value consists entirely in their being objects of other beings' interests." Joel Feinberg, "The Rights of Animals and Unborn Generations," in *Philosophy and Environmental Crisis*, ed. William T. Blackstone (Athens: University of Georgia Press, 1974), 43–68 (citation on page 50).

that that something improves the well-being of a person, but also that that entity has to be *concerned* about it.<sup>26</sup> On Frey's account, the additional condition to the welfarist account of interests is that a person must also *desire* a good in order to have an interest in it.<sup>27</sup> Both thinkers claim that merely influencing the subjectively felt well-being of a person is not enough to constitute an interest in something, but that an additional *concern* about, or *desire* to get that thing is needed. Both also claim that non-human animals, with their limited mental capacities, cannot have such concerns about or desires to get certain things and that they hence do not have an interest in anything.

In defence of his more straightforward definition of interests, Cochrane took the effort of rebutting the claims of Frey and McCloskey. Cochrane's response is simple but convincing. His critique is twofold. First: adopting the exceptionally enriched definition of interests as proposed by McCloskey and Frey is objectionable because it leads to the unpalatable conclusions that, for example, a human baby has no interest in being vaccinated against measles and that smoking tobacco does not run contrary to a person's interests.<sup>28</sup> After all, a baby has no cognitive desire for, or concern about being vaccinated against measles, and many smokers desire and are concerned about getting tobacco, even though this obviously runs counter to their health interests. For this reason, Cochrane holds, the enriched concepts of interests as proposed by McCloskey and Frey have to be contested.

However, and here Cochrane's second point of critique comes to the fore, even if we *were* to adopt the exceptionally enriched definitions of interests, both Frey and McCloskey would still be wrong in claiming that non-human animals do not meet the requirements of their enriched

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<sup>26</sup> Henry J. McCloskey, "Rights," *The Philosophical Quarterly* 15, no. 59 (April 1965): 115–127; Cochrane, *An Introduction to Animals and Political Theory*, 36; Cochrane, *Animal Rights Without Liberation*, 33–36.

<sup>27</sup> Raymond G. Frey, *Interests and Rights: The Case Against Animals* (Oxford: Clarendon Press, 1980), 82; Cochrane, *An Introduction to Animals and Political Theory*, 36; Cochrane, *Animal Rights Without Liberation*, 33–36.

<sup>28</sup> Cochrane, *Animal Rights Without Liberation*, 33–36.

definitions of interests.<sup>29</sup> As Cochrane points out, there is every reason to believe that sentient animals in fact often *do* desire and *are* concerned about the goods they have an interest in.<sup>30</sup> Dogs demonstrate that they are concerned about getting food when they beg for food, and rabbits show a desire to get out of their cage when they bite at the bars. A hog demonstrates concern about avoiding violence when he tries to flee from it, and a mother cow shows that she desires to be with her child when she continuously calls for him on a milk farm. The proof of sentient animals' desires for and concerns about getting something that is in their interest is everywhere, and categorically denying that non-human animals can have interests as conceptualized by McCloskey and Frey thus runs counter to common sense and everyday observations. Cochrane appropriately asserts that the burden of proof should thus be with Frey and McCloskey if they claim that the situation is otherwise.<sup>31</sup>

### *Animals' interests are unfathomable phenomena*

The second argument against assigning non-human animals political rights is that we cannot know what their interests are. If such is the case, assigning them political rights is futile, because they cannot be effectuated in practice.

In order to be able to determine the interests of other animals, it seems required that we can acquire some information about what they feel and experience. But is it possible to ever know what other animals feel and experience? As a philosophical inquiry, it can be very interesting to extensively elaborate on that question. There seems to be something fundamentally mysterious and unknowable about other individuals' minds.<sup>32</sup> It seems impossible to know precisely what other animals feel, think, and experience. However, as moral philosopher Peter Singer (1946–)

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<sup>29</sup> Cochrane, *An Introduction to Animals and Political Theory*, 35–37; Cochrane, *Animal Rights Without Liberation*, 33–36.

<sup>30</sup> Similarly, Joel Feinberg points out, in response to McCloskey's contention that non-human animals do not have interests, that "many of the higher animals at least have appetites, conative urges, and rudimentary purposes, the integrated satisfaction of which constitutes their welfare or good." Feinberg, "The Rights of Animals and Unborn Generations," 50.

<sup>31</sup> Cochrane, *Animal Rights Without Liberation*, 34–35.

<sup>32</sup> Donaldson and Kymlicka, *Zoopolis*, 31.

has pointed out, this is also true of other humans.<sup>33</sup> We can never be one hundred percent sure about the inner world of other individuals, whether human or non-human animals. The experience of, e.g., pain is necessarily an individual experience. Only the experiencing subject himself can be absolutely certain that he is a sentient creature. It is impossible to achieve absolute certainty about the sentience of all other individuals, since we cannot feel or experience their subjective mental world for ourselves.

Obviously, however, we can register behaviour that most likely indicates sentience in other individuals, such as avoiding violence, and such behaviour can help us to determine what that individual's interests are. Furthermore, we can register certain brain activity, or measure certain physical reactions which may indicate stress, such as sudden perspiration, an increased heart rate, or pupil dilation. Scientific knowledge about an individual's physical composition and evolutionary background may also inform us about the likelihood that he has subjective experiences, and may help us in determining his interests. These sources allow us to determine the likelihood that other individuals have subjective experiences, and enables us to make a good estimation of their interests. Admittedly, determining the interests of non-human animals is generally probably somewhat harder than determining the interests of other humans.<sup>34</sup> It is also true that at times it might be hard to figure out what other animals' interests are precisely. This does not mean, however, that we cannot say anything at all about what their interests are. We can inform ourselves with scientific facts about the composition of other animals' bodies, observe their behaviour, study their brain activity, and measure their physical reactions. Combined, this information allows us to accurately estimate the interests of other animals. In conclusion, it is too strong an assertion to maintain that animal interests are unfathomable phenomena.

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<sup>33</sup> Singer, *Animal Liberation*, 10–15.

<sup>34</sup> The opposite is also sometimes argued: determining the interests of other animals is *easier* than determining those of humans, because "humans' needs may be more complicated than those of [other] animals, and humans often don't know themselves what they want, much less what's good for them." Smith, *Governing Animals*, 104.

*Animals' interests are a-political*

Now that we have established that sentient animals have interests and that it is, to a certain degree, possible to know what these interests are, for the purpose of this chapter it is also crucial to establish that these interests are relevant to politics. The third objection against assigning animals political rights could be that animals might have knowable interests but that these interests are irrelevant to politics.

This contention seems to be too blunt. It is true that politics is often about issues in which animals have no direct interests, such as pension funds and minimum wages. However, often politics is also about issues that do directly affect their interests, such as ocean contamination and ritual slaughter. In fact, the number of animals whose lives are affected by political decisions or a lack thereof is enormous, and oftentimes the qualitative impact on these animals' interests is substantial. If we decide to build a highway, animals are chased out of their natural habitat, and migratory routes are disrupted. If political inactivity allows us to consume more and more animal products, the animals whose bodies we consume are obviously affected by that decision. Of course, pets and the animals in zoos, research centres, and other sectors that involve animal use experience the consequences of our democratic rules first-hand every day. Both wild and domesticated animals are omnipresent in our society, and many democratic decisions thus automatically affect their interests. Although it is true that politics is sometimes about typically human affairs in which other animals have no interest, the fact that it is also about issues that animals do have an interest in makes their interests relevant to politics. It justifies the question of whether non-human animals ought to have their interests taken into account politically. The importance of the fact that many non-human animals can be affected by political choices must not be underestimated. As will become clear later on, this fact is vital to the claim that some animals have political rights.

### 1.3 Non-human animals as political patients

Now that we have discussed the most important arguments against political rights for animals, it is time to deal with arguably the most important other question that comes to mind when we start actually considering assigning political rights to non-human animals. Is Aristotle not right in implying that non-human animals are ultimately ineligible for political rights since they cannot comprehend, let alone exercise these rights?

Fortunately, today's thinking about the political roles of non-humans is not as pristine as it was in Aristotle's era. One important currently debated issue is, however, still related to the basic Aristotelian idea that non-human animals are ultimately unfit to engage in political business. The issue is this: are non-human animals merely *undergoers* of political action (what will be referred to here as "political patients") or are they also *doers* of political action (what will be referred to here as "political agents")?<sup>35</sup> "Political action" then may be defined as performing an action that is *distinctively* political and that is the product of political agency.<sup>36</sup> If political acting is an expression of political agency, does this not require various complex capacities, some of which are arguably typically human? As will become clear later on, the controversy concerning the Aristotelian contention ultimately revolves around how we define political agency.

#### *The Political Animal Agents School*

Those who maintain that animals are actually political agents, in other words *doers* of political action, obviously disagree with the Aristotelian idea that animals are unfit for politics. They maintain that non-human animals can act politically, and that, in fact, they oftentimes already act politically. Examples of animal behaviour that is interpreted as political acting are being

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<sup>35</sup> The terms "political patient" and "political agent" are inspired by the well-known philosophical distinction between *moral* agents and *moral* patients, terms which relate to individuals' capacities to act morally and to be held morally responsible. Since the terms used here are to indicate individuals' capacity to act *distinctively political*, "political agent" and "political patient" seem only natural.

<sup>36</sup> Part of this definition ("distinctively political") is proposed by Angie Pepper in: Angie Pepper, "Political Agency in Humans and Other Animals," (paper presented at *Animal Agency: Language, Politics, Culture Conference*, Amsterdam, May 13, 2016), 1.

present in the public realm and refusing to conform to social norms and arrangements in interactions with humans, e.g. by attacking humans. We can identify the political philosophers Sue Donaldson (1962–) and Will Kymlicka (1962–) as the best known defenders of this school of thought.<sup>37</sup> Let us call this school the “Political Animal Agents School,” the “PAA School” for short, to indicate that the thinkers in this school maintain that many non-human animals are political agents. It is important to briefly discuss the main ideas of the PAA School, because these ideas have been quite influential in political animal theory so far.

In their book *Zoopolis* (2011), Donaldson and Kymlicka maintain that many non-human animals are political agents, or “political participants” and “agents of change” as they also call them.<sup>38</sup> Of course, Donaldson and Kymlicka explain, these animals are not *deliberate* agents in the sense that they reflect on their political acting, but they are political agents nonetheless.<sup>39</sup> Donaldson and Kymlicka thus do not accept the Aristotelian premise that animals have no political agency.<sup>40</sup> They come to this conclusion in two steps. First, they reject the classic “rationalistic” conceptualization of political agency and replace it with the much less demanding concept of “dependent agency.”<sup>41</sup> The second step they take is interpreting various forms of animal behaviour in such a way that they fit this conceptualization of dependent agency.<sup>42</sup> Let us take a closer look at these two steps.

In the first step, Donaldson and Kymlicka reject the conventional meaning of political agency. That is to say, they reject the way in which the necessary capacities for being a political agent are typically interpreted.<sup>43</sup> These necessary capacities are: (I) the capacity to have and communicate a

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<sup>37</sup> Donaldson and Kymlicka, *Zoopolis*. In this school also: Smith, *Governing Animals*; Eva Meijer, *Dierentalen* (Leusden: ISVW Uitgevers, 2016); Clemens Driessen, “Animal Deliberation,” in *Political Animals and Animal Politics*, eds. Marcel Wissenburg and David Schlosberg (Basingstoke: Palgrave Macmillan, 2014), 90–104.

<sup>38</sup> Donaldson and Kymlicka, *Zoopolis*, 114.

<sup>39</sup> Donaldson and Kymlicka, *Zoopolis*, 112, 114.

<sup>40</sup> Donaldson and Kymlicka, *Zoopolis*, 58.

<sup>41</sup> Donaldson and Kymlicka, *Zoopolis*, 59–61, 103–105.

<sup>42</sup> Donaldson and Kymlicka, *Zoopolis*, 108–122.

<sup>43</sup> Donaldson and Kymlicka, *Zoopolis*, 103–105.



subjective good, (II) the capacity to comply with social norms, and (III) the capacity to participate in the co-authoring of laws.<sup>44</sup> Donaldson and Kymlicka claim that these capacities are generally interpreted in a “highly cognitivist way,” which sets the bar unreasonably high.<sup>45</sup> That is: they maintain that it is unfair to require that, in order to be labelled a political agent, (I) individuals must reflectively endorse a conception of the good, (II) individuals must understand the reasons for social norms and comply with them for these reasons, and (III) individuals must be able to engage in public reason in order to be co-authors of the law.<sup>46</sup> Donaldson and Kymlicka opt to move away from this overly “rationalist idea” of political agency and to adopt a view of agency called “trust-based dependent agency” instead. In this perception of agency, it is not an innate ability as such, but something that must be socially enabled and thus “inheres in a relationship amongst citizens.”<sup>47</sup> Donaldson and Kymlicka explain trust-based dependent agency as follows: “In this view, even the severely cognitively disabled [and domesticated animals] have the capacity for agency, but it is agency that is exercised in and through relations with particular others in whom they trust, and who have the skills and knowledge needed to recognize and assist the expression of agency.”<sup>48</sup> When interpreted in such a way, the respective capacities needed for (political)<sup>49</sup> agency become much less demanding, namely: (I) the capacity to express a subjective good (“as revealed through various forms of behaviour and communication”), (II) the capacity to comply with social norms (“through the evolution of trusting relationships”), and (III) the capacity to participate in shaping terms of interaction (by e.g. “sheer presence” or “engaging in social relationships”).<sup>50</sup> Domesticated animals have all these requisite capacities of political agency, or so Donaldson and Kymlicka claim.<sup>51</sup> This idea of dependent agency is

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<sup>44</sup> Donaldson and Kymlicka, *Zoopolis*, 103.

<sup>45</sup> Donaldson and Kymlicka, *Zoopolis*, 103–105.

<sup>46</sup> Donaldson and Kymlicka, *Zoopolis*, 103–104.

<sup>47</sup> Donaldson and Kymlicka, *Zoopolis*, 60, 108.

<sup>48</sup> Donaldson and Kymlicka, *Zoopolis*, 60–61, 104–105.

<sup>49</sup> There is some linguistic vagueness in *Zoopolis*, in the sense that it is at times hard to determine whether Donaldson and Kymlicka are discussing *political* agency, relations, and norms or *moral* or *social* agency, relations, and norms.

<sup>50</sup> Donaldson and Kymlicka, *Zoopolis*, 104–105, 112–116.

<sup>51</sup> Donaldson and Kymlicka, *Zoopolis*, 60–61, 104–105.

meant to replace the classical concept of political agency: “the significance of this new model ... [is] to change our conception of citizenship for everyone, regardless of dependency status and innate capacities. Rather than dividing the polity between those who are independent and those who are dependent—or into those who are agents and those who are patients—this new conception of citizenship recognizes that we are all interdependent, and experience varying forms and degrees of agency according to context, and over the life-course.”<sup>52</sup> And indeed, as we will see below, this new concept of agency makes it very hard to distinguish expressions of political agency from passive forms of non-political behaviour.

The second step Donaldson and Kymlicka take is to interpret various forms of animal behaviour in such a way that they meet the criteria stated above. It is obvious that the threshold for political “trust-based dependent agency” is not very high. Donaldson and Kymlicka confirm this when they write that the limits of this type of agency cannot be determined in the abstract: “[the question of what] the outer limits of this potential scope for agency [are] ... can only be answered by engaging in the process—expecting agency, looking for agency, and enabling agency.”<sup>53</sup> Consequently, everyday animal behaviour is interpreted as a political act. Consider, for example, the following types of dog behaviour: choosing some type of dog food over another and expressing a preference for a certain type of walking trail while on a daily outing. Both types of dog behaviours are interpreted as expressions of political agency.<sup>54</sup> According to the PAA School, sometimes even the “sheer presence” of an animal may be qualified as a political act, more precisely: political participation. Donaldson and Kymlicka denounce the traditional conception of political participation, which they say typically indicates a responsibility to be informed, to participate in elections on the basis of this information, and thereby to shape the shared political

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<sup>52</sup> Donaldson and Kymlicka, *Zoopolis*, 108.

<sup>53</sup> Donaldson and Kymlicka, *Zoopolis*, 110.

<sup>54</sup> Donaldson and Kymlicka, *Zoopolis*, 109–110. Although Donaldson and Kymlicka admit that these “dogly” expressions of preferences “may seem like trivial matters in the context of thinking about citizenship,” they add that, in the life of a dog, these matters are “of enormous importance.”

community.<sup>55</sup> This classical concept of political participation is turned down on the grounds that, again, there is too strong a “rationalist inflection at work” in it.<sup>56</sup> Instead, as noted, “sheer presence” and “engaging in social relationships” are already perceived to be forms of political participation.<sup>57</sup> Many other types of animal behaviour are interpreted as animals “negotiating the terms of coexistence with their human companions” or are taken to be a “catalyst for political deliberation” and thus an expression of political agency.

Because it is believed that non-human animals are able to shape the norms of our coexistence, the right way to go forward in political animal theory according to the PAA School is thought to be to listen to what animals try to tell us and to “enable” and “recognize” political animal agents in their “shaping of the rules of our shared world.” We must, in other words, “start a conversation with other animals” about the rules of our co-existence.<sup>58</sup> We can, in this view, negotiate the terms of coexistence *with* animals, instead of unilaterally forcing rules on them.

### *Intention as a necessary requirement for political agency*

The idea that many non-human animals already act politically is certainly thought-provoking, but it is not endorsed in this book. It is problematic for several reasons. The most important problem, as pointed out by political theorist Angie Pepper (1982 –), is that this particular school of thought stretches the definition of political agency too far.<sup>59</sup> Indeed, animals express their preferences often, and these may even be expressions of moral agency, but it is mistaken to interpret this kind of behaviour as the exercise of *political* agency. When we perceive expressions of preferences (such as the discussed food and walking trail preferences) as political acts, the problem is that, so Pepper writes, “virtually all interactions between beings with

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<sup>55</sup> Donaldson and Kymlicka, *Zoopolis*, 112–116.

<sup>56</sup> Donaldson and Kymlicka, *Zoopolis*, 112–116.

<sup>57</sup> Donaldson and Kymlicka, *Zoopolis*, 112–116.

<sup>58</sup> Meijer, *Dierentalen*; Eva Meijer, “Political Animal Voices” (PhD diss., University of Amsterdam, 2017).

<sup>59</sup> Pepper, “Political Agency in Humans and Other Animals.” See also: Cochrane, *Sentientist Politics*, 40–41.

preferences are going to count as exercises of political agency.”<sup>60</sup> And indeed, such a broad definition of what it means to be acting politically leads to rather curious conclusions, such as worms being political agents,<sup>61</sup> and certain acts of resistance by animals, such as cows escaping from the slaughter house, being perceived as “political protest.”<sup>62</sup> Such acts of resistance potentially influence the public opinion, serve as a catalyst for political deliberation, and possibly also indirectly change legal regulations, and thus the PAA School perceives these acts as political ones.<sup>63</sup> In the same line of reasoning, a famous (recently deceased) captive killer whale named Tilikum who killed three people, among which two of his caretakers, is portrayed as a “political murderer.”<sup>64</sup> And similarly, stray dogs autonomously violating the prohibition on taking the subway in Moscow are perceived to be committing civil disobedience (yes, there is a prohibition for dogs on subway cars in Moscow, and yes, stray dogs autonomously take the subway nonetheless).<sup>65</sup>

It is an interesting thought that animals who break the (unwritten) rules regulating their suppression are protesting against their suppression. Indeed, we may fairly interpret a cow escaping from the slaughter house as not wanting to have anything to do with the noisy and bloody mess inside, and maybe killer whale Tilikum did indeed kill those people out of a frustration that was caused by his depressing and never-ending captivity. Admittedly, these acts of resistance by animals may influence the public opinion and hence indirectly influence the legal framework regulating their lives and the circumstances of their suppression. However, perceiving these acts of resistance as *political* acts of resistance for the sole reason that they can have political *consequences* is problematic. That seems to stretch the definition of political acting too far. In an alternative view on these matters,

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<sup>60</sup> Pepper, “Political Agency in Humans and Other Animals,” 13.

<sup>61</sup> Eva Meijer, “Worm Politics,” in *Posthuman Dialogues in International Relations*, eds. Erika Cudworth, Stephen Hobden and Emilian Kavalski (Abingdon: Routledge, 2017), 128–142.

<sup>62</sup> Donaldson and Kymlicka, *Zoopolis*, 115–116.

<sup>63</sup> Donaldson and Kymlicka, *Zoopolis*, 112–116; Meijer, *Dierentalen*, 86–89.

<sup>64</sup> Meijer, *Dierentalen*, 88.

<sup>65</sup> “The acting of the dogs is comparable with the situation in which humans denounce a certain system or privileges of a certain group by breaking the rules,” translation JV. Meijer, *Dierentalen*, 154–155.

the animals are just going about their daily life, trying to fulfil their private preferences, and it is only humans who attach political meaning to these acts.<sup>66</sup> On this account, animals are not actually challenging the rules that regulate their suppression, because, as Donaldson and Kymlicka themselves recognize, they are not *deliberately* trying to garner political effect. Pepper stresses that it is exactly this intention to affect political institutions that seems a requirement to defining an act as political.<sup>67</sup>

An example may demonstrate the importance of having the intention of affecting political institutions to the definition of political acting. Let us expand the example of the stray dogs taking the subway in Moscow a bit. Suppose that taking the subway is not only prohibited for dogs but also for humans with luggage of over twenty pounds. Now further suppose that James, an uninformed American (human) tourist in Moscow with a thirty-pound suitcase is, just like the stray dogs, not aware of the local rules regulating the use of the subway in Moscow. If James, heedless of the prohibition, takes the subway with his heavy suitcase nonetheless, is he committing a political act? Is he “negotiating the terms of coexistence,” just like the law-breaking stray dogs are in the eyes of the PAA School? Or is this just a tourist following his preference to take the subway and thereby accidentally breaking the rules because he is not aware of them—and thus not acting politically at all? The crucial information here seems to be that the tourist is not aware of the rules and has no intention at all of bringing about political effect with regard to these rules. Since James is not even aware of the rules and thus not deliberately challenging them, it seems highly unlikely that he is committing a political act.

Pepper stresses the importance of having the intention of affecting political institutions by offering a different example. She describes the situation of someone who accidentally gets caught up in a protest march by crossing the street to his or her favourite hat store.<sup>68</sup> The “sheer presence” of this person in a protest march does not mean that his or her walk among the protesters is a political act. The crucial factor which distinguishes one walk

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<sup>66</sup> Pepper, “Political Agency in Humans and Other Animals,” 12–18.

<sup>67</sup> Pepper, “Political Agency in Humans and Other Animals.”

<sup>68</sup> Pepper, “Political Agency in Humans and Other Animals,” 5, 16.

among a protesting crowd from another is whether the person doing it has the intention of demonstrating against the respective cause. Since the persons in these examples do not seem to have any intention of affecting the political institutions with their behaviour, there does not seem to be any reason to call their behaviour political acting. This is not to deny that the non-political acts of the tourist in Moscow and the accidental “protestor” will not bring about political change. Indeed, the tourist’s transgression may have a political *effect* if it becomes an everyday recurrence.<sup>69</sup> In the case of law-breaking James, the authorities in Moscow may consider the rule as unnecessarily impeding tourists and may decide to drop it if too many tourists violate it. Similarly, a (hypothetical) constant killing of caretakers by killer whales may have the political effect of having the acceptability of keeping killer whales in marine mammal parks discussed in national parliament. The same is true for the person who was looking for the hat store but got caught up in a protest march instead: the protest march may have political follow-up. These possible political consequences are, however, not deliberately intended by the tourist, the killer whale, or the shopper in the same way as, for example, voting for such political change would be. Since killer whales, dogs, and all other non-human animals typically are not aware of political and legal frameworks, it seems impossible that they are deliberately trying to affect political institutions with their behaviour. Perceiving their resistance against harmful practices as political resistance would stretch the definition of political acting too far.

Adopting the idea of political agency as proposed by Donaldson and Kymlicka would also have unacceptable consequences. It would unnecessarily blur the important distinction between actual political preferences, behaviour, institutions, rules, and representation on the one hand and all sorts of private behaviour on the other. The PAA School dislikes the “highly rationalist,” “intellectualist,” and “cognitivist” traditional interpretations of core political concepts and instead prefers to

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<sup>69</sup> Pepper stresses the importance of distinguishing between an action being *relevant* to politics and an action being *political* on account of stemming from political agency. Pepper, “Political Agency in Humans and Other Animals,” 4–5.

focus on the capacities the mentally disabled and non-human animals *do* have.<sup>70</sup> This seems to assume that these concepts have been rationalistically interpreted for no reason at all, but this is obviously not the case. Rationality is evidently intrinsically linked to political acting and shifting attention to capacities that non-human animals *do* have cannot change this fact. Just like focussing on the cooking abilities of people applying for law school makes no sense in selecting candidates, focussing on irrelevant capacities of animals makes no sense when it has to be determined who is capable enough to engage in shaping the future of a country. It is precisely reasonable and intellectual capacities which are necessary to engage in this cognitively complicated business.<sup>71</sup> Political agency, if it is to mean anything, is comprised of rationalistic and intellectualist standards. For all of these reasons, this book will not endorse the idea of political acting as described by the PAA School, but instead follows the definition of political acting as proposed by Pepper: political acts are only those acts that are intentionally aimed at affecting political institutions.<sup>72</sup> It is clear that no non-human animal acts in this particular way, and hence this book will not further deal with the call for recognition and enablement of perceived “political acts” of non-human animals.

#### 1.4 Political patients and their consideration right

If non-human animals are by definition political patients, we now need to investigate whether this disqualifies them for political rights. Do non-human animals, in spite of their mere political “patency,”<sup>73</sup> still have an

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<sup>70</sup> Donaldson and Kymlicka, *Zoopolis*, 104.

<sup>71</sup> Donaldson and Kymlicka arguably realize this because at various points in the book they mention “enablers” and “collaborators” who would have to attend to the expressions of the domestic animals, “to fit them together into an account of ongoing preferences that constitutes a personalized idea of the good, and to work out how to realize this good under existing circumstances, and to bring this information into the political process.” At the same time, however, they despise the idea of a political guardian, who takes care of the respective persons as clients or patients, on the grounds that this is too paternalistic. It is hard to see how these views are to be unified and what actual political representation would look like if not through genuine political guardians. It is also hard to understand why Donaldson and Kymlicka stress the importance of agency so much if, in the end, others will be responsible for the actual political representation of domesticated animals. Donaldson and Kymlicka, *Zoopolis*, 59–60, 104–105.

<sup>72</sup> Pepper, “Political Agency in Humans and Other Animals.”

<sup>73</sup> *Political patency* is used in this book as a term indicating the opposite of political agency. It hence indicates the characteristic of being *unable* to act with the intention of affecting political institutions.

independent claim to political rights, and if so, on what grounds? Traditional political theory has always presumed a strong link between political agency on the one hand and political rights on the other. In other words, once it is established that a certain person is able to act politically, it is only logical to give that person rights to co-engage in political affairs. This is considered fair under democratic norms, more precisely under the principle of political equality. Excluding a perfectly capable person from political influence is considered hardly justifiable and in conflict with that principle. In the same breath, however, it is also often taken to be implied that political patients, who lack the capability of understanding and doing political business, have no political rights.<sup>74</sup> Traditional democratic theory thus seems to conceptualize political agency as not only a sufficient, but also a *necessary* condition for political rights. The contention, endorsed here, that non-human animals are political patients thus seems to force us to conclude that non-human animals cannot have political rights. However, denying non-human animals all political rights because of their political patiency does not seem to be the only option. The traditionally accepted, but hardly explicitly substantiated idea that only political agency can lead to political rights can be contested. Instead, it will be argued here that political agency, though sufficient, is not a necessary condition for assigning an individual political rights.<sup>75</sup> It will be argued that animals have political rights, in spite of the fact that they are not political agents.

It is important to elaborate a little on what we mean by “political rights.” To start with, it is helpful to split up political rights into two separate categories.<sup>76</sup> On the one hand, there are what we might call “active

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<sup>74</sup> This is also signalized in: Donaldson and Kymlicka, *Zoopolis*, 57–61.

<sup>75</sup> Although Donaldson and Kymlicka argue that animals have agency, they also stress that agency is not a necessary requisite for having political rights (or “citizenship rights”). Donaldson and Kymlicka, *Zoopolis*, 57–61. See also: John D. May, “Defining Democracy: A Bid for Coherence and Consensus,” *Political Studies* 26, no. 1 (March 1978): 1–14; Mark Rowlands, “Contractarianism and Animal Rights,” *Journal of Applied Philosophy* 14, no. 3 (November 1997): 235–247; Mark Rowlands, *Animal Rights: A Philosophical Defence* (Basingstoke: Macmillan, 1998), 123.

<sup>76</sup> In a relatively unknown paper from 1978, John D. May makes a similar point, although he puts it slightly differently. The often uncritically accepted assumption that the groups forming, on the one hand, the people who are subjected to state policy (the “subject population”), and on the other, the people who are to participate in actual politics are exactly the same makes no sense, according to May. “We need to separate the task of identifying democracy’s subject population from the task of determining what rights



political rights,” which are rights that indeed require political agency on the part of the rights holder to make sense. These are rights that enable political participation, such as the right to vote and the right to politically represent others. The other category of political rights, which we may call “passive political rights,” do not require political agency by the rights holder in order to make sense. This would include the political right to have one’s interests considered by the political community’s rulers. We may call this right the *consideration right*.

### *Children’s consideration right in theory and practice*

Many human political patients already enjoy the consideration right. The best example of political patients in possession of the consideration right are human children. Let us analyse their political-legal position in small steps to illustrate how the consideration right works in their case.

To start with, we can establish that human children up to a certain age are political patients. They lack the capacities of sophisticated reasoning and rational thinking that are essential for understanding politics and for political acting. For this reason, it is uncontroversial that children have no active political rights (for example, voting rights). They simply lack the capacities that are required for any form of political participation. At the same time, however, children are vulnerable to political decisions: they can be harmed or benefitted by the political decisions made by others. The fact that they have interests that can be affected by the political decisions of the rulers of the political community is reason to give them a consideration right. Without this right, children (and all other people incapable of engaging in the business of politics, such as the severely mentally disabled) would be at the mercy of political agents, because political agents are the ones who hold and exercise all political power. Put differently: the decisions that rule children’s lives are necessarily made without their participation or consent, and without a consideration right, the people making these political decisions would have, in principle, unlimited power to harm children’s

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and powers need to be assigned to what persons,” thus May. What is needed for being included in the “subject population,” is merely being affected by acts of government. May, “Defining Democracy,” 5–10.

interests. That is, however, not a situation we generally consider fair, nor democratic.

The fact that children can be harmed or benefitted by political decisions means that they have a right to have their interests considered in political deliberations. It is, in short, their sentience, the resulting fact that they have interests, and the cumulative fact that these interests can be harmed in political decision making that means that they have to be taken into consideration by political rulers. Because of the fact that they have politically relevant interests, children rightly do, and paintings such as *The Starry Night* do not have a right to be politically considered for their own sake. As such, the consideration right of children functions as a duty to the political agents in power. It imposes a duty on the ones in power to also give due and equal consideration to the interests of the children who have no active political rights. The basis for this is a view of democracy as a model of equal political consideration of all interests. If interests can be affected by political decisions (or the absence of them), then these interests should also be given equal consideration in the decision-making process, regardless of whether the possessors of these interests sit at the deliberation table themselves. In such a democracy, all people with politically relevant interests, hence also political patients, have a right to be politically considered, regardless of whether people can be partakers in active politics. The fact that political patients such as children cannot engage in the political game does not mean that political agents are free to do whatever they want with them. In short, a modern democracy should recognize political patients' consideration right.

So far, we have only contemplated on a theoretical right, but children's consideration right is also reflected in the current-day institutions of liberal democracies. We have, in other words, made institutional arrangements to force politicians to equally consider the basic interests of children, despite their physical absence in political institutions. Put yet differently, we have institutionally secured that even though children may not sit at the deliberation table, they (or: their interests) are also not up for grabs. Such constitutional embedding of the consideration right is crucial for

the political position of children, as it would be somewhat naïve to simply trust the people in power to give due attention to the interests of children.<sup>77</sup>

How does children's consideration right practically take form? The consideration right is not explicitly recognized as a legal right "to consideration," but it is more subtly woven into the constitutional structures of current-day liberal democracies by means of other legal rights that protect specific interests. Crucial for the political consideration of children's interests is the fact that they have fundamental legal rights that protect their most fundamental interests from being disproportionately harmed in society and in the democratic process. These rights are, of course, in part the basic human rights and civil rights that human adults have too, but children also have legal rights especially customized to their specific needs. These specific children's rights are, for example, laid down in the *Convention on the Rights of the Child* and sometimes also in local constitutions.<sup>78</sup> The *Convention on the Rights of the Child*, among other things, protects children against economic and sexual exploitation, forbids the imposing of capital punishment and life imprisonment without possibility of release on children under eighteen, and prescribes that children have access to education.<sup>79</sup> For children, in the

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<sup>77</sup> Robert E. Goodin probably disagrees. His analysis is that children's interests are merely politically represented through the concept of encapsulated interests (meaning indirectly, through their parents' democratic rights). In my view, this is an inaccurate or at least incomplete analysis of children's political and legal position. This analysis fails to appreciate the fact that children's *rights* and the *political effects of these rights* are crucial for the political position of children. In liberal democracies, we do not simply "trust them [parents] to use it [the vote] to protect their children's interests as well as their own," and we do not simply "assume that parents speak and act on their [children's] behalf," when it comes to children's most elementary interests, as Goodin contends. Indeed, *in principle* we do trust that children's interests are safe in the hands of their parents, but there are limits to what parents can do to or decide on behalf of their children, and these limits are defined by the rights of children. Children's most elementary interests are too important to "assume" or "trust" that parents will adequately safeguard them. In liberal democracies, we safeguard their most important interests both legally and politically through fundamental legal children's rights, and if parents gravely violate their children's most important interests as protected by their rights, the state steps in and protects these children's elementary interests instead. Robert E. Goodin, "Enfranchising the Earth, and its Alternatives," *Political Studies* 44, no. 5 (1996): 843. Gregory S. Kavka and Virginia Warren have similar trusting expectations of the political representation of children by their parents: Gregory S. Kavka and Virginia Warren, "Political Representation for Future Generations," in *Environmental Philosophy*, eds. Robert Elliot and Arran Gare (Milton Keynes: Open University Press, 1983), 26–27.

<sup>78</sup> The *United Nations Convention on the Rights of the Child* is ratified by 196 countries, amongst which all members of the United Nations, notably except the United States of America.

<sup>79</sup> Articles 19, 28, 32, 34, 36 and 37 of *The United Nations Convention on the Rights of the Child*.

absence of a guaranteed “pure” democratic position, such rights are essential. Children’s basic human rights, their civil rights, and their specific under-age rights ensure that the fundamental interests of children cannot be unreasonably disadvantaged in the political process in liberal democracies. These rights generally have two important effects on the political decision-making process.

First: children’s rights limit the discretion of political decision making in the sense that politicians may not disproportionately infringe on their fundamental rights in anything they do. Politicians have the duty to respect the constitution and international conventions with all the rights laid down therein. Lawmakers and government officials are bound to respect these rights in everything they do, and so they are institutionally forced to give due regard to the basic interests of children as protected by their fundamental rights. Oftentimes, the judiciary checks their compliance with these rights in a constitutional court.<sup>80</sup>

The second effect these rights have on the political process is that they function as a catalyst for more specified child protection. The necessarily abstractly formulated rights as laid down in the children’s rights convention, human rights conventions, and national constitutions function as political incentives to give substance to these rights. In practice, these rights are often enriched and supplemented by statutory law and regulations regarding child protection.

In sum, the political position of children could be characterized as follows. If it were not for their rights, children would be, in an institutional-political sense, fully dependent on the willingness of adults to bring their interests into the democratic debate. We have seen, however, that their consideration right is institutionalized through legal protection of their most fundamental interests.<sup>81</sup> These fundamental rights function as a big stick, and they have direct effects on the political process. Despite the absence of explicit child representation in parliament, the interests of children are,

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<sup>80</sup> This is, of course, dependent on the national rules of the legal system and whether they allow for constitutional review by a constitutional court.

<sup>81</sup> Assigning political patients fundamental legal rights is not necessarily the only option for institutionalizing the consideration right. Other institutional designs may be possible, as long as they have the effect of ensuring political consideration of the political patient’s interests.

through these rights, always virtually present in parliament. Put differently: the absence of children in political institutions that is dictated by their mental limitations is institutionally neutralized by safeguarding their basic interests through fundamental legal rights.

Importantly, it follows from the foregoing that certain political patients, namely children, already have a consideration right, both in theory and practice. This confirms that one need not necessarily be a political agent in order to have political rights. Although political patients may be denied active political rights on account of lacking political agency, they are nonetheless eligible for the consideration right. Non-human animals, as political patients, thus may also have this (theoretical) consideration right.

### *The identity of interests as a core characteristic of democracy*

The consideration right tries to give an account of the proper political position of political patients. But before we can rush to the conclusion that non-human animals are equally eligible for the consideration right on account of being political patients with relevant interests, we must first deepen our understanding of this theory a little. For one, it was briefly mentioned that the claim that the ones in power have a duty to also give due and equal consideration to the interests of political patients is only convincing if we understand democracy as a political model that enables us to give equal political consideration to all interests. But is such an account of democracy convincing?

An interesting democratic theory in this regard is that of James Mill (1773–1836), father of the more famous philosopher John Stuart Mill (1806–1873).<sup>82</sup> In his essay “Government” (1825), father Mill investigates several modes of governance in search of the best one.<sup>83</sup> His contemplations on direct democracy and indirect (in other words representative) democracy are

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<sup>82</sup> Janneke Vink, “De Democratische Rechtsstaat als Belangenweegschaal: Belangen als Grondslag voor een Politieke en Juridische Positie voor Dieren,” in *De Toegang tot de Rechter de Lege Ferenda in Milieuaangelegenheden*, ed. Pierre Lefranc and Charlotte Ponchaut (Mechelen: Wolters Kluwer, 2017), 43–56.

<sup>83</sup> “Government” is part of: James Mill, *Essays on Government, Jurisprudence, Liberty of the Press, and Law of Nations* (London: J. Innes, 1825).

important to our cause of finding classical theoretical grounds for understanding democracy as a model that enables the equal consideration of interests.<sup>84</sup>

From his writings, it is clear that James Mill loved the basic idea of a direct democracy, in which the entire political community governs itself. Wary of any form of abuse of power, he thought that the power to govern over all people was safest in the hands of those people themselves.<sup>85</sup> He had, however, no illusions with regard to the practical feasibility of a direct democracy. He was fairly sure that such a mode of governance is practically impossible for two reasons. First, there is a great inconvenience in assembling the entire community every time the business of government requires performance. Direct democracy would consume all the time of the community members, and there would thus be no time left for other public and private life. Secondly, Mill thought that calm and effective deliberation were impossible in a direct democracy, because the assembly would be too numerous for that.<sup>86</sup>

These two problems of direct democracy render it rather useless as an actual form of governance, Mill thought, and this was unfortunate in his eyes, because direct democracy has one of the most important characteristics of a political model secured in its design: the reflection of peoples' interests in political governance. In a direct democracy, the interests of the governed and the governing necessarily coincide, because the community governs itself. This ensures that the interests of the community are fully reflected in government decisions and that there is no risk of foul play. Mill explains:

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<sup>84</sup> It must be noted that Mill used different terms for what we would now call direct and representative (or "indirect") democracy. For reasons of clarity, however, I will replace them with the now customary terms direct and representative democracy.

<sup>85</sup> Mill thought it a "law of nature, that a man, if able, will take from others any thing which they have and he desires." To suppose that a person in power will *not* take from every man what he pleases is, according to Mill, "to affirm that Government is unnecessary; and that human beings will abstain from injuring one another of their own accord." James Mill, "Government," in *Essays on Government, Jurisprudence, Liberty of the Press, and Law of Nations*, ed. James Mill (London: J. Innes, 1825), 8, 17.

<sup>86</sup> To the old Greeks, city states of about forty to fifty thousand citizens were already considered to be too numerous. Robert A. Dahl summarizes the Greek thought as follows: "Like an athlete who in growing fat loses his swiftness and agility and can no longer participate in the games, the enormity of our demos is ill-suited for democracy." Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 16–19.

"The Community cannot have an interest opposite to its interest. To affirm this would be a contradiction in terms. The Community within itself, and with respect to itself, can have no sinister interest."<sup>87</sup> This coinciding of interests between the rulers and the ruled, also called *identity of interests*, guarantees policies that are (perceived to be) in the best interest of all, because what rulers would make policy that hurts their own interests? Mill considered this automatic identity of interests a highly attractive and important characteristic of direct democracy, a characteristic surely to be copied as much as possible into any other, semi-ideal mode of government.

The representative democracy was the next most appropriate candidate for a model of governance. Mill thought that in a representative democracy, too, attaining an identity of interests would be possible. But unlike in direct democracy, this coinciding of interests would not be inherent to its design, and thus attaining the identity of interests would require extra institutional mechanisms. Mill: "There can be no doubt, that if power is granted to a body of men, called representatives, they, like many other men, will use their power, not for the advantage of the community, but for their own advantage, if they can. The only question is, therefore, how can they be prevented? in other words, how are the interests of the Representatives to be identified with those of the community?"<sup>88</sup> Mill thought that making the community responsible for checking the individuals that represent them would do the job. Periodical general elections could be a mechanism that would bring about such a community check. "This is an old and approved method of identifying as nearly as possible the interests of those who rule with the interests of those who are ruled," Mill writes.<sup>89</sup> This community check would be crucial in avoiding abuse of power by the representatives.<sup>90</sup> Without it, Mill predicted, representatives "will follow *their* interest, and produce bad Government" (*italics JV*).<sup>91</sup> The door would be wide open to a "mischievous use of power"

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<sup>87</sup> Mill, "Government," 7.

<sup>88</sup> Mill, "Government," 18.

<sup>89</sup> Mill, "Government," 18.

<sup>90</sup> Mill, "Government," 16–17.

<sup>91</sup> Mill, "Government," 17.

by the representatives, Mill thought.<sup>92</sup> Only with a community check such as periodical general elections would the communities' interests be safeguarded, because the valuable identity of interests would be artificially restored again. Representative democracy, the "grand discovery of modern times" according to Mill, would thus combine the principled rightness of direct democracy with practical feasibility.<sup>93</sup>

There are many things to say about this important early piece of democratic theory offered by Mill, but I will concentrate on only two aspects.

Firstly, by stressing the importance of the political community having the same interests as the ones in power, Mill implicitly paints a picture of democracy as a political model in which the consideration of all individuals' interests is the central trait. A democracy, in other words, in which some form of interests-representation for all members of the political community is a necessary requirement. "Bad government," in Mill's eyes, is a democracy in which the representatives only strive to safeguard their *own* interests, not (also) those of the rest of the political community. *Vice versa*, good government requires representatives to strive to safeguard the interests of the whole political community, and depending on where the boundaries of the "political community" are placed, this could include also the interests of non-human animals.<sup>94</sup>

It must be stressed here that James Mill, unlike his son John Stuart, had no explicit concern for the interests of non-human animals.<sup>95</sup> It seems admissible, however, to bend his theory in the modern interspecies direction a little bit for several reasons. Nothing in Mill's theory implies that it is only suitable for application to humans. On the contrary, the core theme around which his whole political theory spins are *interests*, which we now know are not only possessed by humans but by all sentient animals (John Stuart did

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<sup>92</sup> Mill, "Government," 8, 17.

<sup>93</sup> Mill, "Government," 16.

<sup>94</sup> The boundaries of the political community will be explored in the upcoming subsections.

<sup>95</sup> John Stuart Mill, "Utilitarianism," in *Utilitarianism and Other Essays*, ed. Alan Ryan (Harmondsworth: Penguin Books, 2004), 283; John Stuart Mill, "Whewell on Moral Philosophy," in *Utilitarianism and Other Essays*, ed. Alan Ryan (Harmondsworth: Penguin Books, 2004), 253.



seem to realize this). Furthermore, Mill explicitly agreed with several other political philosophers that the ultimate goal of governance was to achieve the greatest happiness of the greatest number.<sup>96</sup> The happiness of a person, Mill maintained, “is determined by his pains and pleasures,” and thus the business of government “is to increase to the utmost the pleasures, and diminish to the utmost the pains” which are produced by others.<sup>97</sup> Since not only humans but also other sentient animals can experience pains and pleasures, it seems only reasonable to include them too in Mill’s theory on governance. In 1861, John Stuart Mill implicitly made this correction to his father’s theory when he wrote that the Greatest Happiness Principle indeed does not only seek the maximization of the enjoyments and minimization of the pains of humans, but also “so far as the nature of things admits, [those of] the whole sentient creation.”<sup>98</sup> In short, an interspecies interpretation of James Mill’s theory is thus possible, even more so with the knowledge of today, without perverting the very essence of it. Therefore, in Mill’s essay on *Government*, we have found ourselves a theory of democracy with as a key feature the reflection of all (interspecies) interests in the basic democratic institutions.

The second remark on father Mill’s democratic theory is that it has a certain flaw in it that we see more often in political theory, a serious flaw that has contributed to the undertheorizing about the political status of political patients in general. This flaw is that the theory seems to assume that *all* humans, without exceptions, are political agents. A rather pompous, but false view of the human being has been dominating political theory ever since this view became popular: the view of the human animal as the enlightened, reasonable, intelligible, and autonomous being *per se*. Mill’s theory also seems to implicitly endorse this overly idealistic image of humans as perfect political agents *per se*. Mill maintains that *all* interests are

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<sup>96</sup> Mill, “Government,” 3–4.

<sup>97</sup> Mill, “Government,” 4.

<sup>98</sup> An “existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality” must, according to John Stuart Mill, not only be secured to the greatest extent possible to all mankind, but “so far as the nature of things admits, to the whole sentient creation.” Mill, “Utilitarianism,” 283. See also: Mill, “Whewell on Moral Philosophy,” 253.

reflected in governance if all people have a right to vote for representatives. The unspoken premise here seems to be that every single person with interests has an ability to vote. To Mill, it is “very evident” that if the community were to vote for representatives, “the interest of the community and that of the choosing body would be the same.”<sup>99</sup> Mill thus implicitly seems to assert that the political community consists of only intelligible political agents who are able to vote.

This assertion, however, clearly ignores the existence of political patients. Obviously, not all humans, let alone all sentient individuals, are political agents. We know that in reality many people are not (fully) reasonable, intelligible, and autonomous and that many humans are dependent creatures, incapable of political acting. Mill’s theory, like many others, seems to ignore the fact that political patients exist. He simply seems to fail to consider the fact that there are also members of the political community who *have* interests but who are *not* able to vote for representatives, which is a significant inadequacy on his part. Mill does not seem to realize that his so wished-for identity of interests between the political community and the representatives is not at all achieved merely by granting voting rights, because not every individual in the political community is able to vote. If the reflection of interests in governance is fully dependent on voting, which it is in Mill’s model, only the interests of those who can vote will have guaranteed reflection in governance. Even worse, according to Mill’s own predictions, these people responsible for governance will probably make “mischievous use” of their power to rule over the whole community, including political patients. If the political representation of a community is solely based on voting, therefore, political patients are left extremely vulnerable, prey to the whims of political agents. If a true identity of interests between the political community and the political rulers is to be achieved, a political order cannot simply rely on general elections, but is in need of other mechanisms which can account for the reflection of the interests of political patients in governance as well.

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<sup>99</sup> Mill, “Government,” 21.

We must also consider a different possibility, however. Possibly, Mill did not, like many others, simply assume that all humans are political agents. It is possible that Mill did sufficiently consider the existence of political patients, but that he was convinced that the mechanism of voting was sufficient to ensure the representation of their interests in governance nonetheless. This is a plausible possibility, because James Mill was a known advocate of the now controversial idea of *encapsulated interests*. This concerns the idea that not every individual needs independent political rights, because their interests might already be encapsulated in the interests of others. Children's interests, for example, were considered to be encapsulated in the interests of their parents, and thus Mill considered it useless to secure the political reflection (or other protection) of children's interests independently. But also with regard to women, Mill was ruthless. It is unclear whether he thought women were even capable of political acting and thus whether they were even political agents, but there is no doubt that he thought it unnecessary for women to have political rights of their own. Mill argued that women do not need separate democratic rights, because their interests are automatically protected *through* their husbands or fathers, who already have full democratic rights. "Those individuals whose interests are indisputably included in those of other individuals, may be struck off [the list of the choosing body] without inconvenience," Mill wrote.<sup>100</sup> Apart from children, women thus were also perceived to be individuals whose interests were already included in other people's interests.

As pointed out by others, Mill makes some crucial mistakes here.<sup>101</sup> It seems highly unlikely that there even exists *one* individual whose whole set of interests is "indisputably included in those of other individuals." There is always a point at which interests necessarily clash—which is notably even implied in the reflections on human nature and society in the first part of James Mill's work.<sup>102</sup> It is therefore definitely false to maintain that *every* child's or woman's interest is already included in a parent's or a man's

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<sup>100</sup> Mill, "Government," 21.

<sup>101</sup> For example (although without explicitly mentioning James Mill) in: Goodin, "Enfranchising the Earth," 841–843.

<sup>102</sup> Mill, "Government," 3–7.

interest. Moreover, even if there were people whose interests were wholly included in those of their “master,” it would be naïve to expect that the “master” will weigh these interests on a par with his own interests — especially given the selfish nature of man as pictured by Mill.<sup>103</sup> Thirdly, it is also clearly a violation of the principle of political equality to give every man independent political rights and not a single woman. Even among men, there must be some interests already indisputably included in those of others. With regard to men, however, it apparently is not a reason to take away part of their political rights. In short, offering a person, whether child, woman, or man, no means to secure that his or her political interests are duly and independently regarded is to break with the principle of political equality and, strikingly so, with Mill’s own view of what democracy entails.

The gap in Mill’s theory with regard to the political rights of political patients does not mean that his whole democratic theory is useless. Even though Mill himself may have been wrong about *how* an identity of interests between the political community and the rulers can be achieved, his principled depiction and defence of democracy as a political model that *should* achieve such an identity of interests remains untouched and convincing.

It seems that liberal democracies of today have succeeded quite well in attaining an identity of interests for humans. Women, obviously, now have voting rights, and as illustrated above, for children the political consideration of their interests is secured through their fundamental legal rights. Liberal democracies seem to be quite successful, in other words, in institutionalizing the consideration right of all humans who make up their political community. The situation of non-human animals, however, is still under debate. To finish the argument that they, too, have a consideration right that ought to be institutionalized, it is important to investigate whether they are part of the political community. After all, only individuals

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<sup>103</sup> Robert E. Goodin, *Reflective Democracy* (New York: Oxford University Press, 2003), 217. This is even true of husbands and wives. Steven M. Wise cites a remarkable letter that Abigail Adams wrote in 1776, in which she pleaded with her husband, John, to ensure that the new Continental Congress not place “unlimited power into the hands of Husbands. Remember that all Men would be tyrants if they could.” Cited in: Steven M. Wise, *Rattling the Cage: Towards Legal Rights for Animals* (Cambridge: Perseus Books, 2000), 240.

constituting “the demos” of a democracy have a right to be politically considered. Whether non-human animals are among them will be examined in the upcoming subsections.

### *The demos*

In the understanding of democracy as just pictured, the political rulers in representative democracies ought to take into consideration the interests of all the individuals of the political community. Crucially, the interests of those who may never attain representative power themselves, the political patients, must also be considered if they are part of the demos. But who constitutes the demos? Which political patients are part of the demos and thus qualify for the right to be politically considered? Once we have an answer to this, it will become clear whether non-human animals have a consideration right.

The question as to who constitutes the demos is one of the most essential ones in democratic theory. The problem it addresses is sometimes called “the boundary problem” or the “problem of inclusion”: what are the boundaries of a political community, or in other words, who is to be included in the demos? It is a critical question because the answer determines who is a factor of political concern: who is to be democratically included and who is to be excluded.<sup>104</sup> It is all the more remarkable, therefore, that until recently there was a lack of constructive theorizing on this question in literature on democratic theory.

Robert A. Dahl (1915–2014), a renowned political theorist who has extensively looked into this subject, pointed out the lack of theorizing about the boundary problem in 1970. “How to decide who legitimately make up ‘the people,’” he wrote, “is a problem almost totally neglected by all the great political philosophers who write about democracy.”<sup>105</sup> A plausible reason for this theoretical void is given by Dahl himself. Possibly, political

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<sup>104</sup> Ludvig Beckman, *The Frontiers of Democracy: The Right to Vote and its Limits* (Basingstoke: Palgrave Macmillan, 2009); Dahl, *Democracy and Its Critics*.

<sup>105</sup> Robert A. Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970), 60.

philosophers felt like there was no reason to dive into the subject, because the world's "peoples" are already historically formed.<sup>106</sup> We have the democratic people of the United States of America, the people of Germany, the people of Norway, and many more. The boundaries of those democratic "peoples" are not created by principle, but by the historical development of nation states.<sup>107</sup> One might object, however, that the empirical existence of democratic peoples around the world does not relieve us from the obligation of examining the normative question of what constitutes a rightful democratic people. This normative question begs a principled answer, one that cannot be formulated by referring to historical developments, nor by the democratic process itself.<sup>108</sup> Fortunately, the initial scarcity of theorizing on the question of who constitutes the demos was only temporary. In fact, there has been a solid answer to that question for a while now, one which is relatively uncontroversial, and which faces few seriously competitive alternatives.<sup>109</sup> It is the idea that a democratic people is comprised of all individuals who have interests that are affected by the decisions of the government. Put differently: the normative boundaries of the demos are determined by the *principle of affected interests*.<sup>110</sup>

For some time now, the principle of affected interests has been implicitly and explicitly endorsed by many political theorists as the decisive answer to what the boundaries of a democratic people are: only those individuals affected by the collective decisions are part of the concept. But despite the countless references to this principle, the principle has always encountered problems. The same can be said about the principle of affected interests as a solution to the boundary problem as Winston Churchill (1874–1965) said about democracy as a form of government: it is the worst, except for all others.<sup>111</sup> In 2007, however, this tradition of uneasy endorsement of

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<sup>106</sup> Dahl, *Democracy and Its Critics*, 3–4.

<sup>107</sup> Also: Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 48.

<sup>108</sup> Also: Goodin, "Enfranchising All Affected Interests," 43–48.

<sup>109</sup> Beckman, *The Frontiers of Democracy*, 36.

<sup>110</sup> Dahl, *After the Revolution*, 64–67.

<sup>111</sup> Full citation: "All this idea of a group of super men and super-planners, such as we see before us, "playing the angel," as the French call it, and making the masses of the people do what they think is good

the principle of affected interests came to an end when the political philosopher Robert E. Goodin (1950–) published his paper “Enfranchising All Affected Interests, and Its Alternatives.” In this paper, Goodin explicitly endorses the principle of affected interests, he explains why it is the best one around, and he effectively deals with the scarce alternatives to this principle and—in my view less effectively—with the practical objections against it. Goodin argues that the principle of affected interests goes hand in hand with the ultimate democratic goal of protecting the people’s interests and that it is, like democracy itself, ultimately rooted in the equality principle. Fundamentally speaking, the principle of affected interests seems to be the most legitimate solution to the boundary problem.<sup>112</sup>

Quite some objections against the principle of affected interests have been raised, however. Most importantly, the inclusive nature of the principle causes practical problems. If truly everyone whose interests are affected by government decisions constitute the demos, does this not ultimately lead to the conclusion that there is only one demos, namely the whole world? After all, basically every local decision has effects on individuals somewhere else in the world, if not economically, then certainly environmentally. If the Swiss or German governments neglect tackling pollution of the Rhine within their territory, the effects of this are felt by individuals in the Netherlands, where the Rhine flows into the North Sea. If the Belgian government subsidizes Belgian producers of green energy, then producers of green energy elsewhere are affected by this decision; they now have to compete with subsidized rivals. From this point of view, the principle of affected interests causes the number of individuals comprising a people to increase dramatically, possibly to enclose the whole world.

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for them, without any check or correction, is a violation of democracy. Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time; but there is the broad feeling in our country that the people should rule, continuously rule, and that public opinion, expressed by all constitutional means, should shape, guide, and control the actions of Ministers who are their servants and not their masters.” Winston L. S. Churchill, “Speech in the House of Commons,” published in *The Official Report: House of Commons*, 5th Series, vol. 444 (November 11, 1947), 206–207. See on reluctantly endorsing the principle of affected interests also: May, “Defining Democracy,” 8.

<sup>112</sup> Goodin, “Enfranchising All Affected Interests,” 40–68; Dahl, *After the Revolution*, 64.

To make it even worse, the principle of affected interests may lead a demos to expand not only to such an extent that it ignores nation states' borders but also that it ignores "borders" of time. It has been argued that the principle of affected interests may even demand incorporating in the demos people who will live in the future, on account that their interests are also affected by current political decisions.<sup>113</sup> In the context of global warming, for example, every dollar the United States of America fails to spend on slowing down global warming by spending it on e.g. building an oil pipeline instead, affects the interests of the future people living in Bangladesh, who will soon be flooded as a result of global warming. Even though there is reason for some reservations with regard to the idea that the principle of affected interests would require us to include future people as well in the concept of the demos (about which more in the next chapter), it is a fact that many interpret the principle as requiring the inclusion of basically everyone with interests, ignoring almost all boundaries of space and time. It may indeed, in Robert A. Dahl's words, unlock Pandora's Box.<sup>114</sup>

Let us, for the sake of argument, assume that the principle indeed requires us to include foreigners and future people. Even though the principle of affected interests then seems to lead us to a version of democracy as a "genuinely global, timeless democracy," Goodin remains convinced that the principle is the only legitimate way of establishing the demos.<sup>115</sup> He, however, simultaneously admits that if this fundamentally right solution to the boundary problem is to be practicable, then it needs adjustments. This, however, necessarily has the effect of compromising on the normative rightness of the principle—but it is the only option. We cannot be blind to the practical problems of the principle: a timeless global democracy is totally unrealistic. Pursuing an un-adapted version of the principle of affected interests would arguably require abandonment of the

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<sup>113</sup> For example in: Andrew Dobson, "Representative Democracy and the Environment," in *Democracy and the Environment: Problems and Prospects*, eds. William M. Lafferty and James Meadowcroft (Cheltenham: Edward Elgar Publishing, 1996), 124–139; Kavka and Warren, "Political Representation for Future Generations," 21–39; Kristian S. Ekeli, "Giving a Voice to Posterity: Deliberative Democracy and Representation of Future People," *Journal of Agricultural and Environmental Ethics* 18, no. 5 (2005): 443.

<sup>114</sup> Dahl, *After the Revolution*, 67.

<sup>115</sup> Goodin, "Enfranchising All Affected Interests," 64.



system of sovereign nation states.<sup>116</sup> As this is not really an option, at least in the foreseeable future, the extreme consequences of an un-adapted version of the principle of affected interests must be mitigated, and this will hurt in the normative sense. Mitigating the extreme consequences of the principle is possible by adopting two additional demands for determining the demos.

Firstly, we may consider being an inhabitant of the democratic territory to be necessary in order to be part of the demos. In this way, the principle is maintainable in the real world of sovereign nation states. Secondly, we may consider only currently living entities eligible for being part of the demos. This also makes the principle more practical in the current world of currently living people. These extra criteria mean that, in practice, foreigners and future people will be excluded from the demos. Especially the first additional restricting criterion may be hard to account for in a principled, normative sense. After all, we have just established that the legitimate principle for constituting the demos is having interests that are affected by government decisions, and there is a good case to maintain that foreigners are on those grounds part of the demos. The defence of these two extra limiting criteria is thus primarily based on their ability to make the principle of affected interests work in the reality in which states only have jurisdiction on their own territory and in which future people do not exist. Without these additional criteria, the demos will simply be too big, and designing political institutions for this inter-time, worldwide, and someday possibly even interplanetary demos would simply be impossible. For now, therefore, we will consider the demos as being constituted of all individuals whose interests are affected by governmental decisions, with the addition that they must be inhabitants of the territory and currently alive.

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<sup>116</sup> Kavka and Warren, "Political Representation for Future Generations," 32–33. Robert E. Goodin has proposed to introduce "international overlays" which, he claims, "would leave territorially defined states of the familiar sort in place." Goodin, "Enfranchising All Affected Interests," 64–68. See also Alasdair Cochrane's *Sentientist Politics*, in which he develops a cosmopolitan account of what interspecies justice should look like. Cochrane, *Sentientist Politics*.

*Non-human animals and the demos*

Now that we have a reasonably clear rule as to how the demos is constituted, the next step is to find out whether non-human animals are a part of it.

Interestingly, at one point, Goodin indicates that a consistent further reasoning along the lines of the principle of affected interests means that some consideration must also be given to the political position of other sentient animals. When exploring the extreme consequences that an unremedied version of the principle of affected interests has, Goodin, in a footnote, remarks that “depending on one’s views about the interests of other sentient beings or even ecosystems, perhaps we ought on those grounds enfranchise nature as well.”<sup>117</sup> Strikingly, this idea is given no (further) thought in the main text of his paper, but it is relegated to a footnote. Just like Jeremy Bentham more than two centuries before, Goodin considers the implications of his theory for other sentient animals worthy of only a footnote. Although it must be said that Goodin had, by the time of the paper in question, already written a different paper on “nature’s right to have her interests protected as anyone else’s,” it would, given the important implications, have added to the comprehensiveness and prudence of his latter paper if he had elaborated on what the principle of affected interests means for animals in the main text.<sup>118</sup>

Fortunately, this void was recently filled by political philosopher Robert Garner. In 2016, in an attempt to develop a better and less moralistic alternative to the citizenship-account of political rights for animals as developed by Donaldson and Kymlicka, Garner stressed the point that the enfranchisement of animals can be justified by the employment of the principle of affected interests.<sup>119</sup> He does so in two straightforward steps. First, Garner establishes, like we have at the beginning of this chapter, that many political decisions that are made have an impact on non-human animals. That is to say, the interests of animals are affected by the decisions

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<sup>117</sup> Goodin, “Enfranchising All Affected Interests,” 55 (footnote 32).

<sup>118</sup> Goodin, “Enfranchising the Earth,” 835–849.

<sup>119</sup> Robert Garner, “Animals, Politics and Democracy,” in *The Political Turn in Animal Ethics*, eds. Robert Garner and Siobhan O’Sullivan (London: Rowman & Littlefield, 2016), 103–117.

made in a democratic state. Secondly, from this fact it follows that animals, indeed, are members of the political community under the principle of affected interests. Garner thus connects the dots that Goodin foreshadowed in his footnote in 2007, but was reluctant to effectively connect. The two additional criteria added to the principle in order to make it operable in the real world, those of territory and current existence, are met by current animals who reside on the territory. It thus seems fair to conclude that, indeed, some non-human animals are part of the demos.

*Animals vs. foreign people and future people*

Even after Garner's argument that non-human animals are part of the demos, there are still two questions lingering uneasily beneath the surface that must be addressed. First, why should we arbitrarily exclude foreigners and future people from the demos, and not non-human animals? Second, if we agree to include animals in the demos, which animals should be included?

To start with the first question, it has been argued that including all individuals who meet the criterion of being affected by government decisions may be desirable in a normative sense, but is impossible in the real world. For this reason, we have accepted the addition of two practical criteria which make the principle of affected interests manageable in the real world, but which have the effect of arbitrarily excluding foreigners and future people. One may argue that, similarly, including non-human animals in the demos is highly impractical, and one may thus wonder why they should not also be excluded from the demos on this basis. Why not include future people and exclude non-human animals, or include foreigners (as is Goodin's prime concern) and exclude non-human animals?<sup>120</sup> Or why not exclude future people, foreigners, and non-human animals?

These seem to be fair questions. It is crucial to note here that having to choose between excluding several rightful groups from the demos is a

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<sup>120</sup> Robert E. Goodin proposes putting a layer of "world government" on top of currently existing nation states and putting a layer of "international law" on top of currently existing states meant for claiming compensations for damages caused by foreign nations. Goodin, "Enfranchising All Affected Interests," 64–68.

non-ideal situation to begin with. Excluding people from the demos on practical grounds can hardly be justified in a normative sense, and as such, such exclusions will not be defended here as a matter of principle. There seems to be no “good” answers in this regard, since what we are doing here is an exercise of choosing between different evils in the first place. Having said that, the methodology of this book is to work with reality as it is today, and to not sketch a Utopian blueprint which is indifferent and irrelevant to the world as it is today. As such, this requires us to add some extra criteria to the principle of affected interests in determining the demos. The fact that we must choose between several non-ideal alternatives of exclusion need not paralyze us completely, however. Non-ideal as the three exclusions from the demos all are, some are still more acceptable than others.

There are some arguments that can be put forward in support of choosing the enfranchisement of non-human animals over that of future people and foreign people. One argument for doing so is that of the three entities considered, non-human animals’ principled claim to be included in the demos seems to be the most persuasive. Future people’s principled claim to be included in the demos is the least persuasive, because of their ambiguous ontological status. *Are* they even? And thus: “are” they even affected in the same sense as foreigners and non-human animals by governmental decisions?<sup>121</sup> In contrast, non-human animals’ principled claim to be included in the demos seems to be the most persuasive. Of the three considered entities, current animals on the territory of the state seem generally to be the most affected by government decisions. Government decisions will generally hit the interests of current non-human animals on the territory of the state hard. Whereas the intensity of affectedness by government decisions generally wears off the further we go in space and time, this is not necessarily the case once we leave the domain of *Homo sapiens* and move into the direction of other sentient species. In other words, the fact that they are not humans does not automatically reduce their level of affectedness, whereas distance in time and place generally does reduce the level of affectedness. If affectedness is the feature that makes an individual

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<sup>121</sup> Future people’s alleged claim of being enfranchised on the grounds that they are affected by government decisions will be further discussed in chapter two, section four.

eligible to be included in the demos, it seems sensible that if we are forced to choose, we prefer the inclusion of intensely affected individuals over that of less intensely affected individuals.

Another argument in favour of preferring the inclusion of non-human animals in the demos over the inclusion of future people and foreigners is that non-human animals are the easiest of the three to enfranchise. In contrast to the other two entities, the enfranchisement of non-human animals will not necessarily raise unbridgeable practical objections. Including future people would lead to a demos growing into infinity, because it is impossible to know how long human life will continue to exist and until when our decisions will continue to affect these people's interests. Additionally, future people's interests are the hardest to determine, because our knowledge of the context in which they will live gets blurrier with every step further into the future. Different practical problems appear when we consider the actual enfranchisement of foreign people. It was suggested that in order to incorporate foreign people's interests, something like a worldwide democracy has to be established. Most likely, our currently existing nation states could not withstand such radical institutional change and would have to cease to exist.<sup>122</sup> The danger implied in such a global undertaking must not be underestimated, given the fragility of peace and given the possibility that people's solidarity with geographically distant others may have its limitations.<sup>123</sup>

Non-human animals' enfranchisement, on the other hand, perhaps may be established without too much hazardous change to local democracies, but rather by way of small and responsible institutional adaptations. Furthermore, the increasing moral solidarity with other sentient animals (evolutionary distant others, in other words) suggests that enfranchising them in existing democracies may not be an unreasonable stretch. The possibilities of such reform will be examined in the remainder of

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<sup>122</sup> Kavka and Warren, "Political Representation for Future Generations," 32–33; Goodin, "Enfranchising All Affected Interests," 64–68.

<sup>123</sup> To be clear, the possible lack of solidarity with geographically distant others does not affect the geographically distant others' principled right to consideration, which is conditioned on the fact of being affected by political decisions. Such a lack of solidarity could, however, be an important *practical* hurdle to an actual enfranchisement of geographically distant others in political institutions.

this book. For the previously mentioned reasons, it seems sensible and acceptable to opt for including non-human animals in the demos, while excluding future and foreign individuals (among which are clearly also future and foreign animals).

### *Differentiating between animals*

The second question that kept lingering beneath the surface is this: which non-human animals are part of the demos? Is it only chimpanzees, or also elephants, pigs, or maybe even mussels? The application of the principle of affected interests to the animal kingdom may give the impression that they, as a whole, are added to the democratic demos whose political consideration should be guaranteed. Is there is a principled way of distinguishing between this immense multitude of animals? Can we draw a line somewhere in the animal kingdom, preferably a line not as arbitrary as the previously all-too-easily-adopted human-exclusivity line? In answering this, we must find a balance between not stretching democracies unrealistically far on the one hand, and not excluding animals who are entitled to political consideration on the other.

Robert Garner has made a brief but interesting suggestion in this regard. As a method of limiting the immense demos that the principle of affected interests gives rise to, he considers introducing *sentience* as an additional limiting criterion.<sup>124</sup> Applying this criterion would have the effect of including many, though not all non-human animals in the demos, and would restrict the abundance of candidates for enfranchisement to an acceptable number. Garner points out the justifiability of making this restriction when he writes that “Limiting the all-affected principle in this way would seem justified since only sentient beings have the capacity to *be aware* of the affect collective decisions have on their interests” (italics JV).<sup>125</sup>

Indeed, if the basic function of a democracy is to weigh the interests of all who are affected by political decisions, then there is every reason to limit the number of individuals with a rightful claim to that consideration to

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<sup>124</sup> Garner, “Animals, Politics and Democracy,” 115–116.

<sup>125</sup> Garner, “Animals, Politics and Democracy,” 116.

those who can be *aware* of the harms or goods that are inflicted by democratic decisions. Only sentient animals have this awareness. Non-sentient animals, along with trees, mountains, and *The Starry Night*, are not part of the demos, because as far as we know, they cannot experience any harm or good that is done to them by democratic decisions. There is thus no reason to give them independent consideration in democratic decision making. These entities have no subjective and intrinsic interests which can be affected by democratic governance, and so the preferred intercourse with these entities is rightfully discussed in the normal democratic debate in the same way as most other subjects in democracy are. The issue of whether or not to cut a certain tree down, for example, may be approached from several perspectives in the democratic debate. One position may be that the tree is of more economic value when it is converted into a cupboard. Another position may be that the tree is better left alone, a position that can be based in the ethical conviction that natural entities without sentience are also valuable. Both perspectives (and many more) deserve a fair chance of being considered in the democratic debate, but the tree itself has no intrinsic interests that are to be independently weighed in this process. As far as we know today, trees experience no pain or other subjectively felt damage when they are cut down. It is thus unjustifiable for trees to have democratic representation and thus to have the political ability to reduce the freedoms of those who can be harmed or pleased. It is important to note, obviously, that our scientific knowledge with regard to which entities are sentient and which are not increases, and this may affect our assessment of who is part of the demos, and thus entitled to a consideration right, and who is not. If scientists discover that, contrary to what was previously thought, certain organisms are sentient, this automatically increases our demos. Similarly, if scientists discover that, contrary to what was previously thought, certain animals which we thought were sentient appear not to be sentient at all, they are rightfully excluded from the demos. As the pool of sentient entities fluctuates, so must our demos and hence the pool of interests to be politically considered.

Robert Garner, however, is not fully satisfied with his own solution of introducing sentience as a restricting criteria on the demos. He signals one

weak point in making this move: it introduces a moral dimension (“only sentient animals”) into the debate that should preferably remain democratic-theoretical.<sup>126</sup> I, however, disagree with Garner on this point, as the sentience-norm is, in my view, not so much newly introduced, but rather a norm that is already implied in the principle of affected interests.

Recall that this book employs Cochrane’s concept of interests. From that perspective, the sentience-norm is already inherent to the concept of an interest. We have followed Cochrane in his argument that it is useless to talk of interests when it regards non-sentient entities such as plants and paintings. Joel Feinberg (1926–2004), Cochrane’s probable source of inspiration, puts it like this: “an interest, however the concept is finally to be analysed, presupposes at least rudimentary cognitive equipment.”<sup>127</sup> Interests *presuppose* cognitive awareness on the side of the entity that has them, and the interests-having entity is thus necessarily a sentient one. In other words, the capacity for having interests is something reserved only for sentient entities, because only they have the cognitive equipment necessary to even have interests. On this account, sentience is thus not an extra criterion that has to supplement the principle of affected interests, as Garner suggests, but it is already inherent in the principle, because only sentient entities have interests that can be affected. As such, limiting the demos to sentient creatures is not adding an extra moral criterion, but remains a democratic-theoretical norm because it is already implied in the principle of affected interests. What remains is informing ourselves about which animals are sentient and which are not. As far as science can tell us today, this means that chimpanzees, elephants, and pigs are part of the demos, and thus have a consideration right, whereas mussels, for now at least, will politically speaking remain on the side of other non-sentient entities, such as mountains and *The Starry Night*.

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<sup>126</sup> Garner, “Animals, Politics and Democracy,” 116.

<sup>127</sup> Feinberg, “The Rights of Animals and Unborn Generations,” 52.



## 1.5 Conclusion

This chapter has illustrated how classic democratic theory, if non-arbitrarily interpreted, can support the idea that sentient, non-human animals have a right to be considered in the democratic state on account of having politically relevant interests.

First, three *a priori* arguments that could possibly undermine non-human animals' claim to political rights have been discussed and challenged. In response to these arguments, it was argued that many non-human animals have interests, that it is possible to estimate what these interests are, and that many of these interests are politically relevant. Subsequently, the overly enthusiastic claim of the Political Animal Agency School that animals are political agents was challenged on account of stretching the definition of political acting too far. In order to maintain a clear difference between the private and the political, political acting must be defined in a manner that makes political acts distinguishable from mere expressions of private preference. From this, it followed that non-human animals are incapable of political acting, because they cannot act in a way that is intentionally aimed at affecting political institutions.

In the remainder of the chapter it was argued that the dismissal of non-human animals as political agents need not necessarily mean that they cannot have political rights. It was argued that it has long been inaccurately assumed that one needs to be a political agent in order to have political rights. It seems more adequate, however, to distinguish between two separate types of political rights, and to also discern between what the necessary requirements for each of these types of rights are. For determining who ought to be assigned active political rights, namely those which allow a person to act politically, political agency is indeed a relevant characteristic and thus required. However, for determining whose interests are to be considered, in other words who ought to be assigned passive political rights, political agency is not relevant; what is relevant is whether individuals will be affected by the political decisions that are made. In order to demonstrate the sensibility of making this distinction and of conceptualizing a right that has been called the *consideration right*, the political-legal status of human children was assessed. Even though the fact that they cannot act politically

means that they need (and have) no active political rights, they nonetheless need (and have) a consideration right, because their interests are affected by political decisions that are made.

The cogency of the developed interspecies democratic theory was further strengthened by demonstrating that it finds resonance in classic theories and principles of democracy, because they essentially already focus on the importance of interests to democracy. James Mill's classic depiction of democracy as a political model that allows the people to have their interests reflected in governance offers interesting support for an interspecies theory of democracy, if only we update it with the modern knowledge that animals other than humans have interests too. In the same fashion, the principle of affected interests offers straightforward support for the claim that sentient animals are part of the *demos* whose interests the government must take into consideration.

It ultimately followed that currently living, sentient non-human animals on the territory of a democratic state have a right to have their interests considered in the decision-making processes of that state. This may seem a bold claim, especially in comparison with the current position of non-human animals in democratic societies, but this chapter has demonstrated that it is a valid claim, and that it rests not on contestable ethical arguments, but on the classical principles that underpin democracies already. In spite of the fact that, as Darwin noted, we have indeed made animals our slaves, we should consider beginning to view them as our political equals. Not in the sense that we ought to fill out ballots together, but in the sense that they, like us, live under the yoke of a democratic government that affects their lives continuously, and that they, like us, have certain interests they do not wish to be trampled upon by that same government or by other individuals.