



Universiteit
Leiden
The Netherlands

The open society and its animals

Vink, J.

Citation

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

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/79193>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The following handle holds various files of this Leiden University dissertation:
<http://hdl.handle.net/1887/79193>

Author: Vink, J.

Title: The open society and its animals

Issue Date: 2019-10-10

Summary

The Open Society and Its Animals

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.

There is reason to reconsider the relationship between the open society and the animals in it. Whereas animals used to be regarded as objects without consciousness and feeling, modern science points out that many animals are sentient and that, like humans, they have certain elementary interests. Since interests play a crucial role in the political and legal theories that form the foundation of liberal democracies, it seems only natural that the revised perception of animals has consequences for the liberal democratic institutional framework too. *The Open Society and Its Animals* argues that the modern perception of animals as individuals with interests compels us to reconsider the political and legal position of animals in liberal democracies, and for two reasons: to do justice to the animals themselves and to improve the credibility and sustainability of the open society.

Research question and structure

The dual focus on both animals and the open society is reflected in the book's main research question: *Should the fundamental structures of liberal democracies reflect the fact that many non-human animals are individuals with interests, and is this possible without undermining or destabilizing their institutions?*

The first, normative, stage of the investigation asks whether the fact that many animals have interests should have consequences for the fundamental structures of liberal democracies, and if so, what criteria the new political-legal position of animals should meet. Point of departure are the principles that already lie at the basis of liberal democracies, such as the

principle of affected interests, the principle of political equality, and the principle of equal consideration of interests. These principles do not necessarily exclude non-human animals, because they focus on individuals and their interests, which implies that other animals can and ought to be incorporated in them as well. The interspecies democratic theory that is developed in the book is based in such classical liberal democratic principles, and it follows from this theory that sentient non-human animals on the territory of the liberal democratic state have a *consideration right*. They have a democratic right, in other words, to have their interests taken into account by the political rulers of liberal democratic states. From the interspecies democratic theory, five criteria for the enfranchisement of animals in liberal democracies naturally follow. Ideally, 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*).

The second stage of the investigation in the book involves an inquiry into the current political-legal position of non-human animals in liberal democracies, the extent to which this position meets the enfranchisement criteria just mentioned, and how this position could possibly be improved. *The Open Society and Its Animals* finds that the basic political-legal structures of liberal democracies around the world currently fail to reflect the fact that many non-human animals have interests which make them politically and legally relevant entities. Animals' interests have no formal role to play in liberal democratic institutions, the protection of their most elementary interests is contingent on the whimsical inclinations of humans, and animal interests can often only be formally and effectively protected if they overlap with human interests. In short, the fundamental structures of current liberal democracies fail to meet the criteria for animal enfranchisement.

The next challenge is to assess whether and how the institutional structures of liberal democracies could be reformed so as to give due recognition to sentient animals' consideration right without undermining liberal democratic values or unbalancing the system as a whole. The book

finds that merely adapting the *political* institutions is not likely to lead to a solution in this regard, because several difficulties prevent a normatively defensible enfranchisement of animals from being established in the political sphere. Most problematic is the fact that non-human animals cannot engage in the political processes themselves. This circumstance leads to a number of different problems, since political processes and checks and balances seem to be founded on the fundamental anthropological assumption of the rational and self-serving individual with political agency. More promising are the two adaptations to *legal* institutions that are investigated: introducing a constitutional state objective on animal welfare and introducing fundamental legal rights for sentient animals.

A constitutional state objective on animal welfare straightforwardly expresses that the welfare of animals is a serious and elementary aspect of liberal democratic governance that requires political attention. It has the potential to have significant positive effects on the political and legal status of non-human animals in liberal democracies. Importantly, the state objective can serve as a basis for these positive effects without compromising on the democratic process or principles that are essential to the functioning of liberal democracies.

At the same time, enthusiasm must be tempered, because the state objective offers very few guarantees in practice. The state objective on animal welfare must be rejected as an ideal model, because it is normatively deficient in light of the enfranchisement criteria and thus cannot give non-human animals the political and legal status to which they are entitled. However, *The Open Society and Its Animals* argues that, even though it is not ideal, the state objective on animal welfare could be an interesting intermediate model in the historical process of the political and legal emancipation of non-human animals, and that it is a realistic alternative to introducing fundamental legal animal rights in the short term.

In the quest for a normatively acceptable enfranchisement of animals, assigning sentient animals fundamental legal rights is a serious option. More precisely, these would be negative, individual, fundamental legal rights, which would, in type, be similar to the existing fundamental rights of humans. Introducing such legal animal rights would have a great impact on

individual citizens, society, politics, and the legal system, which does not only mean that this cannot be done overnight, but also that these rights would have to be backed by a thorough normative justification. The main justification for such rights would be based in the interspecies democratic theory of the book, but two additional justifications can also be given.

The first additional justification can be found in an interest-based account of rights. If legal rights can be understood to protect interests, as Joseph Raz and Joel Feinberg argue, then sentient animals would also be entitled to certain legal rights. The second additional justification is that assigning sentient animals legal rights would significantly improve legal systems. Liberal democracies currently resolutely exclude non-human animals from the sphere of rights, while endorsing principles that would require the inclusion of sentient non-human animals in the sphere of rights. From an interspecies perspective, Lady Justice should be blind to the often irrelevant factor of species membership, for example in the distribution of welfare rights. Assigning sentient animals fundamental legal rights would improve liberal democratic legal systems by making them less arbitrary, less self-undermining, more consistent, and more in harmony with modern scientific knowledge.

In light of the criteria for animal enfranchisement, the credentials of fundamental legal rights for sentient non-human animals are very strong. Through incorporating animal interests in the basic structures of the liberal democratic state by introducing fundamental legal animals rights, the interspecies legitimacy of liberal democracies would be significantly improved. Fundamental legal animal rights legally require that sentient animals' most essential interests are non-contingently taken into account as independent factors by state officials of all branches. If accompanied by adequate practical regulations and carefully institutionally embedded, implementing fundamental legal rights for sentient animals could meet all five criteria for animal enfranchisement—a unique score among the options that are investigated in the book. Furthermore, if introduced in a responsible manner, fundamental legal rights for sentient animals would also not undermine or compromise on liberal democratic values or jeopardize the long-term stability of liberal democracies, but rather improve them by

eliminating arbitrariness and undermining features currently existent in this political model.

In short, *The Open Society and Its Animals* argues that fundamental legal rights for sentient animals have to be introduced in order to respect sentient animals' democratic right to have their interests considered in the liberal democratic state. However, given the drawbacks and dangers implied in introducing such a thorough legal change overnight, *The Open Society and Its Animals* argues for reformative caution and stresses the importance of having sufficient concern for societal support and proper institutional anticipation and embedding. It seems wise, in other words, to *piecemeal engineer* our way into a more animal-inclusive open society of the future. *The Open Society and Its Animals* attempts to do its part by arguing that sentient animals have a democratic claim to fundamental legal rights, by visualising what the animal-inclusive open society of the future could look like, and by showing that it truly is a viable option that would not only benefit animals and serve justice, but also improve the open society itself.

