

ANIMAL RIGHTS AND HUMAN RESPONSIBILITIES: TOWARDS A RELATIONAL
CAPABILITIES APPROACH IN ANIMAL ETHICS

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In this thesis, I analyze some of the most important contributions concerning the inclusion of animals in the moral and political sphere. Moving from these positions, I suggest that a meaningful consideration of animals' sentience demands a profound, radical political theory which considers animals as moral patients endowed with specific capabilities whose actualization needs to be allowed and/or promoted. Such theory would take human-animal different types of relationships into account to decide what kind of ethical and political responsibilities humans have towards animals. It would be also based on the assumption that animals' sentience is the necessary and sufficient feature for assigning moral status. I start from the consideration that in the history of political philosophy, most theorists have excluded animals from the realm of justice. I then propose an examination of utilitarianism, capabilities approach, and relational-based theories of animal rights (in particular the works by Kymlicka and Donaldson, and Clare Palmer) and borrow essential elements from each of these approaches to build my theory. I claim that a political theory which attaches high importance to individual capabilities, as well as to the various types of relationships we have with animals, is the most appropriate to tackle the puzzle of human responsibilities to animals.

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CHAPTER 1

INTRODUCTION AND OVERVIEW

The inclusion of non-human animals within the sphere of political thought has been rather deficient in the Western philosophical discussion.¹ Although some germinal exceptions to this trend did exist, especially in the Ancient world, it is possible to claim that political thought has not taken appropriately into account the issue of animals' welfare, interests and rights. Typically, political theorists have not examined the theme of animal ethics thoroughly enough, mentioning animals mostly as an expedient to emphasize the characteristics that only humans possessed (which would justify their exclusive membership in the political community) in contrast with what animals lacked. As I will discuss later, a big shift to this trend occurred particularly starting with the contribution of the utilitarian Jeremy Bentham in the 18th Century.

In this thesis, I analyze some of the most important contributions concerning the inclusion of animals in the moral and political sphere. Moving from these positions, I suggest that a meaningful consideration of animals' sentience demands a profound, radical political theory which considers animals as moral patients endowed with specific capabilities whose actualization needs to be allowed and/or promoted. Based on an examination of utilitarianism, capabilities approach, and relational-based political theories of animal rights (in particular the works of Kymlicka and Donaldson, and Clare Palmer), I claim that a political theory which attaches high importance to individual capabilities, and to the various types of relationships we have with animals, is the most appropriate to tackle the puzzle of human responsibilities to

¹ I focus in this paper on the Western history of political philosophy. This choice is based on the fact that the Western scholarship is the one I am most familiar with. It does not in any way imply that Eastern societies have been less atrocious towards non-human animals, or that they were more concerned with the theme of animal justice compared to the Western world.

animals. This claim is based on the assumption that animals' sentience is the necessary and sufficient feature to be included in the ethical realm.

I begin by sketching the anthropocentric character of the Western human-animal relationships, to underline that the predominant exclusion of animals from the sphere of justice is an understated political issue with many ramifications especially connected to animals' well-being and opportunities for real flourishing of non-human lives. I describe the moral and political implications of two key notions - anthropocentrism and speciesism - by investigating their meanings and some of the practical consequences they brought about within our civilization and worldview. To make this characterization less vague and general, I go through some examples encountered in the history of philosophy that show how the exclusion of animals from the territories of law has been prevalent. I then go on, in chapter 2, describing and criticizing the utilitarian ethical framework. I claim that classic utilitarianism à la Peter Singer falls short with respect to the actual representation of the interests of individual non-human animals as well as their uniqueness, interests, and preferences. Instead, I argue that the approach of "capabilities" (plural) constitutes a better framework to account for these key features of animals, here understood also as capable of possessing personhood by virtue of being moral patients.

Moving from Martha Nussbaum's sharp critique of utilitarianism, in chapter 3 I then expand on her inspiring work on capabilities, connecting this approach to its possible consequences in ecological conservation. Historically, conservationism has had the tendency to care more for assemblages of non-human animals (i.e. communities, populations, species) and has therefore paid less attention to actual individuals. Even though the approach of capabilities can be criticized by conservationists for being difficult to apply "in the field," I still suggest that a profound animal ethics should focus, and care for individual animals rather than assemblages. I

proceed by examining some weaknesses of Nussbaum's approach, and by proposing that a more radical approach to capabilities theory may be needed to truly promote animals' flourishing.

Finally in chapter 4, moving from philosophers Clare Palmer, Donaldson, and Kymlicka's contributions to the field of animal ethics, I suggest that the inclusion of animals in political theory should be based on an exam of the relational features of our contact with animals. The different relationships between humans and animals, and the context in which they take place, generate different and peculiar moral obligations: we do not have the same duties towards our companion animals or towards animals that live in the wild. I investigate the philosophical elements that make such distinction relevant. This attention to the relational component that characterizes human-animal interactions would provide a more exhaustive picture that acknowledges an animal's needs and potentiality, but without ignoring the contextual elements.

Anthropocentrism and the Exclusion of Animals in Political Theory

In the history of political philosophy, it is interesting to notice how most theorists have omitted an examination of what political communities owe to animals. More precisely, this omission implies the notion that animals are not entitled to be included in the sphere of human political regulations. In the context of Western civilization, the relationship between human and non-human animals has been based for the most part on anthropocentric assumptions. The anthropocentric approach stresses the uniqueness, exceptionalism, and superiority of humans over other living beings, seen as separate and implicitly inferior entities that can be exploited for the sake of human ends. Although this trend has not been exclusive, it is possible to state that in general, ideas of humanity's separation from the natural world has found support in different

philosophical or religious doctrines that have emerged over the past three millennia. Human exceptionalism in the realm of nature has been grounded on supposed special features pertaining only to human beings such as rationality, linguistic abilities, moral agency, or the sacredness of human life. If we turn to the history of political thought, very few attempts have been made to radically question the subordination of animals. This is not to say that philosophers have not included animals in their arguments/thesis, quite the opposite: many different and sophisticated philosophical and literary works have called attention precisely to animals. Nevertheless, very few of them have actually attempted to build theoretical arguments for the inclusion of animals in the sphere of justice. This is precisely what Alasdair Cochrane claims when he suggests that “the animal issue has been somewhat neglected in political theory” (2010, 4). He points to this prevailing silence not to argue that none of the thinkers before the 18th century mentioned animals in their works, but rather to underline that animals have been part of the discussion primarily as means of comparison with humans.

As perfectly put by Cochrane, “theorists have commonly discussed animals in order to identify some unique human characteristic, and have then gone on to use that characteristic as a basis with which to build their accounts of what a just political community would look like” (2010, 4). In other words, philosophers have referred to animals as the otherness that allowed humans to define their privileged place in the chain of being. They have rarely included animals within the sphere of political justice, or more in general within their philosophical accounts regarding how political communities should govern themselves, and rarely posited that animals may be considered as inherently worth. In fact, very little philosophical work has been done to challenge the anthropocentric foundations of human-animal relationship.

Cochrane suggests that the Aristotelian and Stoic ethical-political frameworks have been fundamental in regard to the exclusion of animals from the regulations of the political community (Cochrane 2010, 13-15). These philosophers have articulated for the first time the idea that the ability for rational thought is absolutely required in order to participate in the realm of politics and be owed justice. This connection between reason and justice had a huge impact on the following centuries, especially on medieval philosophy. The idea that reason is unique to human beings has served as the basis for excluding other animals from the domain of law. Aristotle holds that rationality is what makes humans political subjects and differentiates them from other animals: “That man is much more a political animal than any kind of bee² or any herd animal is clear. For, as we assert, nature does nothing in vain; and man alone among the animals has speech” (Aristotle 2013, 1253a). Surely enough, for Aristotle human beings are fully part of and not separate from the natural world. However, non-human animals are unmistakably dissimilar to humans given their lack of rationality, and can be used by the latter for their own benefit: “[...] one must suppose both that plants exist for the sake of animals and that the other animals exist for the sake of human beings [...] If, then, nature makes nothing that is incomplete or purposeless, nature must necessarily have made all of these for the sake of human beings” (Aristotle 2013, 1256b). In other words, the existence of subordinate beings and objects for the sake of humans is intrinsic in nature’s purpose.

As I already mentioned, this approach had an important influence on the medieval scholarship, which explicitly agreed on the Aristotelian and stoic claim that animals do not possess rationality. This emphasis on reason was combined together with the biblical assumption

² We should not forget how Hobbes (1998, ch. 17) will then reverse this specific point by affirming that bees are more political than men: according to Hobbes, bees (like other animals) can cooperate naturally and their political system exists without the need for coercion (unlike men’s). However, I believe Hobbes’ new perspective does not undermine my broader analysis about the neglect of animals in the history of political thought.

that humans are superior to other living beings and were invested by God with the duty of governing the rest of creation. Thomas Aquinas' account on other animals is a prime example of the medieval approach, which has its roots in the Christian tradition, and accordingly emphasizes the stewardship role of men towards other creatures. God provided men with nature and animals for humans' own sake, so that Aquinas' remarks forbidding cruelty to nonhumans are only to be understood as indirect duties: "this is [...] to remove man's thoughts from being cruel to other men, and lest through being cruel to animals one become cruel to human beings" (Aquinas 1928, book 3, part 2, ch. 112). Since animals are inferior to humans, any restraint from causing any wrong to them is related to the possibility that causing such harm might indirectly lead us to treat other humans cruelly. This account will be very prominent in the following tradition of Western philosophy, particularly in the Kantian doctrine.

Though the prominent attitude in the history of philosophy has been one of disdain or neglect of animals, many exceptions can be encountered: especially in ancient history, several philosophers questioned the assumptions that the practice of eating and killing animals is just, and that they should simply be excluded from the sphere of justice. For different reasons, for example, Empedocles, Theophrastus, and Plutarch all rejected the killing of non-human creatures.³ The neoplatonic philosopher Porphyry also disagreed with the prevalent idea that humans do not owe other animals any kind of justice. He not only attributed some form of rational ability to animals, but also proposed a differentiation between animals and plants based on the concept of sentience. Porphyry's cutting-edge approach is seldom mentioned in the contemporary debates about animal sentience, however it must be recognized that he was the

³ Plutarch in particular challenged the stoic idea that animals do not possess any kind of reasoning capability. In fact in his *De Sollertia Animalium (On the Cleverness of Animals)* he suggested that animals do possess some kind of reasoning ability, different from the human reason, nonetheless relevant enough to dispute the complete exclusion of animals from the boundaries of rationality.

first to introduce this fundamental concept. None of these ancient doctrines had enough influence on the following scholarship though. The prevalent argument remained that, being humans and animals qualitatively different, there was no need to consider animals as appropriate recipients of justice, and that the treatment of or the relationship with animals should not be regulated by the political community.

CHAPTER 2

UTILITARIANISM

Utilitarianism and the Relevance of Sentience

Contrary to this long and general neglect of the animal issue, some utilitarian thinkers in the 18th Century started to consider the treatment of animals as a matter worth of philosophical and political discussion. Most of these reflections stemmed from the realization that animals' ability to suffer, obviously recognized also before as an observable fact, constitutes a relevant topic of inquiry. Of considerable importance for the issue of moral concern for animals as part of the "ethical community" has certainly been the work of English philosopher Jeremy Bentham (1748-1832). Though the theme of sentience was first outlined by Porphyry in ancient political thought, it is notably thanks to Bentham that this concept becomes mainstream. His work was (and is) considered both innovative and provocative because it moved a radical step towards the recognition of moral considerability for non-human animals. He articulated the *ability to suffer* as the main feature on which to ground the equality of all sentient beings, and consequently rights. Bentham proposed an approach based on the ability to feel pain and happiness, as retrievable in the following passage:

The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny [...] a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose they were otherwise, what would it avail? The question is not, Can they *reason*? nor Can they *talk*? but, Can they *suffer*? (Bentham 1996, Ch. 17)

Bentham connects here sentience to justice, therefore considering the ability to feel pain as the key parameter to judge whether a being is to be included in the moral community.

According to him, rationality and speech are not valuable parameters to differentiate us from other animals. First of all, rationality and autonomy are to be separated in the evaluation of

whether animals can be included in the realm of justice. Because there are cases in which certain animals are much more advanced than specific human beings (for instance children or severely mentally disabled), using rationality as a criterion for distinction would entail the exclusion of those “lesser” human beings. Secondly, and most importantly, sentience is a far more meaningful characteristic of living creatures. For Bentham, the apparently “simple” fact of being sentient is the key reason why animals should be included in the sphere of moral and political justice. The most important theoretical leap made by Bentham, and probably one of his most innovative contributions, is that he implicitly expanded the notion of personhood to include non-human animals capable of suffering. The consequences of this radically new way of thinking are groundbreaking because they directly challenge the anthropocentric assumptions of human exceptionalism. Because the general principle of classic utilitarianism is the promotion of the greatest happiness for the greatest number of individuals, every being’s source of happiness or pain is taken into account in the utilitarian calculation. Therefore, Bentham’s conclusion was that not only the human pain ought to be considered, but all pains that are recognizable as such.

There is no doubt Bentham had an essential role in the context of the recognition and propagation of the idea of animals’ sentience, and for an attention to the theme of animals’ suffering more in general. However, it would be wrong to associate such reawakened sensitivity exclusively to the English philosopher. The particular emphasis on Bentham’s work in the literature may also “be due to an Anglophile perspective, resulting from most work on the history of early modern attitudes toward animals having been done by British and American scholars” (Wolloch 2008, 294). In other words, despite the obvious relevance of Bentham’s work, we should not overlook the influence that other authors had on the renewed attention to the theme of animals (and nature more in general) in the modern age. Rousseau for example interestingly

emphasized that animals do possess sensitive capacity. According to Rousseau, human moral attitudes are primarily driven by compassion rather than rationality, and in this sense we have some kind of duty not to mistreat animals. In the *Discourse on the Origin of Inequality* he states that “it seems, in effect, that if I am obliged not to do any harm to my fellow man, it is less because he is a rational being than because he is a sentient being: a quality that, since it is common to both animals and men, should at least give the former the right not to be needlessly mistreated by the latter” (Rousseau 1987, 36). There is in this claim an acknowledgment of animals’ sentience, and the consequent ethical invitation to sympathize with the suffering of other beings, both human and animal.

Furthermore, Rousseau’s theory is based more in general on the idea that civilization is one of the major causes of the corruption of the natural goodness of men. In this regard, animals are in a favorable position, having instincts, being closer to nature, and being preserved from the adulteration brought about by progress and culture: their natural goodness is not corrupted. However, this love for animals does not at all imply that animals are superior to humans, and should be understood in the broader intent of Rousseau to highlight human corruption and vices in opposition to the natural state of humanity. As underlined by Wolloch (2008), “his views on animals were thus ultimately, like those of most other early modern theriophiles, part of a more general anthropocentrically-driven primitivistic critique of human corruption” (299). Rousseau’s moral sensitivity to animals was therefore part of a more general effort to ameliorate human conduct, rather than an authentic interest for the condition of animals *per se*.

Utilitarianism and Speciesism

As noticed earlier, the anthropocentric approach embraced (more or less consciously) by

most human societies and theoretical systems regards other creatures as inferior and lacking in intrinsic moral and ontological worth. Anthropocentric approaches have their foundation in the belief that human beings are separate from other creatures and that their superiority endows them with privileges as opposed to all other species, specifically when compared to other non-human animals.

A fundamental critique of anthropocentrism has coupled with that of *speciesism*, the discriminatory attitude that most human animals implicitly assume in their relationships with non-human beings. In other terms, speciesism is the belief and practice of treating members of one specific species differently, and typically as more relevant (morally, juridically, practically, and politically) than members of other species. In this sense, it is a form of inter-species discrimination that relies on ontological and moral justifications. Some authors have pointed out the problematic fact that speciesism is theoretically defined as “species-neutral,” whereas it seems clear that it implies a specific type of “prejudice in favor of humans” (Milligan 2011, 223).

One of the first cogent definition of speciesism was coined by Peter Singer in his famous *Animal Liberation* (1975) where he embraces and expands Bentham’s original ideas. Singer presents speciesism in a way that is literally species-neutral. He claims that it “is a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species” (Singer 1975, 6). Despite this broad definition, there is no doubt that Singer is aiming at humans specifically, implicitly ruling out the possibility that other species are “consciously” speciesist as humans can be. To highlight the features and the danger of the speciesist way of thinking and acting in the world, Singer proposes an analogy between speciesism and other forms of discrimination: racism and sexism, both of which are based on prejudices subsequently dismissed by the majority of the members of society (at least in the Western world).

Critics of the speciesist argument, and particularly of Singer's analogy, affirm that the comparison is flawed in that it presents two cases of intra-species discriminations as if they operated in the same way of speciesism, an inter-species one. In other terms, they counterargue that it is obviously acceptable to avoid discriminations within the species *homo sapiens*, because it applies to all humans in that species. However, it would be faulty to extend the same type of reasoning to other species. Responses to this counterargument have pointed out the problematic ontological nature of the category of "species" arguing that it has been used, at least in the context of moral reasoning, more to divide than to show similarities, and that it is as false a category as "race."

A terminological clarification can be helpful here. By an almost traditional categorization developed in applied ethics, moral subjects are those who are sentient, conscious and capable to establish reciprocity, and can be therefore held accountable in the reciprocal sphere of moral responsibilities. Moral patients are instead all those individuals who are sentient and conscious or who, even if existing, have limited capacities in perceiving, communicating, or being fully conscious. Accordingly, moral patients cannot function as the bearers of moral responsibilities, but at the same time are part of the moral realm in that they benefit from moral obligations from others. This distinction is not banal at all, and implies that whoever is accepted in the circle of moral consideration is also attributed some sort of personhood. It also entails a recognition of self-worth to all moral persons (subjects or patients) beyond the ability to provide benefits for someone else or to be held accountable morally. Therefore, non-human animals should be considered moral patients, similarly to what already happens in the case of a human infant, or a human with serious disabilities. Even though it is clear that they cannot be "subjects" of this kind of assignment, it is nonetheless plausible that non-human animals could receive moral consideration from humans without being able to reciprocate.

Drawing from Bentham, Singer's critique of speciesism moves through the classical *argument from marginal cases*. As briefly described earlier, this principle basically aims at demonstrating that if nonhuman animals are denied direct moral status because they lack abilities such as rationality, autonomy, and speech, then also some marginal humans should be excluded (e.g. infants and cognitively disabled people) because they evidently do not possess such characteristics. But the claim that all humans are to be favored (legally and morally) over all non-humans, must be founded on the "identification of some morally relevant property that *all* humans have and that *all* non-humans lack [or at least] of a property that *all* humans have *to a greater degree* than *all* non-humans" (Milligan 2011, 227). What Singer is trying to challenge is the common idea that animals' exclusion from the moral and legal community and moral status can be based on their lack of rationality, autonomy, and self-awareness. Once this idea is confronted with the reality that *some* humans "do not qualify," then the assumption on which the argument is based falls apart and should be dismissed. Of course, this is logical and true unless one accepts to be a speciesist shamelessly.

It should appear now clear that Singer wants us to reach the conclusion by a sort of *reductio ad absurdum*: can we deny moral status to those humans who lack rationality or autonomy? Can we put them through painful experimentation? If the answer is negative, then we are compelled to extend the principle of equality to all those beings that are normally excluded. Of course, based on this argument, if a being cannot suffer or experience enjoyment it will not be considered in the utilitarian calculation. When sentience is present, though, "pains of the same intensity and duration are equally bad, whether felt by humans or animals" (Singer 1980, 53). The utilitarian calculation measures the quantity of pain and happiness as neutrally as possible, without attaching specific species-based partiality: "If a being suffers, there can be no moral

justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that the suffering be counted equally with the like suffering – in so far as rough comparisons can be made – of any other being” (Singer 1980, 50). The calculation of the totality of happiness is the principle on which to judge one’s actions. Again, in his theory the interest of animals counts directly (as opposed to theories where they count only indirectly) and animals are placed in the same moral category as humans.

One may wonder at this point how this calculation would work in cases where the increased happiness of one being depends on the drastic restriction of someone else’s happiness. Based on the initial utilitarian theory, what matters is the minimization of the total amount of pain. Therefore if a man’s happiness was vastly increased by hunting, for example, that would “outscore” the lost happiness from, let’s suppose, a hunted fox’s death. Singer however convincingly challenges this point: he suggests that “the principle of equal consideration of interests implies that it [is] wrong to sacrifice important interests of the animal in order to satisfy less important interests of our own” (Singer 2011). In other words, the life of an animal (in this case the hunted fox) cannot be sacrificed in order to satisfy a less fundamental interest of a human (the man who obtains pleasure from the hunt). In this sense, it appears that some interests are so crucial that they cannot be overrun by other interests of lower eminence.

Do Utilitarians Maintain Moral Hierarchies?

Although it is not limited to humans’ happiness or pain, the attribution of sentience to a being generally becomes stronger the more that being is similar to us in terms of psychic abilities and central nervous system. Singer’s approach has been often criticized for this reliance on “likeness.” Moral philosopher Gary Steiner, for example, is a strong supporter of the idea that

sentience should be the basis for moral worthiness, but he criticizes the “hierarchy of morality” that persists within the utilitarian framework. On the one hand, he agrees that the ability of feeling pain should be sufficient to consider the interests of all animals within our moral scrutiny (Steiner 2012). He claims that in this sense Jeremy Bentham and successive Utilitarians have produced an advancement in terms of the consideration of non-human animals. However, he criticizes the underlying idea of “hierarchy of morality” within the utilitarian framework. Steiner’s perspective is more radical because he opposes that animals can be used to satisfy some primary human needs: “Animals may be subjected to pain and suffering as long as it is considered ‘necessary’ for the furtherance of ‘important’ human interests. Animals have no standing to sue on their own behalf for harms they endure at the hands of human beings” (Steiner 2012, 65). Animal experimentation, animal consumption, and certain types of animal husbandry are, in fact, allowed in particular circumstances, specifically whenever the total interests and benefits (of human subjects) are considered to exceed the amount of damage caused against the animals. According to Steiner, “this holds even for a utilitarian thinker such as Bentham, who purports that rational and linguistic ability are not the basis of moral status” (65). Hence, despite the improvement advocated by the utilitarian framework in regard to sentient beings, that approach is not sufficient to completely refute a philosophical, moral, legal system that considers animals as replaceable, objectifiable resources with no inviolable interests.

Furthermore, according to the utilitarian perspective, the cognitive sophistication of a being, its self-awareness, and therefore its level of similarity to humans still count as parameters to decide at what level of the morality hierarchy that being is positioned. Singer himself seems to admit this when he states that “when we come to consider the value of life, we cannot say quite so confidently that a life is a life, and equally valuable, whether it is a human life or an animal

life. It would not be speciesist to hold that the life of a self-aware being, capable of abstract thought, of planning for the future, of complex acts of communication, and so on, is more valuable than the life of a being without these capacities” (Singer 1980, 53). Although pains of the same intensity and duration are considered comparable, whether suffered by a human or by an animal, it is less clear how self-awareness, complex communication, abstract thought (all traditionally associated only with human abilities) are to be weighted in the final calculation of utility.

CHAPTER 3

THE CAPABILITIES APPROACH

The Importance of Individuality and the Concept of Functions

Another fundamental critique that has been brought against the utilitarian approach is the insufficient attention to the individualities of the subjects whose pain/happiness are summed up to calculate the best final utility. This critique has been notably developed by American philosopher Martha Nussbaum. She addresses in particular the idea of aggregation: Utilitarians, she underlines, are committed to the principle of “sum-ranking,” meaning that the pain/happiness of the single individuals are not considered separately but added together to produce a comprehensive total (Nussbaum 2004). In this sense, there is no real threshold in the amount of pain “admitted” for every individual. For example, if a certain number of individuals were subjected to harsh pain, but counterbalanced by the same number of other individuals experiencing pleasure, that may still result in an acceptable total. Based on the utilitarian idea of justice, specific forms or degrees of pain cannot be ruled out *a priori*, but rather enter the same computation that considers simply the final estimate. Based on this concern for the comprehensive total of pain/happiness rather than for the individuals involved in the process, “utilitarianism notoriously refuses [the] insistence on the separateness and inviolability of persons” (Nussbaum 2004, 303). Individuals are not considered inherently worth or somehow inviolable, and there is no real idea of protection of the single against the interest of the many. Utilitarians’ main focus seems to be the satisfaction of the total calculation criterion rather than the individual lives of each being. Nussbaum puts this very clearly: “Slavery, the lifelong subordination of some to others, the extremely cruel treatment of some humans or nonhuman animals – none of this is ruled out by the theory’s core conception of justice, which treats all

satisfactions as fungible in a single system” (Nussbaum 2004, 303). It appears there is no effective way (based on the utilitarian approach) to exclude specific unjust or cruel behaviors, if not based on an empirical examination of the total or average happiness. There is no justice principle that implies the complete refusal of, for instance, slavery or other kinds of (human and nonhuman) subordinations. It is true that the principle of equal consideration of interests, as mentioned earlier, does entail that interests with higher importance cannot be sacrificed in order to satisfy less important interests. However this principle does not appear entirely explicit or developed, and leaves some room for debate as suggested by Nussbaum.

Another key thing to remember is the problem with the understanding of satisfaction itself proposed by standard utilitarianism. Nussbaum shows that the idea of pleasure is based on a rather uniform notion, which implies that it is a single feeling applicable to all subjects, and varying only in degree and not individually or qualitatively. As it turns out, this is assumed also with regard to the notion of pain: as if all kinds of suffering were somehow comparable, Utilitarians distinguish between pains only in terms of their duration and/or intensity. It should not be ignored here that early utilitarians such as John Stuart Mill did suggest that the measurement of utility cannot be purely quantitative. He claimed for instance that the principle of utility is consistent with the idea that “some kinds of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone” (Mill 1998, 56). Mill suggested that intellectual pleasures are inherently superior to merely physical ones. In this sense, it would not be accurate to plainly state that Utilitarians never took quality of pleasure into account.

However, I believe that Nussbaum's critique is directed to the utilitarian inattention to the individual experiencing pleasure or pain, and the prevalent focus on the final estimate regardless the preferences, values, and experiences of a single, specific being. It is very plausible to imagine, she underlines, that qualitatively different kinds of pleasure and pain can be experienced dissimilarly based on the different person, activities and contexts in which they occur. While different persons may experience the same type of pain in different ways, even the same individual could vary their perceptions in the course of life. This is particularly important when we consider the political idea of entitlements: basic entitlements of different nature cannot be tradeable with each other based on the fact that they are calculated within the same aggregate of benefits. Nussbaum describes this fallacy with an example: "Suppose we say to a citizen: We will take away your free speech on Tuesdays between 3 and 4 P.M., but in return, we will give you, every single day, a double amount of basic welfare and health care support" (Nussbaum 2004, 304). This is not what political entitlements presuppose, and specifically the fallacy here concerns different entitlements (or we may say kinds of well-being) as replaceable. Every single type of entitlement or pleasure is qualitatively unique, and cannot be substituted because the overall count allows so.

Finally, Nussbaum correctly points out that not only goods are plural and "not commensurable on a single quantitative scale" (304), but also that there may be other valuable things in an animal's life beside pain and pleasure. Different types of activities can have as much value as general pleasure and pain, the only factors unmistakably taken into account by Utilitarians. Free movement, bodily health and integrity, and emotions are only few examples of the vast range of functions that matter for the quality of life of a human or nonhuman animal.

Reducing everything to the all-encompassing categories of pain and pleasure cuts out the countless ways of flourishing and grieving that are unique to each individual subjectivity.

The Capabilities Approach and Its Aristotelian Foundation

I claim in line with Nussbaum that an approach based on the consideration of singular capabilities is an appropriate foundation for criticizing animals use and abuse, as well as the shortcomings of the utilitarian framework outlined above. The so-called “Capability Approach” or “Capabilities Approach” has been recently proposed as the theoretical structure that can adequately describe and make comparisons among people’s life qualities and well-beings (Sen 1992, 1999). It is a flexible and multi-purpose framework, and does not rely on a stable, invariable definition of well-being that would fit every individual in all circumstances. Instead, it is grounded on the idea that in order to make assessments on social justice and on subjective notions such as “quality of one’s life,” it is necessary to ask what a person is able to do and to be. In other words, it is fundamental to consider what specific kind of life a specific person is able and also willing to actually lead (Nussbaum 2011), and whether that person is a human or a non-human animal.

Nussbaum has contributed remarkably to this new field of inquiry. Although this new framework was primarily established to address *human* well-being, she formulated a type of capabilities approach that can be applied also to nonhuman animals. She embraces the use of “capabilities” (plural) rather than “capability” to stress “that the most important elements of people’s [and animals’] quality of life are plural and qualitatively distinct” (Nussbaum 2011, 18). Reducing all these elements to a single metric necessarily entails a distortion of the plurality of factors that go into a life’s quality. Furthermore, a very compelling element of this theory is

related to the concept of “life dignity” and the elements that go with it: “the basic moral intuition behind the approach concerns the dignity of a form of life that possesses both deep needs and abilities” (Nussbaum 2004, 305). Dignity in this sense is envisioned, and dependent upon the fulfillment of a variety of capabilities and needs. Whenever the innate, basic capabilities of an individual for specific functions are not realized, because it is denied the opportunity to fully perform those functions, then something deeply tragic is taking place that is essentially a form of injustice.

In general, the capabilities framework insists on the absolute importance of flourishing as the only way for a life to be truly worthy of it. The expression of individuals’ capabilities, however, is not strictly confined to actions that relate to the single person. In other words, there are types of valuable elements in one’s life which go beyond the individuality itself, such as in the case of flourishing in the service of a greater good or the community at large. Nussbaum suggests that this is true also in the case of animals, especially questioning the utilitarian idea that only pleasure (and pain) count towards one’s well-being: “There seem to be valuable things in an animal’s life other than pleasure, such as free movement and physical achievement, and also altruistic sacrifice for kin and group” (Nussbaum 2004, 304). In this sense she admits that flourishing can happen not only within the private sphere, but also in the context of a superior good. Nonetheless, the focus always remains on the individual creatures: although it is totally plausible that an individual thrives in the service of a greater good, it is not the continuation of species or the increased number of individuals that matters morally here. The focal point in the consideration of justice is still the individual creature.

In parallel with this emphasis on living beings’ flourishing, Nussbaum stresses that the flourishing of a creature should not be obstructed by the harmful action of another being.

Because the normative framework of capabilities contemplates a world where each and every creature should be allowed and helped to flourish in their unique direction, there should be thresholds to what is actually allowed in the realization of everyone's potential. This is not simply related to the argument of classical liberal theory, which suggests that individuals are free to pursue their own good as long as they do not interfere with everyone else's freedom. Because of the insistence on flourishing, this framework goes beyond the concept of negative freedom (freedom from interference). It suggests that in all the cases where there are constraints on the opportunity to flourish freely, then there should be positive political commitments to compensate such restrictions.

It is important to notice here that the concept of flourishing developed by Nussbaum (and by the capabilities approach more in general) builds on the Aristotelian idea of functions. Aristotle develops the concept of *ergon* (function) in the *Nicomachean Ethics*. To understand that, it is helpful to remember that for Aristotle all entities, animals and humans included, are made of matter and form (their substance), and that the form is the proper function of each individual's substance. Therefore, the concept of substance depends on the movement from potentiality (*dynamis*) to actuality (*entelechia*), meaning from the function in potentiality to the function in its actuality. In order to achieve well-being and a perfect flourishing (*eudaimonia*), each individual being needs to identify and perform well its function, so that the movement from potentiality to actuality can effectively occur. For a human being, the expression of this function is mostly associated with our possession of reason, as well as with virtuous conduct. Carrying out (excellently) these functions is our way to achieve well-being. To put it differently, the key element to achieve *eudaimonia* is the performance of human excellence through the proper use of the rational soul: "human good turns out to be activity of soul exhibiting virtue, and if there

are more than one virtue, in accordance with the best and most complete” (Aristotle 2009, 1098a). Such proper functioning of the rational soul allows for the control of different passions, is instrumental in regulating the vices and excesses, and helps to steer humans to a balanced and virtuous life. Although animals do not possess a rational soul, they also have proper functions determined by their specific nature. The process from potentiality to actuality is wholly applicable to non-human lives as well, according to their particular functions.

There is an easily recognizable affinity between Aristotle’s and Nussbaum’s ideas of flourishing, because of their use of the concept of functions. Furthermore, Nussbaum explicitly recognizes the inspiring Aristotelian approach to nature: she indeed agrees “with the biologist Aristotle [...] that there is something wonderful and wonder-inspiring in all the complex forms of animal life” (Nussbaum 2004, 306). The wonder in front of complex organisms is an excellent starting point for a renewed consideration of the non-human beings. It is very interesting and somehow ironic that the capabilities approach (with its reliance on the concept of flourishing and on the amazement in front of nature) goes back to Aristotle as a way to overcome centuries of speciesism. In a way, it is necessary to resort to the speciesist *par excellence* in order to prove that animals’ well-being counts too. Very relevant in this sense is a passage of *Politics* where he distinguishes domesticated and wild animals: “tame animals have a better nature than wild ones, and it is better for all of them to be ruled by man, since in this way their preservation is ensured” (Aristotle 2013, 1254b). Here, he is comparing the advantageous and natural rule of the soul over the body to the rule of men over tame animals, and therefore claiming not only that domesticated animals have a better nature than wild animals, but also that it is in their interest to be governed by humans. This thought-provoking passage suggests that Aristotle’s account of human-animal relationships is more nuanced than it may appear. It also indicates that a more substantive

discussion on the meaning of this complexity, as well as on the rehabilitation of Aristotle by Nussbaum, is certainly relevant and should be further investigated in a future research.

It is also interesting to note how the capabilities approach moves beyond the inspiring amazement of the scientific spirit as well as the Aristotelian notion of excellence. The feeling of wonder is simply a starting point that suggests “that it is good for that being to flourish as the kind of thing it is” (306). Because it is good for a being to develop its own functions, there follows a moral charge which implies taking on the moral and political responsibility of letting and helping that flourishing take place, which in this sense moves away from the Stagirite. In Nussbaum’s perspective, which I subscribe to, it would be misleading to project human virtues or ways of thriving onto animals. Because each being has specific functions dependent on the species it belongs to and on its individual features, it would not be appropriate to judge an animal’s flourishing process based on the concept of excellence or human virtues. To put it differently, it would be contrary to the spirit of the capabilities approach to assess the well-being of an animal using human virtues as parameters of judgement. In this sense, it would be inappropriate to determine the quality of life of a dog, for instance, based on a human idea of courage or nobility. The range of functions that matter for the quality of life of a dog or any animal does not depend on our projection of what is considered valuable within the human realm. In other words, as I will explain further in the next paragraphs, our responsibility towards animals is not contingent on their capacity to behave according to human values (i.e. being noble, generous, courageous, and so on) but rather on the functions that are specific (intrinsic) to that specific animal.

Of course, the separation between animals’ worth and human values becomes more puzzling when it comes to domestic animals. I will expand on the specificities of domestic versus

wild animals in the next chapter. However, it is important to briefly mention that there are specific animals (especially dogs) that because of their characteristics such as temperament, size, strength, and smelling abilities have been bred and trained by humans to become more correspondent to human expectations and values. They have been bred to become working dogs and help humans carry out particularly dangerous and delicate endeavors beneficial to society. This is the case for instance of the St. Bernard as rescue dog, the Bloodhound as search and rescue dog, or the German Shepherd as police dog. It would seem reasonable to think that the flourishing of such dogs depends on their ability to do noble deeds. In other words, it seems that their functions were adjusted and strengthened by humans in order to make them become dominant traits that are performed naturally. Although it may be true that these dogs express the best quality of life when they can perform the specific activities they were bred for, this does not imply that the capacity to do noble deeds is the basis for including animals in our ethical sphere. What I claim in fact, following both Utilitarians and capabilities approach in this sense, is that *sentience* (and not nobility) is the essential foundation on which it is possible to discern which animals should be considered morally relevant, granted inherent worth, and included in our political obligations. Deciding to include only certain animals because they carry specific capacities that we as human beings admire and treasure would imply moving from an anthropocentric standpoint, the same I am trying to challenge here.

Animal Capabilities According to Martha Nussbaum

As I already mentioned earlier, Nussbaum underlines the idea of positive political commitments specifically for the case of human–animal relationships: because “human beings affect animals’ opportunities for flourishing pervasively” it is our duty to create political

regulations that guarantee the security and freedom of animals. In her own words: “Respect for other species’ opportunities for flourishing suggests, then, that human law must include robust, positive political commitments to the protection of animals” (Nussbaum 2004, 307). Therefore, the great and disruptive human interference with other species demands a positive commitment from our part to create regulations that prohibit animals’ abuse and subjugation. In line with the capabilities approach, I propose that such commitment should be directed towards the protection of individual animals rather than groups (species, communities, and populations). The capabilities approach does not value increased numbers of animals as such, but rather attaches importance to the well-being of each single existing creature, nurturing that specific unique life. Accordingly, it does not focus on the protection of certain species, which on the contrary has been the central interest of mainstream conservation biology and ecology. A conservationist approach would value the protection of species, communities, and populations (particularly if endangered) as a priority over the well-being of individuals, and would for instance allow or even require the killing of specific animals in order to protect one assemblage. This is also true in those cases where a specific animal group is endangering a native plant in a certain habitat: conservation biology and ecology would prioritize the conservation of the native plant to the detriment of the individual animals in that specific area. The capabilities approach would disagree and instead propose solutions that generally assign priority to the well-being of individual sentient beings.⁴

Although the capabilities approach prioritizes the individual members over the species,

⁴ Nussbaum mentions this issue when she talks about the capability for “life.” Although according to the capabilities approach all animals are entitled to continue their lives, she admits there are difficult cases in which specific conditions make life in the wild very painful. She refers for instance to the idea of natural predation to control overpopulation: although predation means death, it may be a less tragic or painful death than “allowing the animal to be torn to bits in the wild or starved through overpopulation” (Nussbaum 2004, 315).

the concept of species remains important to the identification of capabilities for animals.

Nussbaum claims that, because different species have different levels of complexity, more complex types of life also have more and more complex capabilities as their basic and innate features. Cognitive capacity, for instance, entails a vast range of capabilities that would cause a correspondent array of pains when frustrated. Nussbaum explains that “because the capabilities approach finds ethical significance in the flourishing of basic (innate) capabilities [...] it will also find harm in the thwarting or blighting of those capabilities. More complex forms of life have more and more complex capabilities to be blighted, so they can suffer more and different types of harm” (Nussbaum 2004, 309). Despite the continuity among the different forms of life, a barely sentient being will suffer specific kinds of pain that are much more limited (in quality and number) if compared with those suffered from a more cognitively sophisticated creature.

Although “capabilities thwarting” varies greatly in types and degree, she underlines that the level of life does not influence the worthiness of an individual. That is to say, very simple sentient animals and very complex ones (think about gorillas or elephants) are equally worthy per se. The difference of complexity creates a distinction in the type and degree of harm that a certain being can suffer, but does not influence the species’ or individual’s intrinsic worth. In the end, for the capabilities approach, sentience remains the parameter that guarantees the inclusion of beings in the circle of basic justice. Although it is now clear that “sentience is not the only thing that matters for basic justice” (Nussbaum 2004, 309), and that the elements that make for the well-being of an individual are plural and diversified, sentience is maintained as the threshold for being entitled to justice.

It should be clear by now that sentience is the foundational parameter on which inherent worth and the inclusion in the moral sphere are built. This idea however may raise an important

question: would this inclusion and protection of all sentient beings entail an anti-human abortion stance? Law professors Sherry Colb and Michael Dorf tackle this issue in their recent book *Beating Hearts: Abortion and Animal Rights* (Colb and Dorf 2016). They subscribe to the assumption that sentience is what grounds a being's qualification for moral significance, and that accordingly actions affecting sentient beings are to be analyzed from a moral standpoint. Is then abortion morally wrong? They suggest that because in the first trimester of human development (the time frame in which the greatest number of abortions takes place) the nervous and brain systems are not developed enough for sentience, a moral concern does not apply to these aborted fetuses. At the same time, in the rare cases where fetuses are aborted later on in pregnancy, moral concerns do arise. Therefore, it appears that an ethical framework including animals as morally significant and based on the assumption of sentience can be compatible with the justification of human abortion when conducted in the first trimester of pregnancy.

Going back to Nussbaum's position, she proposes to adapt the list of capabilities used for humans in order to sketch some basic political principles that would help direct laws and regulations related to animals. I want to discuss some of the capabilities listed that are more relevant or promising for a renewed framework in the human-animal relation. The first capability listed is "life": just as humans are entitled to continue their lives and not to die prematurely, so too animals should be able to live their lives to the end. This may seem straightforward or simplistic, but is fundamental considering how many animal lives are taken away every single day. Gratuitous killing perpetrated by humans for luxury items, sports or the like should be banned. Although these obvious cases are easily excluded from the sphere of lawful behaviors, I believe a more problematic stance is proposed when it comes to killing animals for food. Nussbaum does not support a complete ban of killing for food. She recognizes that specific

conditions are needed in order to make such killing acceptable. For instance, animals should be killed in a truly painless way, and allowed to live a free-ranging and healthy life. Even if it was possible to achieve methods of killing that are really painless, we may wonder whether there could ever be a way of subjugating animals to death without them realizing that their lives are being taken away. Wouldn't this simple fact dramatically affect their flourishing process?

Another problem concerns the intrinsic value of each individual creature. If we assume that, independently from the species or complexity of the individuals, animals possess inherent value, the idea of killing them to satisfy our desire of specific foods would automatically thwart such intrinsic worthiness.

Bodily health and bodily integrity are central to the capabilities regarding animals. Specific policies are clearly involved here: animals should not be treated cruelly or neglected, and there should be laws regulating adequate nutrition and space for animals held in zoos, circuses, and aquariums. Their bodily integrity should be prioritized, and any forms of harmful treatment banned. Not only the physical sphere of animals is protected under the capabilities approach, but also their psychological and intellectual domains. Emotions and play have a big role in this sense: they are both recognized as fundamental parts of an animal's flourishing. Adequate space and the presence of other species members also seem necessary ingredients for a life condition in which emotions are taken seriously into account. Animals should be free to express their imagination and have access to sources of pleasure and mental stimulation. It goes without saying that only a part of the animal realm possesses these exceptional capacities. However, as I insisted above, it is sentience rather than complexity or cognitive capacity that represents the basis for a being's entitlement to moral significance.

CHAPTER 4

RESPONSIBILITIES TOWARDS ANIMALS: A RELATIONAL APPROACH TO ANIMAL RIGHTS

So far, I have stressed how the concept of animal sentience is essential to lay the foundations of the inclusion of animals in the moral and political sphere. Along with Nussbaum, I also challenged the idea that pleasure and pain are the only elements to be considered in our moral choices, and that the comprehensive total of pain/happiness is the absolute goal of an ethical consideration of animals. On the one hand, I agree that sentience (as very well investigated by Utilitarians for more than two centuries) is the basic element that needs to be taken into account when discussing moral duties towards animals. On the other hand, however, there are many additional and more specific features that go into a being's flourishing, which depends on the possibility for the individuals to develop and express their own capabilities. Because humans often obstruct animals' opportunities of flourishing, it stands to reason that there should be positive political commitments to compensate such restrictions.

It would be appropriate at this point to talk about some more practical ways to actually translate human commitments into the political system. I argue that the most appropriate political theory to address the puzzle of human responsibilities to animals is one that takes into account the various types of relationships we have with animals, and the context in which actions involving animals take place. That means creating specific types of moral and political commitments that consider what type of relationship we have with them. While it may be intuitive that my ethical relationship with my pet is very different from the one I have with a cheetah living in the wild, a more philosophical understanding of the reasons and nuances behind such intuition might be in order.

Clare Palmer: Human Responsibilities in Context

Philosopher Clare Palmer discusses human responsibilities to assist animals in her *Animal Ethics in Context* (2010). To start with, she describes two (real) scenarios that are very useful to understand what we intend when we speak about different relationships between humans and animals and different moral obligations that may or may not arise as a consequence. The first scenario is the yearly migration of wildebeest from Tanzania to Kenya. In order to find better grazing, more than a million wildebeest have to undertake such long, uncertain migration while facing all kinds of dangers. Especially the crossing of Kenya's Mara River is extremely dangerous because of predators, currents, and steep embankments. Every year, many of them are killed or swept away during the crossing. Palmer reports (2010, 1) that in 2007 wildebeest tried to cross the river in a particularly tricky point, and at least ten thousand died, while many tourists and crew cameras observed the mass drowning without intervening. The second scenario deals with a case of animal neglect happened in 2009 in Amersham, Buckinghamshire: a family was convicted of failing to meet the welfare of more than one hundred horses, who were found dehydrated, starving, and ailing with many kinds of infections by the officers of the Royal Society for the Prevention of Cruelty to Animals. Many other horses were already dead when the RSPCA arrived. As one can easily imagine, this horrible case of animal neglect provoked widespread reactions of horror in the general public: the conviction of the owners was widely supported, and large sums of money were raised for the horses' rescue and rehabilitation process.

While it is easy enough to understand that these two scenarios provoke very different reactions, it is interesting and relevant for this discussion to analyze the philosophical elements involved. It goes without saying that the legal situation is extremely different in these two cases. However, the legal element is not the only relevant here: it seems that these examples of

animals' suffering elicit a more profound discussion which has to do with the alternative philosophical arguments that can be used to assess animals' pain and the human responsibilities involved. Palmer suggests that two major approaches are at stake here: the *laissez-faire intuition* and the *capacity approach*. What she calls the *laissez-faire intuition* is "the intuition that while we should care for and assist domesticated animals (such as the Amersham horses) we should just leave wild animals alone" (Palmer 2010, 2). Indeed, it is widely held that humans have different moral responsibilities towards domesticated animals and wild animals. In the two situations described, this approach would indicate that "while there is a moral obligation to feed, protect, and provide medical care for domesticated horses, it is morally permissible—and perhaps even morally required—to leave the wildebeest to their fate" (2010, 2).

The intuitive approach, however, seems to contrast with another relevant theory which gives priority to the *capacities* that certain animals or species possess rather than considering the context and the centrality of the human-animal relationships. In other words, the idea at the basis of the capacity approach is that animals with similar capacities should be treated similarly, no matter the context or type of relationship with humans. An example of this latter approach is Nussbaum's capabilities approach analyzed in the previous chapter: as I explained there, the very core of capabilities theory is that the capacities of all morally relevant beings (i.e. sentient animals) should be fulfilled to the degree in which it is possible for those beings to flourish. And this is held true regardless whether an animal is wild or domesticated. It appears that what matters most for this type of approach to animal ethics is the capacity that characterizes a being, and more in general what happens to the being rather than what caused the harm or in what context that harmful act took place. As underlined by Palmer, for the capabilities approach "what matters ethically depends entirely on *what a being is like*" (2010, 43). Although I agree with

Nussbaum that the possibility for a being to flourish is strictly dependent on that being's chance to express and develop their capabilities, it also seems true that the responsibilities of moral agents (the humans) to intervene in that flourishing process should be contingent on the context and type of relationship with the moral patients (the animals). In fact, there seems to be a partial validity in both approaches mentioned by Palmer (the laissez-faire intuition and the capacity approach) so that an appropriate political theory would incorporate elements from both rather than unconditionally embrace one or the other. The key idea is that "alongside capacities, we also need to pay attention to *relational* features of our contact with animals" (Palmer 2010, 44) in order to have a more exhaustive picture that acknowledges an animal's needs and potentiality, but without ignoring the contextual elements.

Domesticated vs Wild Animals

The concept of human responsibility towards animals is closely linked to the idea of "vulnerability" as well as to that of "causality." While Nussbaum strongly insists on the capabilities that animals have (or potentially have), she doesn't seem to ascribe adequate importance to the fact that animals (and humans) have also specific vulnerabilities that may hinder the actualization of said abilities. This is particularly relevant in the case of domesticated animals: they are indeed peculiarly vulnerable when compared to the majority of wild animals, and their possibility to flourish relies to a great extent on human support. Vulnerability means here both that animals' basic interests are almost fully controlled by humans, and that they are at the same time dependent on humans for their survival and well-being. This becomes even more clear when we realize the extent to which humans have actually exerted their power in the creation and regulation of domesticated animals' lives. As perfectly put by Palmer,

the existence of most domesticated animals today is the result of human decisions and actions, in multiple ways. Humans are responsible, at least in part for (a) the actual situation in which many domesticated animals find themselves, a situation that often involves being closely confined in spaces that prevent them from finding food, mates, etc. for themselves; (b) key facets of domesticated animal natures, including in many cases an inability to be self-sufficient; and (c) the very existence of most individual domesticated animals—a stark contrast with fully wild animals. (2010, 91)

It is immediately clear that these elements (especially the first two) have had a huge impact on animals' ability to live independently and therefore on their degree of vulnerability. This peculiar vulnerability can be seen as both an internal and an external one. It is internal because (as specified in point b) animals have been and still are continuously bred and deliberately “corrected” by humans in terms of their bodily shape and features, temperament, susceptibility to illnesses, and so on. While they are dependent on humans to survive and flourish, they could not be self-sufficient in the wild. This is true not only for pets, but also and even more so for animals that are bred to meet specific human requirements because exploited for research or food. Such is the case for example of “turkeys bred to gain so much fat that they cannot walk, or genetically modified laboratory mice created to be susceptible to specific cancers” (Palmer 2010, 92). Those features are clearly contrary to a life that can self-support itself and were designed to meet human (and only human) motives. Constraints, moreover, can be external: this means that physical, external constraints created by humans hinder animals' opportunities of fulfilling their needs in other ways. This happens for example when animals are enclosed and kept in cages or other types of confinement, or when they are confined in labs or on farms. Their vulnerability becomes immediately factual as their options of providing for themselves in other ways are shut down by external constraints that humans have imposed on them.

The deliberate creation of animals that are necessarily and permanently dependent on

humans to survive implies that humans have a direct causal responsibility for animals' vulnerability, and therefore special obligations towards them. Humans make animals' potential vulnerability actual by restraining their options through external constraints and by making them internally dependent for their survival. This causal link is what generates the special obligations that humans have to assist those animals (Palmer 2010, 93). In this sense, humans not only have the duty not to harm domesticated animals, but also obligations to assist them for all their needs and opportunities for well-being. This is not to deny that domesticated animals do not in any way benefit from what humans can provide for them. It is definitely plausible that, for example, many dogs do enjoy the company of their humans and do benefit from the (often fancy) food they are given, as well as from the interactions and walks they share. But it is also true that most existing domesticated animals are not provided opportunities to flourish, and most of the time are allowed to survive just as much as it is profitable for humans to take advantage of their work. Battery cage hens are just one of too many examples in which such opportunity is denied. They are confined in metal, tiny cages, crammed so close they cannot spread their wings, nearly immobilized for their whole life. It is clear that those natural behaviors necessary for their well-being (such as nesting, dust-bathing, foraging) are bluntly denied. This would not be allowed were animals' moral interests and humans' obligations taken seriously.

Going back to the initial example, it is now clear that the Amersham horses are a case of domesticated animals, made vulnerable by humans and left unable to take care of their own subsistence. Humans had therefore an obligation to assist them. But what happens if the causal relation between humans and animals' lives becomes less relevant? In other words, how are we to evaluate our responsibilities in all those cases where humans have not played a direct influence? Palmer suggests that "the greater the level of contact, entanglement, and influence—

that is, the less distance, in this causal responsibility sense—the more moral responsibilities are thought to be generated” (2010, 86). Because wild animals’ circumstances are much more independent from humans’ influence, our duties of assistance become accordingly weaker. This is the case even when wild animals have similar capacities to domesticated animals. The *laissez-faire* intuition is crucial here: humans have a *prima facie* duty not to harm wild animals, since they are morally relevant sentient beings. However, they do not have any specific duty of assistance in that they were not morally responsible for generating the situation in which these animals live. Even when wild animals are suffering or starving, only negative duties for humans arise. This approach clearly emphasizes the idea that the relational component is essential in establishing human responsibilities towards other beings. I believe this attention to the relational aspect is fundamental and should be at the root of a sound, pragmatic political theory. However, such aspect has been overlooked in most ethical and political philosophies relevant to animals.

What Membership for Animals? A Political Theory by Donaldson and Kymlicka

The idea that relationships between humans and animals are key to establish what specific obligations we have to animals has been recently advocated also by Donaldson and Kymlicka in their *Zoopolis* (2011). They move from a strong animal rights view, which extends equal moral status and inviolable rights to non-human animals. But they go beyond such recognition to propose a political framework that actually describes what concrete ways we can use to relate to different groups of animals. Similarly to Palmer, they underline that such attention to the different relations humans have with different groups of animals has been disregarded within animal rights theory. Donaldson and Kymlicka divide animals in three main

groups and for the first time, they adopt categories typical of citizenship theory to describe what specific moral and political relationship we have to them.

The first category of animals is domesticated animals, that is primarily companion animals and animals raised for food. According to these authors, domesticated animals are part of a shared society with us, and should accordingly be treated as citizens and have rights of membership. As we are responsible for having taken these animals from the wild and made them dependent on our care, we have made them members of the society but as a dominated caste. Like in many other cases in which specific groups of humans were brought into society as dominated, enslaved classes, the way in which justice has been accorded to them has been through the recognition of full membership: “Citizenship is the tool of converting older relations of caste hierarchy into relations of equal membership” (Kymlicka and Donaldson 2014, 204-205). The same process can be applied to domesticated animals, since all the elements necessary to shared citizenship are present: “capacities for trust, communication, co-operation and physical proximity” (2014, 205).

Although this assumption may seem blunt, it becomes more understandable when we consider that this shared membership cannot be expanded to all animals on the planet, because it is domestication itself that makes it possible. Furthermore, citizenship implies that each member of society is both endowed with inviolable rights and contribute to the larger good according to their capacities: “Citizenship is a cooperative social project, one in which all are recognized as equals, all benefit from the goods of social life, and all, according to their ability and inclination, contribute to the general good” (Donaldson and Kymlicka 2011, 137). A mix of rights and responsibilities makes each member both a contributor and a beneficiary. Some examples of rights they mention for domesticated animals are: rights to residency, to healthcare and

retirement, to protection from human or natural threats such as fire or flood, to individual identity. But as I mentioned, members of society also partake of specific responsibilities towards their co-citizens. This implies for instance the duty of civility: as Kymlicka and Donaldson explain, “any scheme of social co-operation requires that members learn to regulate their behaviour to avoid imposing undue burdens or inconvenience on others, so that all members can flourish together. And so, for example, we might legitimately socialize dogs so as not to bite humans or to jump up on them” (2014, 206). Clearly this kind of approach is built on liberal assumptions in that it insists on the inviolability of each individual liberty, both to express oneself and to be free from others’ interference. Furthermore, contrary to the opinion of many animal rights theorists that imposing this kind of socialization is intrinsically oppressive, here it becomes part of the exchange which comes from the social membership, and the basis on which each individual can find their way of flourishing among others.

Norms of civility are not the only way in which domesticated animals share responsibilities with humans: they also have a duty of contribution. At present, such contribution is taken coercively through the tyrannical exploitation of animals’ bodies and work. Again, while animal rights scholarship largely denies that any use of animals’ labor or products could be non-exploitative, Kymlicka and Donaldson argue that a just society could incorporate ways in which animals (granted their full rights as citizens) contribute according to their own potentials: “we can imagine forms of contribution that are in line with the interests and inclinations of animals themselves. Using sheep to graze grass around solar panels, for example, seems benign, as does using sheepdogs to search for those sheep who wander off into danger” (Kymlicka and Donaldson 2014, 206-207). On one hand, turning domesticated animals into a permanently

exploited group implies a denial of citizenship. On the other hand, citizenship would be only *partially* achieved if the potential contributions of its members were entirely negated.

Just as the project of extending citizenship to domesticated animals is convincing, so is the idea that wild animals should be granted full sovereignty over their own lives and territories. Sovereignty is needed so that wild animals can protect themselves from various threats such as annihilation, hunting, and destruction of habitats. It is necessary to them in order to be safe from human threats. At the same time, wild animals possess all the characteristics that make them qualified for sovereignty: “what matters for sovereignty is the ability to respond to the challenges that a community faces, and to provide a social context in which its individual members can grow and flourish” (Donaldson and Kymlicka 2011, 175). Wild animals are competent and know, for example, how and where to find food, how to find shelter, how to care for their offspring, how to hunt, and in general how to successfully tend to their needs through a variety of instinctual and learned skills. In this sense, their autonomy should be respected and supported. Human activities should take into account the existence of wild, sovereign habitats instead of managing such spaces as available, empty territories. For instance, before building a highway, specific safe passages should be designed to guarantee freedom of movement to the wild animals that occupy that territory.

Besides domesticated and wild animals, there is also a third group that rests in-between human society and wild territories: liminal animals. They are urban wildlife, that is non-domesticated animals who live among us. These animals “should be seen as having rights of residency without participating in a shared co-operative scheme with us” (Kymlicka and Donaldson 2014, 203). In other words, they have the right to live among us, but do not enjoy the whole robust set of rights accorded to domesticated animals. Besides “secure residency,” liminal

animals would be conceded “fair reciprocity”: this principle would require that humans engage only through minimal interaction with them, and also that the presence and interests of these animals are positively taken into account when we design our cities and activities. This would imply, for instance, that architectural codes get revised to reduce the risk for birds to fly into buildings, or that buildings incorporate spaces for urban nesting and dens. These are some possible policy-related implications that would follow from this relational and contextual political philosophy.

CHAPTER 5

CONCLUSION

The capabilities approach offers a compelling theoretical framework for a radically different recognition of animals' interests, needs, and ways to flourishing. A serious consideration of the basic, innate capabilities of animals can lead to the creation of laws and regulations that respect much more deeply animals' physical, emotional, and relational needs. Nussbaum's formulation of the capabilities approach provides a convincing theoretical guidance for the recognition of animals as individuals with specific and complex forms of capabilities. Furthermore, her formulation is a great response to the shortcomings of utilitarian theory. Despite having provided an essential contribution to the recognition of animal interests and rights, I showed that Utilitarians do not insist enough on the inviolability of individual persons, because their main concern is for the comprehensive total of pain/happiness rather than for the individuals involved in the process. Also, in the utilitarian approach human beings are still on the vertex of the chain of morality, and human interests seem to have precedence over animals'. We may wonder, indeed, whether this framework is sufficient to completely refute the philosophical, moral, and legal systems that consider animals as objectifiable resources with no inviolable rights. However, while on the one hand the capabilities approach recognizes and highlights the deficiencies of the utilitarian theory, on the other hand it keeps the idea that sentience is a fundamental threshold at the basis of the entitlement to basic justice. I agree that animals' sentience is the necessary and sufficient feature to be included in the ethical realm.

Although the capabilities approach is a very appealing argument, that opens to a very different type of animal-human relation, it leaves some problematic questions unanswered, and somehow agrees with practices that may be seen as inherently exploitative. For example,

Nussbaum seems to support the idea that killing animals for food could be (under specific conditions) justifiable, or that the use of animals in circuses could be compatible with a satisfying fulfillment of emotional and relational needs. I believe that a more radical stand is needed within the capabilities framework in order to fully promote and respect other species' opportunities for flourishing. Fortunately, other scholars have recently and creatively contributed to this conundrum. I think that the work of Palmer, Donaldson and Kymlicka help to overcome some of these problems. These authors move from the relational features of human interactions with animals, and offer contextual, practical approaches to address the complexity of ethical responsibilities towards animals. Palmer insists that it is necessary to move beyond the radical opposition between laissez-faire intuition (we should assist domesticated animals while leaving wild animals alone) and capability approaches (which give priority to the characteristics of a being rather than the contextual situations). The concepts of vulnerability and causality are fundamental here to overcome such opposition, and to determine how and when humans have a responsibility to assist domesticated or wild animals. Donaldson and Kymlicka, finally, convincingly build a political theory in which the relational aspects of human-animal interactions are the grounds. I believe their adoption of classical concepts of citizenship and sovereignty to create more just and respectful existences for animals is extremely valuable. It proposes a practical plan to include domesticated, liminal, and wild animals in our ethical and political frameworks. It also has the potential to resonate with the understanding of a larger audience, already familiar with these concepts, without undermining the inviolability of animal rights.

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