

# BETWEEN THE SPECIES

## Rights, Solidarity, and the Animal Welfare State

### ABSTRACT

This article argues that aspects of the animal rights view can be constructively modulated through a communitarian approach and come to promote animal welfare through the social contexts of expanded caring communities. The Nordic welfare state is presented as a conceivable caring community within which animals could be viewed and treated appropriately as co-citizens with solidarity based rights and duties.

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### **On the Notion of Moral Rights**

Unlike legal rights, moral rights (or natural rights) are not dependent on any political laws or societal norms. They are universal and considered unacquired and inalienable in that they can only in extreme cases be forfeited by the right holder or eliminated by others. This universality claim of natural rights necessitates a further and deeper grounding of authority. Traditionally, this has either been accomplished by reference to a deity, as when the American Declaration of Independence states that all men “are endowed by their Creator with certain unalienable Rights”, or by reference to the faculties of reason. Disallowing the former we are left with the theory that natural rights can be claimed through an argument from reason. This is the assertion in both classical liberalism (Locke 1988, 271) and in the work of the modern libertarian Robert Nozick (1974). An inherent self-ownership is maintained which translates to a right to one’s own body and life – which then again generates further rights. Even if such an argumentative move is possible, it still leaves us with issues pertaining to the necessarily relational aspects of rights. If one has a right, someone else must have a duty. This is a prerequisite for both self-ownership and the possession of rights. Ownership – of oneself or of things – makes no sense without others. By definition, an entirely isolated individual does not and cannot own anything, as owning logically implies not only that the object owned belongs to him, but that it does not belong to someone else. If there is no “someone else” then the concept of ownership simply loses all meaning. Similarly, rights can only be understood and be meaningful as long as there are others who, because of my rights, have duties of action or omission towards me. Even if one does not agree that rights necessitate duties it would be difficult to explain any prescriptive rights in the absence of anyone to prescribe them to. This inevitably removes

the universality, and, partially, the inherency from the notion of rights. If a situation exists, e.g. being isolated or having no relations, which precludes any meaningful notion of rights, then universality, which is an either-or type of concept, is unattainable. Indeed, any claim of a relation-free universal type of rights could appropriately be categorized as "... rhetorical nonsense – nonsense upon stilts" (Bentham 1843, 501).

When addressing the question of rights for animals, Tom Regan provides us with a neo-Kantian animal rights theory based on the human-like cognitive abilities of many different species of animals. His chief work, *The Case for Animal Rights* (1983), is, to a large extent, a response to and criticism of Peter Singer's utilitarian animal ethics approach (Singer 1993). Throughout this and future books, Regan argues that individual rights, and not the reduction of suffering, should be the key element of moral evaluation. Regan clearly agrees with many of Singer's semi-abolitionist answers on the question of animal use (ibid. 64), but he disagrees with the fundamental premises of Singer's argument and fears that the utilitarian theory does not fully protect animals from harmful human exploitation. Specifically, Regan claims that Singer's utilitarianism could leave room for a justification of evil means in order to gain good ends. To avoid this problem, he has developed a theory based on the inherent value of certain kinds of life forms and the basic (natural) rights attributed to the possession of such values. He dismisses Kant's original argument, that only morally capable agents can have inherent value, as arbitrary (Regan 2004, 239), and expands the group of beings who have inherent value (or are ends in themselves) to include all those which are *subject-of-a-life*. To be such a subject involves the possession of a number of different cognitive capabilities such as belief, preferences, experiential life, and a perception of time: "Those who satisfy the

subject-of-a-life criterion themselves have a distinctive kind of value – inherent value – and are not to be viewed or treated as mere receptacles” (ibid., 243). This distinctive kind of value is uniquely different from intrinsic values derived from the subjects evaluation of positive and negative experience (ibid., 235). Inherent value is categorical and absolute and there are no degrees or levels of value involved. It is a matter of status: you either are a being with inherent value and thus equally valuable with all other subjects-of-a-life, or you are not.

According to Regan the possession of inherent value translates into having fundamental rights. These are basic moral rights which are unacquired, universal, and equal between relevantly similar individuals and they consign duties of respectful treatment to all ethical agents (ibid., 327). Applied to the world as we know it, this would halt all systematic uses of animals (at least mammals of one year or more) in which animals are not also treated as ends in themselves (ibid., 358). Regan acknowledges that specific situations can arise where, *ceteris paribus*, the rights of some ought to be overridden by the rights of others. Such extreme situations would be a choice between two unavoidable evils and one should always attempt to achieve the lesser of the two. Our organized uses of animals throughout different areas of society are, however, rarely clear examples of lesser and greater evils. Normal animal agriculture-is, arguably, a classic example of someone profiting from the violation of the rights of others, and entailing that subjects-of-a-life are brought “to an untimely end because of human interests” (ibid., 394).

To have a right is, according to Regan’s notion of the concept, to be in a position to claim (ibid., 271). Rights are, therefore, fundamentally present in subjects-of-a-life in an agency-free

context, while the claims themselves are only possible in relation to moral agents. This appears to encounter the principle problem of how we could possibly conceive of rights meaningfully if the subject-of-a-life was the only being in the world – or if none of the other beings were ethical agents capable of the sort of relation that includes rights and duties. Furthermore, Regan’s notion of inherent value, upon which his claim of inherent rights rests, is detached from any actual evaluation.

“..., inherent value exists logically independently of valuers; that is, of individuals who recognize value. That is, for Regan, an individual having inherent value should be clearly distinguished from that individual being valued by others” (Rowlands 1998, 87).

Additionally, inherent value is independent from what Regan calls intrinsic value, i.e. the value that a certain being itself attaches to its experiences (Regan 2004, 235-236). Thus a subject-of-a-life might by definition be such a being which can intrinsically value itself, but its valuing of itself is not the basis of its inherent value. This purposefully distinguishes the theory from a utilitarian view by rejecting the idea of individuals as preference-satisfaction receptacles (ibid. 210), but it also leaves us with another fundamental conundrum: how are we to understand the concept of value without reference to anyone or anything valuing? Rowlands calls this sort of logically independent value “mysterious” (Rowlands 1998, 86), causing one to speculate upon the foundation or origin of inherent value, and whether, indeed, there is one. Lastly, it is not totally apparent what the connection might be and how the causality operates between animals being subjects-of-a-life (and thereby having inherent, indivisible value) and animals being holders of rights. This is probably best explained by combining two of Regan’s

underlying ethical assumptions: questions about morality are primarily questions about justice – “[p]aramount among our unacquired duties is the duty of justice” (Regan 2004, 274) – and, secondly, this view is a result of our considered moral beliefs (reflective intuitions) (ibid., 133-140).

Regan’s considered beliefs are similar to the reflective equilibrium of John Rawls (ibid., 135) who predominantly employs such as a method in the formation of principles of justice – a formation derived from an ongoing reflection over principles of justice, moral intuitions, and the “original position” (Rawls 1988, 17-22). In spite of these similarities and the general mutual emphasis upon rights, Regan and Rawls fundamentally disagree on the possible extents of a rights view and the status of animals that this entails. Whereas Regan includes all moral patients (subjects-of-a-life) in his theory, Rawls’ more contractarian based approach consciously excludes all non-moral persons – i.e. all beings who do not have “a conception of their good” and “are [not] capable of having [...] a sense of justice” (ibid., 505). Most significantly, the latter of these two carries with it a necessary exclusion of animals from the spheres of justice and rights. Without these capabilities, animals, and by default, human infants and the severely mentally disabled (Garner 2003, 6-10), are incapable of entering the contractual situation requisite for having duties as well as rights.

“... it does seem that we are not required to give strict justice anyway to creatures lacking this capacity. [...] They [animals] are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way” (Rawls 1988, 512)

Peter Carruthers follows this part of Rawls' reasoning, leading to the inevitable conclusion that animals do not have direct ethical standing (Carruthers 1992). This follows Kant's original argument on this subject (Kant 2001, 212), and asserts that any wrongness committed against an animal can only have ethical ramifications indirectly through, for example, the human owner of the animal. Thus, wantonly kicking a dog is not ethically problematic unless the dog has a master capable of entering the moral contract. Rawls, on the other hand, does not exclude animals from the sphere of ethics and states that it is certainly "wrong to be cruel to animals" and that their capacities for pain and pleasure "clearly impose duties of compassion and humanity" (Rawls 1988, 512). Although this could be seen as an inclusion, it still, specifically, removes animals from any political or legalistic deliberations or concern, thus, effectively, dividing the notion of morals into two aspects. The wrongness of animal cruelty and the duties of compassion can, in this light, only be construed as a kind of personal moral matter, detached and distinct from the moral matters of justice, human society and state.

A number of problems arise from the above mentioned rights, theories and their contractarian versions. One such prominent problem is the assumption that an ethical theory in general and a theory of distributive justice especially, must necessarily be grounded in the liberalistic rights of the individual. In the animal ethics of contemporary socialist thinker Ted Benton (1993), we are presented with a change of the underlying premise. Although inspired by Marx's idea of distribution "from each according to his ability to each according to his needs" (Marx 2008, 27), Benton dismisses the anthropocentric nature of Marx's original work. He remains, however, focused on the basic concepts of need, species-being, and alienation,

and he criticizes the liberal rights view of its failing inclusivity and of failing to realize the institutionality of animal use and abuse. By referring to needs as the moral relevancy in a “socialist principle of justice”, Benton steers clear of the Rawlsian split between animals being owed compassion but not rights, and can argue “that there is no ontological obstacle to its extension beyond species boundaries” (Benton 1993, 212). With regard to institutionality, Benton argues that many animals, like an impoverished working class, are suffering not only because of the acts of individuals in society but, additionally, because of the activities of very complex societal systems. A liberal rights theory, he claims, addresses the notion of violation as a one-to-one scenario in which rights are held and violated by individuals (ibid., 89). This is, however, not the most common representation of our relation to animals. The extent to which responsibility for the violation of the rights of billions of animals, reared for food each year by the animal agricultural industry, can be assigned to an individual, is limited. The question of whether to reproach farmers, the business executives, the investors, the retailers, the consumers, the legislators, or “a civil service which fails to enforce what legislation there is” (ibid., 89-90), becomes, rather, a question about systems and institutions, not about whose rights impose whose duties.

### **The Welfare State and Inclusive Communitarianism**

The social democracy of the Nordic welfare state is based on a number of key ideas with an emphasis on equality and solidarity. The notion of equality in the welfare state stresses, also, the importance of the equality of results as opposed to purely the equality of opportunity, thereby setting it apart from more market oriented and liberalistic states. This kind of outcome equality (or benefit equality) not only focuses on equal



points of origin, but endeavors to include different stages of life and the needs associated with these stages. Furthermore, it universalizes not only the levels of distribution but the definition of citizenship, including everybody who needs it and not just those who contribute through their work (Knudsen 1995, 5). This connects to another significant feature of the Nordic welfare state: *fellowship* or, as it is known in the context of social democratic thought, solidarity: "... a universal welfare state may be seen as an experiment in solidaristic behavior on a massive scale" (Kuhnle and Hort 2004, 17). Drawing on centuries-old collectivist traditions, solidarity in Scandinavian political thought includes "a sense of belonging to and identifying with others" (Einhorn and Logue 2003, 158), and the readiness to accept one's share of both responsibility and destiny in the common future of the society. There is a strong element of reciprocity in this concept of solidarity (ibid., 159), combining the importance of obligation of the community/state to take care of the individual with the requirement of the individual to contribute to the community/state. But, provided that need is the factor which decides the manner of help the citizen receives from the state (Knudsen 1995, 5), solidarity is limitedly reciprocal insofar as it demands social contribution only from those who are capable. No incapability – prolonged or temporary, complete or partial – is enough to disqualify the citizen from the right to the common resources and care.

The structure and the underlying fundamental political values of the Nordic welfare state are indicative of a certain kind of social connectedness. This is, on a number of levels, comparable to the communitarianism of political philosophy with its emphasis on humans as social beings whose active happiness can only be achieved through the community. Originating from Aristotelian virtue ethics and political theory, the com-

munitarian state is not to be understood as a neutral guardian of the individual citizen's autonomy, but as an entity with the explicit purpose of assuring the common best. This idea is founded on a methodological and a normative understanding of humans and society. Methodologically, communitarianism criticizes liberalism for a misinterpretation of the world by not recognizing "the fact that the self is 'embedded' or 'situated' in existing social practices" (Kymlicka 2002, 221), and never exists in a pre-social condition. From this embeddedness, communitarians derive an emphasis on "the value of communal existence" (Garner 2005, 89).

Characteristically, communitarianism has, in part, been associated with conservatism in their mutual convergence on existing social unity and anxiety about the diversification of society. This kind of "backward-looking communitarianism" (Kymlicka 2002, 276) would shy away from any talk of including animals in the political society out of fear of undermining the necessary social accord. Thus, the modern resurgence of virtue ethics and neo-Aristotelian political philosophy has had a very limited influence on discussions of animal ethics and animal rights. In *Dependent Rational Animals* (MacIntyre 1999), the father of modern neo-Aristotelian thought, Alasdair MacIntyre, suggests an ethically relevant commonality between humans and animals based, in large part, on shared conditions of vulnerability and dependence. A virtuous society should, according to MacIntyre, incorporate the marginal cases – the very young, the disabled, and, following his own logic, certain so-called higher animals – into the community, and hold their individual flourishing as "an important index of the flourishing of the whole community" (ibid., 109). The most substantial incorporation of animals into a communitarian theory is, however, presented to us by Martha C. Nussbaum in *Frontiers of*

*Justice* (2006). Here she sets out a theory of justice which goes beyond the Rawlsian call for compassion: “Unlike contractarianism this approach involves direct obligations of justice to animals; [...] Unlike Utilitarianism, it respects each individual creature” (ibid., 351). Nussbaum maintains that we have relations of commonality with numerous members of non-human species, and that some of these – maybe even most of those we have relations with – are “capable of dignified existence” (ibid., 326). This dignity is rooted in the Marxian idea of the human being as a being “in need of a totality of human life-activities” (ibid., 74), and is intertwined with the citizens’ entitlement to a list of capabilities. This is a rather diverse and pluralistic list of capabilities, each of which can be read as an intrinsic ability and, simultaneously, as grounds for establishing a sphere of rights and opportunities which must be respected. Pertaining to animals, Nussbaum’s list is not limited to capabilities such as life and bodily health, but lists also affiliation and the control over one’s environment (ibid., 393-400). Nussbaum maintains that we share our world with animals worthy of dignity, and this, in itself, leads to obligations of justice towards others whose flourishing is part of the flourishing of the community. Such thinking is an antithesis to the duties of compassion proclaimed by Rawls. In Rawls’ approach to animal compassion, there need not be any wrong-doing involved. In saving a dog from being burnt, it makes, from the third point of view, no difference for Rawls whether the dog is being hurt by the fire from an erupting volcano or by an adult person with a fiery stick. Nussbaum, however, insists on a clear difference in the obligation of compassion. In the former example, we have a case of pure compassion obligating one to rescue the dog. In the latter, we are presented with a more complicated case including compassion and delivering a being from harm, with the additional matter of duty to “inhibit, and punish *acts* of the sort that cause

the suffering occasioning the compassion” (ibid., 336). This concerns preventing disrespect of the animal’s rights; it is a matter of justice.

The rights involved, however, are not those attributed to Regan’s subject-of-a-life beings. Where animal rights, in Regan’s eyes, almost entirely translate to the negative rights of being left alone by humans, Nussbaum’s neo-Aristotelian approach focuses on rights of a more positive kind, placing such rights in an active relational context. All animals with which we have relations are thus – and in their capacity as sentient beings with dignity – “direct subjects of the theory of justice” (ibid., 389). They are not part of the sort of reflective equilibrium or overlapping societal consensus about animal rights which Nussbaum sees as a possibility within future constitutional democracies. In this sense, the capability approach concurs with the social contract approach, in that only humans can participate in the shaping of political consensus due to their higher faculties of reason. As we have seen, this does not by necessity exclude animals from the rights established by a political consensus. Rather, Nussbaum incorporates animals in the overlapping consensus through the notion of guardianship where animals are “endowed with entitlements that are theirs, even if exercised through [prudent human] guardianship” (ibid., 376). This should be understood as a benevolent paternalism aimed at securing the species-specific flourishing of animals through surrogate imaginative sympathy and knowledge of their lives. It is important, however, to recognize that this does not amount to indirect Kantian duties in which the guardian, instead of the animal, becomes the real target of obligation. The guardian’s role is not that of surrogate rights-holder, but, as the term indicates, a role of rights-protector, pro-active supporter, and proxy choice-maker. Such an argument is similarly seen in the work

of Will Kymlicka and Sue Donaldson who argue for a political representation of animals that circumvent the problem of animals not being able to participate in voting (Kymlicka and Donaldson 2011, 153). They argue that public systems ought to be constructed that give an institutional framework to the work of such guardians. This could be done, for example, by creating animal ombudsmen or designated legal representation for animals (*ibid.*, 154).

### **The Animal Welfare State: Rights**

Before exploring how a certain kind of welfare state could possibly support the proliferation of animal rights, it is necessary to return to the notion of animal rights themselves in order to clarify how these would have to be incorporated into an animal welfare state.

A contractarian theory of rights, which insists on the rationality of the contract participants, will never be able to encompass animals. This is what Kant and Carruthers recognized in and lead the latter to a contractarian moral theory, which states that “there is no basis for extending moral protection to animals” (Carruthers 1992, 196). Rawls, however, following the same theoretical path as Carruthers, seems to intuitively shy away from this logical step, circumventing it by creating two separate spheres of morals, one of duties regarding justice and one of duties of compassion. In addition to giving the impression of an evasive strategy, Rawls’ idea of two separate spheres of moral duties also leaves us with two levels of value, effectively referring animals to an inferior status. Although this tactic retains animals (and human marginal cases) within the moral sphere, it is as second-rate citizens – vulnerable to the attitudes and behavior which follow such conceptual language. This is, in part, what Andrew Dobson indicates when writing “justice

implies a ground-level equality between distributor and recipient which charity does not; [...] obligations born of justice are more binding and less revocable than those born of charity” (Dobson 1998, 95). Thus, I find that Rawls’ semi-inclusion of animals in a concept of compassionate duty represents not so much a salvaging as a demoting of moral standing for animals.

There are, as I see it, constructive and promising ways of salvaging a rights-based approach to animal ethics. Primarily it must be a theory of rights which does not automatically exclude non-rational beings. A necessary condition of inclusion could be, for example, a matter of sentience or vulnerability. This would not only entail the inclusion of many species of animals, but would also resolve the intuitively problematic exclusion of young children and cognitively disabled adults. Such a modification would, of course, lead to the contract becoming asymmetrical – i.e. between rational agents and non-rational beings. This asymmetry has two associated aspects. Firstly, it is an asymmetry of power where knowledge, including understanding the contract, is limited to one side. Secondly, animals are incapable of consenting to as well as abiding by the contract’s terms. It is these aspects of asymmetry which are the target of Nussbaum’s “prudent guardianship” (Nussbaum 2006, 376) in which rational agents become representatives of animals, charged with protecting and advocating their entitlements/rights. Nussbaum sees this as an analogue case to the instances where disabilities have compromised a human’s “capacity for choice and autonomy” (ibid., 375). In such cases, as with animals in general, she proposes a carefully executed paternalism through which the animal becomes included in the social contract and the overlapping consensus.

### **The Animal Welfare State: Rights, Inclusion, and Solidarity**

From Nussbaum's idea of the benevolent paternalistic guardian, we can approach an animal rights theory with a more actively inclusive structure. It is important that we understand rights as having both an intrinsic and extrinsic property. By intrinsic property it is implied that the capable bearer of rights is a being that, if her rights are respected, is better off. This would exclude all inanimate objects since it would be difficult to comprehend how, for example, a rock could be better or worse off. It would, however, according to this initial definition, not necessarily exclude plants and other beings without mind. Yet, the focus of this article is on animals such as pigs and dogs which are embedded in our culture and cannot only be better or worse off, but are, furthermore, capable of experiencing their lives as better or worse. By extrinsic property it is implied that rights necessarily involve relations to rational agents capable of having obligations. By the concept of embedded I mean to argue along the lines of Kymlicka and Donaldson that there are certain types of animals that have the capacity to enter into mixed-species community and some types that cannot (Kymlicka and Donaldson 2011, 123). Fundamentally, any animal must, in order to be able to become a citizen, be of such a type that it can be socialized into a human-animal community. This is not a continued subjugation of the animal "but a temporary developmental process for bringing individuals into full membership of the community" (ibid., 125). Such a socialization into and inclusion in mixed-species communities is not feasible for many wild animals and I agree with Kymlicka and Donaldson that as such these should be considered inhabitants of sovereign animal nations (ibid., 156). The relationship with these animals should thus be considered a matter of interna-

tional justice and is not a matter of rights and solidarity within the mixed human-animal community.

The Nordic welfare state's emphasis on the relational properties of rights is mirrored in its concept of solidarity. Solidarity is commonly defined as having both a descriptive characteristic of a certain common-ground structure in a social group, and as a normative characteristic concerning members of a social group having "mutual obligations to aid each other, as and when should be necessary" (Bayertz 1999, 3).

Concerning the former, the problem quickly becomes one of community cohesion. Solidarity, as well as Aristotelian communitarian based theories, relies on a given group's participants having some kind of common linkage by which each member can be ascertained as one of us. Whatever this linkage is anchored in, rationality, shared values, common fate or common history, it implies that a) there is a limit to the community and thus someone or something must be external to it, and b) the characteristics of those who are external to the community provide, to a certain extent, a definition of the community members through their otherness. In relation to our present question about domesticated animals, this raises the question of inter-species descriptive solidarity – i.e. is it meaningful to understand animals as integrated into human social groups and, indeed, can people and animals understand themselves as belonging to the same social groups? In other words: does descriptive solidarity necessarily entail bonds that could not exist between man and animal? I do not believe this is the case. We simply have too much evidence of group-oriented human-animal bonding to reject the entire notion of inter-species communities. Companion animals such as dogs are commonly referred to and understood as parts of families and, conversely,



dogs understand themselves as part of the family (Wells 2009). There are no logical species boundaries in descriptive solidarity relating to humans' understanding of the relationship. We are, as humans, obviously capable of "feelings of belonging together or sympathy" (Wildt 1999, 217) towards animals of many different species. This, however, is most likely not a reciprocal understanding and besides a few examples – most noticeably dogs – it would be difficult to attribute a general cross-species feeling of belonging from animals in general to humans in general. Alternatively, it is, as already indicated, not a necessity for community membership (descriptive solidarity) that all participating members are rational beings. Nor is it a necessity to understand their connectedness to the whole that is society. The community and levels of solidarity are defined from the stand-point of those rational beings who understand the concept of communal connectedness. There is no logical reason why such a community should not include beings which do not understand their part in the community, nor partake knowingly in its structuring.

We encounter comparable issues when addressing the normative characteristics of solidarity – and, to a certain extent, comparable answers. Understanding solidarity as a moral relation between individuals is, as its communitarian roots suggest, a very old perception. Although Theophrastus (371-287 BC) to a large extent continues the philosophy of his teacher Aristotle, he rejects Aristotle's dismissal of animals as belonging in the moral community and maintains "that animals enjoy kinship (*oikeiotês*) with us" (Sorabji 1993, 177). With this moral notion of kinship, Theophrastus introduces a non-speciesist normative solidarity (as well as non-speciesist communitarian ethics). It is the matter of belonging which is stressed instead of rational (contract-) abilities, and it maintains that an asym-

metrical solidarity could be extended to include the non-human parts of the community as rights beneficiaries – albeit not as obligation-havers. One could argue in support of the claim that animal rights and animals' inclusion in the moral community is impossible due to the limits of moral psychology. Bernard E. Rollin states that we have a deep-seated “(perhaps biologically based) intuition that we favour those made close to us by bonds of blood, friendship or love” (Rollin 2005, 110), and this is the foundation of what he calls the “reasonable partiality” of moral psychology. We are limited by our psychological make-up to such a degree that it renders us incapable of being universally impartial. Rollin does, however, claim that partiality, based on Aristotle's concept of *philia* (brotherly love), has already been extended to many companion animals (*ibid.*, 120), and that there is no reason why, with time, such extensions of moral psychology could not encompass other animals.

It is along analogous lines that I see the political normative concept of solidarity working in favor of animal rights and animal welfare. Incorporating Benton's socialist concept of need and Nussbaum's inclusive communitarianism, we can identify and incorporate animals as community members who, although they are incapable of obligations, have the needs and entitlements ensured by the concept of belonging. Solidarity, when extended to animals in our society, is an extension of rights – rights of inclusion and rights to communal care. There is no inherent problem in solidarity-influenced states upholding the direct individual (negative) rights. However, in addition to the individuals' rights directed at the individuals' duties (and vice versa), solidarity presses the necessity of individuals' rights and duties being directed at the community or state. In other words, among the duties that we have, according to solidarity, are duties towards the community as a whole. Mark

Sagoff implicitly touches upon this when he states that our deliberations as citizens should “take as their logical subject the community as a whole” (Sagoff 2008, 38). Duties towards our common society as a whole – which we could call citizen duties – lack the directness of normal rights-theory duties. They are not specific and have very little to say about individual people’s rights and what these rights demand of other people. Citizen duties are concerned with and aim towards the good of the community as a whole; there is no immediate and corresponding right to a citizen duty. Citizen rights, on the other hand, are rights possessed by all members of the community. They are positive rights of belonging and, through this belonging, rights to be treated as members of the community and be cared for. Citizen rights are not connected as directly to citizen duties, but are directed towards the representation of citizens – i.e. the state or government. This means that the state is not just the night watchman whose function it is to ensure that the members of society respect the rights of each other. The solidarity-state itself is infused with collective duties of members and thus becomes the object towards which citizen rights must turn. Instead of understanding society as merely a gathering of individual rational agents who come to terms with each other through reflection on justice, the concept of solidarity institutionalizes benevolence aimed at all citizens independent of their rationality or capability for reciprocation. Culturally integrated animals, such as farm or working animals, have needs both as a consequence of being living conscious beings and, furthermore, because of their confined and controlled lives. When we extend the notion of the moral community and solidarity to these animals, the realization or frustration of their needs is no longer merely related to the personal compassion (or duties of compassion) of farmers, but becomes a community issue and a

matter of the community, via a pro-active state, living up to its duty to its members.

In the 17th and 18th Centuries large sections of land around Europe and North America were defined as common land and used mainly for the grazing of livestock. The commons, as they came to be called, were pieces of land where all the local farmers had the right to graze their sheep or cattle, and the duty to keep the land usable and avoid over-grazing. These rights and duties of the commoners were not rights and duties towards other individual commoners, but towards the common itself. Not the common as the land as such, but the common as the community one belongs to and its common use and common resources, now and in the future. In this sense, rights and duties are an aspect of what we could label common justice and indicate the justice of solidarity. Common justice and the rights which derive from it should not be understood as a replacement for liberal rights. Liberal rights theories like those of Regan and Rawls are necessities of individuals' interaction with other individuals in just ways. They must, however, encompass more in the sphere of justice than a few rational humans. A theory of justice must, as Regan's indeed does, reach beyond the narrow limits of species and rationality. Such extension of rights to include animals must, furthermore, realize the voicelessness of these beings and consequently provide them with sympathetic human advocates. These Nussbaumian guardians are, to a certain extent, a practical solution to a problem arising from theory. Liberal rights, although theoretically universal, are functionally beneficial mainly to those who can stand up for themselves. This is an easily amendable problem when the question of rights and duties occurs between adult and rational human beings. But when rights and duties occurring between humans and animals are questioned, the asymmetry develops

to problematic proportions. Thus, a neutral state must, by appointing human advocates, function as the voices of animals. This point leads to the last necessary feature of any liberal animal rights theory: it must be accompanied by a non-individual rights approach, such as common justice, reflecting the connectedness of communities – and making the rights of the community members a public matter and the duties towards them a state requirement. Thus, liberal justice and common justice are not mutually exclusive. Common justice – or solidarity – merely illustrates that liberal rights are not all there is to say on the subject of animal rights.

### **To Conclude – on the Animal-Human Community**

The Nordic welfare state, and its emphasis on solidarity and equality of results, provides a better foundation for animal rights than more liberal political philosophies. But why even focus on farm and working animals and the possibilities of rights? Would any substantial rights for these animals not immediately lead to the abolition of animal agriculture?

There are two reasons why the rights theory proposed in this article will not necessarily lead to the abandonment of animal agriculture and working animals. The first is connected to the theory of common justice and solidarity, the foundations of the Nordic welfare state. Solidarity rests upon reciprocal obligation enacted through the state, and in this view animals can be obliged – as any other citizen with the ability to do so – to contribute to society in general and the welfare of the community. The concept of common justice animal rights does not necessarily, like that of Regan's liberal negative rights, aim at preventing the use of animals. The solidarity concept, and that of common justice (citizen rights and citizen duties) does not

rule out the use of animals for humans' (or for other animals') sake. Indeed, one could quite possibly defend working animals, companion animals and certain forms of animal agriculture as paternalistically helping animals to fulfill their obligations to the society of which they are part. This could be the "gentle usage to these creatures" identified by Hume (2006, 25). The citizen duties are, in principle, not exclusive to humans – so, although the killing of young animals constitute a problem, farm animal uses such as egg and milk production could, in downscaled and radically altered versions, be justified under a paternalistic common justice. The exclusion of animals as contributors to our common human-animal society could, in effect, be considered a denial of true citizenship (Kymlicka and Donaldson 2011, 137).

The second reason is of a more practical nature. How we perceive and understand animals correlates directly to our positive or negative attitudes and behavior towards them (Harfeld 2010). Attitudes and their corresponding behavior are not fixed entities and can change, reflecting new beliefs and opinions (Knight et al. 2010). Such changes, seen not individually but on a societal level, are the development of what Rollin calls "Ethics<sub>1</sub>" – i.e. "the set of beliefs that society, individuals, or subgroups of society hold about good and bad, right and wrong, justice and injustice, fairness and unfairness" (Rollin 2006, 31). Changing these beliefs is the key to changing the lives of animals and increasing animal welfare among animals in our society. Thus, an animal rights approach is not only about arguing the reasonableness of rights and possibly effectuating these through laws. It is about creating changes in culture through changes in the public's standing on a certain issue. I perceive the philosophical and public debate on animal rights, as well as the effectuated animal rights and welfare legislation, as always

being subject to cultural morphology. Changing the moral psychology of society in this manner is perhaps the single most important factor in creating an animal welfare state.

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