



Universiteit  
Leiden  
The Netherlands

## **Towards an interspecies health policy : great apes and the right to health**

Nieuwland, J.

### **Citation**

Nieuwland, J. (2020, May 13). *Towards an interspecies health policy : great apes and the right to health*. Retrieved from <https://hdl.handle.net/1887/87894>

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/1887/87894>

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

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/87894> holds various files of this Leiden University dissertation.

**Author:** Nieuwland, J.

**Title:** Towards an interspecies health policy : great apes and the right to health

**Issue Date:** 2020-05-13

#### **4. Health interests: a matter of rights?**

As argued in chapter 3, vital interests can generate moral rights. The interests of individual animals in not being made to suffer and not being killed provide possible grounds for rights. In addition, animals can have a moral right to freedom of opportunity, the normative strength of which correlates with their capability of intentionally thinking as well as acting. I understand these rights to fall in line with (and as being a specification of) the demands of the Great Ape Project, which not only endorses a right to life, but also the protection of individual liberty and the prohibition of torture for great apes (Singer & Cavalieri 1993).

Given these basic rights, one could ask which further rights great apes may have. To what extent do they possess more “positive” rights e.g., the right to health? Which distinct interests in health give rise to rights protection, and why?

The mere presence of interests does not suffice to having a right to health. It is argued that health differs from other interests in the sense that it requires positive action. This right may create moral duties without generating any claims of justice in terms of rights. In other words, a right to health does not exist.

Retreating to a negative understanding of the right to health can counter the criticism against a positive right. Such a right demands that humans do not impose serious threats to the health of individual great apes. Even if one does not acknowledge positive rights, a negative right to health already imposes substantial duties, hereby avoiding rather than engaging with the criticism aimed at the right to health as being a positive right.

Does this imply that a positive right to health cannot be endorsed? This conclusion depends on questions such as: to what extent are relational conditions (e.g., cooperation, membership) relevant to acknowledging a right to health. And, are these conditions sufficient or even necessary when generating the protection of rights?

##### ***4.1 Why health matters: pathology and opportunity***

Why is health of moral relevance? One may argue that health is part of a good life irrespective of how it affects other interests: health is intrinsically valuable (Nielsen 2014). However, perhaps the instrumental value of health in relation to other interests carries the

most relevance. Which are those other interests? Health is related to well-being in important ways. A state of health can first of all be associated with the avoidance of pathological suffering. Although this link is contingent, as not all instances of ill health will entail suffering, ill health will often cause suffering, at least at some point (cf. Schroeder 2012). Thus, when bringing this interest in health to bear on great apes, to the level that ill health causes suffering, it becomes quite obvious in the interests of individuals to be healthy.

A state of good health also correlates with a positive life expectancy. Again, resembling its link with the avoidance of pathological suffering, health is not a necessary condition to live a long life as it is possible to live a life of normal length while coping with ill health. Health does however often facilitate continued life as well as the prospects of living a life with a normal lifespan; ill health often imposes a threat to such interests to the degree that ill health shortens one's life expectancy. It is in the interests of great apes to be healthy.

One may also draw a connection between how health not only enables individuals to function but also to realize goals in life (Nordenfelt 2006). It has been postulated that health is intrinsically normative and therefore defined in terms of its relation to well-being. As Nordenfelt (2006: 147) puts it, "A is completely healthy if, and only if, A is in a bodily and mental state which is such that A has the second-order ability to realize all his or her vital goals given a set of standard or otherwise reasonable conditions". It is also observed realizing such goals "is a necessary condition for the animal's long-term happiness" (Nordenfelt 2006: 155).

A non-evaluative understanding of health as a concept need not dismiss the normative relevance of health. Rather than being conceptually evaluative, it is possible to define health in statistical terms, while at the same time recognizing the value of health. For example, a non-evaluative definition of health as species-typical functioning, statistically defined reflects a certain range of opportunities to pursue one's own life goals. If one falls below the standard of species-typical functioning, there are reasons of fairness either to remedy or compensate for this shortcoming (Daniels 2007).

Do great apes have an interest in health because of the opportunities it provides? If one believes health becomes morally relevant for the way it reflects one's ability "to choose and pursue one's own life goals", then perhaps great apes miss out on something, as it is uncertain

whether they are able to engage in such second-order reflection. As to the extent that health supports well-being, however, great apes have a distinct interest in health stemming from the interest in the avoidance of suffering. Moreover, if indeed great apes have significant interests in possessing a range of opportunities available to them to explore and develop their preferences as individuals, health does appear to play an important supporting role after all, even if they are not able to engage in second-order reflection. The ability to reflect upon one's own life goals is overly demanding when explaining the moral relevance of health in terms of the opportunities it provides.

Apparently the following two distinct reasons for valuing health exist: (a) the avoidance of pathological suffering and (b) because health enables individuals to do things of value (Hausman 2015: 169). Both the interest in a continued life and the prospect of a normal lifespan could be cashed out in terms of the goods that life contains (including any avoidance of suffering and being enabled to do things of value).

These interests in health relevantly relate to the moral rights discussed in chapter 3. The interest in avoiding suffering has been argued to suffice to generate a moral right, demanding not to be made to suffer by others. Although ill health may result from the actions of others, it often concerns the contingency of biological processes rather than the involvement of a moral agent. The right to health would also protect to a certain degree against ill health not caused by others. Thus, whereas interests largely overlap, the right to health appears to require more than merely the right not to be made to suffer.

The right to freedom of opportunity demands a range of opportunities if the individual wishes to explore and develop his or her personal preferences. We then need to create a socio-ecological setting that is attuned to the individual ability to make meaningful choices pertaining to his or her life. Such facilitation of a meaningful choice relates to the second reason for valuing health, to wit, the way it enables individuals to fully engage and pursue their goals. Health is a treasured resource, for example, when pursuing either certain life goals (Daniels 2007) or vital goals (Nordenfelt 2006). Health is an internal ability of an individual and in general measured against his or her environment. The range of opportunities that should be available to individuals partly determines the required level of health. In order to explore their environment and interact with other animals, for instance, great apes need a certain level of health, which they might not need if their opportunities were rather limited.

Consequently, the right to health is closely linked to the right to freedom of opportunity, whereby the former provides a paramount condition for the latter.

In sum, the interest in (a) the avoidance of pathological suffering and (b) health as an internal ability serving to explore a range of opportunities both provide a case for the *prima facie* acknowledgment of a right to health for great apes. Although great apes, as is discussed in chapter 3, are probably not able to reflect on their life goals in the same way autonomous beings can, this condition does not discount their interests in exploring a range of opportunities. Much in accordance with Daniels' line of thought, the health of great apes hereby reflects a range of opportunities that is morally relevant to consider. The right not to be made to suffer, the right to life, and the right to freedom of opportunity are all relevant to this understanding of the right to health whereby not one of these rights captures all aspects of a right to health, thus providing space for a distinctive right to health accompanied by its specific obligations.

#### ***4.2 Why not just duties?***

Now let us look at the objection formulated as follows: of course, great apes take an interest in health. While our specification of these interests is interesting, it does not provide us with a compelling reason to recognize a right to health. The three rights proposed by the Great Ape Project are basic in the sense that their correlative duties require restraint on the account of the duty holder. Interests in health impose a positive duty, which is rather differs from the duties that correlate with negative rights. While we might have the duty to not only protect but also promote the health of great apes, it is by no means a demand of justice. In other words, great apes do not have a right to health as a demand of justice based on their interests in health.

This objection distinguishes between various types of rights. The three rights concerning the Great Ape Project are negative rights in the sense that they require obligatory restraint on the account of the duty holder. In other words, they demand one should not torture, imprison or kill a great ape. These basic rights are very clear, and not overly demanding. A right to health, as one may assume, would require far more resources and efforts in order to fulfill its corresponding obligations. The International Covenant on Economic, Social and Cultural Rights (1976), for example, describes the human right to health as “the right of everyone to

the enjoyment of the highest attainable standard of physical and mental health”.<sup>59</sup> Although philosophers often take issue with this formulation, they nevertheless do by and large understand the right to health as a positive right (Rumbold 2015).

Positive rights have attracted a wide array of concerns. As is suggested, positive rights can be considered less stringent than negative rights (Pogge 2001). Whether or not we owe great apes more, we at least acknowledge their basic negative rights that protect them against any woeful infringement. Another issue that arises when comparing negative and positive rights is the identification of a duty holder (O’Neill 2005). Everyone is duty-bound not to torture, imprison, or kill great apes, but who holds the duty to care for their health needs? Furthermore, which level of health needs to be attained and maintained as a matter of justice (Wolff 2012a)? To what extent does the right to health become the center of gravity of all moral demands in its aim to provide “the highest attainable standard of physical and mental health” (Caney 2010)?

These considerations may yet fully undermine the recognition of certain duties in order to protect the health of great apes. However, they do impose significant obstacles as to recognizing a moral right to health, which implies that those representing the interests of great apes by proxy cannot claim as a requirement of justice any health-related goods or services to benefit great apes. Action aimed at protecting and promoting their health is charitable, though optional.

#### ***4.3 Considering a negative right to health***

What if we put aside our interest in a positive right to health, and turn to a negative one instead? Or put in other words, why not go for a minimal goal (protecting health against infringement) instead of maximizing health? A minimalist account of the human right to health in order to counter certain objections to its maximalist formulation has been developed: a negative conception of the human right to health entails that “all persons have a human right that other people do not act so as to create serious threats to their health” (Caney 2010: 79).

This understanding of the right to health effectively deals with the above-mentioned concerns as follows: “First, it does not require people to maximize the health of all. Second, it does not

---

<sup>59</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> [accessed 2 May 2019].

affirm a positive right to be (maximally) healthy. It affirms only a negative right that persons do not harm the health of others” (Caney 2010: 79). It is hence clear whoever holds the corresponding obligation: everyone who could negatively affect the health of others. As we should not strive at endangering someone’s life, we must likewise not be causally involved in bringing about the ill health of others.

Whereas the negative conception of the right to health captures only part of what the right to health is often believed to comprise, the implications of such limited formulations are striking nonetheless.<sup>60</sup> Consider the anthropogenic influence on the climate and how it affects human health in various negative manners (Caney 2010: 75). Climate change represents one of the numerous ways in which individual health is (on occasion severely) disadvantaged as a consequence of preceding human conduct, rendering those involved to be at least duty-bound to discontinue such harm. Note, however, that a negative right to health would not demand (a) any policy as a matter of justice to protect individuals from ill health due to natural causes or (b) lifting them to a certain level of health.

Considering the interest great apes have in health (as discussed above) I suggest that, at a minimum, and in terms of a *prima facie* right, all great apes have a right that humans do not act so as to create serious threats to their health. The practical implications of this claim will be addressed in the following chapters. For the time being, it will suffice to point out that this right imposes substantial duties without having to rely on the notion of a positive right.

Moving from a positive to a negative right is largely executed for pragmatic reasons and does not fully satisfy. Many regard the right to health as being a positive right. Thus, transforming its nature for pragmatic reasons does at first hand not provide us with a more comprehensive justification of the nature of the right to health or its scope. Another means to address the above-mentioned issues comprises arguing for certain background conditions allowing the right to health to become plausible. Rather than grasping the right to health as a negative right, such an approach seeks to restrict the scope of recipients.<sup>61</sup>

---

<sup>60</sup> Caney who proposes this understanding of the right to health primarily for strategic reasons is, in other words, not necessarily opposed to a more positive understanding of the right to health but takes a modest approach.

<sup>61</sup> Of course, modifying the nature of the right or altering its scope need not exclude each other.



#### ***4.4 The efforts of animals and their entitlements***

A right to health being a positive right can be held plausible only under specific conditions. For example, the right to health could be associated with citizenship (Donaldson & Kymlicka 2011). The positive obligations following from the right to health in this case rely in part on the membership of a particular society. The human right to health is generally understood in this manner. Concepts regarding human rights presuppose a specific background not only characteristic of the social fabric of society but also deemed necessary to ground such entitlements. Humans are social animals and live together in societies, delineated political communities. Human rights function as a normative reference point within the context of being a member of a certain community. Moreover, by narrowing the scope of health justice down to society, the concern of identifying a duty holder becomes far more manageable. Whereas the scope of these rights is universal in the sense that each and every human has this right, governments are held responsible to fulfill the corresponding obligations emanating from human rights held by their respective citizens (Wolff 2012b). The right emerges from the collaborative efforts of citizens. The ability of humans to contribute in this way renders them eligible for specific benefits in terms of positive rights e.g., access to health care. Cooperative efforts result in certain goods that give rise to considerations of distributive justice. Only those that contribute and cooperate should benefit from and be allocated a portion of the collective goods.

If the right to health is associated with contributing to the collective good, then animals are apparently immediately excluded, as one could argue that they are unable to cooperate. This assessment would nevertheless be too hasty because it, at least, presupposes an opinion on what contributing to society entails while not only ruling out the cooperative efforts of certain animals but also omitting other understandings of contribution which could in the end prove relevant. Several political theorists (e.g., Valentini 2014; Coeckelbergh 2009; Donaldson & Kymlicka 2011) have postulated that animals cooperate in several ways, which entitles them to a fair share of goods to be distributed. Dogs perform various tasks within society. For, they “herd cattle, help the blind to walk, guard our property, participate in rescue operations, work with the military and the police (among other things as sniffer dogs detecting illegal substances), assist in psychological therapies and are used in hospitals to relieve patients’ anxiety” (Valentini 2014: 42). Their contribution to societal interests is considerable, whereby the anthropocentric bias must be noted.

One could remark that only specific dogs are engaged in such activities. Many dogs will go through life without performing any such tasks. Does this imply that only working dogs have positive rights? Or, because certain dogs cooperate, do the other canines receive a free pass? In other words, could the contribution of for instance Labrador Retrievers suffice to convey all kinds of dogs – indeed, across the spectrum of the rather absurd human-imposed differentiation of breeds – with positive rights? Moreover, is this privilege restricted by means of species boundaries?

Perhaps many pet dogs do contribute after all. A second argument may now broaden the scope in order to reach beyond working dogs only. Canines provide humans with company. Therefore, considering ensuing benefits, perhaps it is not unreasonable to remark: “to the extent that dogs contribute to providing these goods, they should be appropriately rewarded” (Valentini 2014: 43). Needless to say, a number of dogs in society also live without either performing work or contributing in any other relevant manner. This fact however should not trouble an associative account of canine justice, “just as the existence of some humans who cannot cooperate in society (e.g., psychopaths or the severely disabled) does not disqualify human beings in general from the status of fellow cooperators” (Valentini 2014: 43.)

The above account compels the inclusion of certain animals into an associative account of justice.<sup>62</sup> The distribution of health-related goods pertains to a matter of justice. That being the case, if cooperation provides a basis for positive rights concerning humans, then animals should not be excluded, as they contribute to society in many ways. Dogs are not the only species of animals capable of contributing. If we assume that, while conforming to the high ethical standards resembling those upheld with regard to the research of human behavior, the behavioral research of great apes for example can teach us a great deal about, among other things, the similarities and differences with humans, then this also comprises a possible relevant contribution. Hence, one could argue that (a certain number of) great apes also have positive rights.

Whether an associative account compels in itself is less obvious. When writing on canine justice, Valentini indicates access to healthcare for dogs. However, while a number of positive rights may be earned, based on one’s contribution to and role in society, it remains unclear how individual access to healthcare forms an “appropriate reward”. In which manner does the

---

<sup>62</sup> Valentini views the associative account of justice to be an assumption rather than a theory to be justified *per se*.

provision of health care equal a reward? This question becomes especially problematic when considering individuals unfit to cooperate with and contribute to society. All individuals will be dependent on fellow citizens at any rate during their childhood and often later in life, too (Nussbaum 2006). A number of humans will heavily depend upon others their entire life. Rendering their entitlements (e.g., access to health care) contingent upon their positive effects on society is implausible. The concept of contributing to society in order to receive benefits in terms of positive duties is erroneous. A society of course requires the efforts of its citizens to provide benefits in terms of health care and security, but this does not entail that one is entitled to those benefits only if one is able to contribute and/or cooperate. While any associative account of justice should include animals as Valentini convincingly demonstrated, perhaps more importantly, such an understanding of distributing goods should be challenged on its own grounds.

#### ***4.5 Is citizenship required?***

Another possibility is to take a group-differentiated approach with regard to positive rights, hereby basing one's entitlements on membership rather than merely on cooperating. Donaldson and Kymlicka (2013) argue that (a) domesticated animals are inextricably part of what they refer to as "mixed human-animal societies" and (b) we should recognize these animals as citizens and thus relevantly similar to human members of society. We read here too that in their opinion only domesticated animals can have a right to health care <sup>63</sup>: "Domesticated animals can be incorporated into a public medicare plan precisely because they are domesticated, and hence able to flourish within a mixed human-animal society. As with the human members of this society, they are socialized to comply with social norms which operate both to minimize the risks they impose on others and which protect them from risks" (Donaldson & Kymlicka 2013: 149-50).

Their viewpoint differs from the associative account because it places an emphasis on cooperation above contribution. Societies are inextricably multispecies, including their norms. If animals are able to comply with these norms and flourish, then they must be assigned a citizenship status along with all the positive benefits which citizens enjoy, such as the positive right to health care. Instead of an entitlement derived from one's contribution to the collective good, the contingent factor of being a member with the capacity to flourish in a mixed

---

<sup>63</sup> Instead of arguing for a right to health, Donaldson and Kymlicka focus on the right to health care.

human-animal society is underlined as follows: "health care is a right of membership in contemporary societies, and domesticated animals have the right to be treated as members" (Donaldson & Kymlicka 2011: 142). This is a nationalist stance in the sense that it limits the right to health care to human as well as animal compatriots. Not entitled to the benefits of society are for instance what Donaldson and Kymlicka designate liminal animals (e.g., rats, pigeons). These animals lack membership, while inhabiting human-made societies and living amidst wild animals in a relatively independent manner, distanced from human affairs altogether.

Valentini's account is contestable when explaining the apparent duties of justice towards those who are unable to cooperate. Donaldson and Kymlicka need to explain to us why compatriotism or membership is attributed such normative weight. Do undomesticated animals lack the required relational status for holding entitlements such as the right to health? Is the ability to comply with social norms and flourish in a mixed human-animal society necessary? Donaldson and Kymlicka acknowledge that whenever humans are confronted with a weakened or otherwise ill liminal animal, he or she possesses a rightful claim to health care. Such animals should either be rehabilitated in order to be released or become full members of society. The interests of the individual denizen animal overrule any lack of citizenship status and to a certain degree places pressure on the normative import of membership. The right to healthcare may perhaps extend beyond the members of a particular society, as there are always such liminal animals in need. What would be the objection against developing a health care infrastructure to assist any liminal animals in need of health care?

Such an initiative would conflict with the interests of animals themselves, as Donaldson and Kymlicka would argue. Membership only informs us of part of the narrative. An additional negative argument restricts the right to health care to members only, to wit, if non-member animals have a right to health, either liminal or wild, this would imply respectively "radical abridgement of their individual freedom and collective sovereignty rights" (Donaldson & Kymlicka 2011: 150). The duties corresponding to their individual right to health would restrict their freedom, which is unacceptable to Donaldson and Kymlicka. Even if it would be possible to make health care available to them, it would violate their liberty rights.

Does the positive argument in itself suffice to restrict the scope of the right to health to members only?<sup>64</sup> As far as Donaldson and Kymlicka are concerned, liminal animals in need of health care are indeed an exception to the rule. I however suggest that these cases exemplify the reason why interests rather than membership or compliance with social norms provide a necessary condition for the right to health. If the negative argument fails, and we can thus accommodate the health interests of animals outside of society without violating their liberty rights, then the positive argument does not succeed in restricting the scope of positive duties to members only.<sup>65</sup>

The requirements of contribution or membership both fail to succeed in restricting the scope of the right to health. Does the right to health then transgress both species and geopolitical boundaries, hereby ushering in a cosmopolitan line of thought?

#### ***4.6 Going cosmopolitan***

The attempts to significantly restrict the right to health's nature or scope appear to be in vain. Rather than transforming either the nature of the right or its scope, the right to health should perhaps be understood as a positive right after all.

What does the distinction between positive and negative rights specifically involve? It partly follows from the concept: it is worse to cause harm, than to allow harm to happen. Here a moral relevant distinction between doing and allowing is created (Shue 1996: 37). A negative right protects against the harmful actions by others whereas a positive right requires beneficent action. Positive rights therefore require beneficent efforts irrespective of one's involvement. In other words, even if A is not causally implicated in the predicament of B and

---

<sup>64</sup> My aim here is to establish if compelling principled arguments restrict the scope of justice in terms of positive rights to members, most specifically, the right to health. In chapter 6, I will explore the negative argument in greater detail, and in chapter 7 the right to health of great apes in the wild. One possibility comprises their holding the abstract right to health but nevertheless almost in all cases without a concrete right to health.

<sup>65</sup> Whereas it may be the case that the Government of the Netherlands should be held responsible for health-related duties towards all the Dutch, as with the German Government towards the Germans, the possibility of recognizing the health interests of those residing outside a society is not excluded. In other words, while delivering an adequate distribution of health-related duties with regard to members, these duties need not be all there is. Instead of only recognizing the interests of members of society as plausible grounds for a right to health, one could argue that the health interests of all inhabitants of a particular nation state, rather than merely those of the members of society, impose duties specifically for the involved nation state. This stance remains nationalist to the extent that duties are restricted to nation states whereby not membership, but geographical borders draw the lines of responsibility.

how it came about, the positive rights of B correlate with positive duties held by A to nonetheless render assistance (Pogge 2009).

The beneficent obligations imposed by positive rights have led certain scholars to doubt that one could set off from sufficiently important interests to directly arrive at positive rights. Though individuals in need obviously are significantly interested in receiving assistance, a duty-based perspective rather than starting directly from moral rights may be required here (O'Neill 2005). It is without a doubt praiseworthy to help the needy, but it is something rather different to claim that disadvantaged individuals have a right with a corresponding duty of justice to render assistance. Acknowledging a right makes no sense when it cannot be claimed either due to a lack of institutional recognition of such claims or the result of any indecision as to who bears the corresponding duty. A necessary condition for positive rights (aka welfare rights) is the existence of institutions where one can claim one's rights. "Welfare rights" (e.g., the right to health) are hereby separated from "liberty rights" (e.g., the right not to be killed) (O'Neill 2005). In the latter case, institutions are not required as each individual bears the corresponding duty.

Does this difference between types of right suffice to reject the notion of a positive right? Is it not the case that "even if we assume a meaningful distinction between negative and positive duties, all rights will typically have as counterparts duties of both sorts" (Tasioulas 2007)?<sup>66</sup> A number of classical negative rights will imply positive duties and vice versa, positive rights will involve negative duties.

Do rights have to be claimable in order to exist? The way I see it, rights need not be claimable currently in order for them to exist in a meaningful manner. The existence of human rights need not rely upon the prior identification of duty holders and the specification of their duties, but rather on the interests they represent.<sup>67</sup> Based on such an understanding of moral rights, significant interests give rise to a *prima facie* rights protection (Cochrane 2013b; Tasioulas 2007). The interest-based theory of rights "... can allow for knowledge of the existence of rights (hence of the justification of duties corresponding to those rights) without the duties being precisely specified or allocated to particular agents. Instead, the allocation and

---

<sup>66</sup> This train of thought can be traced back to Shue 1996.

<sup>67</sup> For a similar viewpoint, see Wolff 2012b.

specification is a further question, not one that needs to be answered in order to establish the existence of the right” (Tasioulas,2007: 92).

The significance of interests delineates *prima facie* rights, a process slightly different from the specification of concrete rights, and identification of duty holders. Pressure is hereby placed on the distinction between positive and negative rights, as well as on the process of decreasing the normative force of the former: what matters is whether certain interests suffice to generate rights protection, not whether they involve predominantly negative or positive duties. Being of a more positive nature does not disqualify one’s existence as a right.

If, however, a number of abstract rights never result in a concrete right with corresponding duties, the concept of such abstract rights becomes superfluous. O’Neill (2005) criticizes the concept of welfare rights on this basis. Nevertheless, abstract or *prima facie* rights play an important critical role in the assessment of institutions (Tasioulas 2007; Ashford 2007; Garfield 2001). This is the reason why we should be careful not to immediately infer from a lack of concrete rights the non-existence of their *prima facie* predecessors. The failure to establish concrete rights may disclose faults not only within the institutional framework but also as to other relevant background conditions, rather than present us with an expression of its own conceptual shortcomings (Wolff 2012a).

Duties do have to be executable in order to acquire a right to meaningfully exist. There is no point in demanding the continuation of one’s life beyond a normal lifespan, as this is generally simply not feasible (Wolff 2012a). Determining the feasibility of duties is not always straightforward. This procedure should be carried out with consideration of the critical function that rights embody. For example, “In judging whether there is a human right to antiretrovirals, one cannot simply take as given the price that pharmaceutical companies, motivated by profit-maximization and asserting rights conferred by patent laws, charge for such drugs. Those prices are the upshot of policies formed within a market system and an intellectual property regime that may themselves be morally deficient in salient respects” (Tasioulas 2014: 298).

The concern for feasibility supports the dealing with any issues regarding the scope of the right to health, while at the same time challenging contingent reasons for acknowledging positive rights (e.g., nationality, species-membership, one’s ability to contribute). Rather than

the installing of specific conditions for the right to emerge, it is the significance of interests considered within the feasibility-based bounds that determines the demands of concrete rights. If and only if an interest carries sufficient weight to impose a duty upon others does it generate a moral *prima facie* right.

The right to health is hereby rendered a tentative cosmopolitan right: the interests give rise to moral rights, not any group-affiliation. Moreover, as suggested and argued for in chapter 3, compassion would bolster the interest-based theory of moral rights championed by Cochrane; it represents a moral bedrock rarely identified in the discourse of justice. Compassion develops out of the recognition that one's own suffering provides sufficient reason to disapprove suffering wherever it is found and motivates one to alleviate it to the best of one's ability. In and of itself, it cuts across any human-imposed boundaries, highlighting individual sentience and the moral salience of suffering and happiness. Whereas Cochrane's account remains vulnerable to any purported duty-holder who denies that the interests of others are sufficiently weighty to be duty bound, they would now have to reject compassion as a ground for shunning of such duties. Any rejection of compassion as a ground for normative theory should bear the burden of proof rather than the other way around, given the saliency of suffering to any sentient individual. In terms of the scope of justice, if indeed compassion provides the thrust behind interests-based theory as I hold it should, then any such theory should be cosmopolitan by default.

#### ***4.7 Concluding remarks***

A number of interests underpin a right to health of great apes, to wit, the avoidance of pathological suffering, continued life and the freedom of opportunity. The right to health should be considered as a logical follow-up to the three basic rights which the Great Ape Project defends. Objections which attempt to categorically differentiate the right to health from the other three rights fail, for the difference pertaining to the interest-based account of moral rights developed in this thesis largely dissolves. If and only if an interest carries sufficient weight in order to impose a duty upon others does it generate a moral right. Whether this obligation is considered either negative or positive is secondary to the consideration of its feasibility.

The interest-based account also renders the right to health cosmopolitan. Attempts to limit the scope of the right to health in reference to contingent factors fail. Interests rather than such



contingent factors (e.g., contribution, cooperation, membership) underpin moral rights. If interests suffice to impose duties upon others, a *prima facie* moral right has come into existence.

In chapter 5, I will focus on demands concerning a right to health in terms of its corresponding duties. Which level of health is required? Should we limit the range of duties to certain determinants of health or is such a restriction unjustified?

