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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>

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**Author:** Vink, J.

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

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

## 2

# **Animals in liberal democracies in theory and practice**

## **Introduction**

In 2006, the Netherlands became the first country in the world to have representatives of a political party primarily focussed on animal rights and animal welfare in the national parliament: the *Partij voor de Dieren* (Party for the Animals). Four years later, this political party held two seats in the House of Representatives (out of 150), and one in the Senate (out of 75). In that same year, Niko Koffeman (1958–), senator for the Party for the Animals, got the Dutch prime minister, Mark Rutte (1967–), to make a remarkable statement. The occasion was the Parliamentary Debate on the Speech from the Throne in the Dutch Senate: an annual meeting of the government and the Senate in which the prime minister, on behalf of the government, defends the policy plans of the government. In the present case, the government's plan to create five hundred positions for so-called "animal cops" was discussed; these are policemen specially appointed to tackle animal suffering and abuse.<sup>128</sup> Senator Koffeman was curious about which animals would benefit from these plans, especially given the fact that the government would simultaneously be taking millions away from two agencies responsible for the enforcement of animal welfare rules in the animal industries (the NVWA and the AID).<sup>129</sup> As a representative of the animal advocacy party, Koffeman looked at these plans from the perspective of *all* abused animals in the Netherlands, including those in the industries. He challenged Prime Minister Rutte to clarify whether the intent of

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<sup>128</sup> "Vrijheid en verantwoordelijkheid" (coalition agreement VVD-CDA), September 30, 2010, 14, 40–41.

<sup>129</sup> NVWA stands for *Nederlandse Voedsel- en Warenautoriteit* (Netherlands Food and Consumer Product Safety Authority); AID stands for *Algemene Inspectiedienst* (General Inspection Service).

introducing animal cops was only to combat abuse of fluffy pet animals, such as cats and dogs, or whether the animal cops would also be burdened with tackling the harder and more systematic and ingrained types of animal abuse in the industries. Koffeman: “What are these animal cops going to do? What will they mean for the bio-industry? Because as you are introducing the animal cops, you are also cutting the resources of the NVWA and the AID [agencies responsible for enforcing animal welfare rules] by nineteen million euros. That is obviously odd. If you want to tackle animal suffering, of which five hundred million animals are victims, you should not say: we are only going to pay attention to small animals, the dogs and cats. What are you going to do and when?” Koffeman did not succeed in persuading Rutte to discuss the important problem of arbitrary discrimination between different types of animals on mere grounds of fluffiness and economic usefulness. Instead, Rutte concisely answered: “I am prime minister of all animals.” After this historic statement, the discussion in the Senate lost its serious tone (“Are you also prime minister of the animals who snap at the boss?” a Green Party senator asked), and the discussion soon diverged from the topic.<sup>130</sup>

The idea that the prime minister of a liberal democracy is the leader of all the animals on the state’s territory is a provoking thought. Although Rutte’s statement was more likely a jocular way of evading Koffeman’s serious question about whether the animal cops would leave the most intense forms of animal abuse untouched, his statement is a nice starting point for elaborating on the question of what it really means to involve other animals in democratic deliberations and institutions. We could, for the purpose of this chapter, take Rutte’s statement quite literally, even though to him it was probably only a convenient joke. The statement that a prime minister is prime minister of all animals seems to embody the idea that not only humans, but other animals also make up the “people” of a liberal democratic state. This idea, at least when it comes to sentient animals on the territory, was endorsed in the previous chapter. But what consequences should it have for the actual institutions of liberal democracies if we agree

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<sup>130</sup> *Handelingen I* 2010/11, (10), 36, 59–60 (translations JV).

that some non-human animals are also part of the demos? How can we reflect this thought in these institutions? If some non-human animals indeed have a consideration right, in which part of the institutional framework of a liberal democracy can this right be implemented? Must it be incorporated in the professional duties of the head of government, as Rutte's statement could be taken to imply? Is he indeed not only prime minister of all Dutch humans, but prime minister of all Dutch animals?

The principled case for a consideration right for animals has been established in the previous chapter, and the purpose of this chapter is to obtain a clearer view of the normative goals of animal enfranchisement and of the current possibilities for animal enfranchisement in liberal democracies. For obvious reasons, the term "enfranchisement" is used here (and throughout this book) in the broad sense of indicating some type of political or legal recognition of non-human animals in basic institutional structures, not in the narrow sense of extending voting rights to non-human animals. In order to achieve the goals of this chapter, both the normative theory concerning animals' consideration right and the current position of animals in liberal democracies will be analysed. The first section sets out which requirements for institutional enfranchisement follow from the interspecies democratic theory that was put forth in the previous chapter and that supports animals' consideration right. These criteria will be labelled *enfranchisement criteria*. The second section investigates what the current basic political-legal position of non-human animals in liberal democracies generally is, and identifies three promising developments in the area of animal law and politics. The third section investigates whether the current position of animals in liberal democracies is sufficient in light of the enfranchisement criteria. The fourth section discusses to what extent existing theories and ideas concerning the enfranchisement of future people can be useful resources in elaborating on the options for animal enfranchisement. The last section summarizes and brings together the different findings of this chapter.

## 2.1 Enfranchisement criteria

From the interspecies democratic theory that was set out in the previous chapter, some normative requirements for institutionalizing the consideration right naturally follow. In this section, these requirements for institutional reform that immediately follow from the theory of the previous chapter are defined. The institutionalization of the consideration right must be in line with these demands in order for it not to undermine the very democratic principles that underpin this right. The sum of these criteria will function as the normative framework for animal enfranchisement in the remainder of this book.

### *The legitimacy criterion*

The most significant consequence of the interspecies democratic theory put forth in the previous chapter is that it necessarily alters the way in which we understand political legitimacy.

It is as good as impossible to offer a fully comprehensive account of all different conceptions of political legitimacy in political theory here, but a relatively neutral description of political legitimacy is that it is a standard that refers to the justification and acceptability of a political system. However, in order to say anything meaningful about legitimacy, we are required to give some content to what it means for a political system to be “justifiable” and “acceptable.” This section focusses on one particular type of political legitimacy, namely democratic legitimacy, for obvious reasons. Democratic legitimacy, however, is also subject to many different interpretations, of which I will employ the one that places the least normative requirements on a democracy: procedural democratic legitimacy. Choosing this most marginal explanation of democratic legitimacy carries the least risk of raising the suspicion that unnecessary ethical demands are being smuggled in. Yet, even this marginal version of democratic legitimacy will be sufficient to show that democratic legitimacy requires giving non-human animals a political status. Put differently: if indeed the demos comprises not only humans but also other sentient animals, then these other

sentient animals also necessarily become part of the definition of democratic legitimacy—even in the most minimalistic version of the concept.

The procedural account of democratic legitimacy is based on a certain perception of democracy. In the procedural account of democracy, democracy is identified with a sound democratic process. The emphasis is thus on the decision-making process, not on the content of the decisions that result from it (which is central in the more demanding concept of *substantive* democratic legitimacy). In the legitimacy concept based on the procedural account of democracy, democracies are thus considered legitimate (“acceptable” and “justifiable”) insofar as their most basic procedures and institutions are realized and complied with. The obvious next question then is: what procedures and institutions must be realized? In this case, the only requirement for legitimacy is having basic democratic institutions and procedures in place that are consistent with the absolute minimal criteria for even qualifying as “democratic”: reflecting the political equality of every member of the demos. Democratic institutions are therefore considered legitimate insofar as they embody the most minimalistic idea of democracy: offering all members of the demos some sort of political consideration on an equal level.<sup>131</sup>

It was argued in the previous chapter that a non-anthropocentric understanding of democracy leads to the conclusion that the demos also includes sentient non-human animals who reside on the territory of the democratic state. It will be clear by now that this expansion of the demos necessarily has an impact on our understanding of democratic legitimacy. If basic democratic structures are to enable the equal political consideration of all members of the demos in order to be legitimate in the most minimal sense of the term, then the animal-inclusive understanding of the demos means that these democratic structures must also reserve a place for non-human animals in order to qualify as legitimate.

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<sup>131</sup> The roots of this understanding of democratic legitimacy can be traced back to John Locke, who argued that political authority stems from the individuals themselves, who, together and in equal proportions, ultimately form the demos. John Locke, *Second Treatise of Government and A Letter Concerning Toleration*, ed. Mark Goldie (Oxford: Oxford University Press, 2016/1689).

In sum, by merely employing even the least demanding conceptual version of democratic legitimacy, non-human animals will have to be incorporated in it, and as a result democratic institutions will need to consider them in order to qualify as democratically legitimate. Put the other way around, a democracy is illegitimate if it offers sentient non-human animals no formal role at all in its basic democratic institutions. Such would create a democratic deficit. Reserving a place for non-human animals in the basic democratic structures is thus the first requirement for animal enfranchisement.

### *The non-contingency criterion*

The second normative requirement for animal enfranchisement that follows from the interspecies democratic theory set out in the previous chapter is that the consideration of animals' interests may not be contingent in the sense that it is fully dependent on the willingness of humans to do this, but must be institutionally secured instead.

It has been argued that sentient non-human animals have the intrinsic democratic right to have their interests taken into account on account of having politically relevant interests. That right is, in other words, not derived from humans. The intrinsic character of this consideration right means that animals have the right of having their interests taken into account for their own sakes, regardless of humans' readiness to do so. In implementing this consideration right, it is thus important to not make the actual consideration of animals' interests fully dependent on human goodwill, but instead employ or develop some sort of institutional mechanism that obliges humans in relevant political and legal positions to take sufficient account of the interests of other sentient animals.

Institutional securement is necessary due to the fact that it would be irresponsibly naïve to make the protection of the interests of those who are already politically oppressed (non-human animals) completely dependent on the goodwill and generosity of the political oppressors (humans). An analogy with the position of children clarifies this. We have seen that children, just like sentient animals, have an independent and inherent consideration right. In their case, it is evident that it would be unacceptably



naïve to make the consideration of their basic interests fully dependent on the generosity of adults. The wisdom that great philosophers and history itself have taught us time and again is that some people are inclined to use the power they have for their own purposes and at the expense of those who have less power or no power at all.<sup>132</sup> Making the consideration of children's or animals' interests dependent on the goodwill of human adults is thus not only in conflict with the intrinsic nature of the consideration right but also simply not sufficient. In an institutional sense, more is required than a non-committal possibility for humans to take non-human interests into account whenever they feel like it. An institutional constellation in which the consideration of non-human animals' interests is fully contingent on humans' generosity does not only violate their consideration right and is thus an injustice with regard to non-human animals; it is also an affront to the democratic principles in which the consideration right of animals is rooted.

In a work addressing the contingency of the relationship between democracy and animal protection, Robert Garner introduced two concepts which may be helpful in this context.<sup>133</sup> The current situation in liberal democracies<sup>134</sup> is characterized by Garner as *strong anthropocentrism*: the interests of animals are only considered to the extent to which humans want them to be considered.<sup>135</sup> This leads to a situation in which the prevention or ending of disproportional infringements on animals' interests is contingent upon enough humans wanting this. This contingent relationship between democracy and animal protection can only be justified if we assume that the ancient anthropocentric theory of democracy in which only human preferences count is valid.<sup>136</sup> I have argued, however, that it is not. Moving from an anthropocentric democratic theory to a non-discriminative,

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<sup>132</sup> For example in: Mill, "Government," 8, 17; John Stuart Mill, "Considerations on Representative Government," in *Collected Works of John Stuart Mill (Vol. XIX): Essays on Politics and Society (Part II)*, ed. John M. Robson (Toronto: University of Toronto Press, 1977/1861), 505.

<sup>133</sup> Garner, "Animals, Politics and Democracy," 103–117.

<sup>134</sup> More about the protection of animals in current liberal democracies follows in section two of this chapter.

<sup>135</sup> Garner, "Animals, Politics and Democracy," 103, 111–112.

<sup>136</sup> Garner, "Animals, Politics and Democracy," 111.

interspecies democratic theory suggests that we also move away from strong anthropocentrism and give non-contingent consideration to animal interests instead. Given the obvious fact that the interests of animals must necessarily be identified and articulated by humans, however, the only realistic alternative is an institutional constellation in which what Garner calls *weak anthropocentrism* dominates.<sup>137</sup> In such an institutional constellation, there is human “representation of animal interests irrespective of the wishes of any particular human electorate,” even if these interests clash with important human interests.<sup>138</sup> This weak anthropocentrism as described by Garner converges with the non-contingency criterion in the sense that the non-contingency criterion favours a weak anthropocentric institutional setting in which animal interests can be made to count, irrespective of corresponding (human) public support.

In short, we can side with Garner in his suggestion that abandoning anthropocentric democratic theories also requires abandoning the strong anthropocentrism that currently defines democracy’s relationship with the consideration of animals’ interests. A democratic theory which perceives sentient non-human animals as members of the *demos* calls for institutional means that secure the inclusion of their interests in democratic calculations. It requires, in other words, a situation in which the consideration of their interests is no longer dependent on human clemency but in which it is institutionally safeguarded.

### *The independence criterion*

The earlier discussed circumstance that the interests of non-human animals do not necessarily converge with those of humans brings the third normative requirement into view. The distinctiveness of non-human animals’ interests means that their interests must be regarded and institutionalized as an independent factor in liberal democratic considerations. This is the third normative requirement for institutionalizing the consideration right.

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<sup>137</sup> More about the necessary human assistance in putting flesh to the bones of the consideration right of animals follows later in this section.

<sup>138</sup> Garner, “Animals, Politics and Democracy,” 111–112.

An opposing view on this matter is the previously discussed idea of encapsulated interests as advocated by James Mill. It was argued, however, that the concept of encapsulated interests is flawed to begin with, so also in the context of non-human animal interests representation. Recall that Mill argued that no separate representation for women was needed because he thought women's interests were indisputably included in those of their fathers and husbands. In other words, women's interests would not be regarded as an independent factor in democratic considerations if it were up to James Mill. Similarly, with regard to non-human animals, one may argue that no independent institutional protection of their interests is needed because their interests are indisputably included in those of humans. This contention is obviously mistaken, however, because human and non-human interests very often do not converge at all, but in fact clash in the most horrible ways. After all, humans and other animals kill and eat one another, to name one of the many conflicts of interest between the two. Therefore, it is clearly not true that the one's interests are automatically represented through the other's political enfranchisement, and both entities thus need independent representation of their interests.

One may object, however, that there are some interests that humans and many other animals (especially mammals) share, such as the basic interests in having access to breathable air and clean drinking water. However, this true fact is no reason to deny non-human animals an independent political position to defend the totality of their interests, for they still have many interests that are not shared by humans (such as not ending up as a steak). Again, the analogy with women's political position clarifies this point. Women and men also have overlapping basic interests, but this is not a sufficient reason for denying women the institutional possibility to defend the totality of their interests, for they also have interests that men do not share (such as the interest in gaining voting rights in earlier times, the interest in paid maternity leave, the interest in having access to routine breast cancer screenings, etc.). Similarly, the fact that there are some overlapping basic interests between non-human and human animals is no reason to deny either of them an independent position in the liberal democratic framework. The fact that non-human animals also have interests

that conflict with those of humans makes independent political recognition and consideration of their interests indispensable.

A yet different objection may be that a James Millian way of representing non-human animals' interests is the only viable option. If non-human animals are incapable of defending their own interests politically, then is a Millian form of representation not the only option? If that were the case, the independence requirement would have to be discarded on account of being impossible to meet in practice. This seems to be the position of Robert E. Goodin. In spite of the fact that Goodin seems to realize that offering representation through the concept of encapsulated interests is *generally* reprehensible ("we baulk at those examples [of encapsulated interests of slaves and Pre-Edwardian wives]," and "there is something deeply wrong with [such] social arrangements"), Goodin proposes to reintroduce this "deeply wrong" form of representation for natural entities, among which we must also count non-human animals.<sup>139</sup> Even though it is a form of representation which, in Goodin's own words, "we have historically learned to loathe,"<sup>140</sup> reviving this type of representation is justifiable according to Goodin, because he considers it to be the only viable option of bringing natural entities' interests into the political sphere. Goodin assumes that the only alternatives to politically ignoring non-human interests are (I) defective enfranchisement through the Millian notion of encapsulated interests, or (II) requiring non-human entities to politically pursue their own interests. Since the second option is obviously impossible in reality, Goodin opts for the first option of encapsulated interests.

Goodin's conviction that no alternative methods of enfranchisement exist is too hasty and not solidly underpinned, however, for he does not investigate whether there are any alternatives. He just assumes that "there is simply no other way in which nature's interests can find political representation except through being politically incorporated within the interests of sympathetic humans."<sup>141</sup> It seems more prudent, however, to carefully explore all possible alternative ways of enfranchising non-human

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<sup>139</sup> Goodin, "Enfranchising the Earth," 841–844.

<sup>140</sup> Goodin, "Enfranchising the Earth," 841.

<sup>141</sup> Goodin, "Enfranchising the Earth," 844.

animals, or maybe even develop new mechanisms, before we decide to breathe life back into a form of representation that is “deeply wrong” and which “we have historically learned to loathe.” Before we have explored such alternatives, it is too soon to revive the concept of encapsulated interests and hence too soon to decide that the normatively legitimate requirement of independent consideration is too demanding to be met in practice. Until it is certain that animal interests cannot be offered an independent political position, we must uphold the independence requirement and not unnecessarily lower our legitimate normative standards. For now, the normative standard remains that we ought to find a way to regard non-human animal interests as an independent factor to be taken into account in our liberal democratic weighing processes.

A different question that immediately arises is the following: if animals’ interests are to be inserted as an independent factor in liberal democratic considerations, probably by means of representatives, does this imply that these representatives have to *exclusively* represent non-human animal interests? In other words, does the fact that animals’ interests are a factor that must be independently considered mean that the people representing these interests cannot simultaneously represent humans?

This demand does not necessarily follow from the normative theory from the previous chapter. To say that animals’ interests deserve independent liberal democratic consideration is not to say that representation of humans and non-human animals can only be done by two different (groups of) people. It is theoretically possible that a person is capable of weighing the both independent and often conflicting interests of humans and non-human animals against one another.<sup>142</sup> Just like it is not necessarily impossible for a male representative to take women’s interests into account as an independent factor in his democratic considerations, it similarly is not necessarily impossible for a human representative to weigh

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<sup>142</sup> Of a different opinion about institutional protection of succeeding generations is Benedek Jávör, who writes that it is a “theoretical impossibility that the same institution could represent both [present generations’ interests and those of future generations], since in many cases it is exactly the present generation which is in conflict with the future citizens.” Benedek Jávör, “Institutional Protection of Succeeding Generations: Ombudsman for Future Generations in Hungary,” in *Handbook of Intergenerational Justice*, ed. Joerg Chet Tremmel (Cheltenham: Edward Elgar, 2006), 288–290.

both human and non-human animals' interests against one another as independent factors. It is true, however, that bringing such a dual attitude into practice would require a relatively high level of integrity on the side of the representative. One must be able to put oneself in the shoes of someone else of a different gender or species and even be prepared to rule in favour of the other person if a fair weighing of the respective interests and preferences leads to such an outcome. From a cynical point of view, which is very often the most advisable view in political philosophy, one may argue that it is highly unlikely that a person would act in such an objective way. Bias in favour of one's own species or gender may easily obscure the ability to visualize the interests of others; it may prevent a person from giving them due and independent regard and from weighing them on a par with other interests. The fact that it is extremely hard to fairly represent the independent interests of different (groups of) individuals simultaneously must be kept in mind when considering the simultaneous representation of humans and other animals by the same person as an institutional option. However, this signalled risk does not necessarily lead to having to relinquish the very idea of such simultaneous representation of human and non-human animals' interests by one and the same representative altogether. It may be possible to "nudge" representatives into the required objectivity of weighing all interests equally and independently by designing the institutional frameworks in such a way that speciesist incentives are minimized, or by selecting the representative on having a certain incorruptible character. Whether this would be possible and useful are questions of institutional design, and as such they will be more extensively discussed in the upcoming chapters. The provisional normative position for now is that introducing separate human and non-human representatives is not an implicit condition to the third requirement of considering the interests of non-human animals as an independent factor.

### *The human assistance criterion*

A fourth requirement for animal enfranchisement follows from the observation that non-human animals are political patients. Since non-human animals are incapable of defending their own interests in an institutional

context, the only realistic option of institutionalizing the consideration right of non-human animals is to make humans responsible for respecting this right. The politically capable, so human political agents, must be burdened with the task of giving due regard to non-human animals' interests in an institutional context.

Crucially, a democracy governed only by humans is not necessarily illegitimate, just like a democracy governed only by adults is not necessarily illegitimate. It is only illegitimate if no due consideration is given to the interests of the rest of the demos (such as children and other sentient animals). A democracy governed merely by human adults is thus perfectly legitimate if they make an effort to also consider other sentient animals' and children's interests. As implied in Garner's reflections on weak anthropocentrism, a certain amount of anthropocentrism in involving animals' interests in a democracy cannot be removed, nor is that desirable.<sup>143</sup> Even in an ideal, full-fledged interspecies democracy, humans will have to continue to be the political mediators in the sense that they will be responsible for identifying and articulating the interests of other animals.

Representing non-human animals is a difficult matter, however. Offering a sincere representation of non-human animals calls upon the finest political and psychological qualities of human agents. Even apart from any (subliminal) species biases, representing animals other than humans is in itself a highly complicated matter. In contrast with the views of political theorist Kimberly K. Smith (1966–), I do not consider representing non-human animals to be “no more mysterious than the business of representing human beings.”<sup>144</sup> Politically or legally representing non-human animals is a unique pursuit and in crucial ways more complicated than representing other humans. Smith maintains that the representation of animals certainly does not require “supernatural powers,” and that, of course, is a truism, but Smith's contention that it is “*no more mysterious*” (italics JV) than representing humans may be a bit too optimistic.<sup>145</sup> After all, when attempting to represent somebody, it is generally easier to imagine yourself

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<sup>143</sup> Garner, “Animals, Politics and Democracy,” 111–112.

<sup>144</sup> Smith, *Governing Animals*, 102.

<sup>145</sup> Smith, *Governing Animals*, 102–103.

as another human than as an animal of another species. Additionally, humans share a highly complex language, which allows us to communicate our multifaceted feelings, needs, and preferences to one another. Unfortunately, we cannot (yet) communicate in such highly complex ways with other animals.<sup>146</sup> To the contrary, communicating with them is difficult in most cases. In determining the right content of representation of non-human animals, we thus have to count on mostly incomplete information about their bodies and minds. Furthermore, psychological prejudice for others who are socially and evolutionary similar to ourselves could cause an unwarranted bias in favour of humans, which may further impede our ability to provide sincere representation and equal consideration of other animals' interests. Other circumstances, which are typical to representation of political patients in general, hinder offering acceptable representation even more: whereas most humans can offer (preliminary and subsequent) guidance on the representation wished for (e.g. by voting or by corresponding with politicians), non-human animals are incapable of doing so.

All these handicaps concerning the representation of other animals and their possible remedies will be discussed more extensively in the next chapter. For the purpose of this subsection, it suffices to establish that humans must be the ones providing representation of non-human animals' interests and that this is generally much harder than representing other human beings. Furthermore, it is important to stress that these difficulties in representing other animals obviously do not affect the *prima facie* right that sentient animals have to political consideration. In other words, if we agree that non-human animal interests deserve political consideration, it is our solemn duty to represent their interests to the best of our abilities, and we, as political agents, will have to find ways to make their consideration right work in practice.

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<sup>146</sup> See on this subject also: Meijer, *Dierentalen* and Meijer, "Political Animal Voices."



*The residency criterion*

The fifth and last requirement for institutionalizing the consideration right of animals is related to the practical necessity that there must be a limit on the number of sentient animals who have this right. It was elucidated before that, since an inter-time and worldwide liberal democracy is, at least in the foreseeable future, practically impossible, certain limitations on who counts as a member of the demos must be established. The limits suggested were current existence and residency on the territory of the state, which are here translated into the fifth requirement for institutional reform. Only sentient individuals currently living and residing on the territory of the democratic state have a consideration right in that particular state.

At first glance, residency seems a highly impractical standard for identifying which non-human animals have a consideration right in a certain liberal democracy. It is an understatement to say that animals do not necessarily stay within the borders of one specific state. Transnational animal migration is a normal, everyday occurrence. The fictitious lines that we have drawn on the map of the world which indicate the borders of states run straight through the territories of wild animals and straight through many animals' migration routes. In which state are the interests of the whales, birds, elephants, and many more animals who travel large parts of the earth to be considered? It seems the requirement of residency confronts us with quite some challenges.

In the case of human residents, who obviously also cross many state borders, we have circumvented this problem by attributing birthright citizenship. With birthright citizenship, an individual human becomes a citizen of a particular state, in relation to which that human has corresponding political rights. In this way, the challenges related to residency-based consideration rights can be circumvented. This citizenship system has many benefits, of which the most important is that it enables us to easily determine which state is related to which human being. However, in the case of non-human animals, this system seems impracticable. It seems hardly possible to determine the existence of every single sentient animal in the world, let alone attribute them citizenship of specific states based on

birth rights. The static citizenship model used for humans thus seems not readily applicable to non-human animals.

It is, however, possible to conceive of a different solution, one we may label *dynamic citizenship*.<sup>147</sup> This solution respects the basic idea of offering a consideration right to the individual animals residing in a certain state, and it also takes into account animals' habit of crossing human-invented borders. The alternative I propose is that we take residency quite literally, and opt for a construction in which the presence of a sentient animal on the territory of a certain state *activates* that state's duty to take political notice of the interests of this animal. Put differently, solely with their presence, non-human animals trigger their own political and legal status. With the proposed dynamic citizenship structure, the consideration right of a sentient animal comes into existence in a certain liberal democratic state the moment the animal enters the sovereign territory of that state. To be clear, territory comprises all the space over which the state has jurisdiction: the territorial land, the territorial airspace, and the territorial waters of the state. The consideration right is thus valid as long as a sentient animal resides on the territorial land or in the territorial water or air of the state. This residency-activating option for the consideration right seems to be the only option which respects the fact that animals do not necessarily respect state borders, but also the fact that states only have jurisdiction over their own territory. Liberal democracies are only able to effectively and undisputedly come to animals' (political and legal) aid if they are on the territory of the state. It would thus be unreasonable to commit states to taking political and legal account of the interests of animals who are not on their territory. The dynamic citizenship structure as proposed here does not commit states to such impossible duties.

Practically, this means that non-human animals travelling across different states will activate liberal democracies' duties to respect their interests one after the other, like tiles lighting up when someone walks over

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<sup>147</sup> See for other interesting alternatives to birthright citizenship also: Rainer Bauböck, "Stakeholder Citizenship: An Idea Whose Time Has Come?" in *Delivering Citizenship: The Transatlantic Council on Migration*, eds. Bertelsmann Stiftung, European Policy Centre, Migration Policy Institute (Gütersloh: Verlag Bertelsmann Stiftung, 2008), 31–48; Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge: Harvard University Press, 2009).

them. Accordingly, sentient animals will have a consideration right in any liberal democracy they pass through, if those states have incorporated dynamic citizenship for non-human animals, that is. Animals who reside in a certain state their whole life will enjoy the consideration right throughout their lives in that particular state, whereas animals passing through several states enjoy the consideration right in one state one moment and in another state the next.

An example could make this theoretical concept more concrete. Take for instance the red knot, a shorebird with an extensive cross-state migration route. When migrating, the red knot will enjoy the consideration right in the consecutive states of his flight. As the knots successively visit Norway, the Netherlands, Belgium, France, Spain, and Portugal, these countries each have the duty to take the interests of the shorebirds into consideration during the time these birds reside on their territory. In the period of residency, the political and/or legal institutions of these liberal democracies must take the interests of the red knots into account, on account of them residing on their territory.

In short, the dynamic citizenship model as proposed here makes it possible to circumvent the challenges posed by the fact that animals do not respect borders and that we can hardly assign them static citizenship, while respecting the reality that states only have effective control over their own territory. This makes it possible to sustain the residency requirement as a fifth normative requirement for institutionalizing the consideration right, without demanding the impossible.

In sum, this section has defined five requirements for animal enfranchisement that follow from the interspecies democratic theory in the previous chapter. Taken together, these five requirements seem to prescribe the normatively preferred status of sentient non-human animals in liberal democracies as follows. Liberal democracies must reserve an institutional place (*legitimacy criterion*) in which humans (*human assistance criterion*) are institutionally bound (*non-contingency criterion*) to consider the independent interests (*independence criterion*) of sentient non-human animals who reside

on the territory of the state (*residency criterion*). These requirements function as a lodestar for the remainder of this book.

## 2.2 The current position of animals in liberal democracies

Now that the normative framework has been clarified, it is time to analyse the current position of non-human animals against this background. To this end, this section first sets out the basic outlines of the current political and legal status of animals in liberal democracies. Subsequently, this section identifies three promising developments in the area of animal law and politics that may improve the actual protection of animals' interests in liberal democracies in the nearby future.

### *Basic outlines*

In analysing the political and legal status of non-human animals in liberal democracies, it suffices to look into the extent to which humans are institutionally committed to taking non-human interests into account in the execution of their political and legal roles, since non-human animals themselves have no means of pursuing their own interests in such contexts. Furthermore, due to the many differences between liberal democracies around the world, this subsection can only be an adequate overview of animals' general position in liberal democracies if it merely discusses the most *basic* outlines of animals' positions in liberal democracies. Therefore, in what follows only the most basic outlines of commitment to animal welfare by humans in key liberal democratic positions will be analysed.

When we analyse the institutional structures under which legislative branches in liberal democracies function, it is immediately clear that non-human animal interests have no *formal* role to play in legislative deliberations, nor is there any formal commitment to address the interests of non-human animals in the resulting legislation. In principle, the exclusively human electorate elects exclusively human representatives, and these representatives are in no way institutionally bound to pay heed to the interests of non-human animals (that is, with the exception of a small number of states which have a state objective on animal welfare in their

constitution, the normative acceptability of which will be separately discussed in chapter four). That there are generally no formal inducements, let alone obligations to address animal interests in legislative deliberations does not mean, however, that it is impossible for members of the legislative branch to do so. Animal interests can play a role in legislative deliberations if the electorate wishes it and if it instructs its representatives accordingly. This is obviously not merely a theoretical option. The actual existence of such goodwill to take animal interests into account is illustrated by the fact that liberal democracies commonly have animal welfare legislation and by the fact that some liberal democratic states have elected parliamentary representatives of political animal advocacy parties, who have as one of their main aims to defend animal welfare interests in legislative deliberations. The significance of these features for the political status of non-human animals will be discussed further below.

Non-human animal interests also have no formal role in executive deliberations or actions. The head of government or state in liberal democracies has no formal responsibilities towards non-human animals, and thus a “prime minister of all animals” or a “president of all animals” for now remains a fictional narrative that has not (yet) found reflection in the institutional outlines of liberal democracies. Not in the execution of governmental policy, nor when employing discretionary powers, nor in the deliberation that precedes this are members of the executive branch institutionally obliged or even stimulated to take the interests of non-human animals into consideration (again with the exception of states that have a constitutional state objective on animal welfare, which will be discussed in chapter four). However, there are no institutional obstacles which actively prevent members of the executive branch from paying heed to animal interests. Thus, in the executive context too, the structures of liberal democracies are generally permissive with regard to animal interests in the sense that they allow for considering them, but do not stimulate or require it.

The position of non-human animals in the legal institutional structures and the law itself is more complex. We could say that generally, however, the interests of non-human animals have no meaningful role in the legal context

of current liberal democracies, to which animal welfare legislation is an important exception.

Most importantly, non-human animals are legally designated as objects instead of subjects—just like human slaves used to be before their legal liberation. This categorization as legal objects has two important implications. The first implication of their status as objects is that non-human animals cannot have rights of their own, such as the right not to be enslaved or the right to life.<sup>148</sup> Their lack of rights in turn means that in legal conflicts of interests, non-human animals will almost always lose out, for their interests carry little legal weight, whereas humans' most important interests carry enormous legal weight because they are protected by fundamental legal rights. Even if they would want to, judges are not allowed to weigh the interests of humans (as protected through fundamental legal rights) and the interests of non-human animals on a par: they are legally bound to give preference to the interests of humans because these enjoy the highest level of legal protection. The fact that non-human animals are perceived as legal objects and their lack of rights thus put animals fundamentally on the legal side-line.

The second implication of being legally categorized as an object is that non-human animals can be the objects of humans' property rights. This means that humans with a property right over other animals (such as a farmer over his cattle, a pet owner over his pet, etc.) are, in principle, allowed to do anything they want with these animals. As is the case with other legal objects over which humans can have property rights (such as books, stocks, and, in a darker time of some states that now qualify as liberal, human slaves), owners can—in principle—sell, rent, use, enslave, and kill their legal property. This is because a property right, as concisely expressed in Dutch law, "is the most comprehensive right that a person can have to a thing."<sup>149</sup> Obviously, being object of such a powerful right makes the object itself (the slave, or the non-human animal) legally highly vulnerable. This is the reason why many scholars have argued that it is

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<sup>148</sup> See also: Wise, *Rattling the Cage*.

<sup>149</sup> Article 5:1 (1) Burgerlijk Wetboek (The Civil Code of the Netherlands).

imperative to remove non-human animals from the property status if their interests are ever to be taken seriously.<sup>150</sup> It must be pointed out however, that even though property rights are the most comprehensive rights a person can possibly have to a thing, they are not absolute. Statutory law, as well as conflicting fundamental legal rights, can limit the ways in which the rights bearer may use his property. Just like an owner's property right to a baseball bat is limited by statutory law to the bat not being used to beat people up, so are the property rights to animals also limited by statutory law. Most laws limiting property rights for the benefit of animals' welfare are *animal welfare laws*. These laws can prohibit or prescribe certain ways of interacting with "animated property," such as prescribing a certain amount of moving space for farm animals or prohibiting the docking of pig tails without stunning. Furthermore, property rights of humans are obviously also limited by criminal law prescriptions. According to most liberal democratic countries' penal legislation, humans are prohibited to abuse (pet) animals, which also limits the property rights humans have over other animals. Such animal welfare laws and criminal laws thus limit the ways in which humans may interact with animals for the benefit of the animals' welfare, and they are omnipresent in liberal democracies around the world.

Important to add in this context, however, is that these laws that ought to protect the interests of animals are much less effective in practice than might be imagined. Political theorist Siobhan O'Sullivan (1974–) has pointed out that in Western legal jurisdictions, both animal welfare laws as well as criminal law prohibitions regarding animal cruelty systematically discriminate between different animals on the grounds of both species membership and their (economic) usefulness to humans.<sup>151</sup> Many animals,

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<sup>150</sup> Gary L. Francione, *Animals, Property and the Law* (Philadelphia: Temple University Press, 1995); Wise, *Rattling the Cage*. Differing: Garner, *The Political Theory of Animal Rights*, 43–55; David Favre, "A New Property Status for Animals: Equitable Self-ownership," in *Animal Rights: Current Debates and New Directions*, eds. Cass R. Sunstein and Martha C. Nussbaum (New York: Oxford University Press, 2004), 234–250; Cass R. Sunstein, "Introduction: What are animal rights?" in *Animal Rights: Current Debates and New Directions*, eds. Cass R. Sunstein and Martha C. Nussbaum (New York: Oxford University Press, 2004), 3–15; Smith, *Governing Animals*; Cochrane, *Animal Rights Without Liberation*, 148–153.

<sup>151</sup> O'Sullivan, *Animals, Equality and Democracy*. Such legislation is sometimes discriminative in design, other times in its application.

whether because they are of an unpopular species or because of their economic profitability, or both, are thus excluded from such legal protection. Crucially, the legal prescriptions which should unambiguously protect animals against harm generally do not affect the industries in which animal abuse is ubiquitous and even part of the business model.<sup>152</sup> Given the intensity and scale of the harm inflicted on animals in these industries, this significantly reduces the usefulness of such legislation to aggregative animal welfare.

The effectiveness of these laws in protecting animal welfare is also significantly compromised by the fact that non-human animals have no legal standing.<sup>153</sup> This is yet another important element of animals' poor legal position, since, as Alexia Staker accurately puts it: "standing operates as a gateway to the legal system."<sup>154</sup> The fact that non-human animals have no legal standing means that they themselves, through human legal representatives, cannot bring proceedings to court to ask for the execution of laws protecting some of their interests. In other words, non-human animals, nor any hypothetical legal representatives can request judicial review of the compliance with animal welfare laws due to the fact that they are not accorded legal standing. In most liberal democratic jurisdictions, the right to bring a case to court is reserved for "individuals" or "persons" with an interest protected by relevant statutory law. And even though the protected interests in animal welfare laws are those of the animals themselves, they still are generally denied standing. This is because the legal terms "individual" and "person" are generally interpreted in an anthropocentric way, comprising human individuals and even human-lead corporations and associations, but not individual non-human animals.<sup>155</sup> As a consequence, non-human animals and their hypothetical legal representatives are not able to bring a case concerning animal welfare to court. This situation renders

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<sup>152</sup> O'Sullivan, *Animals, Equality and Democracy*. See also: Smith, *Governing Animals*, 87–94.

<sup>153</sup> A classic work about the lack of standing for non-human entities is: Christopher D. Stone, *Should Trees Have Standing? Law, Morality and the Environment* (New York: Oxford University Press, 2010/1972).

<sup>154</sup> Alexia Staker, "Should Chimpanzees Have Standing? The Case for Pursuing Legal Personhood for Non-Human Animals," *Transnational Environmental Law* 6, no. 3 (2017): 487.

<sup>155</sup> Joan E. Schaffner, *An Introduction to Animals and the Law* (Basingstoke: Palgrave Macmillan, 2011), 82–84.



judicial review of compliance with animal welfare rules a marginal phenomenon.

In some liberal democratic countries, however, standing is sometimes offered to animal welfare organizations. Under strict circumstances, they can get access to the courts of law if they are able to convincingly demonstrate that the case they want to press in court is necessary to defend their officially proclaimed interests or goals as an organization (these interests and goals are usually listed in their statutes). Such organizations must, in other words, illustrate that a particular instance of non-human animal harm *also* harms human interests, because only the latter are eligible for being defended in court. Wanting to protect the welfare of animals can be one of those human interests on the basis of which organizations are sometimes accorded legal standing. In many cases, however, even animal welfare organizations are unable to bring animal welfare claims before a court of law, because overly formalistic standing requirements or an inadequate formulation of the organizations' statutes prevents them from being accorded legal standing.<sup>156</sup> In some countries, this leads to the curious situation that some animal protection laws are uniquely immune to judicial review.<sup>157</sup> In sum, apart from some indirect legal constructs that only work in some countries and in a limited number of specific cases, liberal democracies lack institutional structures which generally facilitate judicial review of rules that protect non-human animals.

### *Promising developments*

On first glance, it seems that the current political and legal position of non-human animals in liberal democracies is generally quite meagre. There are, however, three important developments in some liberal democratic states which may possibly improve the position of non-human animals in the nearby future. It may be fruitful to investigate whether these developments

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<sup>156</sup> Shigehiko Ito, "Beyond Standing: A Search for a New Solution in Animal Welfare," *Santa Clara Law Review* 46, no. 2 (2006): 377–418.

<sup>157</sup> Mariann Sullivan, "Consistently Inconsistent: The Constitution and Animals," *Animal Law* 19, no. 2 (Spring 2013): 219.

can indeed enrich the current status of non-human animals in liberal democracies and make it more meaningful.

*A new legal status as “animated objects”*

In addition to what has been said about the legal position of non-human animals, a recent development in the law of several liberal democracies needs to be addressed in order to provide a complete analysis of non-human animals’ legal status in liberal democracies. This is the development that some liberal democratic states, such as the Netherlands and France, have tried to give legal expression to the obvious fact that non-human animals are quite different from all other entities which are legally categorized as objects, such as books and baseball bats. These jurisdictions have done so by either negatively declaring that “animals are not things,” as in Dutch law, or by positively recognizing that “animals are living beings endowed with sentience,” as in French law.<sup>158</sup> Do these developments mark a fundamental shift in the legal landscape, one that liberates non-human animals from the sphere of legal objects and all its effects of making them legally inferior?

It must be pointed out that the precise meaning of the new legal status for non-human animals in jurisdictions which have undergone the respective transformation will remain a grey area for some time to come. At best, these developments may be interpreted as reflecting an increasing legal awareness that sentient beings are fundamentally different from inanimate objects and as creating a new legal status for them somewhere between a legal object and a legal person. The creation of such a new “animated object” status can then be seen as a hopeful enterprise which, by breaking with the traditional dichotomy between legal objects and subjects, could clear the way for further future improvements in the legal position of non-human animals. In a more sceptical interpretation of these developments, however, these new legal declarations can be understood as an attempt to soothe societies’ increasing unease with the categorisation of non-human animals as objects, without actually bringing about changes that have legal significance.

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<sup>158</sup> Article 3:2a (1) Burgerlijk Wetboek (The Civil Code of the Netherlands) and article 515-14 Code Civil (The Civil code of France).

The creation of a new status between object and subject may then be seen as reaffirming the legal demarcation line between humans and other animals and as a way of circumventing the more radical change of assigning non-human animals real legal personhood.

Although the full legal significance of these recent changes in the law will only become clear as time proceeds, it is possible to say something about the preliminary significance of these developments. First of all, it cannot be ruled out that the legal changes that declare non-human animals to be animated objects will function as aggregators for gradually improving the legal position of non-human animals in the future, but their current value seems to be mainly symbolic.<sup>159</sup> What is certain is that these developments do not have the effect of dragging non-human animals into the category of legal subjects, nor do they comprise a fundamental shift in the legal understanding of non-human animals as entities with which humans can do what they want, apart from some legal exceptions. It is also clear that these developments do not assign non-human animals rights, nor do they require that animal interests are weighed on equal footing with human interests. These are all legal privileges still exclusively reserved for humans. The new legal declarations do not even bring about a fundamental reform of the basic structures and functions of property law, something their formulation seems to quite deceptively suggest.<sup>160</sup> Scepticism is further fed by the fact that the respective legislation in the countries in question determines that provisions applying to legal “things” still also apply to animated objects (non-human animals). For instance, in Dutch law, immediately following the celebrated phrase that “animals are not things,” is the sobering addition that “provisions relating to things are applicable to animals,” with some reservations.<sup>161</sup> In French law, the phrase that “animals

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<sup>159</sup> Jean-Marc Neumann, “The Legal Status of Animals in the French Civil Code: The Recognition by the French Civil Code That Animals Are Living and Sentient Beings: Symbolic Move, Evolution or Revolution?” *Global Journal of Animal Law* 1, (2015): 1–13; Mark Tuil and Walter Dijkshoorn, “Symboolwetgeving in Wording,” *Nederlands Juristenblad* 274, no. 6 (2010): 353–354; Gieri Bolliger, “Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives,” *Animal Law* 22, no. 2 (Spring 2016): 359–362.

<sup>160</sup> Bolliger, “Legal Protection of Animal Dignity in Switzerland,” 361.

<sup>161</sup> Article 3:2a (2) Burgerlijk Wetboek (The Civil Code of the Netherlands).

are living beings endowed with sentience” is similarly supplemented with the relativizing addition that “with the exceptions of the laws that protect them, animals are regulated under the legal status of goods.”<sup>162</sup> One wonders what the actual additional value of awarding animals the status of “animated objects” is, since, as we have seen, their handling by humans could already be restricted and *was* already restricted by several legal prescriptions in animal welfare law and criminal law. It seems safe to conclude that the discussed developments are less spectacular than they may seem to the legally untrained eye. The provisional significance of these legal developments may be primarily sought in the symbolic sphere, rather than bringing about a more fundamental change in the legal status of non-human animals.

### *Political animal advocacy parties*

A second development, one that could possibly enrich the political status of non-human animals, is the fact that the number and representative power of political animal advocacy parties, which claim to (among other things) represent non-human animal interests in representative institutions, is increasing. This could make it likely that the interests of animals are increasingly heard in the primary democratic institutions, and could thus possibly strengthen the political status of non-human animals.

Worldwide, there are currently nineteen political parties whose main aim it is to represent animal interests.<sup>163</sup> Four of those currently hold actual representative positions: the Dutch party since 2006, the Portuguese party and the Australian party since 2015, and the party in the United Kingdom since 2017. The world’s first animal advocacy party was the German *Partei Mensch Umwelt Tierschutz*, which was established in 1993. The Dutch *Partij voor de Dieren* (established in 2002) was the first animal advocacy party to gain representative positions on a national level in 2006. The representatives of these relatively new animal advocacy parties are elected in the traditional

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<sup>162</sup> Article 515-14 Code Civil (The Civil code of France).

<sup>163</sup> “International Movement,” Party for the Animals, <https://www.partyfortheanimals.nl/international-movement/>, accessed August 2019.

way, and they aim to draw attention to animal interests in representative institutions to a greater extent than conventional parties do.

There is reason to believe that animal advocacy parties are indeed successful in putting animals' interests on the political agenda. A 2016 study found that the attention for animal welfare issues in the Dutch parliament increased "markedly" after the Dutch political Party for the Animals had entered it in 2006.<sup>164</sup> Due to the absence of alternative explanations for this sharp increase in parliamentary attention for animal issues, researcher Simon Otjes (1984–) claims that it is "very likely" that this change was caused by the manifestation of the Party for the Animals in parliament.<sup>165</sup> If this effect is not typical for the Netherlands—there are no indications that this is the case—and if the worldwide number and size of animal advocacy parties with representative positions keeps growing, then is it reasonable to expect that animal interests will earn increasing attention in the primary institutions of liberal democracies around the world in the upcoming years.

Despite these prospects, it is important to realize that even if such parties grow in number and size, this will not bring about the fundamental shift in the political status of animals that is normatively required. There are at least two downsides to this form of political animal representation which renders it insufficient to function as an adequate institutionalization of the consideration right of sentient animals. These two criticisms also apply to more conventional political parties insofar as they decide to bring animals' interests to the fore. There is, in a political-institutional sense, no categorical difference between animal advocacy parties and other political parties which bring animal interests to the political table. Both depend on the votes of human political agents to get their (not necessarily objective) people elected into representative positions, and consequently both suffer the same shortcomings.

A first problem with this type of animal representation is that there is no guarantee that the political efforts of such a party are objective with regard to species membership. There is no guarantee that *all* sentient animals' interests are represented, let alone fairly proportional to their

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<sup>164</sup> Simon Otjes, "The Hobbyhorse of the Party for the Animals," *Society & Animals* 24 (2016): 383–402.

<sup>165</sup> Otjes, "The Hobbyhorse of the Party for the Animals," 383, 399.

numbers and proportional to the strength of their interests. The political agenda that an animal advocacy party presses does not necessarily balance out the different interests of different non-human animals, but may be biased instead. The representatives of a political (animal advocacy) party may, deliberately or not, prioritize human interests, the interests of the animals most close to humans, or animals who can otherwise count on more human sympathy. This is not an inconceivable risk at all, for it is obvious that some animals (humans included) garner more human sympathy than others on arbitrary grounds. Since it is in representatives' interests to attract as many votes as possible, it is only natural that they will prioritize the interests of the animals for whom the electorate has the most sympathy. Respecting the wishes of the electorate is the only conceivable survival strategy for a political party in a liberal democracy, and the electorate is presumably generally much more open to human rights protection or panda preservation than to welfare protection for octopuses. Objectively speaking, however, it is not at all clear that panda's interests are deserving of more political attention and concern than octopuses' interests. In short, the first shortcoming of any form of animal representation through (conventional or animal advocacy) political parties carries a serious risk of speciesism and what could be labelled "interspeciesism" (arbitrary discrimination between animals of the same species)<sup>166</sup> in it, with which it could arbitrarily and illegitimately exclude certain sentient animals from being politically considered.

The second and most important downside of this way of representing animals is that political parties will only get a fair shot at representing animals' interests if human political agents are willing to vote for them, which is problematic in light of the non-contingency requirement. There is obviously no secured institutional position allocated to the parties that aim to represent animal interests in the democratic institutions, nor any guarantees with regard to their size and the strength of their political

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<sup>166</sup> An example of what is labelled here as "interspeciesism" is an unequal protection of rabbits in different contexts. Often, pet rabbits enjoy relatively strong legal protection, while rabbits used for scientific or cosmetic experiments enjoy relatively weak legal protection. This difference in legal protection can be labelled as *interspeciesist*, because it arbitrarily discriminates between animals of the same species.

influence. The continued existence and representative power of these parties are susceptible to political fluctuations and many other external factors, making this type of political animal representation a whimsical undertaking. Among other things, the representation of non-human animals' interests through political parties is dependent on the concern that human voters have for other animals and on their willingness to reflect this concern in their political vote. In other words, the representation of non-human animals' interests through political parties is uncertain and unstable at a fundamental level. This inherent feature of, in Robert Garner's terms, strong anthropocentrism makes this form of representation inadequate to function as a satisfactory institutionalization of animals' consideration right, for it fails to meet the non-contingency requirement. Fully respecting the consideration right of sentient non-human animals requires more than the optional representation of their interests whenever humans feel like it. An interspecies democracy should, as Garner writes, have animal representation "irrespective of the level of concern for animals in wider human society," for politically considering their interests is not a human hobby that voters can freely ascribe to or not but a democratic duty.<sup>167</sup>

One may object, however, that it is unreasonable and undemocratic to disqualify this type of animal representation on the mere account that these political parties have no secured institutional role. After all, in principle, no democratic party deserves a secured institutional position, so why should an animal advocacy party have one? Does the democratic equality principle not entail that no interest or preference is more deserving than others? Should animal advocacy parties not have to fight for their subsistence and political influence by collecting votes like any other party, as is currently the case?

This appeal to the ideal of a political level playing field seems only sensible and democratic in an anthropocentric paradigm, that is: when it is assumed that only human interests are worthy of political representation. If a democracy only takes notice of humans, it seems perfectly reasonable and democratic to assign political powers to parties in accordance with the

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<sup>167</sup> Garner, "Animals, Politics and Democracy," 114.

number of votes cast for them, just as it is reasonable and democratic not to grant any of the parties special privileges, such as a secured institutional position. These rules create a level playing field for all humans with voting rights, and assigning any political party a secured institutional role would unbalance this fundamental equality. So far, the objection against assigning any party a secured institutional role seems convincing, reasonable, and democratic.

We must remember, however, that this book is not about anthropocentric democracy, but about interspecies democracy. If we accept the argument that some non-human animals also have a consideration right, this fundamentally alters our perspective. We can then see that the rules that prescribe that political powers are assigned to parties according to the number of votes cast for them no longer create a level playing field, but instead preserve an essentially discriminatory practice that even creates a situation of political *inequality* between humans and other animals. In the paradigm of the interspecies democracy, the current democratic battle for political influence through voting for political parties is not equal to begin with: humans are in possession of all the “arms,” namely their votes, whereas non-human animals by definition have no “arms,” nor any other means of getting their interests onto the democratic board. Therefore, there is no equal democratic contest to begin with. An equal democratic contest is only truly equal if all concerning parties have access to the same arms, but this is clearly not the case. The falsely perceived “equal” combat between political parties is, in fact, exclusive and discriminatory, for it clearly favours the interests and preferences of those who can vote, while excluding those of individuals who cannot vote. Therefore, it is misleading to refer to the ideal of a political level playing field when maintaining that animal advocacy parties should compete with other parties “equally.” This combat between parties intrinsically favours “human advocacy parties” and thus cannot establish a level playing field on its own. This is the reason why the representation of non-human animals’ interests must be established in a different way than through a political competition based just on votes. The logic behind requiring a secured institutional position for animal interests alongside all human interests is precisely to compensate for the fact that



non-human animals lack all the voting arms that humans have. From the perspective of the interspecies democracy, a political level playing field for humans and other animals can only be created through installing an institutional position for non-human animal interests that is not dependent on votes that non-human animals will never cast.

In short, the consideration right of non-human animals can never be sufficiently institutionalized if we rely solely on the representation of animal interests by political parties that in turn depend on votes for their representative existence and political strength. It is important to add here, however, that the normative dismissal of animal advocacy parties as a form of animal enfranchisement on account of lacking a secured institutional position does *not* automatically mean that assigning animal advocacy parties a secured institutional position *would be* an acceptable option. It will be argued in chapter three that this would be undesirable for other reasons.

In sum, due to the two discussed shortcomings concerning (inter)speciesism and contingency of political consideration, the rise of political animal advocacy parties alone cannot establish the normatively desired situation in which all resident sentient animals have their interests independently considered in a non-contingent way.

### *Democratic transparency and freedom of speech*

The third development that may improve the protection of animal interests in liberal democracies is related to the fact that animal welfare organizations increasingly focus on defending the human civil right to free speech, which has potential beneficial side-effects for non-human animals. Through focusing on the legal protection of free speech and transparency of animal industries, it might be possible to indirectly further the interests of animals who are suffering in typically opaque conditions.

Most of the suffering of non-human animals in liberal democracies, both in number and in severity, still happens behind the closed doors of the farm industry and experimentation facilities. There is reason to believe that public exposure of such hidden animal use leads to better legal welfare protection for these non-human animals. In *Animals, Equality and Democracy*,

Siobhan O’Sullivan demonstrates that there is a correlation between the visibility of animals and the extent to which they are legally protected.<sup>168</sup> Animals who are visible to the public generally enjoy relatively good legal protection, whereas animals who are hidden away generally do not. Even though O’Sullivan, strictly speaking, merely detects a correlation between visibility and legal protection, it is possible and likely that there is also a causal relationship between the two. In other words, high levels of visibility may not accidentally coincide with higher levels of legal protection: it is possible that visibility (indirectly) *causes* better animal welfare legislation. It is quite conceivable that once people are confronted with animal (ab)use, they tend to prohibit it. We may see this process at work in liberal democracies around the world: resistance to relatively public forms of animal abuse such as bullfighting, fox hunting, and the exploitation of animals in marine mammal parks and circuses is growing. This growing public disapproval has also translated into an increase of legal bans on such public animal abuses.<sup>169</sup> As O’Sullivan illustrates in her book, visibility of the abuse is an important, if not indispensable condition for this development. A causal relationship between visibility and legal protection would suggest that if only we made the ways in which we harmfully treat animals in everyday businesses more transparent, public dismay and improved legislation protecting these animals would follow. Concentrating on improving transparency of the animal industries may thus eventually lead to better legal protection for a great number of non-human animals.

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<sup>168</sup> O’Sullivan, *Animals, Equality and Democracy*.

<sup>169</sup> Stuart Winter, “New Poll Shows Bullfighting is on the Way Out,” *Express*, January 20, 2016, <https://www.express.co.uk/news/nature/636496/poll-shows-bullfighting-on-way-out>; Mark Naylor, “Are Spaniards Over Bullfighting?” *Culture Trip*, June 15, 2017, <https://theculturetrip.com/europe/spain/articles/are-spaniards-over-bullfighting/>; Ashley Cowburn, “85% of the British Public are Opposed to Repealing Fox Hunting Ban, Poll Reveals,” *Independent*, December 26, 2017, <https://www.independent.co.uk/news/uk/politics/fox-hunting-poll-boxing-day-league-against-cruel-sports-ban-theresa-may-election-a8127851.html>; Will Coldwell, “Marine Park Attractions: Can They Survive?” *The Guardian*, September 12, 2014, <https://www.theguardian.com/travel/2014/sep/12/seaworld-blackfish-marine-park-attractions-future>; “Europeans Want Wild Animals in Circuses Banned, Poll Reveals,” *Stichting Aap*, October 3, 2018, <https://www.aap.nl/en/news/europeans-want-wild-animals-circuses-banned-poll-reveals>; “Countries With Restrictions or Ban of Wild Animals in Circuses,” *Four Paws International*, June 19, 2018, <https://www.four-paws.org/campaigns-topics/wild-animals/restrictions-keeping-wild-animals-in-circuses>.

O'Sullivan suggests that enhancing transparency of the animal industries can be defended on democratic grounds: "Integral to the notion of democracy is the idea that 'we the people' are involved in making decisions informing the type of society we live in. Yet in the case of animal protection it is almost impossible to take animals' interests, or the interest a human may have in not harming animals, into account because few of us are in a position to assess how well the interests of animals are being met."<sup>170</sup>

O'Sullivan accurately draws attention to the fact that, in an open democratic society, the public has a right to know what is going on in society in order to be able to shape society according to its own will. The public can only do that, however, if they have access to information that provides them with a clear view of the actual current state of their society. If certain dubious actions are chronically tucked away and impossible to become aware of without breaking the law—as many atrocities in the animal industries are—the public is seriously compromised in their democratic right to participate in policy making. How can people make sure that the right aspects of society are given political priority if one dark aspect of our society is chronically underexposed and thereby almost immune to public scrutiny? How can we ascertain for ourselves that the level of animal welfare in the animal industries reflects the level as desired by the public, if the public is unable to inform themselves about the actual situation in the animal industries? A certain level of transparency is vital in an open society, so that the public is able to employ their democratic arms should any injustice reveal itself. O'Sullivan seems to be right in asserting that demanding transparency of the animal industries is perfectly defensible on basic democratic grounds. Due to this democratic basis for enhancing transparency, one need not necessarily subscribe to the interspecies democratic theory as proposed in this book in order to support transparency improvements in the animal industries. Since transparency is essential for any democracy to function properly, even democrats without special concern for animal welfare should

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<sup>170</sup> O'Sullivan, *Animals, Equality and Democracy*, 165–167.

be able to join those who demand more transparency in the animal industries.<sup>171</sup>

An interesting legal development in the context of transparency of the animal industries is the emergence of what critics indicate as “Ag-gag laws.” These laws have recently been introduced in several states in the United States of America. Ag-gag laws have the effect of silencing whistle-blowers in the context of animal abuse and food safety scandals by criminalizing whistle-blowers who make, possess, or publish footage from inside animal farms or slaughterhouses. The footage under attack often exposes severe animal abuse, and it is thus precisely the kind of footage that typically leads to public outrage and a public debate on raising animal welfare standards or on improving the enforcement of existing rules. By criminalizing the making, possession, and publication of such footage, American democratic transparency is compromised, for these laws hinder the American people in knowing what goes on inside these farms and slaughterhouses. In light of this, we might even conclude that the right of the American people to govern democratically is compromised, because being able to know what goes on in society is a necessary prerequisite for democratic governance. The recent introduction of Ag-gag laws is thus not only alarming from the perspective of animal welfare, but also from the perspective of democratic governance.

A counteracting development can also be detected, however. Since 2013, a broad coalition of organizations for animal protection, civil liberties, and journalism has been dedicated to challenging Ag-gag laws in court for being in violation of the American Constitution. So far, they have been successful: the Ag-gag laws of three states so far (Idaho, Utah, and Iowa) have been ruled (partially) unconstitutional by courts. In all three cases, courts have ruled that the Ag-gag statutes violate the First Amendment of the American Constitution, which guarantees, among other things, the freedom of expression. According to the courts, the Ag-gag laws violate the

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<sup>171</sup> Parts of the previous two paragraphs have been published before in: Janneke Vink, “If Slaughterhouses had Glass Walls...,” Leiden Law Blog, March 31, 2017, <http://leidenlawblog.nl/articles/if-slaughterhouses-had-glass-walls>.

free speech rights of undercover investigators and journalists. In 2015 in Idaho, the Ag-gag statute was struck down as unconstitutional by the U.S. District Court for the District of Idaho on the grounds of violating the First and Fourteenth Amendments (more precisely its Equal Protection clause).<sup>172</sup> The State of Idaho appealed this decision, however, and brought the case to the United States Court of Appeals for the Ninth Circuit. In 2018, this federal court ruled the Idaho Ag-gag statute partly unconstitutional, holding that its core provision comprising the ban on recording the conditions inside factory farms and slaughterhouses violates the First Amendment.<sup>173</sup> In Utah in 2017, the Ag-gag statute was ruled unconstitutional by the U.S. District Court of Utah on account of being in violation of the First Amendment to the American Constitution.<sup>174</sup> Similarly, in Iowa, the U.S. District Court for the Southern District of Iowa struck down the Ag-gag statute in 2019, also holding that the ban on undercover investigations at factory farms and slaughterhouses violates the First Amendment.<sup>175</sup> Stephen Wells, executive director of the Animal Legal Defense Fund, which leads the coalition of non-profit organizations who challenge these laws in court, has expressed the

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<sup>172</sup> “Idaho ‘Ag-Gag’ Law Ruled Unconstitutional in Federal Court,” Animal Legal Defense Fund (August 3, 2015), <https://aldf.org/article/idaho-ag-gag-law-ruled-unconstitutional-in-federal-court/>; “Court Enjoins Enforcement of Unconstitutional Ag-Gag Law,” Animal Legal Defense Fund (November 12, 2015), <https://aldf.org/article/court-enjoins-enforcement-of-unconstitutional-ag-gag-law/>.

<sup>173</sup> “Coalition Defends District Court Victory Striking Down Unconstitutional Idaho Ag-Gag Law,” Animal Legal Defense Fund (June 20, 2016), <https://aldf.org/article/coalition-defends-district-court-victory-striking-down-unconstitutional-idaho-ag-gag-law/>; “Federal Appeals Court Strikes Down Provisions of Idaho’s Ag-Gag Law in Precedent-Setting Victory for Animals, Workers, Free Speech,” Animal Legal Defense Fund (January 4, 2018), <https://aldf.org/article/federal-appeals-court-strikes-provisions-idahos-ag-gag-law-precedent-setting-victory-animals-workers-free-speech/>; “Challenging Idaho’s Ag-Gag Law,” Animal Legal Defense Fund (January 4, 2018), <https://aldf.org/case/challenging-idahos-ag-gag-law/>.

<sup>174</sup> “Utah Ag-Gag Law Declared Unconstitutional,” Animal Legal Defense Fund (July 7, 2017), <https://aldf.org/article/utah-ag-gag-law-declared-unconstitutional/>; “Utah Will Not Appeal Decision Holding Ag-Gag Law Unconstitutional,” Animal Legal Defense Fund (September 7, 2017), <https://aldf.org/article/utah-will-not-appeal-decision-holding-ag-gag-law-unconstitutional/>; “Challenging Utah’s Ag-Gag Law,” Animal Legal Defense Fund (last updated September 7, 2017), <https://aldf.org/case/challenging-utahs-ag-gag-law/>.

<sup>175</sup> “Court Rules Iowa Ag-Gag Law Unconstitutional in Major Victory for Free Speech and Animal Protection: Undercover Investigations at Factory Farms Protected by First Amendment,” Animal Legal Defense Fund (January 9, 2019), <https://aldf.org/article/court-rules-iowa-ag-gag-law-unconstitutional-in-major-victory-for-free-speech-and-animal-protection/>; “Challenging Iowa’s Ag-Gag Law,” Animal Legal Defense Fund (January 9, 2019), <https://aldf.org/case/challenging-iowas-ag-gag-law/>.

confidence that “These unconstitutional laws will fall like dominos.”<sup>176</sup> It is probable indeed that these three rulings will function as legal precedents in potential upcoming court cases concerning the constitutionality of Ag-gag laws in other states.

How are we to appreciate these developments concerning transparency in the animal industries in the light of non-human animals’ legal position? Do they affect the legal position of non-human animals at all? Above all, if the recent emergence of Ag-gag laws has any effect on non-human animals’ legal position, it must be a negative one. After all, these laws cause less instead of more transparency in animal farming, and we have seen that the opaqueness of the conditions under which animals are used correlates with lower legal levels of welfare protection. However, we have simultaneously detected a trend in which these laws are successfully challenged by non-profit organizations, rendering these Ag-gag developments relatively harmless in three states so far. By appealing to the civil rights of the American Constitution, these organizations have succeeded in neutralizing the harmful effects Ag-gag laws could have had on animals and the quality of animal welfare legislation. Although praiseworthy in this regard, we must admit, however, that the successes achieved by these non-profit organizations do nothing more than that: neutralizing a potential threat to animals and the legal standards concerning animal welfare. Their efforts will not improve non-human animals’ legal status, not even if Ag-gag laws would indeed come to “fall like domino’s,” because these efforts are merely aimed at regaining the legal situation as it was before the introduction of Ag-gag laws.

There may be some room for optimism when we take a closer look at the developments as discussed above, however—which is why they still qualify as promising developments. Two valuable lessons can be learned from what has been discussed, and if these lessons are adequately transformed into strategies by animal welfare groups, they have the potential of raising legal animal welfare standards in liberal democracies in the future.

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<sup>176</sup> “Utah Ag-Gag Law Declared Unconstitutional,” Animal Legal Defense Fund (July 7, 2017), <https://aldf.org/article/utah-ag-gag-law-declared-unconstitutional/>.

First, we have seen that demanding more transparency in animal industries could possibly lead to improved animal welfare standards in the long term. If there is indeed a causal relationship between the two, then new doors to improving animal welfare standards within the current structures of liberal democracies are opened. Demanding more transparency in typically opaque sectors is then not only advantageous to our open societies, but also a tool for improving animal welfare standards. Animal welfare groups could put this supposition to the test and start focusing more on transparency of the animal industries. If a causal relationship does not exist, it is possible that nothing changes, but if it does, this may effectively lead to higher animal welfare standards in the future. Transparency thus is a potential hidden gem waiting to be discovered by animal welfare groups.

The second valuable lesson that can be deduced from the foregoing is that humans can sometimes employ their own legal rights in order to indirectly further animal interests. The lawsuits concerning the Ag-gag laws teach us that the rights of humans may indirectly also further some animal interests if their interests overlap and humans' rights are employed in a clever way. It is likely that humans' legal rights can be creatively employed in other areas of the law as well and generate beneficial consequences for non-human animals in those contexts too. If taken to heart and used in strategies by animal welfare groups, these two lessons have the potential to indirectly and gradually improve actual animal welfare and legal animal welfare standards in liberal democracies in the long term.

The main question remains, however, whether an intelligent use of these two lessons would improve the more fundamental legal position of non-human animals in liberal democracies. Unfortunately, it would not. Even if animal welfare groups were to instantly and permanently focus on improving transparency of the animal industries, and if they were to relentlessly employ civil rights in their fight for better animal welfare, this would at best probably only have the effect of improving animal welfare conditions and legal standards. Suppose, for the sake of argument, that all types of animal use were transparent (slaughterhouses with glass walls, farm animal raising accessible through video streams, all animal experiments answered for in public reports, etc.), and that the employment

of civil rights in legal disputes for the benefit of other animals were a daily routine. This would probably benefit non-human animals directly and indirectly. It would enable the public to better assess how well the interests of animals are currently met; it may make us more inclined to voluntarily take their interests into account, or to give these interests more weight in our political and economic decisions; and it would probably lead to higher legal animal welfare standards. For these reasons, and the earlier-mentioned reason of contributing to the strength of democracies as such, pursuing higher levels of transparency for corporations or institutes which use animals is to be applauded, as is indirectly standing up for animal welfare through the use of human civil rights. However, in light of the bigger picture, these are only minor gains, insignificant even to the basic political-legal position of non-human animals in liberal democracies. Not even absolute transparency of all animal use will lead to the situation in which animals' interests are non-contingently and institutionally assessed. Even if animals were able to look us in the eye from behind the glass walls of a slaughterhouse, they would still be slaughtered, and more fundamentally, they would still be essentially dependent on our willingness to take their interests into account when we make liberal democratic decisions. Our eye contact could seduce us to take their interests more serious than is currently the case, but truly taking their interests seriously would in no way be an institutional commitment. The non-contingency requirement, in other words, would still not be met. Something similar is true for employing humans' legal rights in an attempt to improve the welfare conditions of non-human animals. No matter how seriously pursued, these efforts cannot alter the fact that non-human animals remain fundamentally dependent on our will to take legal notice of their interests. Besides that, non-human animals' interests could still only be made relevant in court if they collided with human interests, which is another shortcoming, this time in light of the independence requirement. In sum, even the brightest prospect of turning the two lessons learned into practice would not lead to the required alteration in the position of non-human animals in liberal democracies.



### 2.3 Normative assessment of the status quo

The previous section has clarified the current position of non-human animals in liberal democracies and some possible future improvements. This section assesses the normative acceptability of the current position of non-human animals, including the three possible improvements discussed, in the context of the criteria for animal enfranchisement.

We have seen that non-human animals have no meaningful political or legal status in the liberal democracies of our time. Our assessment has pointed out that the basic frameworks of liberal democracies are such that non-human animals are fundamentally dependent on humans to have their interests taken into account, both in political and in legal considerations. There appears to be no incentive or compulsion for humans to address animals' interests properly. Against the background of the normative requirements for non-human animals' rightful position in liberal democracies, this is quite troubling.

#### *The legitimacy criterion*

The fact that liberal democracies reserve no institutional place for non-human animals' interests raises serious legitimacy concerns, because, as it was argued, an interspecies interpretation of the procedural democratic legitimacy principle requires that the institutional framework of a democracy offers all members of the demos some sort of political consideration on an equal level, and thus requires that the interests of non-human animals are attended to in the basic procedures of a democracy.

A similar legitimacy concern with the current-day liberal democratic framework was earlier expressed by Robert Garner. He has formulated what is arguably one of the most important questions in current political philosophy: "[Is] a political system that does not directly incorporate the interests of animals ... entitled to describe itself as a genuine democracy?"<sup>177</sup> Garner questions the very characterization of the current political model as genuinely democratic because of the fact that it lacks any form of non-human animal interest incorporation. By calling into question the

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<sup>177</sup> Garner, "Animals, Politics and Democracy," 111.

characterization of current democracies as genuinely democratic, Garner seems to hint that the current political model is lacking in procedural democratic legitimacy, for such legitimacy requires that institutions are in place that can qualify as “democratic.” Since the current institutions fail to offer *all* members of the demos some sort of political consideration on an equal level, instead blatantly excluding the non-human part of the demos, it could be argued that current-day liberal democracies are lacking in legitimacy from an interspecies perspective.

In fact, this suggestion is mild compared to other thinkers’ assertion that the absolute human political dominion over other animals is not only democratically illegitimate, but tyrannical. Jeremy Bentham hoped for the day when the rest of the animals would acquire those rights “which never could have been withholden from them but by the hand of tyranny.”<sup>178</sup> In Bentham’s footsteps, Peter Singer, Steven M. Wise, Sue Donaldson, and Will Kymlicka have also characterized our (political) relationship with non-human animals as tyrannical.<sup>179</sup> Do these thinkers have a point? When we observe the factual situation in liberal democracies of today, it is clear that humans have given themselves the unlimited right to rule over non-humans’ lives and that we rule over them in an arbitrary way. We are not formally committed to giving them any consideration, and benefits we reluctantly give them are contingent on our capricious wishes. This form of extreme subordination and political dependence, combined with arbitrary rule, are the core ingredients of tyrannical rule. Since non-human animals have no fundamental rights or any other rule-of-law-like protection to ascertain some level of fair governance over their lives, humans are effectively allowed to rule over them as tyrants. In principle, anything is permitted—as evidenced by the fact that the mass killing of non-human animals is daily routine in our otherwise civilized societies. It is thus not unreasonable to maintain that, from an interspecies perspective, the current

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<sup>178</sup> Bentham, *An Introduction to the Principles of Morals and Legislation*, 310–311 (footnote 1).

<sup>179</sup> Singer, *Animal Liberation*, 17, 185, 204, 207, 226, 248; Wise, *Rattling the Cage*, 239–240; Sue Donaldson and Will Kymlicka, “Unruly Beasts: Animal Citizens and the Threat of Tyranny,” *Canadian Journal of Political Science* 47, no. 1 (March 2014): 23–45.

human governance over other animals in liberal democracies is a form of tyranny.

The alarming result of this is that the omnipresent political and legal ignorance of non-human animals not only constitutes a violation of animals' consideration right, but it is also a disgraceful stain on current open societies, which should, of all things, ostracize tyranny.<sup>180</sup> The political and legal negligence of non-human animals' interests constitutes a democratic legitimacy problem that should concern all democrats. To be clear, this is of course not to disqualify the liberal democratic model as such, nor to deny the liberal or democratic character of our current political systems. If we forget about other animals and consider only humans, current liberal democracies are perfectly liberal and democratic, and they are the cleverest political systems people have come up with in documented history. But now that a democratic deficit with regard to other sentient animals has revealed itself, we cannot but conclude that these ingenious systems with their as of yet exclusively human characters are urgently in need of some adaptations in order to shake off their newly discovered tyrannical traits.

### *The non-contingency criterion*

We have analysed that current liberal democracies generally have no fixed mechanism which provides for taking animal interests into account. This seems problematic in light of the second criterion for animal enfranchisement: the non-contingency criterion, which prescribes that the consideration of non-human animal interests must be institutionally safeguarded.

We have seen that there are some (existent and foreseeable) options for the consideration of animals' interests in current liberal democracies, but these options seem insufficient to constitute an adequate status for non-human animals. In all of the discussed options, the consideration of non-human animals' interests was still fully contingent on human generosity. In the case of political parties that claim to stand up for animal welfare, the extent of their political influence, and even their very existence are

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<sup>180</sup> Popper, *The Open Society and Its Enemies* (Vol. I), 65, 235 (note 6).

completely contingent on the electorate's noble mindedness to vote for such parties. Likewise, the mere existence of animal welfare laws, the quality of their content, their actual execution, and the extent to which there is judicial review of compliance with such laws are completely contingent on human will. For this reason, merely raising the level of animal welfare prescriptions in existing animal welfare laws in the future would still be insufficient, for contingency is inherent to this institutional instrument, and thus will continue to be a normative problem. The fact that some liberal democracies now legally define non-human animals as animated objects instead of regular objects does not affect the fundamental structure in which the legal consideration of non-human animals' interests is fully contingent on human will. Neither does the fact that some jurisdictions offer standing to animal welfare organisations in matters relating to animal welfare laws mean that this contingency is taken away. Whether or not judicial review of the compliance with animal welfare legislation is effectuated is then still dependent, among other things, on whether there even are animal welfare organizations around, whether they have sufficient resources at their disposal to start such legal proceedings, and whether they are prepared to initiate such proceedings. The same is true in the context of Ag-gag laws. Humans may employ their own legal rights in order to expose animal cruelty and thus arguably increase the general knowledge about and concern for animals, but this does not lead to a situation in which the consideration of animals' interests is institutionally safeguarded. Again, Ag-gag proceedings only occur to the degree to which non-profit organizations decide to make this a priority. Moreover, we have established that even the highest hypothetical level of transparency in animal (ab)use could not remove animals' more fundamental political and legal dependency on humans.

In short, despite all developments happening in the area of animal welfare in liberal democracies, the consideration of animal interests remains fundamentally contingent. Individuals functioning in the political and legal institutions of liberal democracies, such as political representatives and judges, are not formally obligated to take the interests of other animals into account. This gives reason to think that the basic structures of liberal

democracies as they are today are unable to facilitate a normatively acceptable institutional implementation of the consideration right of animals.

### *The independence criterion*

In light of the third normative requirement, the independence requirement, the current outlines of liberal democracies also seem problematic. This criterion demands that animal interests are considered as an independent factor in liberal democratic interest-weighting processes.

In the current structures of liberal democracies, animals can generally only count on a recognition of their interests when these interests are in some way or another tied to human interests. This element of anthropocentrism has been persistently present in the history of liberal democracies. Many of the first anti-cruelty laws in liberal democracies prohibited certain forms of animal abuse not on account of the independent interests of the abused animals themselves but on account of contributing to human moral civilization. These laws were thus not meant to protect non-human animals from harm but for moral education: the idea was that a civilized people should abhor aggression against animals, and the purpose of these anti-cruelty laws thus was to teach people the moral lesson that one ought not to enjoy animal abuse.<sup>181</sup> To a large extent, current liberal democracies still continue this anthropocentric approach of offering only circuitous and indirect aid to animals.<sup>182</sup> Even though animal welfare laws have improved in the sense that they now generally grant that protecting non-human animal welfare is their core motivation, in most other contexts, animals' own interests are not recognized as being of independent value.

Illustrative is the legal debate in many liberal democracies concerning a potential ban on unstunned ritual slaughter of animals. More often than not, the centrally discussed issue is not whether the damage done to animals' welfare during unstunned slaughter is sufficient to impose a

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<sup>181</sup> Erno Eskens, *Een Beestachtige Geschiedenis van de Filosofie* (Leusden: ISVW Uitgevers, 2015), 288–294; Dirk-Jan Verdonk, *Dierenrechten* (Amsterdam: Amsterdam University Press, 2016), 105–153; Smith, *Governing Animals*, 37–39.

<sup>182</sup> Smith, *Governing Animals*, 39–41.

duty on halal and kosher slaughterhouses to stun all animals before slaughter, but whether a liberal government may limit the freedom of religion of certain groups. This is a consequence of the fact that without legal subjectivity and rights, non-human animals' independent interests are virtually invisible to the law. As a result, not animals' obvious, elementary interests in not having to undergo immense additional suffering before they die, but the human right to religious freedom dominates the debate. In many countries, due to the poor legal position of non-human animals, the argument that animals needlessly die in horrible pain and anxiety is not considered a legally strong enough argument for integrally prescribing stunning prior to slaughter. An integral ban on unstunned slaughter thus requires legal backing in the form of arguments that address adjacent *human* interests, such as the human interest in having a secular government and religiously neutral laws.<sup>183</sup>

There are many situations in which we see that non-human animal interests play no independent role in liberal democratic institutions and may only be served if they coincide with human interests. We have observed, for example, that non-human animals (or their potential legal representatives) have no legal standing of their own. This is another way of saying that their interests are not recognized to be valuable enough to be protected in court. It is only when non-human animals' interests collide with human interests that access to the courts is sometimes offered, and then only to protect these *humans'* interests in pursuing animal welfare. The same phenomenon is at play in the context of the Ag-gag laws. The laws criminalizing the exposure of footage of animal abuse were not, and cannot be legally contested on the grounds of the interests of the animals themselves in revealing such abuses. Instead, again, a link with human interests must be established, this time the human interest in an open democracy, more precisely in free speech.

In short, we have seen that, in general, non-human animal interests are almost never considered to be of independent value in today's liberal

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<sup>183</sup> Paul Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism* (Boston: Wiley-Blackwell, 2010); Paul Cliteur, "Criteria voor juridisch te beschermen godsdienstvrijheid," *Nederlands Juristenblad* 44–45 (2012): 3090–3096; Bastiaan Rijpkema and Machteld Zee, eds., *Bij de Beesten af! Over Dierenrecht en Onrecht* (Amsterdam: Uitgeverij Bert Bakker, 2013), 15–62; Carla M. Zoethout, "Animals as Sentient Beings: On Animal Welfare, Public Morality and Ritual Slaughter," *ICL Journal* 7, no. 3 (2013): 308–326.

democracies. The protection that is accorded to non-human animals is still generally derived from the well-established value of human interests. If such a link is missing, then non-human animals are almost always left empty-handed, for apart from modern animal welfare legislation, there are no institutional arrangements securing the intrinsic interests of non-human animals for their own, independent sakes. Due to the lack of such institutional enfranchisement, current liberal democracies fail in meeting the independency requirement for animal enfranchisement.

Now that the institutional outlines of current liberal democracies have been tested against the legitimacy, non-contingency, and independence requirements, two normative requirements have yet to be addressed: the human assistance requirement and the residency requirement. However, in absence of any institutional constellation that can account for non-contingently taking the independent interests of non-human animals into account, it seems hardly possible to discuss current compliance with the last two requirements of animal enfranchisement in modern-day democracies. These two requirements are more specified criteria for how such an institutional arrangement should be realized: by humans empowered to protect animals' interests and applicable to all sentient animals on the territory. Without any non-contingent and independent institutional arrangements in place, it is not possible to check whether they are currently adequately controlled by humans (human assistance criterion) and whether they currently apply to all sentient animals on the democratic territory (residency criterion). Therefore, compliance with these latter two requirements cannot be discussed, and it seems permissible to now summarize what has been said about animals' current position in liberal democracies.

The previous section started by analysing the most basic outlines of commitments that humans in key liberal democratic positions have in relation to animals' interests. The overall picture was that non-human animals have no meaningful political or legal status and that they are, in a legal and political sense, fundamentally dependent on human clemency. Three discussed recent developments could not alter the basic structures

which make non-human animals helpless dolls in liberal democracies: a new legal status as “animated objects,” the rise of political animal advocacy parties, and an increasing focus on democratic transparency and the freedom of speech. This situation has been criticized in the current section for the fact that it does not meet any of the criteria of animal enfranchisement. Furthermore, apart from being a violation of animals’ consideration right, the structures of current liberal democracies are also an affront to democratic principles that lie at the basis of this right and the open society itself. The current and foreseeable institutional constellation of liberal democracies seems unable to offer non-human animals what is rightly theirs, and at the same time undermines its own principles. For these two reasons, our anthropocentric liberal democracies seem in urgent need of an interspecies update; for animals’ sake, but also for their own.

## **2.4 Similarities and differences with the enfranchisement of future people**

The normative appreciation of the current basic structures of liberal democracies from an interspecies perspective has been quite ruthless. The remainder of this book will concentrate on investigating whether it is possible to make some alterations in the current institutional constellations of liberal democracies which may fix the indicated normative errors. To this purpose, I will investigate whether extending some pre-existing institutional enfranchisement options to non-human animals may bring the normative ideal of animal enfranchisement closer, but I will also investigate whether some new, yet merely theoretical institutional options may bring us closer to the normative ideal. In exploring these new models of animal enfranchisement, it will prove to be useful to look at some models that have already been developed and proposed in the context of the enfranchisement of future people.<sup>184</sup> In this section, I defend this methodology and argue that

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<sup>184</sup> Most importantly: Dobson, “Representative Democracy and the Environment,” 124–139; Kristian S. Ekeli, “Constitutional Experiments: Representing Future Generations Through Submajority Rules,” *The Journal of Political Philosophy* 17, no. 4 (2009): 440–461; Kristian S. Ekeli, “Green Constitutionalism: The



it is fruitful and permissible to use some ideas concerning the enfranchisement of future people<sup>185</sup> in the context of animal enfranchisement.

One of the problems of looking into institutional options of improving the political and legal position of non-human animals is that there is quite a gap in the literature when it comes to pragmatic ideas on how to improve the position of non-human animals. In contrast, quite a lot has been written on the adjacent subject of how to practically improve the political and legal position of people who will probably come into existence in the future. This makes it attractive to look into the literature about future people enfranchisement to see whether it contains creative ideas of institutional design that can be used in the context of non-human animal enfranchisement as well. In research concerning the subject of how to practically improve the political and legal position of future people, problems related to the enfranchisement of future people are discussed, and these problems are often very similar to the ones we will encounter when investigating the actual enfranchisement of non-human animals. We may learn a great deal from how such problems are approached in the context of future people enfranchisement. Insofar as the literature concerning the enfranchisement of future people address design-technical problems which are also apparent in the context of animal enfranchisement, they seem suitable to learn from for our purposes.

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Constitutional Protection of Future Generations," *Ratio Juris* 20, no. 3 (September 2007): 378–401; Kristian S. Ekeli, "The Principle of Liberty and Legal Representation of Posterity," *Res Publica* 12 (2006): 385–409; Ekeli, "Giving a Voice to Posterity," 429–450; Iñigo González-Ricoy and Axel Gosseries, eds., *Institutions for Future Generations* (Oxford: Oxford University Press, 2016); Michael Kates, "Justice, Democracy, and Future Generations," *Critical Review of International Social and Political Philosophy* 18, no. 5 (2015): 508–528; Kavka and Warren, "Political Representation for Future Generations," 21–39; Tine Stein, "Does the Constitutional and Democratic System Work? The Ecological Crisis as a Challenge to the Political Order of Constitutional Democracy," *Constellations* 4, no. 3 (1998): 420–449; Dennis F. Thompson, "Representing Future Generations: Political Presentism and Democratic Trusteeship," *Critical Review of International Social and Political Philosophy* 13, no. 1 (March 2010): 17–37; Dennis F. Thompson, "Democracy in Time: Popular Sovereignty and Temporal Representation," *Constellations* 12, no. 2 (2005): 245–261.

<sup>185</sup> More often, "future people" are instead referred to as "future generations," but given the individualistic angle of this book, I find "future people" a more appropriate term. Individual people can have rights; the social construct that is a generation cannot.

There are many similarities between the purpose of enfranchising future people and that of enfranchising non-human animals. To start with, both are concerned with increasing the political and legal concern for entities currently un(der)represented in liberal democracies. Just like non-human animals, future people currently have no institutionalized options of having their interests promoted in the relevant liberal democratic bodies.<sup>186</sup> In this sense, both future people and non-human animals are left at the mercy of currently living human beings. In addition, both future people and non-human animals lack the ability to comprehend their inferior position,<sup>187</sup> nor are they able to (collectively) protest against it, let alone change it themselves. In the case of future people, this is for the simple reason that they do not (yet) exist; for non-human animals the reason for this is the language barrier and their (to this end) inadequate capacities.

Additionally, the position of both non-human animals and future people is made worse by the fact that current human politicians have every reason to ignore and even damage their interests.<sup>188</sup> As we will explore more in depth in the next chapter, the currently active accountability-mechanism, which is meant as a protection against abuse of power, has the spill-over effect of encouraging ignorance of all interests of non-voters (among which both non-human animals and future people). After all, the fact that politicians are accountable for their professional results through periodic

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<sup>186</sup> With regard to future people: Kavka and Warren, "Political Representation for Future Generations," 21; Ekeli, "Green Constitutionalism," 378–379; Ekeli, "Constitutional Experiments," 440; Ekeli, "The Principle of Liberty and Legal Representation of Posterity," 385–386; Kates, "Justice, Democracy, and Future Generations," 517.

<sup>187</sup> When it comes to future people, we soon find ourselves in a meta-philosophical maze. Certainly, many people who will be existent one day will, at the moment of actual existence, possess the cognitive abilities that are necessary to understand the politically inferior position of future people. However, at that moment, they will be *actual* people, no longer future people, which is why I maintain that "future people ... lack the ability to comprehend *their* inferior position." Future people, as non-materialistic entities of a predictive nature, cannot comprehend anything. It is merely when they become a wholly different entity, namely an existing person with cognitive abilities, that the necessary conditions for comprehending anything are met.

<sup>188</sup> With regard to future people: Ekeli, "Green Constitutionalism," 398; Kates, "Justice, Democracy, and Future Generations," 517–519; Kavka and Warren, "Political Representation for Future Generations," 21, 28, 36; Stein, "Does the Constitutional and Democratic System Work," 425–427; Thompson, "Representing Future Generations," 19; Bruce Tonn and Michael Hogan, "The House of Lords: Guardians of Future Generations," *Futures* 38 (2006): 116.

elections causes a situation in which deviating from the interests and preferences of the electorate is politically dangerous, because ignoring *their* wishes may result in not being re-elected, whereas ignoring the interests of future people and other animals costs them nothing. Thus the accountability mechanism incites political ignorance of all interests other than those which the electorate finds important, from which future people and non-human animals suffer similar consequences: it leads to short-sighted and anthropocentric politics.<sup>189</sup>

Also strikingly similar are the opportunities and difficulties of establishing some kind of political representation for future people and non-human animals. Most importantly, both entities are obviously unable to authorize representatives to act on their behalf, nor are they able to hold them accountable through periodical elections.<sup>190</sup> This means that the enfranchisement of both entities would require us to look into less conventional methods which establish interests reflection in governance. In this context, non-human animals and future people are yet again comparable in that a certain amount of paternalism cannot be avoided when it comes to the political incorporation of their interests. Both concerned entities have no political agency, and so their enfranchisement necessarily requires that currently living humans think and act for them. Both types of enfranchisement thus also struggle with the risk of abuse of power by humans who ought to represent future people's or non-human animals' interests in the political organs, and must find a way to mitigate this risk (about which also more in the next chapter). These are all very relevant problems of the current political-legal position of both entities and for the anticipated practical enfranchisement of both entities, and thus institutional solutions to these problems in the one context are highly relevant to, and possibly even recyclable in the other context.

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<sup>189</sup> With regard to future people (short-sighted politics): Ekeli, "Green Constitutionalism," 398; Kavka and Warren, "Political Representation for Future Generations," 21, 28–29, 36; Stein, "Does the Constitutional and Democratic System Work," 425–427; Thompson, "Representing Future Generations," 17–22; Tonn and Hogan, "The House of Lords," 116, 118; Edith Brown Weiss, "In Fairness to Future Generations," *Environment* 32, no. 3 (April 1990): 10.

<sup>190</sup> With regard to future people: Ekeli, "Constitutional Experiments," 450.

It is important to clarify at this point, however, that the fact that I will refer to institutional solutions proposed for handling some of these problems in the context of future people does not mean that I subscribe to the underlying philosophical position that future people have rights such as the consideration right. It is not at all clear that the currently living have obligations to future people, something that is all too easily assumed by many writers on this subject.<sup>191</sup> Although taking a stance in this regard is not strictly necessary for the purpose of this book, I will briefly discuss some of the complications related to future people's alleged claim to political rights, for this illustrates how much stronger sentient animals' claim to political rights is.

In order for us to be persuaded to agree that future people indeed have political rights, it must be established that they are part of the democratic people, the demos. We have seen in the previous chapter that many writers are indeed convinced that future people are part of the demos, for the reason that current democratic decisions also affect future people. This contention can be challenged, however, for it might be argued that the ontological status of future people prevents them from being counted as part of the demos. Future people by definition do not exist in the current moment; they are only a prediction of the future. Thus, in a certain sense, they are also not affected by current-day political decisions, because strictly speaking, they *are not*. In line with this argument, we could also maintain that future people, on account of being non-existent, cannot *have* anything, including rights. As put forth by political economist Wilfred Beckerman (1925–): “properties, such as being green or wealthy or having rights, can be predicated only on some subject that exists. Outside the realm of mythical or fictional creatures or hypothetical discourse, if there is no subject, then there is nothing to which any property can be ascribed.”<sup>192</sup> In short, speaking of future people as “being affected” or “having rights” is thus futile, for they are not subjects but hypothetical entities.

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<sup>191</sup> Most often implicitly, but sometimes also explicitly, for instance in: Kavka and Warren, “Political Representation for Future Generations,” 22. Kavka and Warren state that: “We shall assume that it makes sense to speak of those currently living having obligations to future generations, and that we do in fact have certain obligations of this kind.”

<sup>192</sup> Wilfred Beckerman, “Intergenerational Justice,” *Intergenerational Justice Review* 2, no. 2 (2004): 3.

Future people's claim to rights is rendered even more problematic by the fact that they are not only predictions of the future, but that these predictions of future existence are also uncertain. It is impossible to be certain whether future people will ever come into actual existence, for we can never exclude the possibility of a meteor striking the earth today, or of other apocalyptic disasters which could destroy all life on earth.<sup>193</sup> Of course, the chances that these things will happen to us in the near future are very small, but the fact that they might happen is relevant to the philosophical question at hand. It means that even if, for the sake of argument, we would agree that the hypothetical nature of future people does not, in principle, prevent them from having rights, they still only *potentially*, not actually, qualify for a consideration right. Future people will only potentially come into existence as actual individuals, and thus they will only *potentially* be individuals with interests that could qualify for rights protection. Deducing actual rights from this mere potential qualification for these rights would be a logical error. As pointed out by others, "what follows from potential qualification are potential, not actual, rights. A potential president of the United States is not on that account Commander-in-Chief [of the U.S. Army]." <sup>194</sup> Similarly, a potential individual with potential interests is not on that account a bearer of actual rights, such as the consideration right. The ontological status of future people as hypothetical entities and the uncertainty regarding their future existence are thus critical elements that raise problems and make their claim to political rights particularly weak — certainly weaker than that of actually and presently living individuals.<sup>195</sup>

In line with the previous argument, there is also a good liberal case to make against the rights of future people. It is a liberal adage that rights are never "free," in the sense of having no consequences for others. The here debated rights of future people would necessarily come at the expense of actual individuals with demonstrable interests. A liberal might argue that in

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<sup>193</sup> Christopher D. Stone, "Safeguarding Future Generations," in *Future Generations & International Law*, eds. Emmanuel Agius and Salvino Busuttil (London: Earthscan Publications, 1998), 76–79.

<sup>194</sup> Stanley I. Benn as referenced in: Ekeli, "The Principle of Liberty and Legal Representation of Posterity," 400.

<sup>195</sup> Daniel Callahan, "What obligations Do We Have to Future Generations?" in *Responsibilities to Future Generations*, ed. Ernest Partridge (Buffalo: Prometheus Press, 1980), 73–85.

order to legitimately limit a person's freedom, a benefitting entity must be apparent and demonstrable. From a liberal perspective, it can hardly be justified that currently living beings have to give up some of their *actual* freedom for the *possible* advantage of *possible* future beings. This seems like a bad trade off in liberal terms, for actual freedom is sacrificed without anything close to certainty that others will receive benefits in return. Due to the hypothetical nature of future people, it is all but certain that others will benefit from that costly sacrifice. As such, especially *liberal* democracies should be very careful in going down the road of giving rights to hypothetical entities.<sup>196</sup>

Some have argued that establishing institutional representation of future people's interests is undesirable for more practical reasons. It is hard, if not impossible, to predict the interests and needs of future people, as these are continuously influenced by unpredictable factors, such as technological progress and natural forces, not to mention the behaviour and choices of current people. We cannot possibly be certain about how many people there will be in the future and what their most pressing problems will be.<sup>197</sup> It is therefore practically impossible to take the interests of future people into account, even if we were to agree that they would have this political right from a principled point of view. This practical argument is obviously not relevant to the question whether future people have a claim to rights in the first place, however.

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<sup>196</sup> This is not to say that liberal democracies may not offer less radical methods of serving the most probable future interests of probable future persons. Current politicians could, for example, voluntarily internalize the probable interests of posterity.

<sup>197</sup> See on the (in)determinability of future people's interests and how it affects the possibility of representing future people also: Kavka and Warren, "Political Representation for Future Generations," 24–25 (arguing that we do know a great deal about the interests of future people); Dobson, "Representative Democracy and the Environment," 131–132 (arguing that it is clear that there will be future people, that what we do now will affect them, that they will have interests, that these interests are capable being represented, and that we can be fairly sure that they will want both a viable environment in which to live and the possibility of satisfying their basic needs); Ekeli, "Green Constitutionalism," 387–390 (arguing that we at least have reliable knowledge about the physiological needs of future people and that courts are to determine which natural resources are critical to the physiological needs of future people); Thompson, "Representing Future Generations," 22 (arguing that uncertainty about future people's interests is reason to protect their capacity for making their own collective decisions); Anja Karnein, "Can We Represent Future Generations?" in *Institutions for Future Generations*, eds. Iñigo González-Ricoy and Axel Gosseries (Oxford: Oxford University Press, 2016), 83–97 (arguing that establishing deliberative bodies may reduce the uncertainty about future people's interests).

These difficulties seem to resist assigning future people political rights. We have not, however, investigated all the relevant arguments exhaustively and properly, so a definitive stance on this matter will not be defended in this book. What has been discussed though, gives enough reason to doubt the validity of future people's claim to political rights. Arguably, future people are not part of the demos, because future people *are* not affected by current decisions, but merely *will be at risk of possibly becoming* affected by current decisions. Their "affectedness" by political decisions thus seems fundamentally different from that of sentient animals (humans included) who are currently alive. Arguably, whether to come to future people's aid or not is typically an issue that should be subject to pluralistic democratic debate among the actual living, without future people having the luxury of leaning on rights protection that would place part of this issue outside of the democratic realm. Fortunately, these uncertainties about future people's political rights need not be sorted out here. It is, however, interesting to see that, in comparison with future people, sentient animals' claim to political rights is particularly strong. The circumstances that could affect future people's claim to a consideration right are absent in the context of sentient non-human animals. Sentient non-human animals are actually existing individuals, they have actual and demonstrable interests, they are existent in this time and place, and because they actually do live on the territory and they actually are affected by the political decisions made, it is hardly contestable that they are part of the demos and consequently have a consideration right. In liberal terms, it is not a bad trade off to give them (political) rights, since for actual restrictions on human behaviour, other sentient animals get an upgrade in actual freedom or actual well-being in return, and this often will be a much larger share than that which was surrendered by humans. Lastly, this book has argued that, if some effort is expended, it is possible to get a reasonable idea of what sentient animals' interests are.

The purpose of this section was to illustrate why it is fruitful and permissible to use some ideas concerning the enfranchisement of future people in the context of animal enfranchisement. Due to the fact that there are many

similarities in the challenges of designing enfranchisement models for future people and for non-human animals, we can learn from solutions proposed by some thinkers who maintain that future people must be enfranchised as well, without needing to subscribe to their preliminary philosophical position that this is normatively required. The situations of future people and non-human animals are comparable when it comes to the aspect that is relevant to this book: improving the un(der)representation of currently politically excluded entities. Both find themselves in a fundamentally subordinated position, both cannot make use of the conventional democratic methods of authorization and accountability, and thus both would need unconventional methods to have their interests considered in the institutions of a liberal democracy (if this were desirable in the case of future people). For this reason, I consider it methodologically acceptable to use some ideas from the models and solutions constructed for improving future people's political position in the next chapters, without implying that I also endorse the underlying presupposition that future people have a claim to political enfranchisement.

## 2.5 Conclusion

The main aim of this chapter was to get a clearer view of the normative goals of animal enfranchisement, of the current possibilities for animal enfranchisement in liberal democracies, and of their normative acceptability. The chapter proceeded in three stages.

First, five normative requirements of animal enfranchisement in liberal democracies were deduced from the interspecies theory of democracy. These criteria prescribe that liberal democracies must reserve an institutional place (*legitimacy requirement*) in which humans (*human assistance requirement*) are institutionally bound (*non-contingency requirement*) to consider the independent interests (*independence requirement*) of sentient non-human animals who reside on the territory of the state (*residency requirement*). The actual institutionalization of non-human animals' consideration right must be in line with these demands in order for it not to undermine the very democratic principles that underpin this right. These



five criteria continue to function as the normative framework for animal enfranchisement in the remainder of this book.

The second stage consisted of investigating what non-human animals' current position in liberal democracies is and whether this is sufficient in the light of the aforementioned enfranchisement criteria. Thus the current political and legal status of animals in liberal democracies was assessed, as well as three promising current developments which may directly or indirectly contribute to improving the actual protection of animals' interests in the nearby future. When set against the normative background, the overall picture of non-human animals' position was quite grim, and the three discussed developments were not able to alter this assessment, not even if they were to succeed in generating the most positive results possible in the nearby future. In that case, the legal and political institutions of liberal democracies would still have no in-built obligations to address the interests of non-human animals properly. The normative assessment of current liberal democratic structures led to some quite shocking findings. Regarding the (interspecies) legitimacy of current liberal democracies, we had to admit that thinkers typifying humans' political attitude towards other animals as "tyrannical" might have a point. Humans have given themselves the absolute right to rule over the lives of all other animals in an arbitrary and totalitarian way. This not only constitutes a grave violation of non-human animals' consideration right, but is also a democratic problem that undermines the principles that lie at the very basis of current open societies. Therefore, improving the position of non-human animals is not only essential in order to do justice to their consideration right, but it would also improve the democratic calibre of liberal democracies. The subsequent chapters thus focus on what types of institutional reform could improve non-human animals' position in liberal democracies.

In envisioning the interspecies liberal democracy of the future, it would be a waste of energy to reinvent the wheel completely if it is possible to learn from comparable pre-existing enterprises in adjacent disciplines. In our case, some models of institutional reform that have been proposed in the context of future people enfranchisement seem usable. The enfranchisement

of future people faces many of the problems that are also present in the context of non-human animal enfranchisement. These similarities, together with the fact that literature on interspecies institutional design is scarce, led me to the conclusion that it is fruitful and methodologically permissible to use ideas of institutional design concerning the enfranchisement of future people in the context of non-human animal enfranchisement. This was the third and last stage of this chapter. It has been stressed however, that these cross-references do not imply that this book subscribes to the underlying philosophical position that future people have political rights. In what follows, the options of improving liberal democratic institutions so as to make them account for non-human animal interests as well will be explored.