

Animal Rights

Palgrave Handbook on the Philosophy of Rights

Introduction

Many humans believe that at least some other animals matter morally.¹ They donate to animal shelters. They share their homes with animals and try to treat them well. Some avoid eating food or wearing clothes that result from animal exploitation or suffering. Some also work to pass laws protecting captive or wild animals from unnecessary harm. In many cases, humans make these changes not merely because they think that animals *as a whole* matter morally in some way, but also because they think that *individual* animals matter morally in some way. Moreover, many humans think that individual animals matter morally for *their own* sakes, and not merely for *our* sakes, and that we can have duties *to* them, not merely duties *about* them. They think that harming animals can be wrong because it *wrongs* the animals.²

However, many humans who believe that animals matter morally deny that animals can have rights in a sense that goes beyond a "right" to have their interests taken into consideration. On this view, our responsibilities to other animals are fundamentally different from our responsibilities to our fellow humans. For instance, the exploitation of fellow humans is wrong not only because it treats them inhumanely (for instance, by increasing their suffering or frustrating their desires) but also, and especially, because it violates their rights to life, liberty, property, or other such basic entitlements, and because it violates their rights not to be treated merely as means, as resources, or as property. In contrast, the exploitation and extermination of other animals is morally wrong only to the extent that it treats them inhumanely.

In contrast, many other humans accept that other animals can have rights. Of course, this is not necessarily to say that *all* animals have rights, or that nonhuman rights always have the same content or strength as the rights of humans. It might be that some animals have rights and others lack them, and that the content and strength of rights varies widely across species. But at least some nonhuman animals have at least some rights, and therefore our responsibilities to them extend beyond a mere responsibility to improve their welfare. On this view, the exploitation and extermination of nonhumans can be morally wrong *whether or not* it harms them unnecessarily, in much the same way as it can be with fellow humans.

In general, rights scholars believe that rights are grounded in either *interests* or *will*.³ Questions about animal rights can arise for both theories provided that animals can have interests and wills in the relevant sense. Our view is that animals *can* have interests and wills in the relevant sense, but defending this claim is not our focus here. In this chapter we discuss animal rights in general terms that make sense for both the interest theory and the will theory. But if you believe that animals can have rights according to one kind of theory (likely the interest theory) but not the

¹ Throughout the chapter, we use the terms "other animals," "nonhuman animals," and "animals" interchangeably, though of course they are not interchangeable in all contexts.

² In more technical terms, this view holds that humans have "directed duties" towards animals. For discussion of the distinction between directed duties to animals and other kinds of duties towards animals, see Feinberg (2008). For a more general treatment of directed duties, see Sreenivasan (2010).

³ For more, see Kramer et al. (2000).

other (likely the will theory), then feel free to read this chapter as focusing on your preferred theory as we continue to make progress on the deeper issue of the grounds of moral rights.

The question of whether animals have rights is not merely of theoretical interest. It has major practical implications, too. Our current social, political, and economic systems depend on the *systematic* exploitation and extermination of *trillions* of vertebrates and *quadrillions* of invertebrates per year. Recognizing animal rights would thus require us to change not only how we interact with animals in our own lives, but also how we structure our societies. For instance, if captive animals have a right to life, then even “humane” meat production might be unjust. Likewise, if wild animals have a right to liberty, then even “humane” zoos and aquariums might be unjust. We might not like these possibilities, but we should take them seriously.

Indeed, if nonhuman animals have moral rights, then perhaps they should have legal and political rights too. For example, some philosophers have argued that at least some nonhuman animals should be recognized as legal persons, with legal rights and legal standing. On this view, if lawyers file a credible habeas petition claim alleging that a nonhuman animal is being unjustly detained, a court might have a responsibility to hear that claim. Similarly, some philosophers have argued that certain nonhuman animals should be recognized as political citizens, with at least some membership rights in our political communities; political sovereigns, with membership rights in their own political communities; or political denizens, with a kind of liminal political status.

To be clear, we plausibly have a duty to transform our interactions with other animals regardless of whether they have rights. After all, the vast majority of animal farms, zoos, aquariums, and other such institutions *do* harm animals unnecessarily, and these inhumane practices need to change whether or not “humane” alternatives are permissible. Still, if nonhuman animals can have rights, then we might need to pursue different goals and we might also need to pursue them in different ways. This chapter surveys arguments for and against the claim that animals have any moral rights, along with arguments about which animals might have rights, which rights they might have, and how strong their rights might be. We close by pointing to future directions for research.

Why might animals have rights?

We begin by considering arguments for and against animal rights, starting with the latter. Some scholars deny that nonhuman animals matter for their own sakes at all. Famously, for instance, Immanuel Kant argues that only humans have the rational capacities required for personhood, and that the lack of such capacities precludes animals from holding rights:

“The fact that the human being can have the “I” in his representations raises him infinitely above all other living beings on earth. Because of this he is a *person*...i.e., through rank and dignity an entirely different being from *things*, such as irrational animals, with which one can do as one likes” (Kant 2007, 239). [Yikes!]

Other scholars accept that animals matter for their own sakes in general but deny that nonhuman animals have moral rights in particular. For example, Carl Cohen grants that animals “surely

ought not to be made to suffer needlessly,” but he argues that they cannot have rights because rights holders must have the capacities for *autonomous moral judgment*:

“Animals do not have such moral capacities. They are not morally self-legislative, cannot possibly be members of a truly moral community, and therefore cannot possess rights. In conducting research on animal subjects, therefore, we do not violate their rights, because they have none to violate” (Cohen 1986, 866).

Regardless of the details, these arguments typically proceed in the same way: They start by positing a feature that they allege is unique to humans, and they then argue that this feature is a necessary condition for moral standing in general, or for moral rights in particular. In some cases they focus on a particular kind of property, such as the capacity for advanced language or reason. In other cases they focus on a particular kind of relation, such as particular biological or cultural bonds. In other cases they focus on both at the same time, for instance by claiming that only participants in a social contract can have moral rights, and only individuals with advanced capacities for language and reason can participate in a social contract (Carruthers 1992; cf. Scanlon 1998).

This kind of argument typically invites both descriptive and normative responses. The descriptive response is that there are few if any features that all and only humans possess. To the extent that we set a high bar for possession of moral rights, for example by holding that advanced language and reason are necessary, then we not only exclude all nonhumans but also exclude many humans. And to the extent that we set a lower bar, for example by holding that other kinds of communication or decision-making can suffice, then we not only include all humans but also include many nonhumans. Indeed, it might be that the only conspicuous feature that all and only humans possess is: membership in the species *Homo sapiens* (Williams 1985).

The normative response is that more inclusive conceptions of moral rights are better than less inclusive ones. Yes, if particular humans or nonhumans lack advanced capacities for language and reason, then they might lack *duties*, because they lack the ability to morally assess their own actions. They might also lack *particular* rights, such as the right to provide informed consent for particular interactions. But they still have rights that reflect their own interests and needs. This is why we rightly accept the idea of universal human rights even though our capacities can vary widely across individuals and life stages. In order to be both inclusive and consistent, we should accept that the same can be true for nonhumans with similar capacities.

However, this kind of “argument from species overlap” is controversial, even among ethicists who endorse animal rights (Horta 2014). For example, some ethicists believe that this kind of argument exaggerates similarities between nonhuman animals and, say, infants or humans with severe cognitive disabilities, describing these individuals in simplistic, reductive terms and degrading them all in the process (Kittay 2005; Crary 2018). Some ethicists also believe that this kind of argument can backfire, by leading the audience to associate “lower status” humans with “higher status” nonhumans in a way that motivates them to treat the relevant humans *worse* rather than in a way that motivates them to treat the relevant nonhumans *better* (Gruen 2021, 79; Nozick 1983).

Some ethicists also believe that there might, in fact, be features that all humans and no other animals possess. For example, perhaps all humans have rights because they at least *could have had* advanced language or reason (Kagan 2019); because they have the *potential* or *genetic basis* for such capacities (Frey 1977; Liao 2011); because they have a *form of life* that ‘normally’, ‘naturally’, or ‘characteristically’ involves such capacities (Cohen 1986; Scruton 2006; Steinbock 1978); or because they are *valued by* beings who have such capacities (Carruthers 1992; Steinbock 1978). The question then becomes whether such features are metaphysically respectable, morally non-arbitrary, and actually possessed by all humans and no other animals (Dombrowski 1997; Nobis 2004; Norcross 2004).

In any case, suppose that there are, in fact, no non-arbitrary features that all humans and no other animals possess, and that the correct response is to accept an inclusive view about rights, according to which all humans and at least some other animals have rights. In this case the question becomes which of their features play the role of grounding such rights. Philosophers defend a wide range of answers to this question, including *sentience* (the capacity to have positive or negative experiences), *agency* (the capacity to set and pursue goals in a self-directed manner), *life* (the capacity to perform behaviors that contribute to survival, reproduction, or species-relative flourishing), and *bonds of care and interdependence* (participation in morally significant relationships).

Tom Regan, whose 1983 book *The Case for Animal Rights* is a founding document for animal rights theory, argues that beings have rights when they are subjects-of-a-life, and that beings are subjects-of-a-life when they have a combination of these features:

“[I]ndividuals are subjects-of-a-life if they have beliefs and desires; perceptions, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them” (Regan 1983, 264).

Contemporary animal rights theorists defend a range of somewhat similar views. For example, Gary Francione argues that sentience is “the only characteristic that is relevant for the purpose of having a right not to be treated as a resource.” (Francione 2010, 159) Will Kymlicka and Sue Donaldson argue that every sentient being has rights because they are a “vulnerable self... a being with subjective experience whose life can go better or worse as experienced from the inside” (Donaldson and Kymlicka 2011, 30). Christine Korsgaard argues that sentient animals have “a right to freedom” because, like humans, they “perceive the world in valenced ways and act accordingly,” which makes them “ends-in-themselves” (Korsgaard 2018a, §10; 2018b, 23). And Martha Nussbaum argues that sentient animals have a “form of life that involves a set of important goals towards which they strive,” which grounds “rights to support for the capabilities central to their various forms of life” (Nussbaum 2018, 96; 112).

Which animals might have rights?

Even for philosophers who believe that nonhuman animals can have rights, there is a lot of disagreement and uncertainty about which animals have rights. This disagreement and uncertainty is not only normative, concerning which features are sufficient for rights, but also descriptive, concerning which beings have these features. For example, in addition to asking whether sentience or agency is sufficient for rights, we can also ask whether particular animals count as sentient or agential. These questions are both important and difficult, since we need to answer them to determine how to treat fellow creatures, yet we need to confront our own bias and ignorance about the nature and value of other minds to answer them.

At least in the West, the history of thought about the distribution of rights in the world has been a history of moral circle expansion. As recently as a generation ago, experts more commonly accepted that only moral agents (that is, beings who can have moral duties) count as moral patients (that is, for our purposes, beings who can have moral rights). Experts also more commonly accepted that only vertebrates like mammals and birds count as sentient and agential. We thus had at least two apparent routes to the conclusion that a wide range of animals lack rights: the denial that (non-rational) sentient agents can have rights, and the denial that a wide range of animals count as sentient agents in the first place.

However, the fields of animal minds and ethics have made rapid progress, and more inclusive views are now more common. As we have seen, many prominent ethicists now accept that sentience, agency, and other such features are sufficient for rights. Additionally, many prominent scientists now accept that all vertebrates (including mammals, birds, reptiles, amphibians, and fishes) and many invertebrates (including, at minimum, cephalopod molluscs, decapod crustaceans, and fishes) have a non-negligible chance of being sentient, agential, or otherwise significant, given the evidence. As a result, the view that all vertebrates and many invertebrates have a non-negligible chance of having rights is now more common.⁴

Of course, the claim that a being *has a non-negligible chance of having rights* is different from the claim that a being *has rights*. However, the former claim might be the best we can do for now. As a result, some ethicists are now exploring using principles of risk and uncertainty to estimate the scope of the moral circle. In the context of rights, the basic idea is that if an action has a non-negligible chance of violating rights, then we should consider that risk. In some cases we might know that a being has rights but not whether our action will violate them, and in other cases we might know that our action *would* violate their rights *if* they had them, but not whether they *do*. Either way, on this view, we should consider this risk (Sebo forthcoming).

However, even if we agree about this view, we might disagree about the details. One question is where to draw the line between “non-negligible risks” that require consideration and “negligible risks” that can be ignored. Some ethicists think that *all* non-zero risks merit consideration, whereas others think that only *some* non-zero risks do; in the latter case, proposed probability thresholds typically range from one in ten quadrillion to one in ten thousand (Monton 2019). A lot depends on which threshold we select in this context, since plausibly, all living beings have at

⁴ There is widespread agreement that vertebrates are sentient (Andrews, Birch, Sebo, and Sims 2024), although a vocal minority argue that fishes are not sentient because they lack a neocortex, among other reasons (Key 2015; Diggles et al. 2024).

least a non-zero chance of having rights, whereas only some (say, all vertebrates and many invertebrates) have at least a one in ten thousand chance, given the evidence (Sebo 2023).

Another question is how to treat beings who have a non-negligible chance of having rights. One possibility is to apply a precautionary principle. In this context, that would mean that if certain animals might have rights, then we should act as if they do. Another possibility is to apply an expected value principle. In this context, that would mean that if certain animals might have rights, then we should multiply the probability that they have rights by the amount of weight that their rights would carry if they did, and we should act as if they have rights with the resulting amounts of weight (though this latter principle might work better for theories of rights that allow rights to carry finite amounts of weight (Birch 2017; Sebo 2018).

Recently, philosophers and scientists have made substantial progress developing frameworks for estimating such probabilities. Consider an influential framework that Birch et al. (2021) developed for attributing sentience to invertebrates. This framework starts by surveying the literature for evidence about whether particular invertebrates possess potential *neurobiological* indicators of sentience: (1) nociceptors; (2) integrative brain regions; (3) connections between nociceptors and integrative brain regions; and (4) apparent pain-related responses to noxious stimuli, which can be sensitive to anesthetics or analgesics. We can then assign low, medium, or high confidence to the view that these animals possess these indicators.

The framework then surveys the literature for evidence about whether particular invertebrates possess *cognitive/behavioral* indicators of sentience: (5) the animal flexibly balances the avoidance of threat against the opportunity for reward; (6) they flexibly engage in self-protective behaviors in response to injury and threat; (7) they learn associations between noxious stimuli and painful stimuli in a way that goes beyond classical conditioning (Crump et al. 2022), habituation, or sensitization; and (8) they value potential local anesthetics or analgesics when injured. We can then once again assign low, medium, or high confidence to the view that these animals possess these indicators, and we can then combine it all together.

Using this framework, Birch et al. (2021) argue that there is enough evidence of sentience in cephalopod mollusks (including octopuses, squids, and cuttlefishes) and decapod crustaceans (including crayfishes, lobsters, and shrimps) for these animals to be classified as sentient under UK animal welfare law. Additionally, Gibbons et al. (2022) argue that there is “strong evidence” that adult Blattodea (cockroaches and termites) and adult Diptera (flies and mosquitoes) can experience pain, as well as “substantial evidence” that other adult insects (including ants, bees, moths, crickets, sawflies, butterflies, and grasshoppers) can experience pain, though they do not recommend classifying these animals as sentient for any particular purpose.

Strikingly, the UK government adopted Birch et al.’s recommendations in their Animal Welfare (Sentience) Act 2022, which holds that when assessing a policy that affects sentient animals, the government must have “all due regard to the ways in which the policy might have an adverse effect on [their] welfare.” Of course, there is a difference between recognizing animal *welfare* and recognizing animal *rights*. There is also a big difference between recognizing animal welfare *in theory*, by claiming that it merits consideration, and recognizing animal welfare *in practice*, by

adopting policies that minimize unnecessary harm to animals. Still, this law represents an important step that could eventually lead to recognition of animal rights in the UK.

Which rights might animals have?

There is also a lot of disagreement and uncertainty about which rights animals have. Once again, this disagreement and uncertainty is partly moral, concerning which properties or relations are sufficient for particular rights, and partly descriptive, concerning which animals have these properties and stand in these relations. But generally speaking, many parties accept that whether animals have general, agent-neutral rights (such as, say, the right to life, liberty, or property) depends on whether they have the kinds of *interests* that, according to some, rights are meant to protect, or the kinds of agency that, according to others, allows them to exercise the kind of normative control that rights confer.

At least in the West, views about these issues have changed as well. For most of the twentieth century, even many animal ethicists assumed a stark difference between humans and other animals in this respect. On the one hand, they assumed that humans are sophisticated *agents*, with the capacity to not only experience pleasure and pain but also engage in complex, temporally extended projects and relationships. In contrast, they assumed that other animals are, at best, mere *patients*, with the capacity to experience pleasure and pain but not to engage in such projects or relationships. As a result, they attributed a wide range of rights to humans but only one to other animals: the right not to be made to suffer unnecessarily (Cochrane 2012; Feinberg 1974).

However, developments in cognitive ethology and comparative psychology have complicated this picture considerably. Specifically, we now appreciate that morally relevant capacities such as learning, memory, self-awareness, social awareness, communication, reasoning, and emotionality are more complex than we previously assumed; they come in different kinds and, in many cases, they can be had to different degrees. As a result, we now appreciate that even though nonhuman animals might not have complex, temporally extended projects or relationships in the same respects, or to the same extents, that many humans do, they can still do much more than simply passively experience pleasure, pain, and other such states (Jamieson 2018).

For example, Nussbaum (2023) argues that sentient animals are capable of “significant striving” towards flourishing, and that each species of sentient animal has a distinctive form of life that allows members of that species to strive towards flourishing in a distinctive kind of way. Thus, Nussbaum argues, sentient animals have positive or negative “rights to support for the capabilities central to their various forms of life” (112), including not only the opportunity to “enjoy good health” and “the use of one’s senses and imagination,” but also the opportunity “to plan a life, to have a variety of social affiliations, to play and have pleasure, to have relationships with other species and the world of nature, and to control, in key ways, one’s own environment.”

Similarly, (Sebo 2017) makes a distinction between *propositional* agency (which involves acting on *normative propositional judgments*, that is, judgments about what one has most reason to do) and *perceptual* agency (which involves acting on *normative perceptual experiences*, that is,

perceptual experiences that involve positive or negative valences). Sebo then argues that when we make this distinction, we can see that nonhuman animals can have perceptual agency even if they lack propositional agency. We can also see that perceptual agents can have at least a minimal interest in life, liberty, property, and other such entitlements even if they lack the same kind, or degree, of interest in these entitlements as propositional agents.

In recent decades, the political turn in animal ethics has produced substantial discussions about each of these kinds of rights, as well as about the kinds of interests or needs that give rise to them. For example, Visak and Garner (2015) discusses a range of views about whether and to what extent animals have an interest in continued existence. Andrews et al. (2018) discusses a range of views about whether and to what extent animals have an interest in bodily liberty. And scholars discuss a range of views about whether and to what extent animals have an interest in control over objects or habitats (Hadley 2005; 2015; Cooke 2017), and whether they have a right to property according to, for instance, the Lockean labor-mixing theory (Milburn 2017).

In addition to holding that many animals have many rights in virtue of their capacities, interests, and/or agency, some philosophers also hold that many animals have many rights in virtue of their relationships with each other, and with us. For example, Palmer (2010) makes a distinction between captive domesticated animals and free-living wild animals. She then argues that humans have different duties to each kind of animal, in virtue of their different natures and our different relationships with them. Specifically, we have stronger duties of assistance to captive and domesticated animals than to free-living or wild animals, since human activity has rendered the former animals vulnerable and dependent in a way that generates special duties to them.

Similarly, Donaldson and Kymlicka (2011) make a distinction between domesticated animals, wild animals, and liminal animals (for instance, urban animals who exist in the middle of this spectrum). They then argue that states should treat domesticated animals as *citizens*, wild animals as *sovereigns*, and liminal animals as *denizens*. Does this mean that, for instance, cats, dogs, cows, pigs, and chickens should have all the same citizenship rights as humans? Not necessarily. But it does mean that they should have the citizenship rights that make sense given their individual capacities and relationships, such as, for instance, a right to reside in, and return to, particular territories and a right to representation in particular legislatures.

Of course, one complication for such views is that in a world reshaped by human activity, increasingly few animals are *fully* wild or free-living. Human activities such as deforestation, agriculture, and the wildlife trade impact quadrillions of animals directly each year. They also impact many more animals indirectly, via disease outbreaks, fires, floods, and our own responses to such threats. In some cases we know that our activities have these impacts, and in other cases we might not be sure. Either way, our own past actions may generate duties of assistance to an increasingly wide range of animals according to relational views, making such duties the rule, not the exception (Delon 2020; Palmer 2021; Nussbaum 2023; Sebo 2022).

Some legal authorities have now legally enshrined the rights of some animals. In recent years, The Constitutional Court of Ecuador, The Delhi High Court in India, The Islamabad High Court of Pakistan, and other legal authorities have recognized animal rights (“Constitutional Court of Ecuador Recognizes Animal Rights in Landmark Ruling,” n.d.; Schneider 2020; Gulatsi 2023).

And while United States Courts have yet to make similar rulings, three judges on the New York Court of Appeals recently wrote powerful opinions in favor of this idea, including one in a 2018 chimpanzee rights case (Fahey 2018) and two in a 2021 elephant rights case (Rivera 2022; Wilson 2022). Perhaps these opinions will pave the way to future legal recognition of animal rights in the U.S.

How strong might animal rights be?

Finally, there is also a lot of disagreement and uncertainty about the *strength* of animal rights. The most fundamental question one can ask about the strength of a right is whether it is an absolute right or a threshold-right. If it is a *threshold-right*, then it carries a finite amount of moral weight, and so we can permissibly violate this right as a necessary means to sufficiently valuable ends, for example by killing one to save, say, one hundred, one thousand, one million, or some other number (depending on where one sets the threshold). If it is an *absolute right*, then it carries an infinite amount of moral weight, and so we can never permissibly violate this right as a necessary means to other ends, no matter how important those ends may be.

Of course, whether rights not to be harmed or killed are threshold-rights or absolute rights, we might still be permitted to harm and kill animals in many cases even if they have these rights. After all, many rights theorists believe that rights admit of exceptions; for example, even when someone has a right to life, you might still be permitted to kill them in self-defense, in other-defense, or as a necessary side effect of morally important activity. So, insofar as humans need to kill other animals for those reasons (for instance, by killing insects as painlessly as possible to protect ourselves or our crops when the insects constitute a direct threat and we have no other option available), this violence might be permissible whether or not rights carry a finite amount of moral weight.

Still, a lot depends on whether rights carry finite amounts of moral weight in general, and on how much moral weight the rights of animals carry in particular. After all, while some of the violence that humans inflict on other animals might count as self-defense, other-defense, or a necessary side effect of important activity, much of it counts as a means to an end, including the uses of animals for food, research, and other purposes. Sue Donaldson and Will Kymlicka argue “that a world in which better or longer lives for the many are purchased by sacrificing the few is not a world worth living in,” regardless of whether the individuals sacrificed are humans or other animals (2011, 44). Are they correct?

Consider three views that we might accept about the moral weight of animal rights. The first is *the equal weight view*. According to this view, all rights carry equal moral weight, regardless of who possesses them or which biological categories they occupy. The absolutist view is a kind of equal weight view, since it implies that rights have a kind of infinite amount of moral weight. But the threshold view is compatible with the equal weight view too; for instance, we might hold that a life killed is equal to a million lives saved regardless of whose lives they are: We can permissibly kill one human to save a million humans, one ant to save a million ants, one human to save a million ants, or one ant to save a million humans (Sebo 2022, 141-165).

The second view is *the proportional weight view*. According to this view, the moral weights of rights is proportional to the moral weights of the relevant interests. Suppose that a human's interest in survival is a million times stronger than an ant's. In this case, we might assume equal weight in intraspecies cases, for instance by holding that we can permissibly kill a human to save a million humans and that we can permissibly kill an ant to save a million ants. But we might assume unequal weights in interspecies cases, for instance by holding that we can permissibly kill a human to save no fewer than a *trillion* ants and that we can permissibly kill an ant to save a *single* human. (Of course, a lot depends on our views about aggregation too (Sebo 2023)).

The third view is *the non-proportional weight view*. According to this view, the moral weight of rights is neither equal nor proportional to the moral weight of the relevant interests. Instead, it depends on a more complex set of factors. For example, Shelly Kagan proposes that animals could have weaker rights *both* because they have weaker interests *and* because their interests matter less, given that they exhibit morally relevant features such as autonomy to a lesser degree (Kagan 2019). Depending on the details, this view might imply that we can permissibly kill a human to save no fewer than, say, a *quintillion* ants, or that we can permissibly kill an ant, say, *for fun*. Of course, it remains an open question whether the differences between humans and other animals that Kagan's theory appeals to have the moral significance needed to ground such large differences in the weight of human rights and animal rights.

For views that link the strength of rights with the strength of interests in such ways, we face a further, empirical question as well: how to compare the strengths of interests across species. Some scientists and philosophers believe that all welfare subjects have equal or incomparable welfare capacities, and thus they all have equally or incomparably strong interests in particular kinds of goods. According to this view, for example, there is no sense in which the best human life is *better* than the best ant life, or in which a human has a *stronger* interest in survival than an ant. Instead, these individuals have equal or incomparable welfare capacities, and equally or incomparably strong interests in survival (Višák 2023; Korsgaard 2018).

Other scientists and philosophers believe that some welfare subjects can have higher welfare capacities than others, on the grounds that they have more mental complexity and longevity. For instance, we might think that since a human has more neurons and a longer lifespan than an ant, the human is capable of more pleasure, satisfaction, flourishing, achievement, and other such goods in life. We might also think that insofar as the human has the capacity for temporal self-awareness, they also have a stronger interest in their own future. On this view, insofar as the human has more at stake in life than the ant in these ways, the best human life *is* better than the best ant life, and the human *does* have a stronger interest in survival than the ant.

However, even if we agree that welfare capacity can vary with cognitive complexity and longevity, we might disagree about how to measure those differences. For example, given that some neurons affect welfare more than others, are neuron counts the best proxies for welfare capacities at any given time, or are other, more complex proxies better? Similarly, given that some animals have faster cognitive “clock speeds” than others (and, so, they might be able to experience the passage of time more slowly), are life spans the best proxies for welfare capacities across time, or are other, more complex proxies better? And of course, a lot depends on our background theories about what constitutes welfare in the first place (Fischer 2022).

Shelly Kagan writes that “[i]t is, after all, one thing to say that *people* are not to be deliberately sacrificed for the greater good—but quite another to insist that even a mouse or a rabbit or a snake cannot be killed, even when this is the only way to save hundreds or thousands of people or more” (177). Without attempting to say whether Kagan is right or wrong here, we will simply observe that, as with other questions discussed in this chapter, this question is both important and difficult, and there is substantial risk that human bias and ignorance will affect our answers. We thus have a special responsibility to assess these issues carefully, following the best arguments where they lead rather than simply assuming a self-serving conclusion from the start.

Conclusion: Theory, Practice, and Progress

While this chapter has surveyed a wide range of questions related to animal rights, many other questions remain. For example, if animals have rights, then are we permitted or required to prevent third parties from violating these rights, and if so, what form might that prevention take? Furthermore, if animals have rights, then are some animal rights “inalienable,” or are all animal rights alterable (for instance, waivable or transferable) in some way (for instance, via choices that the animal makes, choices that the animal *would* make in idealized conditions, or choices that a suitable surrogate makes)? In these and other respects, the possibility of animal rights sheds new light on a wide range of issues in the philosophy of rights.

Another interesting question is whether animals can hold rights against *each other*. The traditional answer to this question is no, because animals are moral patients, not moral agents, and moral patients can hold rights only against moral agents. However, some scholars now challenge this assumption. For example, some scholars argue that human agency might be required for some kinds of responsibilities but not for others. Some scholars also argue that many nonhuman animals have higher capacities for agency than we previously appreciated, such that they might have at least minimal responsibilities after all. These questions about animal agency could have wide-ranging implications not only for animal rights (particularly for a will theory of rights, as noted above) but also for animal responsibilities.

Importantly, these questions about animal rights matter for everyone, not simply rights theorists. Whether or not we think that rights are *real*, we might still think that rights are *important*. For example, utilitarians have long argued that even if the concept of natural, inalienable rights is “nonsense upon stilts” (Bentham), creating and maintaining systems of legal rights is necessary for maximizing utility in the long run, since institutional systems of rights serve as a valuable check against biased and self-serving applications of harm-benefit analysis. Systems of rights are particularly important in this way for vulnerable populations who lack social, legal, and political power, and nonhuman animals are, of course, a good example of such a population (John and Sebo 2020).

Philosophical work on animal rights is thus extremely important both in theory and in practice. Theoretically, it bears on basic questions about who can have rights, which rights they can have, and how strong those rights can be. For example, it may lend support to threshold views about rights, since, as we have seen, these views allow for the possibility that we can give more weight to human rights than to ant rights, all else being equal, on the grounds that humans are more

likely to have interests *and* that humans are likely to have stronger interests (though, of course, we should be wary about intuitions that support such ideas). Thinking about rights in a multispecies context might thus lead to different, and better, theories of rights.

Moreover, practically, philosophical work on animal rights bears not only on decisions that affect animals (which is to say, nearly all decisions) but also on decisions that affect other nonhumans, including plants, species, ecosystems, human-nonhuman chimeras, and advanced artificial intelligence systems. It might also bear on decisions that affect human populations. For example, future generations of humans are relevantly similar to nonhuman animals in several important ways: There are many more of them than us, our actions might be impacting them in morally significant ways, and they lack the ability to participate in making these decisions. Determining how to treat these populations thus raises several of the same basic moral issues.

For these and many other reasons, the philosophy of animal rights is one of the most important and difficult topics that we face in ethics. We still have a lot of work to do on this topic, and it will take a lot of care to do this work in a rigorous and systematic way; for instance, we will need to connect work on animal rights with work on human rights, AI rights, and other such topics; connect work on these topics in ethics with work on these topics in law and policy; connect work on these topics in the humanities with work on these topics in the social sciences and natural sciences; and recognize that these topics all involve moral and scientific disagreement and uncertainty, and so we should approach them with caution and humility.

However, it would be a mistake to assume that answering questions about animal rights with caution and humility means waiting for consensus or certainty before taking action. Humans will undoubtedly face significant moral and scientific disagreement and uncertainty about animal rights for the foreseeable future. In the meantime, if the status quo continues, then we will continue to kill *quadrillions* of animals per year for our own benefit, often unnecessarily. When we incorporate the risk that these animals have rights into our decision-making, we might find that we have a responsibility to start transforming our social, legal, and political systems now, in order to mitigate the risk that our practices are systematically violating animal rights.

References

- Andrews, Kristin, Jonathan Birch, Jeff Sebo, and Toni Sims. 2024. "Background to the New York Declaration on Consciousness." <http://nydeclaration.com>.
- Andrews, Kristin, Gary L. Comstock, Crozier G.K.D, Sue Donaldson, Andrew Fenton, Tyler M. John, L. Syd M. Johnson, et al. 2018. *Chimpanzee Rights: The Philosophers' Brief*. Routledge.
- "Animal Welfare (Sentience) Act 2022." n.d. King's Printer of Acts of Parliament. Accessed January 16, 2024. <https://www.legislation.gov.uk/ukpga/2022/22/enacted>.
- Birch, Jonathan. 2017. "Animal Sentience and the Precautionary Principle." *Animal Sentience* 2 (16). <https://doi.org/10.51291/2377-7478.1200>.
- Browning, Heather, and Jonathan Birch. 2022. "Animal Sentience." *Philosophy Compass* 17 (5): e12822. <https://doi.org/10.1111/phc3.12822>.
- Carruthers, Peter. 1992. *The Animals Issue: Moral Theory in Practice*. New York, NY: Cambridge University Press.

- Cochrane, Alasdair. 2012. *Animal Rights Without Liberation: Applied Ethics and Human Obligations*. Columbia University Press.
- Cohen, Carl. 1986. "The Case for the Use of Animals in Biomedical Research." *The New England Journal of Medicine* 315 (14): 865–70. <https://doi.org/10.1056/NEJM198610023151405>.
- "Constitutional Court of Ecuador Recognizes Animal Rights in Landmark Ruling." n.d. Harvard Law School - ALPP. Accessed January 17, 2024. <https://animal.law.harvard.edu/news-article/landmark-ruling/>.
- Cooke, Steve. 2017. "Animal Kingdoms: On Habitat Rights for Wild Animals." *Environmental Values* 26 (1): 53–72.
- Crary, Alice. 2018. "The Horrific History of Comparisons between Cognitive Disability and Animality (and How to Move Past It)." *Animaladies: Gender, Animals, and Madness*, 117–36.
- Crump, Andrew, Heather Browning, Alex Schnell, Charlotte Burn, and Jonathan Birch. 2022. "Animal Sentience Research: Synthesis and Proposals." *Animal Sentience* 7 (32). <https://doi.org/10.51291/2377-7478.1770>.
- Delon, Nicolas. 2020. "Pervasive Captivity and Urban Wildlife." *Ethics, Policy and Environment* 23 (2): 123–43. <https://doi.org/10.1080/21550085.2020.1848173>.
- Diggles, Benjamin K., Robert Arlinghaus, Howard I. Browman, Steven J. Cooke, Robin L. Cooper, Ian G. Cowx, Charles D. Derby, et al. 2024. "Reasons to Be Skeptical about Sentience and Pain in Fishes and Aquatic Invertebrates." *Reviews in Fisheries Science & Aquaculture* 32 (1): 127–50. <https://doi.org/10.1080/23308249.2023.2257802>.
- Dombrowski, Daniel A. 1997. *Babies and Beasts: The Argument From Marginal Cases*. University of Illinois Press.
- Donaldson, Sue, and Will Kymlicka. 2011. *Zoopolis: A Political Theory of Animal Rights*. Oxford, New York: Oxford University Press.
- Fahey, E., majority opinion. 2018. Nonhuman Right Project, Inc. v. Lavery, 31 N.Y.3d 1054, 100 N.E.3d 846. New York Court of Appeals.
- Feinberg, Joel. 1974. "The Rights of Animals and Unborn Generations." In *Philosophy and Environmental Crisis*, edited by William Blackstone, 43–68. Athens, Georgia: University of Georgia Press.
- Feinberg, Joel. 2008. "Human Duties and Animal Rights." In *Animal Rights*. Routledge.
- Fischer, Bob. "The Welfare Range Table." Rethink Priorities, 2022. <https://rethinkpriorities.org/publications/the-welfare-range-table>.
- Francione, Gary. 2010. *Introduction to Animal Rights: Your Child Or the Dog?* Temple University Press.
- Frey, R. G. 1977. "Animal Rights." *Analysis* 37 (4): 186–89. <https://doi.org/10.2307/3327349>.
- Gibbons, Matilda, Andrew Crump, Meghan Barrett, Sajedah Sarlak, Jonathan Birch, and Lars Chittka. 2022. "Chapter Three - Can Insects Feel Pain? A Review of the Neural and Behavioural Evidence." In *Advances in Insect Physiology*, edited by Russell Jurenka, 63:155–229. Academic Press. <https://doi.org/10.1016/bs.aiip.2022.10.001>.
- Gruen, Lori. 2021. *Ethics and Animals: An Introduction*. 2nd ed. Cambridge Applied Ethics. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108986304>.
- Gulatsi, Taylor. 2023. "Legal Personality for Animals in India and Pakistan | In Custodia Legis." Webpage. The Library of Congress. August 30, 2023. [/blogs.loc.gov/law/2023/08/legal-personality-for-animals-in-india-and-pakistan](https://blogs.loc.gov/law/2023/08/legal-personality-for-animals-in-india-and-pakistan).

- Hadley, John. 2005. "Nonhuman Animal Property: Reconciling Environmentalism and Animal Rights." *Journal of Social Philosophy* 36 (3): 305–15. <https://doi.org/10.1111/j.1467-9833.2005.00277.x>.
- . 2015. *Animal Property Rights: A Theory of Habitat Rights for Wild Animals*. Lanham: Lexington Books.
- Horta, Oscar. 2014. "The Scope of the Argument from Species Overlap." *Journal of Applied Philosophy* 31 (2): 142–54.
- Jamieson, Dale. 2018. "Animal Agency." *The Harvard Review of Philosophy* 25 (October): 111–26. <https://doi.org/10.5840/harvardreview201892518>.
- John, Tyler, and Jeff Sebo. 2020. "Consequentialism and Nonhuman Animals." In *Oxford Handbook of Consequentialism*, edited by Douglas W. Portmore, 564–91. Oxford University Press.
- Kagan, Shelly. 2019. *How to Count Animals, More or Less*. Uehiro Series in Practical Ethics. Oxford, New York: Oxford University Press.
- Kant, Immanuel. 2007. "Anthropology from a Pragmatic Point of View." In *Anthropology, History, and Education*, edited by Robert B. Loudon and Günter Zöller, translated by Robert B. Loudon. The Cambridge Edition of the Works of Immanuel Kant. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511791925>.
- Key, Brian. 2015. "Fish Do Not Feel Pain and Its Implications for Understanding Phenomenal Consciousness." *Biology & Philosophy* 30 (2): 149–65. <https://doi.org/10.1007/s10539-014-9469-4>.
- Kittay, Eva Feder. 2005. "At the Margins of Moral Personhood." *Ethics* 116 (1): 100–131. <https://doi.org/10.1086/454366>.
- Korsgaard, Christine M. 2018a. "The Claims of Animals and the Needs of Strangers: Two Cases of Imperfect Right." *Journal of Practical Ethics* 6 (1): 19–51.
- Korsgaard, Christine M. 2018b. *Fellow Creatures: Our Obligations to the Other Animals*. Oxford, New York: Oxford University Press.
- Kramer, Matthew, Simmonds NE, and Steiner Hillel. 2000. *A debate over rights: Philosophical enquiries*. Oxford University Press.
- Liao, S. Matthew. 2011. "The Basis of Human Moral Status." In *Ethics and Moral Philosophy*, 335–56. Brill. https://doi.org/10.1163/9789004215337_017.
- Milburn, Josh. 2017. "Nonhuman Animals as Property Holders: An Exploration of the Lockean Labour-Mixing Account." *Environmental Values* 26 (5): 629–48. <https://doi.org/10.3197/096327117x15002190708155>.
- Monton, Bradley. 2019. "How to Avoid Maximizing Expected Utility." *Philosophers' Imprint* 19.
- Nobis, Nathan. 2004. "Carl Cohen's 'Kind' Arguments For Animal Rights and Against Human Rights." *Journal of Applied Philosophy* 21 (1): 43–59. <https://doi.org/10.1111/j.0264-3758.2004.00262.x>.
- Norcross, Alastair. 2004. "Puppies, Pigs, and People: Eating Meat and Marginal Cases." *Philosophical Perspectives* 18 (1): 229–45. <https://doi.org/10.1111/j.1520-8583.2004.00027.x>.
- Nozick, Robert. 1983. "About Mammals and People." *The New York Times*, November 27, 1983, sec. 7.
- Nussbaum, Martha C. 2018. "Working with and for Animals: Getting the Theoretical Framework Right." *Journal of Human Development and Capabilities* 19 (1): 2–18.

- <https://doi.org/10.1080/19452829.2017.1418963>.
- . 2023. *Justice for Animals: Our Collective Responsibility*. Simon and Schuster.
- Palmer, Clare. 2010. *Animal Ethics in Context*. Columbia University Press.
- . 2021. “Assisting Wild Animals Vulnerable to Climate Change: Why Ethical Strategies Diverge.” *Journal of Applied Philosophy* 38 (2): 179–95.
<https://doi.org/10.1111/japp.12358>.
- Regan, Tom. 1983. *The Case for Animal Rights*. University of California Press.
- Rivera, J., dissenting opinion. 2022. Nonhuman Rights Project, Inc. v. Breheny, WL 2122141. New York Court of Appeals.
- Schneider, Kevin. 2020. “The Case of Laxmi the Elephant and Animal Rights in India.” Nonhuman Rights Project. August 14, 2020.
<https://www.nonhumanrights.org/blog/laxmi-animal-rights-india/>.
- Scruton, Roger. 2006. *Animal Rights and Wrongs*. A&C Black.
- Sebo, Jeff. 2017. “Agency and Moral Status.” *Journal of Moral Philosophy* 14 (1): 1–22.
<https://doi.org/10.1163/17455243-46810046>.
- . 2018. “The Moral Problem of Other Minds.” *The Harvard Review of Philosophy* 25 (October): 51–70. <https://doi.org/10.5840/harvardreview20185913>.
- . 2022. *Saving Animals, Saving Ourselves: Why Animals Matter for Pandemics, Climate Change, and Other Catastrophes*. Oxford, New York: Oxford University Press.
- . 2023. “The Rebugnant Conclusion: Utilitarianism, Insects, Microbes, and AI Systems.” *Ethics, Policy & Environment* 26 (2): 249–64.
<https://doi.org/10.1080/21550085.2023.2200724>.
- . forthcoming. *The Moral Circle*. WW Norton.
- Sreenivasan, Gopal. 2010. “Duties and Their Direction.” *Ethics* 120 (3): 465–94.
<https://doi.org/10.1086/652303>.
- Steinbock, Bonnie. 1978. “Speciesism and the Idea of Equality.” *Philosophy* 53 (204): 247–56.
- Visak, Edited by Tatjana, and Robert Garner, eds. 2015. *The Ethics of Killing Animals*. Oxford, New York: Oxford University Press.
- Višak, Tatjana. 2023. *Capacity for Welfare across Species*. Oxford, New York: Oxford University Press.
- Wilson, R.D., dissenting opinion. 2022. Nonhuman Rights Project, Inc. v. Breheny, WL 2122141. New York Court of Appeals.
- Williams, Bernard. 2006. “The Human Prejudice.” In *Philosophy as a Humanistic Discipline*, edited by A. W. Moore, 135–52. Princeton University Press.
<https://www.jstor.org/stable/j.ctt7rx9w.17>.