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The open society and its animals

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Acknowledgement of sources

Some of the ideas in this book have been published before. The thoughts on liberal democracy as an interest-weighing mechanism and the importance of James Mill's depiction of democracy to this idea were first published in a chapter that I wrote for an edited volume on environmental rights.[564] Parts of section 2.2, which concerned transparency as a democratic principle, have been published before as a blog article on the Leiden Law Blog, a legal blog platform for popular science of Leiden University.[565] Parts of section 4.1, which concerned the constitutional state objective, were also part of two previous works: expert advice for the Belgian Senate on a proposal of law to add a state objective on animal welfare to the Belgian Constitution and a scholarly paper in which I investigate the desirability of implementing a similar provision in the Dutch Constitution as well.[566] The differences between common law and civil law systems in attaining legal animal rights as addressed in section 5.1 were also shortly addressed in a chapter that I wrote for an edited volume on the most pressing questions in contemporary science.[567] In that chapter, I also first suggested that current legal systems are based on an outdated scientific worldview.[568] Finally, some ideas expressed in section 5.3, regarding how current legal systems undermine the equality principle, were published in a chapter co-authored with my promotor Paul Cliteur for an edited volume on equality and freedom.[569]

[564] Vink, "De Democratische Rechtsstaat als Belangenweegschaal," 43–56.
[565] Vink, "If Slaughterhouses had Glass Walls…."
[566] Vink, "Het Constitutionaliseren van de Zorg voor Dieren als Wezens met Gevoel"; Vink, "Dierenwelzijn," 1862–1869.
[567] Vink, "Hoe Zijn de Rechten van Andere Dieren dan Mensen te Waarborgen," 314–317.
[568] Vink, "Hoe Zijn de Rechten van Andere Dieren dan Mensen te Waarborgen," 314–317.
[569] Cliteur and Vink, "De Gelijkheid en Vrijheid van Mensen en Andere Dieren," 87–105.

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Glossary of terms

Active political rights
A category of political rights that require political agency of the rights holder in order to make sense. These are rights that enable political participation, such as the right to vote and the right to politically represent others. See also section 1.4 and *Passive political rights*.

Anthropocentrism
A strong or exclusive, not always justified focus on humans and their interests. See also *Strong anthropocentrism* and *Weak anthropocentrism*.

Character selection strategies
Strategies that can help establish that representatives or representative institutions function in alignment with the interests of those they are supposed to represent by focussing on the manning of these institutions with the right persons. See also section 3.1.III and *Institutional nudging strategies*.

Consideration right
The (passive) political right to have one's interests considered by the political communities' rulers. *The Open Society and Its Animals* argues that all sentient animals on the territory of a liberal democratic state have a consideration right. See also section 1.4, *Passive political rights*, and *Interspecies democratic theory*.

Constitutional state objective
A constitutional norm with legally binding effect, which enjoins on public policy the continuous observance of or compliance with certain tasks or objectives (in the context of this book: protecting animal welfare). Sometimes also called: "fundamental objective," "policy principle," "constitutional objective," or "directive principle of state policy." See also section 4.1.

Democratic costs
Immaterial costs that the endeavour of enfranchising non-human animals may incur, which could be problematic from a democratic point of view. See also sections 3.1.V and 3.2.

Dynamic citizenship
A citizenship framework for non-human animals in which the mere presence of a sentient non-human animal on the sovereign territory of a certain liberal democratic state activates that state's duty to give due political consideration to the interests of that animal. See also section 2.1, *Residency criterion*, and *Residency-dependent right*.

Enfranchisement
Throughout *The Open Society and Its Animals*, the term "enfranchisement" is used 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. See also *Enfranchisement criteria*.

Enfranchisement criteria
Normative requirements for institutionalizing the consideration right of non-human animals, derived from the interspecies democratic theory presented in this book. This book argues that there are five enfranchisement criteria, which together prescribe the normatively preferred enfranchisement of sentient 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*). See also section 2.1, *Legitimacy criterion*, *Non-contingency criterion*, *Independence criterion*, *Human assistance criterion*, *Residency criterion*, and *Interspecies democratic theory*.

Fundamental legal rights
This book typifies the fundamental legal rights it discusses as negative, individual, fundamental legal rights. *The Open Society and Its Animals* concludes that assigning sentient animals on the territory of liberal democratic states certain fundamental legal rights, such as the right not to be tortured and the right to life, could establish a normatively desirable situation in which sentient animals' consideration right is institutionally respected. See also section 5.2.

Human assistance criterion
One of the five enfranchisement criteria. The human assistance criterion prescribes that humans must assist in the realization of non-human animals' consideration right by objectively representing their interests in the appropriate institutions. See also section 2.1 and *Enfranchisement criteria*.

Identity of interests
A coinciding of interests between the rulers and the ruled. An identity of interests should prevent abuse of power, because the community can have no sinister interest within itself and with respect to itself. James Mill thought achieving an identity of interests to be an essential democratic ideal. See also section 1.4 and James Mill, "Government."

Independence criterion
One of the five enfranchisement criteria. The independence criterion prescribes that non-human animals' interests must be regarded and institutionalized as an independent factor in liberal democratic considerations. See also section 2.1 and *Enfranchisement criteria*.

Institutional nudging strategies
Strategies that can help establish that representatives or representative institutions function in alignment with the interests of those they are supposed to represent by focussing on the design of these institutions. See also section 3.1.III and *Character selection strategies*.

Interests
A certain good or action is in an individual's interest if it positively affects the well-being of that individual. See also section 1.2.

Interspecies democratic theory
The normative democratic theory developed in the first chapter of *The Open Society and Its Animals*. The theory holds that sentient non-human animals on the territory of a liberal democratic state have a consideration right: the (passive) political right to have their interests considered by the political communities' rulers, on account of having politically relevant interests. See also chapter 1, *Consideration right*, and *Enfranchisement criteria*.

Interspeciesism
Arbitrary discrimination between animals of the same species. See also section 2.2.

Legitimacy criterion
One of the five enfranchisement criteria. The legitimacy criterion prescribes that basic democratic structures must reflect a due and equal regard for sentient non-human animals in order to qualify as democratically legitimate. See also section 2.1 and *Enfranchisement criteria*.

Non-contingency criterion
One of the five enfranchisement criteria. The non-contingency criterion prescribes that the consideration of sentient non-human animals' interests may not be contingent in the sense that it is dependent on the willingness of humans to do this, but must be non-contingent in the sense of institutionally secured. See also section 2.1, *Enfranchisement criteria*, and *Weak anthropocentrism*.

Passive political rights
A category of political rights that do not require political agency of the rights holder in order to make sense. The consideration right is a passive political right. See also section 1.4, *Active political rights*, and *Consideration right*.

Political agency
The characteristic of being able to act with the intention of affecting political institutions. See also section 1.3, *Political agent*, *Political patient*, *Political patiency*, and Angie Pepper, "Political Agency in Humans and Other Animals."

Political agent
An individual who is able to act with the intention of affecting political institutions. See also section 1.3, *Political agency*, and *Political patient.*

Political patient
An individual who is unable to act with the intention of affecting political institutions. See also section 1.3, *Political patiency*, and *Political agent.*

Political patiency
The characteristic of being unable to act with the intention of affecting political institutions. See also section 1.3 and 1.4, *Political agent*, *Political patient*, and *Political agency.*

Residency criterion
One of the five enfranchisement criteria. The residency criterion prescribes that the consideration right of sentient non-human animals currently living and residing on the sovereign territory of a liberal democratic state must be institutionalized. See also section 2.1, *Enfranchisement criteria*, *Dynamic citizenship*, and *Residency-dependent right.*

Residency-dependent right
A right that becomes activated only if the rights-bearing individual resides on the territory of the state. See also section 5.4, *Residency criterion*, and *Dynamic citizenship*.

Strong anthropocentrism
A situation in political systems in which the interests of non-human animals are only considered to the extent to which humans want them to be considered, in other words: contingently. See also *Anthropocentrism*, *Weak anthropocentrism*, and Robert Garner, "Animals, Politics and Democracy."

Weak anthropocentrism
A situation in political systems in which 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. The non-contingency criterion favours a weak anthropocentric institutional setting. See also *Anthropocentrism*, *Strong anthropocentrism*, *Non-contingency criterion*, and Robert Garner, "Animals, Politics and Democracy."

Curriculum vitae

Janneke Vink (Schiedam, 1990) holds a Bachelor's degree in Law (Leiden University, 2011), a Master's degree in Criminal Law and Criminal Procedure (Leiden University, 2013) and a *cum laude* Master's degree in Jurisprudence and Philosophy of Law (Leiden University, 2013). Vink has been lecturer of several Jurisprudential courses at Leiden University, guest lecturer for a science course on Human Evolution at Leiden University, lecturer for the Pre-University College at Leiden University, editor and author for the Leiden Law Blog, and is founding board member of the Dutch branch of the non-governmental organization Minding Animals. Vink is also a member of the study group on Animal Ethics of the Dutch Research School of Philosophy (Nederlandse Onderzoeksschool Wijsbegeerte). Her doctoral research was conducted at the Institute for the Interdisciplinary Study of the Law at Leiden University. Vink is currently Assistant Professor at the Department of Constitutional and Administrative Law and Jurisprudence of the Open University of the Netherlands.

The Open Society and Its Animals is an interdisciplinary study centred on the political and legal position of animals in liberal democracies. With due concern for both animals and the sustainability of liberal democracies, *The Open Society and Its Animals* seeks to redefine animals' political-legal position in the most successful political model of our time: the liberal democracy.

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