

LICENSE

TO

A moral argument for
the right for animals
not to be killed

LIVE

Abstract

Animals play a significant role in people's lives. As pets, but also as a source for food, clothes, education, pleasure and research. This thesis investigates whether it is possible, and on which grounds, to grant animals the right not to be killed. In order to find an answer, the field of deontological ethics has been researched. The act of killing itself is wrong, since for this act human beings are used as instruments. In the theories of Immanuel Kant and John Rawls animals are excluded and the rights' theory of Tom Regan does not give a definite answer. That is why this thesis concludes with Martha Nussbaum's application of the capabilities approach on animals. In its concluding chapter this thesis states that it is possible to grant animals the right not to be killed, but not because they have certain (moral) abilities or complex emotions, but because life has value itself and should therefore be protected out of compassion, etiquette and respect.

Keywords: animal rights, animal ethics, killing, value of life

Preface

“Man is the only creature that consumes without producing. He does not give milk, he does not lay eggs, he is too weak to pull the plough, he cannot run fast enough to catch rabbits. Yet he is lord of all the animals.”

Excerpt From: George Orwell, Animal Farm, 1956

It was the sight of hundreds of pigs being killed, by throwing them in the back of a truck because they had the pig flu that made me decide to become a vegetarian. Seeing the ease with which these screaming animals were being killed, was extremely hard for me to watch and understand as a child. When I was watching these pigs I could not see any difference between these animals and the dog we took such good care of at home. They both had ears, eyes, four legs and the ability to communicate and express that they felt pain or joy. Both animals had a mouth so they could eat and they seemed to fight for their lives when in danger. I made my decision to never eat meat again because if I could never eat my dog, why would I eat a pig?

As a nine-year-old girl living in a small village called Angeren that is actually known because of its pig farms (even the town statue of Angeren is a pig), I had a hard time defending my choice. Even though my motivation was logically sound to myself, I did not want other creatures to be killed in order for me to eat meat, the years after I became a vegetarian and eventually vegan were not easy. People would start heated discussions every time my veganism came up. I was not only defending animals by not eating them, I had to justify my choices and myself as well.

The interest in this subject is not only personal: today's society *seems* to care more than ever about the lives of animals as well. In July 2015 there was a big uproar when an American dentist, Walter Palmer, killed Cecil the lion for sport. Cecil was a celebrity at Hwange National Park in Zimbabwe and

attracted many tourists. The locals loved him and by killing him, Palmer angered many (Tran, 2015). By use of social media, a large number of people expressed their disapproval, while the majority of these people probably would not worry about the death of other animals such as cows or pigs, in order for them to be able to eat meat. Due to all the commotion, Walter Palmer had to close his dental clinic, received threats and his vacation home was vandalized. People placed pig's feet around his house (Tran & Waugh, 2015).

Gary Francione, an American philosopher and an advocate of the 'abolist approach', considers this global outcry over the death of Cecil the lion 'moral schizophrenia'. He states on his website that there is no difference between the lion or all the other animals that are killed for food (Francione, 2015). It is interesting how people worry about the life of a lion, in specific Cecil, but have no problem with using pig parts to make a statement in regards to the death of this particular lion.

Consider it a child's logics, but as a child, to me killing pigs did not make any sense. The astonishment I felt back then, because of the ease with which these animals were killed, is a feeling that still comes up very often today and it is the base of my *personal reason* to decide on doing further research on the question whether it is morally justifiable to kill animals. Or:

Is it possible, and on which grounds, to grant animals a right not to be killed?

Kelly Janssen, August 2016

Summary

Nowadays animals do not have rights. This thesis focuses on the question if and on which ground animals can have a right not to be killed. To find an answer, the field of deontological ethics is examined.

First, the work of Immanuel Kant has been researched. He is against killing human beings, since that would mean human beings are treated as an instrument rather than as an end in themselves. He probably would have opposed assisted suicide, since that would also mean that human beings are used as an instrument to end their own lives. The death penalty however, is a case in which he makes an exception. The killing of animals is not addressed, because animals are no moral agents that are autonomous and have a will. Therefore, they cannot be included in the realm of justice.

This is a perspective shared by John Rawls. Rawls also believes that justice can only be owed to agents that understand justice. He does not believe animals can have rights. But he does state that human beings have the *duty* to treat them with compassion. Both authors do not include animals in their theories.

Tom Regan could have offered the great alternative. He believes that animals should be granted rights because they are subjects-of-a-life. This means that they have a life that is valuable and that they are able to have interests that make them ideal candidates for having rights. However, when his notion of inherent value is challenged by the 'life boat challenge', this concept is found wanting. When it comes to killing an animal or a human being in a life-threatening situation, according to Regan, the human being survives.

Martha Nussbaum is more extreme with her capabilities approach in which she describes ten core entitlements to which animals should be able to live up to. Her argument is that animals are entities that should be able to live flourishing lives and when human beings intervene, they cause harm to an animal. She goes even further: she wants human beings to protect animals, even when an animal is under attack from another animal. Nussbaum definitely comes close to an answer on the question whether a right for animals is

possible, even though the application in the political realm is extremely difficult.

For Mik

Compassion is the greatest gift one can have.

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PART I

About the debate, rights and killing

When people start exploring the field of animal ethics, it is very likely Peter Singer is one of the first authors they come by. However, when it comes to *rights* for animals, one should look in a whole different direction. PART I reflects on the debate on animal ethics and briefly describes the difference between animal rights and animal welfare. Besides these topics, this part addresses the question whether it is morally wrong to kill at all. Before granting someone a right, and thus impose duties on another, it is important to know precisely why some act is considered to be wrong. Consequently, the notion of rights and having a right is discussed, while paying significant attention to the animal as a political being and the problems that come along when granting animals rights

Chapter 1:

Introduction

1.1 Why animal rights?

When it comes to animals, it appears that humans have a license to kill. In the Netherlands alone, over 550 million animals are killed annually for no other reason than the future consumption of their meat. This number increases when we add animals that, for example, are killed for their fur or animals that are given a lethal injection because of an illness. Even though a very precise number cannot be given, it is clear that the killing of animals happens on a massive scale.

Even though the majority of today's society accepts these killings, it does seem like a transition is going on. Christine Teunissen, member of the Party for the Animals and the Dutch Senate puts it this way: "So much has changed; meat eaters feel the need to defend themselves nowadays. Vegetarians do not have to do that anymore" (Teunissen as cited in Oomen, 2015).

Besides this, the range of meat alternatives in supermarkets is constantly expanding and also in restaurants the possibilities to choose meat free alternatives are vastly growing. Recently, one of the three largest meat processing companies in the Netherlands, Zwanenberg Food, decided to start producing meat alternatives as a result of the decrease in demand for meat in the Netherlands and Western-Europe. The company believes that, in order to maintain a profitable business in the long run, it should produce meat alternatives parallel to their current meat based product range, because it does not expect that the demand for meat will be rising anytime soon again (De Vré, 2015).

Vegetarians and vegans on the rise

Outside the Netherlands people also care more about animal welfare. The animals in New Zealand for example recently gained the status of 'sentient beings', which means that people acknowledge that animals are able to experience emotions such as pain and distress. By acknowledging this, people are required to act while keeping the welfare of

animals in mind (McIntyre, 2015).

In the United States approximately five per cent of the population is strictly vegetarian, while twenty to thirty per cent lean towards a vegetarian diet. The difference between these two groups is that the strict vegetarians completely banned eating meat products and that the other group is interested in the vegetarian diet while still eating meat occasionally.

Reasons to go vegetarian vary: one may be concerned by climate change when others mostly decide on a vegetarian diet to benefit their health. However, many people take on a vegetarian lifestyle because they get concerned about the way animals are treated in the meat industry (Pojman, 2012, 8-9). In the Netherlands the number of vegetarians in percentages is lower than in the United States: according to the Dutch institution 'Sociaal en Cultureel Planbureau' (Schyns, 2016) between 3 and 4,5 percent of the population is a vegetarian.

The number of vegans, who do not eat or wear any animal products at all, is increasing. Twenty years ago there were only 16.000 (0.01 percent) vegans in the Netherlands. Nowadays the number of Dutch vegans is increasing rapidly and is estimated to be between 50.000 and 70.000 (0.3 and 0.4 percent) (SCP, 2016).

And not only there is an increasing number of vegetarians and vegans: the number of people who call themselves 'flexanists' is increasing at an even faster rate than the number of vegans. These are people who occasionally but consciously eat plant-based food instead of food that has ingredients derived from animals. (Steltenpool as cited in Van Ditmars, 2016). Two reasons for this are; people are more aware of the effects that food production has on the 'environment, animal welfare and health' and it is easier to replace animal products in your daily diet (Seidell as cited in Van Ditmars, 2016). It is not clear how many 'flexanists' there are in the Netherlands exactly, because this is a very new trend in society that has not been researched elaborately yet.

Perception of animals

Science has evolved and during the last decennia scientists, in the field of biology

for instance, discovered that somehow animals have advanced cognitions such as regret and shame. It has also been proven that animals also have the ability to learn from each other's mistakes. Because of the Internet, people are confronted with these scientific discoveries more often, by seeing videos of animals doing innovating things we never expected them to be able to do (De Waal, 2016, 12). This raises questions in society whether the image that we have had of animals so far, has been correct. Subsequently; are we treating our fellow earthlings in a correct manner?

The increase in attention for animals' abilities, welfare and/or rights is not a trend that can only be seen in our society. As will become clearer in section 1.2, this development can be found in the field of political science and philosophy as well. A question many philosophers deal with is whether animals can be granted moral rights at all. Many find this doubtful because animals do not have the capability to speak and to reason like human beings.

The American deontological philosopher Tom Regan for example, focuses on this question, whether animals can be entitled to have rights, in his book *The Case for Animal Rights*, which received considerable response. Regan has also written a book with colleague philosopher Carl Cohen called *The Animal Rights Debate*, in which they discuss completely opposing views on how animals should be treated in today's society. In this book it becomes evidently clear that Tom Regan can be placed amongst the rightists. Cohen criticizes him and can be placed among the welfarists since he aspires a more protectionist perspective that has more in common with the utilitarian view.

The question

In this thesis I want take matters slightly further. Not only will I investigate whether it is possible to grant animals moral rights at all, the focus will lie on one particular right. This leads to the following question: **is it possible, and on which grounds, to grant animals the right not to be killed?**

Of course, as is the case with humans' right to life as well, this does not mean that people can mistreat or inflict pain upon an animal and stop when the animal is almost

dead. It is a right that merely focuses on the use of animals, speaking in Kantian terms, as a mean and not as an end. Many animals are brought into this world to serve human beings (as a source for meat or clothing and for educational purposes or research). If this right was to exist, this would mean that a lot of animals would not be brought into life at all, since people would not be able use them. Therefore, people would not assist animals in their reproduction.

1.2 The debate on animal rights

First of all, before researching the main question, it is necessary to give an overview of the political debate on animal ethics and how it evolved to the point it is today. Up until now animals are referred to by many different terms, such as ‘natural slaves, non-rational beings, linguistically deficient, not moral agents, soulless and devoid of the divine image’ (Linzey, 2009, 11-12). It does not matter which exact definition or status animals are given, it is clear that the concepts used to define animals often emphasize on how much animals differ from human beings. This is also the result of a long tradition within philosophy in which classical thinkers focused on the differences rather than acknowledging some similarities.

Ancient times

The manner in which we treat animals is not a question that arose recently, even though scientists only just discovered that animals are able to feel complex emotions; it is a topic that has occupied philosophers for centuries. In *De Abstantia* (263 AD) for example, Porphyry already advocated that a vegetarian diet is, at least for philosophers, the best diet and that animals should not be killed. He believed, following the footsteps of Theophrastus, that animals could reason in their own way. This was not the only thing withholding him from killing animals. He believed that they were conscious and able to experience pain and terror (Taylor, 2009, 37).

“But with respect to other animals who do not at all act unjustly, and are not naturally impelled to injure us, it is certainly unjust to destroy and murder them, no

otherwise than it would be to slay men who are not iniquitous. And this seems to evince that the justice between us and other animals does not arise from some of them being naturally noxious and malefic, but others not, as is also the case with respect to men.” (Porphyry, De Abstantia, bk 2.22).

Porphyry is not the only philosopher from those times that occupied himself with the question of what animals exactly are and how they should be treated. Centuries before Porphyry, there was Aristotle, who studied animals with precision and categorized them, believing that there was a hierarchy to be found in nature. Animals existed for the good of human beings, where plants merely existed as useable objects for humans and animals.

Aristotle believed that every living being has a soul; this however does not mean that he was convinced that every living being is capable to be conscious. The philosopher meant that everything that lives has the ability to grow towards its own ‘telos’. Plants live for nutrition, to grow and to reproduce. Animals have some sort of perception of sense and are therefore different from plants. Human beings distinguish themselves from animals because they have the ability to reason (Taylor, 2009, 35-36). This capability offers human beings to climb on top of the pyramid and be superior to all other living organisms. According to Aristotle:

*“For some animals bring forth, together with their offspring, so much food as will last until they are able to supply themselves; of this the vermiparous or oviparous animals are an instance; and the viviparous animals have up to a certain time a supply of food for their young in themselves, which is called milk. In like manner we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all, at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete, and nothing in vain, the inference must be that **she has made all animals for the sake of man.**” (Aristotle, 1984, Politics, bk 1.)*

Note that in his works, Aristotle actually already stated that animals are man's property, as is still the case today. He did not believe that animals were born to live by their own accord, even though he stated that everything that is alive has a *telos*.

Ensouled and unensouled beings

Years later, during the seventeenth century Descartes had a whole different view on what animals essentially are. He believed that animals could be considered machines that lack 'sentience' and have no mind or consciousness. This does not mean that he was convinced that animals could not experience any sensation at all. He admitted that animals were familiar with hunger, pain, anger and being joyful, but he probably did not categorize these feelings and experiences under mental states: he rather believed that this was just animal behavior (Taylor, 2009, 39).

His way of thinking is dualistic which means he believed the body and the mind act independently from one another. Animals, as believed by Descartes, do not have a mind and therefore also lack a soul, since the soul is connected to the mind. It was not only the non-existence of a soul that distinguished animals of human beings, but also the lack of abilities to speak and to be morally responsible. Descartes categorized creatures into ensouled and unensouled beings (Hatfield, 2014; Armstrong & Botzler, 2003, 2-3).

British historian Keith Thomas of the University of Oxford strongly believes that Descartes' arguments had some power to it, namely that it rationalized the manner people treated animals. It confirmed the feeling the majority had, that there was nothing wrong with their behavior towards animals, since the qualitative difference between human beings and animals was proven (Armstrong & Botzler, 2003, 3).

Can they suffer?

Most of the philosophers, as stated before, focus on the differences between animals and human beings, mainly based on the idea that non-humans lack the ability to reason. It was philosopher Jeremy Bentham who took a different perspective on animals.

As a utilitarian he focused on the pain and pleasure a person could experience, rather than on the ability to reason (Taylor, 2009, 49).

Bentham does not focus on humans only. In his book *Introduction to the Principles of Morals and Legislation* there is a footnote that has been very important to people who engage in both welfare and rights movements. In this footnote he states that the number of legs or the “villosity of the skin” is not a good enough reason to reign over animals, in the same way “the French already discovered that the blackness of the skin is no reason why human being should be abandoned without redress to the caprice of the tormentor”. He ends the footnote with the infamous words, used by many animal rightists and welfarists: ‘The question is not, Can they reason? nor, Can they talk? but, Can they suffer?’ (Bentham, 1823, 311).

Bentham, by using these words, built the fundamentals for the first animal protection movement; the Royal Society for the Prevention of Cruelty against Animals (RSPCA) that was founded in 1824. This was also because earlier German and British courts ruled that animals should not be treated unnecessarily cruel: not because animals were entitled to have rights, but it was a great sign of disrespect towards God. People that were members of RSPCA were engaged with investigating in which ways the lives of animals could be better by *reducing* their pain (Armstrong & Botzler, 2003, 5; Wissenburg, 2014, 3).

It is not until 1970 that the debate on animal rights took significant flight when Peter Singer’s *Animal Liberation* was published. Singer did research on how animals are able to live their lives, and how human beings should change their approach towards animals (Singer, 1970). He is a good example of a philosopher who follows the utilitarian perspective that is not occupied with the concept of rights.

Speciesism

Singer’s method can be considered the welfarist approach, since he focuses on the improvement of the lives of animals, not the abolition of the use of animals per se. However, Singer is responsible popularizing the term ‘speciesism’. Speciesism is,

according to Peter Singer, ‘a prejudice or attitude of bias in favor of the interests of one’s own species and against those of members of other species’ (2009, 6). Both the welfarist and the rightists approach are well known with the notion of speciesism and often use this term to strengthen their arguments.

Opposing the welfarist approach is Tom Regan, who pleads for granting animals rights because the focus should not be on the differences between animals and human beings, but on their similarities. He states that animals are, as humans, ‘subjects-of-a-life’. Both man and animals experience pain and pleasure, which influence the quality of life (Gruen, 2014). In this thesis Regan plays a vast role in answering the research question. He does not only underline the rightists approach, but his arguments are also based on deontological ethics.

1.3 Animal welfare versus animal rights

In order to understand the debate, it is important to recognize that there are essentially two camps that fight for better lives for animals. One of them is occupied with the idea of animal *welfare* and the other wants to grant animal *rights*¹. People who are in the ‘welfarist-camp’ fight against animal cruelty and in favor of laws that prevent cruel treatment towards animals. According to welfarists, it can be acceptable for animals to be killed for meat consumption or experimented on for scientific reasons, as long as this happens ‘humanely’. This is not the case for animal rights advocates, who plead for human beings to not use animals in any way at all (Sunstein & Nussbaum, 2004, 4-5).

The dichotomy between animal welfare and animal rights can also be easily described by the following statement by American philosopher Tom Regan, who is a

¹ The rights movements are also known as the abolitionist movements. In particular philosopher Gary L. Francione uses the terms of abolition and he introduces the ‘abolitionist approach’. He believes that the rights movement “requires the abolition of animal use” (Garner & Francione, 2010, x). But, the abolition family can be divided in two groups as well: the advocates that aspire animal liberation and the ones that are believers of animal rights. The two camps are often unhappy with another: the camp of animal rights advocate that ‘animals have rights as humans have rights and that the experimentation on animals is morally wrong because it violates those rights’ while the liberation-front claims ‘that the animal movement (although animals may have no rights in the strict sense) the evils of experimentation on them outweighs all the goods that it may do’ (Cohen & Regan, 2001, 7). Not all abolitionists are rightists, but almost all rightists can be considered abolitionists.

proponent of the rights based theories: 'It is not just refinement or reduction [of suffering] that is called for, not just larger, cleaner cages, not just more generous use of anesthetic or the elimination of multiple surgery, not just tidying up the system. It is complete replacement' (1986).

Thus: in animal rights theories it is not about making life better, it is about banning all forms of using animals for our food, clothing, entertainment etc. According to Regan the best people can do towards animals, is refrain from using them. Gary Francione puts it differently. When he refers to the rights movement, he focuses on one right in particular, namely "the right not to be treated as property" (Garner & Francione, 2010, 1).

This right entails the following: "we (1) stop our institutionalized exploitation of animals; (2) cease bringing domesticated nonhumans into existence; and (3) stop killing non-domesticated animals and destroying their habitat" (Garner and Francione, 2010, 1). If this right would actually exist, the right that is being researched in this thesis would be viable as well.

The mouse

The idea behind animal welfare is merely about improving the lives of animals, not refraining from using them. According to Gary Francione the animal welfare approach, is a manner in which animals do not have the same value as human beings and that it is defensible to use animals, as long as this happens in a humane fashion. (Garner & Francione, 2010, 3).

The problem with animal welfare movements, who want to *reduce* animal suffering, can be illustrated by the following example Francione uses. In this example he mentions an experiment in which a mouse is exposed to fire for five minutes. The welfare movements would think that this experiment is too cruel and decide to reach a compromise: the mouse will be burned for only four minutes and forty-five seconds (Francione, 2003, 22). Can this really be considered as an improvement of animal welfare? The problem here, according to Francione, is the focus on reducing suffering instead of advocating for the best position for animals, namely not to be used (2003, 23).

Moral schizophrenia

Francione believes that ‘the most ardent defenders of institutionalized animal exploitation themselves endorse animal welfare’ (1996, 1) and those people are the ones who are looking to regulate the exploitation of animals. This is the opposite of what the rightists believe, which is a complete elimination of animal exploitation. Together with Robert Garner, professor of political theory at the University of Leicester, Francione wrote *The Animal Rights Debate: Abolition or Regulation?* In this book, the authors speak of moral schizophrenia: “... we say one thing, that animals matter and are not just things, and we do another, treating animals as though they were things that did not matter at all. The traditional animal welfare approach has failed” (Garner & Francione, 2010, x).

From thing to person

Another important aspect of the animal rights movement is that it aspires to make a shift from seeing an animal as a ‘thing’, a property, to looking at them from a different angle and seeing them as an individual, a living being. Francione mentions two reasons for this shift. First, there is no characteristic that is owned by human beings that no other animal has as well. People who have no problem with the use of animals often refer to *qualitative* differences, but there are some animals that possess the same characteristics as human beings and there are humans who do not possess a certain trait that some animals do have. Secondly, according to Francione, to say that animals are morally irrelevant based on the fact that they are from different species is unacceptable. That would be the same as excluding people from a moral community because of their race, sex or sexual orientation (2003, 9).

This thesis’ main question, whether it is possible to grant animals a right not to be killed, is about *rights* rather than *welfare*. When it comes to the act of killing, animals cannot be killed ‘a little less’ to improve their wellbeing, thus it makes no sense to choose the welfarist approach when attempting to protect a certain ‘right to life’. This position, that animals have a right not to be killed, is only possible when it is based on the *prima*

facie² human right not to be killed.

To even come close to an answer, the focus will lie on philosophers within the field of deontological ethics and not on the other two fields, virtue ethics or consequential ethics. This decision has been made because the deontological field fits the research question better, since it offers normative theories. In consequentialism for example, an act is either right or wrong, whereas in the case of killing animals it might be necessary to look 'beyond one's moral duty' since there might be exceptions in which it is acceptable to kill animals (Alexander, 2012).

Thus, the research question in this thesis is:

Is it possible, and on which grounds, to give animals the right not to be killed?

In the following chapter, the focus lies on what a right precisely is. Before granting someone something, it should be clear what it is that is granted. The answer lies in a short overview of how philosophers describe what it is to have a right, and finally a deontic logic description of a right for animals not to be killed will be given.

In chapter three the central questions are whether and why killing in general is (morally) wrong and why and on which ground people have the right to life. The deontological ethics of Immanuel Kant are important, since he has a very strong opinion on the matter of killing, suicide and the death penalty. In the fourth chapter the differences and similarities between humans and animals are examined, with the help of Immanuel Kant and John Rawls. This chapter also focuses on the position animals have in the realm of justice. Foundation for the fifth chapter is Tom Regan's theory and the criticism that followed his book *The Case for Animal Rights*. Subsequently, in chapter 6, Martha Nussbaum offers an alternative on all theories discussed, by introducing the capabilities approach. This chapter is followed by the conclusion, which holds a definitive answer to our research question, and recommendations on further research will be made.

² With prima facie right, one means that "(1) there are circumstances in which it is permissible to override it but (2) anyone who would override it must justify doing so by appeal to valid moral principles that can be shown to override this right in a given case" (Regan, 2004, 328)

Chapter 2

What is a right?

2.1 Different views on what it is to have a right

This thesis elaborates on the question whether animals should and can have rights, specifically the negative right not to be killed. However, before answering this question, it is important to have a clear idea of what a right, or having a right, actually entails. The United Nations has summarized the basic rights humans have in The Universal Declaration of Human Rights (founded in 1948). This pamphlet exists of articles in which the basic rights of every human being are described, no matter what characteristics someone might have. In the first three articles, some important rights are already mentioned. It states that everyone should ‘act in spirit of brotherhood’ since all people are born with the ability to reason, and all people have a conscience. Article 3 states that ‘everyone has the right to life, liberty and security of person’.

These rights are protected by law and can be regarded as *legal rights*. However, the question is whether these legal rights are bound to moral rights, such as the right to life or the right to liberty. An absolute answer is hard to find, because many philosophers only scratch the surface regarding the question whether killing animals is justifiable or have issues with the idea of moral rights. Bentham for example, who believed that ‘the idea of moral rights was conceptual nonsense’ (Campbell, 2013).

A claim to something

According to the definition used by American philosopher Angus Taylor in his book *Animal Ethics: An Overview of the Philosophical Debate* a right is “a claim to something that is recognized as legitimate on the basis of some moral or legal principles. A right may be thought of as a protective shield around an individual’ (Taylor, 2009, 21-22). This definition is in agreement with what philosophers have stated throughout history . John Stuart Mill claimed the following: ‘When we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of

law, or by that of education and opinion” (Mill, 2003, 226).

2.2 Basic and non-basic rights

Francione refers to professor Henry Shue, who makes a distinction between ‘basic’ rights and ‘non-basic’ rights. Even though he only speaks of human rights and not animal rights, it is interesting to mention his division between basic and non-basic rights. A basic right is ‘any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself’ (Shue, as cited in Francione, 2003, 7). Therefore; as long as the basic right, for example the right to life, stays intact, a non-basic right can be violated if necessary. When a basic right is undermined, other rights have no value at all anymore. Therefore in order for rights to exist, the basic right should be present (Francione, 2003, 7).

There are few basic rights and one of them is specifically interesting in light of this thesis, one that also receives the most attention in Francione’s work, namely the right to physical security: “the right not to be subjected to murder, torture, mayhem, rape or assault” (Shue as cited in Francione, 2003, 8). This is a negative right, which means that the person that has this right does not need to act on it, but the ones around him do.

Since animals are no ‘moral agents’ that are aware that they might have rights – this will be explained in chapter 4 - this negative basic right is interesting. It means that if people are going to grant animals rights, they should at least be entitled to the right to physical security, since it is a basic right (Francione, 2003, 7). Without this basic right non-basic rights do not exist or have no meaning. There is a hierarchy in rights.

2.3 The deontic logic approach

John Stuart Mill however, does not fit the deontologist approach at all. An approach that makes more sense is the deontic logic one. Political theorist Marcel Wissenburg explained what it is to have a right in his dissertation *Justice from a distance: An Outline of a Liberal Theory of Social Justice*. His explanation of a right in terms of logic is that it is the ‘undivided authority to decide (...), or the full control over, whether or not

a specific X will be used in a specific way Y to a specific purpose Z' (Wissenburg, 1994, 190). X refers to a set of objects, Y to a set of means and Z to the set of ends. He explains that a right exists of, how he calls it, right-molecules: which is the 'basic material' of a right. Explained in formal terms a r-molecule is:

- '(1) an element (X_a, Y_a, Z_a) from the set $X \times Y \times Z$;
- (2) at one particular moment in time and on one particular place' (Wissenburg, 1994, 190).

There is no need to be specific when it comes to determining r-molecules since the number of r-molecules is infinite due to the infinity of time and space. Also, due to time passing new r-molecules start to exist (Wissenburg, 1994, 191).

A universal right for an animal not to be killed would be written as:

$$\text{Animal: } C (X_{1-n}, Y_{1-m}, Z_{1-p}, \text{life, world})$$

The C refers to the conditions that should be there. In this case you need an animal that is alive (X), this animal should have access to the means to stay alive, such as food, oxygen and water when these means are available³ (Y), which brings us to the end: not to be killed (Z). The time is of course the moment of living and the place is the world, since it is about a universal right that counts for all animals around the globe.

However, since there are many r-molecules and manners to describe a right, in the real world the notion of a perfect right does not exist. In the case of the life of an animal, the right for an animal not to be killed seems infeasible. What if an animal attacks me and I have to defend myself or I kill a rabbit while driving a vehicle? Wissenburg rather speaks of *conditional* rights than *absolute* ones, since there are exceptions: killing an animal in self-defense for example or ending the lives of animals that are clearly suffering (even

³ The intention of X, access to the means to stay alive, is not that human beings should take care of animals and avoid death at all cost. X wants to make sure that these 'means' such as water, food and oxygen are available to them, and people do not deliberately keep these conditions away from animals (a duty not to withhold primary goods). X are the conditions to reach Z. Killing refers to dying as a result of intentional behavior.

though it is sometimes hard to decide whether a life is still worth living, but this is a different debate).

2.4 Animals and rights

It might seem unnatural to ask the question whether it is even possible for animals to have rights. Intuitively many people believe in the animal and humans division and that the one group (humans) has rights whereas the others (animals) are here to serve or are 'just there' and that human beings have no duties towards them.

Briefly, some of the main critics on animal rights movements will be addressed before going any further. It is good to introduce this knowledge beforehand since it makes it easier to recognize weak points in certain theories when they are addressed later and to see whether animals fit into these theories or not. This short preview on whether rights for animals are realistic gives a little insight in the complexity of granting these rights as well.

Why animal rights?

In 2011 the book *Zoopolis* by Will Kymlicka and Sue Donaldson was published, in which they argue that animals can be political and should be granted rights. They claim that different types of animals are engaged in relationships with human beings and that subsequently human beings have different obligations towards different types of animals. Donaldson and Kymlicka believe that all animals should have inviolable, basic rights. The authors explain the essentials of such a right and why it could be (and as far as the authors are concerned 'should be') plausible by the following example:

Donaldson and Kymlicka believe that the majority of people will find the death of a baboon less tragic than the death of a human being. Subsequently; killing a baboon is not as evil as murdering a human being. However, the authors explain why this way of thinking (and feeling) is out-of-place. There are also different kinds of people, but that does not mean that the death of one person is worse than the death of someone else. Intuitively a lot of people would feel worse about the death of someone young than the

death of an elderly person. But because people feel this way, does not make it tolerable to kill older people in order to harvest their organs and let the younger ones live. The majority of people would not find that in the least bit acceptable. And that tourists do not have the same right as the citizens living in a particular country, does not mean those citizens can kill those tourists or treat them however they want (Donaldson & Kymlicka, 2011, 21-22).

The question remains: why can animals have rights? Even though this will be discussed in chapter 5 and 6 where Tom Regan and Nussbaum's theories are described, it is useful to get an idea of the direction the rights movements are going. Animal rights movements say that all conscious and sentient beings, animals included, should be granted protective rights. Conscious and sentient beings are, according to the movement, "selves" which means that they have a "distinctive subjective experience of their own lives and of the world which demands a specific kind of protection in the form of inviolable rights" (Donaldson & Kymlicka, 2011, 24). In other words, animals have selfhood⁴ and should be seen as persons and consequently, should be granted inviolable rights (Donaldson & Kymlicka, 2011, 24-27).

Locke as an inspiration

Nowadays, animals have no rights at all. This is because animals are still considered to be property/things, instead of individuals. The following idea of a right by John Locke was inspiring for rightists:

'Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offend, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another' (Locke, 1986, 10).

⁴ A more elaborate description of why animals should have rights, according to the animal rights movements, will follow in this thesis (chapter 5), as well as the notion of selfhood (chapter 4).

Everyone has, in the state of Nature, the right to punish the ‘transgressors’ of this law, since it is important to keep the natural law ‘in vain’, otherwise it would be worthless (Locke, 10-11, 1986). The concepts of natural law and natural rights are the most important ones in Locke’s philosophy. In natural law the focus lies on the duties one has where natural rights is based on privileges or claims an individual is entitled to. According to Locke the fundamental rights of a human being are the right to life, liberty and property. It is not acceptable that human beings destroy each other or consider another person to be a resource (Locke, 1986; Taylor, 2009, 45). As will be clear in chapter 4, this is what Kant states as well; he describes this perspective as that human beings are ends-in-themselves and can never be used as a mean.

Tom Regan gets much criticism on his argument in his book *The Case for Animals Rights* in which he attempts to extend Locke’s rights (Machan, 1998, 105). The ‘problem’ however with rights, according to Tibor Machan, who is an advocate against animal rights, is that a right is an arrangement between different parties who mostly accept and value each other’s rights. Since animals are not able to enter such a treaty between entities, they cannot be subjected to rights (Machan, 1998, 105).

The problem here is not due to animals and their lack of moral capacities. Rights are, eventually, a social construction, constructed by human beings for the benefit of human beings. What is made, can be changed. That animals do not meet the condition of being morally capable does not mean animals should be scrutinized forcefully, hoping that something can be found that is similar to moral capacity. It could be useful to examine the condition and reconsider whether it is necessary to have moral capabilities in order to be granted a right.

Respecting hierarchy

Animals lacking moral capacity is also often the base for criticism when animal rights are discussed. As British philosopher Angus Taylor mentions, having a right, means a person is able to stand up for one’s self. Animals are not able to do so, at least not in the

sense that they understand ‘moral concepts’. Physically, animals are able to defend themselves, but on the moral level they lack this ability. That is why, according to critics, animals cannot be granted moral rights and therefore cannot be seen as moral agents.

As mentioned before, Machan is a strong advocate against animal rights, but not because he believes animals should be treated badly. He just believes that animals do not belong in the realm of justice: “It is a matter of ethics and not of the laws of human societies that animals ought to be treated compassionately and kindly by people” (Machan, 2012). He states that when animals are granted rights, they should be accountable for killing each other as well. Machan does not believe that there is harm in using animals by people for their own good, and says it is “justified” since people are of “greater importance”. He thinks it is wrong to undermine nature’s hierarchy (Machan, 2012).

Machan makes a fair point: since animals do not have the ability to be moral agents, (words used by Nozick) animals do not go on trial, and cannot be punished for the mistakes they are making or are not able to start a political revolution (1998, 106-107) (apart from the pigs in George Orwell’s famous book *Animal Farm* of course). But are all creatures who are considered to be human beings capable of performing these acts? Is someone who is born handicapped a human being? Did someone who started off as a healthy person and got brain damage due to a disease or accident transform from human to non-human? And, can we treat them the same way we treat animals?

When looking at animals and human beings we tend to focus on the differences, on the fact that humans have the ability to reason, and animals do not and therefore, animals should not be granted rights. However, looking at the similarities, we do find some overarching characteristics that can be found in both human beings and animals. Both can experience pain and pleasure, and both have an interest to survive; all humans and nonhumans have surviving mechanisms. All animals have *desires*, which means that they have preferences and want things, as food and shelter. When there are more choices, they prefer one option above the other (DeGrazia, 2009, 205-207)

Politics of sympathy

According to Manuel Arias Maldonado, a scholar of the University of Malaga, animals, whether we want it or not, belong to “our circle of moral consideration” (2014, 20). He refers to a quote from Iris Radisch that “In our living together with animals it is impossible to do everything right. But that does not give us the right to do everything wrong” (Radisch as cited in Arias Maldonado, 2014, 19).

Arias Maldonado does believe that animals deserve moral consideration, but he immediately falls into the trap of speciesism as he pleads that not *all* animals can be fitted in the moral domain. He distinguishes pets, charismatic animals and big mammals with the other animals and states that it is “politically useful” to make this division (Arias Maldonado, 2014, 20). Still, he is convinced that animals should be able to live better lives, but without people giving up their own welfare. A slow transition, based on new knowledge, technology and economic wealth can lead to a more harmonious relationship between animals and nonhumans. He illustrates this transition with the example of scientists who use food modification to gain meat-producing cells from living cows and use these to make meat, without killing the cow (28-29).

In this way, when alternatives are offered, the debate whether animals should have rights can be avoided since people do not need animals anymore. It is undoubtedly an original manner to approach the case of animal rights, but it sends the problem right into the future. It is true that some new developments can save some animals, this is also the case when using fake animals in medical experiments, but that does not mean that the question if animals should have rights can be forgotten. What about rights for pets or animals that are on the wrong end of a hunter’s rifle?

2.5 Are animals even political?

Not only the question whether animals are entitled to rights raises problems. Also, when animals are indeed granted rights: how are these rights applied in the real world? What makes the animals’ case a political one? Wissenburg writes in his book *Animal Politics and Political Animals* about the politicization of animals. He sums up three

overarching characteristics of the theories on animal ethics that give animal advocacy a “political flavor”, but he states that these are also the “weak spots” in today’s theories (Wissenburg, 2014, 31-33).

First, it is stated that animals are not things, but rather can be seen as individuals who have interests of their own. Saying that animals are unique and individuals makes them “subjects of justice”. Second, it is always black or white i.e. animals are either completely different or completely the same⁵. That sameness is often a foundation for animal advocacy to build up arguments for animal rights based on marginal cases by saying that if a mentally disabled person has a right but no mental capability, a dog should have the same right. In chapter 4, Rawls’ *A Theory of Justice* is discussed and marginal cases will be addressed more elaborately.

Third, the state has a role when it comes to animal rights, since these rights have become “subject of politics”. As Wissenburg puts it: “rights is, after all, distribution, distribution is justice, and justice defines politics” (2014, 33). This means that it is not that people treat animals well out of common decency; it means that when people are indeed cruel, they can be punished by the state.

Weaknesses

These three characteristics are, as mentioned before, also the three big weaknesses the theories have to work with. The individuality of animals is not easy to prove: a creature can only be an individual when it is self-aware, Wissenburg states. Not many animals have shown that they indeed have some resemblance with the abilities of human beings (Wissenburg, 2014, 33). However, it must be noted that knowledge on the subject is expanding on a daily basis. . Animals could have abilities human beings do not have or have not recognized yet. Thus, it is hard to prove that animals are self-aware but it is also hard to prove that they are not.

Mark Bekoff, professor at the University of Colorado observed many animals throughout the years. He is convinced that animals do have certain self-awareness but

⁵ With completely the same it is meant that they are fundamentally the same (Wissenburg, 2015, 33), of course characteristics such as looks etc. differ.

rather focuses on that they have a sense of body-ness. This body-ness is necessary for animals in order to join in social activities. Animals know that something belongs to them: it is *their* tail, *their* urine or *their* friend. “Their sense of mine-ness or body-ness is their sense to self” (Bekoff, 2013).

But, even if animals can be regarded individuals, this does not automatically mean that an ethical treatment follows. For this, animals must be assimilated. However, since they are not able to protect themselves, they need people to handle protection on their behalf. This creates a new problem: people would have to recognize the interests of animals, which consequently means that non-assimilation is necessary (Wissenburg, 2014, 34).

The second issue is that even if animals do have the status of a moral individual, this does not automatically mean that they are legal subjects as well. Wissenburg turns the argument for marginal cases around; these people were not morally subjects, but they were still included in the legal realm. “The two [moral status and legal status] are simply not related” (Wissenburg, 2014, 35).

It is understandable why Wissenburg would state this, since it is proven that marginal cases, comatose, mentally ill, babies, even people who are asleep, are protected by the state. This protection is unconditional for human beings: even when these marginal cases are not morally capable to actively join a society (but most of them are not capable of hurting other persons; this does not go for animals: even a hamster can leave painful bites). Besides this, Wissenburg is convinced that profiling animals as “failed humans” is not necessary, as there is “room in between the legal and political extremes” (2014, 35). The third weakness of political theory for animals lies in the concepts of political theory. According to Wissenburg political theories about animals are often confused with ethics and there are very few authors who address the problem political. Most theories are about why and how animals should be involved in society and how people have duties towards them; they forget about the role the state has (Wissenburg, 2014, 35). And this role is quite important when it comes to political theory.

To incorporate animals to political theory effectively, there are three conditions:

animals should be able to live according to the specie they belong, a “subtler conception of ‘the subject’ compatible with a wider range of possible legal statuses for animals” is needed and more convincing arguments should be built regarding the role of the state according to the fate of animals (Wissenburg, 2014, 40).

New norms

What if animals were able to communicate, and express their wishes: would that mean that people would *have to* respond to their wishes and grant them? In other words: how can morality become normative? Christine Korsgaard, Professor of Philosophy at the Harvard University, found that there are four manners in which morality can become a norm: (1) voluntarism, (2) realism, (3) reflective endorsement and (4) the appeal to autonomy (Korsgaard, 1992, 25)

The first three do not have much in common with the deontological view, which is why the focus is on the last one, the appeal to autonomy. It emphasizes the importance of the autonomy, a concept that can be found in both the theories of Kant and Rawls. They believe that morality can be found in the moral agents’⁶ - humans - own will. Laws, just as in Rawls’ Original Position that will be discussed in chapter 4, are built because agents decide what is justice (Korsgaard, 1992, 25).

This is of course what the Categorical Imperative also includes: acting in a particular way, means that the act can be seen as a law in itself. Hence, if I decide not to steal from someone else, it could be a universal law. As Korsgaard puts it: in Kantian philosophy every impulse a human beings has, should be subjected to “the test of reflection” because then it can be decided whether there is a reason to act that way. Also, in this way one can check if an act is reasonable, because then we can determine if it should be a law to us (Korsgaard, 1992, 76). Probably no one would say that theft is a reasonable act, as no one wants this to happening to him or her. This is the power of autonomy in Kantian terms: people decide to which laws they want to obey, because the law comes from themselves.

⁶ See chapter 5, ‘5.1 The approach of Tom Regan’

Chapter 3:

Can killing be morally justified?

3.1 The concept of killing

In the previous chapter the definition of rights and having a right has been explained. In this chapter the concept of killing will be covered, and in particular why killing is wrong and the idea of 'acceptable deaths'. Since the goal of this thesis is to investigate whether a right to life for animals is ethically defensible, it is important to determine whether it is justifiable to give human beings a right to life, before considering applying this right to animals (Frey, 1983, 100). This might sound like speciesism, because making a statement of this sort implies a difference between human beings and animals, it is a logical step however. At first sight, human beings already have the right (to live); it is important to understand on which grounds humans (should) have this *prima facie* right and if these grounds can be applied to animals as well.

In short; killing is the act of ending one's life, thus, killing is the most definitive act one can do to another person or to oneself. Killing means nothing less than ending someone's life, which means the person who dies loses all opportunities to reach any of their goals in life. The human who dies is immediately robbed from his or her future; the reason why someone was killed does not change the consequence of death.

Intuitively most people tend to claim that killing someone is *always* wrong. For many it feels unnatural to decide whether another human being should live or die. There are so many views on whether it is morally just to take a human life. An overarching point of view would clarify this subject as a whole. This in order to find an answer to the question whether the killing of an animal can be morally justified. (Frey, 1983, 100).

Nevertheless, it is important to realize that there are mitigating circumstances, i.e. there are circumstances in which the level of acceptance rises when killing someone: assisted suicide, for example, or the death penalty.

By law, for example, there are different levels of seriousness of the act of killing. First degree or capital murder is when the killing is intentional, which means the

murderer deliberately killed another person and that this murder has been pre-meditated and/or planned in advance. Second-degree murder is killing someone 'with malice' but without planning on killing someone. When someone is killed unintentionally during another offense, this is considered to be a felony murder.

The aim of this chapter is to give a clear overview on if and on which grounds it is not allowed to kill a human being. This question helps to find out whether it is morally acceptable to kill animals or if animals should gain the right not to be killed. To find an answer to this question, the focus is on deontological ethics. The consequentialist approach for example would not lead to an interesting application of its ethics, since the consequentialist do not believe in human *rights*, let alone animal *rights*. By elaborating the deontological arguments of Immanuel Kant the morality behind killing is addressed.

3.2 Killing in general

Why is killing an issue? Why is killing other beings considered to be wrong? Presuming to answer this question from a deontological point of view, life is supposed to have a certain value that is so significant that it should not be ended before it naturally reaches its end (this value of life is also referred to as the sanctity of life). Therefore, killing is considered to be wrong, because people give life meaning to life by having interests and live to reach their ends.

The majority will agree that murder is an act that should be punished, since it is [considered to be] morally wrong. However, what in the case of abortion or a legal guardian that decides on taking someone's life when that person is not able to make such decisions because he or she is brain dead?

People have human rights and these also include the right to life, thus the right not to be killed. Correspondingly, people have the right not to be harmed, tortured or violated in any way, since this conflicts with their autonomy. Autonomy is one of the most important characteristics that define human beings, since this has always been seen as the main characteristic that distinguishes humans from animals. Human beings have autonomy, and with that capacity the ability to reason (Wolff, 1970). That does not only

mean that people have the ability to take responsibility for their actions (and maybe more importantly: in most cases can be held responsible), it also means they can take responsibility for killing someone else or, in some cases, themselves.

The majority of people believe that the lives of animals are less valuable than those of human beings (Frey, 1983, 109). Raymond Frey⁷ who was an American philosopher at the Bowling Green State University, explains this by an example with chickens. Billions of chickens are ‘produced’ daily in farms and it is hard to see them as individuals with their own lives and interests. This in contrast with human beings who not only have another/better quality of life, but it is the richness of those lives that makes them more valuable. With ‘richness’ Frey means that human beings experience certain things in their lives that animals do not, such as “falling in love, marrying, and experiencing with someone what life has to offer; having children and watching and helping them to grow up” etc. (1983, 109).

This is also the reason why a lot of people have no problems with utilizing animals for vivisection, because they believe the lives of animals are worth less than that of a human being and these experiments are beneficial to the progress of mankind. Nevertheless, there is a great number of experiments being done on animals that are not necessary for the benefit of the existence of human beings, Frey pleads. Also, if the richness of lives is a condition, which makes the life of a human more valuable than that of animals, there are always human beings that do not have this richness as well (Frey, 1983, 110). Babies⁸ for example, or an extremely depressed unmarried human being with suicidal thoughts who has no children, only eats salads with no dressing and hates everything that this world has to offer, including culture, sports and knowledge. Still, people feel more comfortable experimenting on animals than on living human beings, even though the animal could have had a much richer life than the human whose life is not enriched at all. Frey cannot explain on which base people should refrain from testing

⁷ Raymond Frey can be considered to be a philosopher who writes from the utilitarian perspective. However, he contributed much to the field of animal ethics, and his concept of the value of life can be used as an introduction to the chapter on killing.

⁸ Babies of course have the potential to live very enriched lives. But they also have the potential to live very ‘unenriched’ lives, such as the ‘very depressed’ person in the following sentence.

on other humans rather than testing on animals.

However, even though the concept of the value of life is very interesting, in light of this thesis it is more important to ask the question whether and why it is *intrinsically* and *morally* wrong to kill a human being or an animal? The answer to this question lies in the field of deontological ethics, which focuses on concepts such as the value of life, autonomy and dignity.

3.3 Immanuel Kant on killing

In the field of deontological ethics, one of the most important philosophers that focuses on killing is Immanuel Kant. His view on whether killing in general is right or wrong becomes very clear in his work *Grundlegung zur Metaphysik der Sitten*, where he states how suicide for example is a manner of using a person merely as a mean instead of an end. According to the categorical imperative, in which someone acts out of duty and not out of desire, it is important that people act in a manner that this act could be a universal law. The idea behind this is that people should never use others just as a mean but as a mean and an end at the same time (Boucher & Kelly, 2010, 424).

This is why Kant is against killing, since it does not match the notion of autonomy, of a person and the duties that come with that autonomy and the will to survive. In Kant's well-known work *Grundlegung zur Metaphysik der Sitten* (GLMS) he states that one mostly acts out of self-interest, because people strive for happiness. An important aspect of his argument is the duty people have towards themselves to survive, which means Kant condemns suicide in his philosophy:

Erstlich, nach dem Begriffe der notwendigen Pflicht gegen sich selbst, derjenige, der mit Selbstmorde umgeht, sich fragen, ob seine Handlung mit der Idee der Menschheit, als Zwecks an sich selbst, zusammen bestehen könnte (GLMS, 62)

When committing suicide, according to Kant, one uses himself as a mean to make an end to one's life. Even when someone lives in great pain, killing is not acceptable, as a person cannot be used as a mean, or as an instrument:

'Der Mensch ist aber keine Sache, mithin nicht etwas, das bloss als Mittel gebraucht

warden kann, sondern muss bei allen seinen Handlungen jederzeit als Zweck an sich selbst betrachtet werden. Also kann ich über den Menschen in meiner Person nicht disponieren, ihn zu verstümmeln, zu verderben oder töten.' (GLMS, 63)

This does not only clarify that Kant is opposed to suicide, but also that he is against killing other humans beings in general. This might also mean that he is an opponent of euthanasia, which was not a well-known act in his lifetime. Euthanasia is, as in the case with suicide, when someone decides that the suffering their life is offering has reached its limits and has become unbearable.

The Death penalty

Suicide is prohibited in the United States of America. In the case of assisted suicide states prevent people from getting killed, when at the same time the death penalty is executed in some of the country's states. Kant, is strongly in favor of the death penalty, which seems contradicting when juxtaposed with his disapproval of suicide or euthanasia.

In the first part of *Metaphysics of Morals*⁹, the *Metaphysical Elements of Justice*, Kant states that "If, however, he has committed a murder, he must die. In this case there is no substitute that will satisfy the requirements of legal justice" (Kant, 1999, 139). There is no alternative punishment for someone who has killed another, even when the killer will end up living in an extremely bad situation. The intention by which the death penalty is given should be that the murder/crime doer gets punishment in balance with the evil intention the criminal has. Kant believes that any act of crime one does, he eventually does to himself (Kant, 1999, 138-139).

Punishment by law is executed for three main reasons, namely retribution, fairness and deterrence (Pojman & Rejman, 2000, 69). These three reasons are not compatible with Kant's perspective on death penalty as a punishment. In his philosophy Kant states that the death penalty is not meant to be an act of deterrence. If someone who committed a crime only gets punished to deter others, he or she is *used* as an instrument, as a mean (Pojman & Rejman, 2000, 70). This treatment is unjust: as stated in Kant's categorical

⁹ For this thesis both English as German texts of Immanuel Kant have been examined.

imperative, persons can never be used as a means to an end since people should be treated “as ends in themselves”.

No one gets punished because they “willed the punishment”, Kant explains (1999, 142). People get punished because they wanted to do a particular crime. Thus, people cannot actually be punished, since they *wanted* to commit a crime, and it is not a punishment when someone gets what he wants (Kant, 1999, 142).

There are however two cases in which Kant considers it doubtful whether a person should be sentenced to the death penalty, namely infanticide at the hands of the mother (honor of motherhood) and “killing a fellow soldier in a duel” (military honor) (Kant, 1999, 143).

3.4 The others on killing

In order to shed another light on the case of suicide it is important to also give a description of an opposing voice. Suicide is not a question that only occupied Kant. In 1997 the six moral philosophers Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Thomas Scanlon and Judith Jarvis Thomson, wrote *The Philosophers’ Brief* on assisted suicide to discuss whether the state should allow doctors to help people who are terminally ill to commit suicide.

Even though this does not directly address suicide but more the situation on *helping* someone to commit suicide, it does focus on the value of life and the decision for human beings to end their lives. Even though America has not constitutionalized assisted suicide – the right to die – (yet), these philosophers believe that a human being has the right to decide for himself when they have suffered enough and the pain has become unbearable. The philosophers call this the right to make “the most intimate and personal choices central to personal dignity and autonomy” (Dworkin et al., 1997).

Even though the right of assisted suicide is a right to die, and thus not the right not to be killed, which is researched in this thesis, it is a subject that is too important to be ignored, because it shows on which grounds one is allowed to kill (or allowed to be killed). In *The Philosophers’ Brief* the argument of the six philosophers is based on the

notions of dignity and autonomy. They refer to cases of people who were terminally ill and wanted to end their lives. The reason why they should be able to, according to Dworkin and his fellow philosophers, is because they were all people who were *mentally competent*¹⁰ in the phase of terminal illness (1997). Interesting here is that the presence of autonomy, and their mental competence, is yet again a condition one has to have to decide what happens to your life i.e. to have certain rights.

Dignity

However, there is another important aspect to the question whether one should be able to commit assisted suicide, namely that the notion of dignity is involved. Dignity is a concept that is important when it comes to rights, as will be shown later when discussing Martha Nussbaum's capabilities approach. Dignity is crucial when it comes to protecting one's liberty, as stated in the fourteenth amendment of the American constitution.

Only those who do not believe there is no harm in letting people live while they experience their lives as too painful and not dignified are against assisted suicide. According to the philosophers who wrote *The Philosophers Brief* many other people do believe that there is harm in these cases and that it should be possible to, on the base of liberty, decide that they want to end their lives (Dworkin et al., 1997).

Dworkin himself wrote the book *Life's Dominion* about suicide and abortion, in which he wants to build a bridge between the liberal and the conservationist movements when it comes to abortion. He thinks both actually have a lot in common, since it is not about rights, but about the value of life itself (Dworkin, 1994; Tribe, 2003). Even the strongest opponents believe that in some circumstances abortion is justified. The conservatives for example believe that when a woman is raped, she should be able to abort

¹⁰ I am aware that there are also cases in which patients are brain dead, comatose, or in a permanent vegetative state and they are kept alive by machines, when family members actually want to end the life of that patient. The patients do not have the mental competence to say whether they want life support to end or not, and often their lives can only be ended when it is proven that one is brain dead or when they described their wished in their will (FindLaw). However, since this thesis focuses on a right for animals not to be killed, I decided to only use the example of assisted suicide, when people are mentally competent, to focus on the grounds when it is permissible to kill. It is too complex to address all exceptions on this, even though these cases do have some similarities with cases when animals suffer and people choose to euthanize the animal. Here the animal is not mentally competent and does not give consent either.

the fetus¹¹. The liberals believe that it is justifiable to have an abortion when the fetus will lead a difficult life due to physical or economic circumstances (Dworkin, 1994, 99-101). Thus, as concluded by Dworkin, the arguments are not based on whether the fetus has a right, but because people are committed to the sanctity of life¹². That sanctity of life is one of the fundamentals of Tom Regan's argument on why animals should be granted rights.

¹¹ I follow the tradition of Dworkin to use the term fetus in all stages of pregnancy.

¹² The theory of Ronald Dworkin is described very briefly. I just want to show that there is another way to look at if one is entitled to live and why. The sanctity of life has many similarities with Regan's subject-of-a-life, as will be elaborated on in chapter 5.

PART II

About humans versus animals, rights for animals and capabilities

In the first part of this thesis the concepts of killing and rights are explained. In order to establish an answer to the research question it is important to examine why human beings differ qualitatively from animals and why humans have rights and animals do not. Consequently, different theories of John Rawls, Immanuel Kant and Tom Regan are discussed. Martha Nussbaum takes a different direction with her capabilities approach and brings us closer to the final answer.

Chapter 4:

Humans versus animals

“We do have a lot in common. The same earth, the same air, the same sky. Maybe is we started looking at what is the same instead of what is different... Well, who knows?”
(Pokémon, 1998)

In (contemporary) philosophy the emphasis lies on the differences between animals and human beings. Many philosophers, pre-Singer, were convinced that animals could never be moral agents because they lack the ability to reason and do not have the same level of intelligence and rationality. Kant, for instance, believes that because animals have no ability to reason, they are unable to be a member of a moral community and thus are not identities that should have rights (Taylor, 2009, 47).

This assumption still forms the status quo in modern times, since John Rawls excludes animals from his *A Theory of Justice* exactly because animals lack the capability to reason. Similar to Immanuel Kant he does prefer a nice treatment towards animals and he states that one has duties towards animals. However, Rawls still believes the difference between humans and non-humans is unbridgeable (Rawls, 1999, 442).

Authors like Peter Singer¹³ and Regan rather focus on the similarities between animals and human beings. As Singer mentions: people come in all shapes as well, and are not entirely equal. If complete equality would be a condition that is necessary to be treated equal, no one could be treated equal, since people are not completely equal (Singer, 1970, 3). Still, Singer does not speak of animals in the rights-manner. Regan admits that animals are not able to act morally, but they do have capacities that make them worthy to have rights, such as the will to survive and live (Cohen & Regan, 2001, 38).

In this chapter, the perspectives of Immanuel Kant and John Rawls are described and discussed. It is about what makes a person a human being and what the

¹³ Peter Singer is not addressed extensively in this thesis but his perspective of equality is so explicit that it is of added value to this chapter.

characteristics are that make sure that humans are entitled to rights. And the question is: On what grounds are human beings inevitably entitled to rights and animals are not? It will be clear that in most theories animals are not granted any room and the next chapter will work towards an alternative.

4.1 Immanuel Kant

If the world had no rational beings, the “world would have no value” (Kant as cited in Calhoun, 2015, 3) Morality and rationality are capacities that are originated in human beings and without the human beings, such characteristics would not exist, because they cannot be found in other creatures. The idea that people have the ability to bring these virtues into the world means that people are of value and therefore not agents that could be used as a mean. Kant believes that people are “ends-in-themselves” and have dignity beyond price” (Calhoun, 2015, 3). By the fulfilling of duties towards others the status that human beings have, that they are not means but ends-in-themselves, stays intact (Calhoun, 2015, 3).

Immanuel Kant states in the beginning of his book *Grundlegung zur Metaphysik der Sitten* that good will is one of the most important characteristics a human being can have. Without good will it is impossible to reach happiness and some characteristics of human beings can even turn out to be dangerous, for example the ability for humans to control themselves (Kant, 2007, 18):

“Mäßigung in Affekten und Leidenschaften, Selbstbeherrschung und nüchterne Überlegung sind nicht allein in vielerlei Absicht gut, sondern sogar einen Teil vom inneren Werte der Person auszumachen; allein es fehlt viel daran, um sie ohne Einschränkung für gut zu erklären” (Kant, 2007, 19).

Kant states that even when this good will does not reach its full potential, it still shines as a “Juwel doch für sich selbst... als etwas, das seinen vollen Wert in sich selbst hat” (Kant, 2007, 19). People’s own will is extremely important in the way Kant sees human beings

(and how human beings differ from animals). Also, in order to decide what is just in a society, this will of people is an important factor.

Freedom

Kant emphasizes on one particular right that counts for all human beings, specifically the right of *Freedom*. This is closely connected to the notion of will that Kant mentions in *Grundlegung zur Metaphysik der Sitten*. Freedom, in Kantian terms, namely means ‘independence from the constraint of another person’s will insofar as it [this freedom] is compatible with the freedom of everyone else in accordance with a universal law’. He explicitly states that this right is entitled to humans because of ‘virtue of humanity’ (Kant, 1999, 38).

As mentioned before, Kant believes that ‘will’ is one of the most important characteristics of a human being. This ‘will’ is also important in deciding whether something is just or unjust, which is also one of the fundamentals of Rawls’ theory which will be discussed later. This is in line with the notion Kant has of personhood, namely that human beings are rational and autonomous.

In *Fundamental Principles of the Metaphysics of Morals* Kant speaks of three authorities, *moral persons*¹⁴, in a state that are closely related to one another: the three are executive, judicial and sovereign. The combination of these three must lead to a decision on what is wrong or right (Kant, 1999, 119). This authority only works when it is derived from the ‘united Will of the people’ and because the justice that is prescribed to a society comes indirectly from the will of the people that form that society, it can do absolutely no injustice to anyone. When a person does injustice to another person, he indirectly does injustice to himself (Kant, 1999, 119).

Citizen

A person who lives in this society is a citizen and these citizens have three features

¹⁴ As explained in the footnote written by the translator of Kant’s work, John Ladd, Kant does not refer to actual persons when he speaks of ‘moral persons’. By moral persons Kant means ‘an artificial person’ such as a corporation. When Kant refers to human beings, he uses the term ‘natural person’.

in their nature that makes them member of a community. These features are (1) “the lawful freedom to obey no law other than one to which he has given his consent”; (2) “the equality of having among the people no superior over him except another person whom he has just as much of a moral capacity to bind juridically as the other has to bind him”; (3) “the attribute of civil self-sufficiency that requires that he owes his existence and support (...) to his own rights and powers as a *member* of the commonwealth” (Kant, 120, 1999).

Note that the first three features of the citizen focus on the capacity for human beings to be rational, or in Kant’s word, be moral capable. In order to be a citizen, a member of a community in which laws apply, it is a *necessary* condition to be morally capable or how John Rawls would put it: to have a sense of justice.

Since a human being is reasonable and autonomous, a theory of justice has its foundation in people’s reason i.e. rationality. And this theory exists of ‘unconditional practical laws’ which Kant refers to as ‘moral laws’. These laws are things we have to do (*imperatives*) and things that we are not allowed to do (*prohibitions*), in other words, things that are or are not ‘morally’ permissible (Kant, 1-14, 1999).

No room for animals

It has become clear that animals have no place and play no role whatsoever in Kant’s theories and arguments. Kant divides everything that exists on this world into two groups, namely humans and things. Animals are, in Kant’s terms, things that can be used by human beings. It is acceptable to experiment on them, even when the animal suffers, as long as the aim is creditable and it is in advantage of humanity (Taylor, 2009, 48).

Animals cannot be members of a moral community. He is clear when he states that a community exists of citizens who are morally capable and that the people are the ones who decide what justice is. The only feature (of a citizen) that could be applicable to animals is the last one, “the attribute of civil self-sufficiency that requires that he owes his existence and support (...) to his own rights and powers as a *member* of the commonwealth”, Animals can be self-sufficient. Still, applying Kant’s perspectives on

animals feels forced since he is obvious about the place of the nonhumans in society. Animals are the marginal cases. The question arises what happens to other marginal cases, such as people who do not have an own rational will because they have mental disabilities. Are these people equal to animals, or even better: are animals equal to them?

Selfhood and personhood

In the words of Sue Donaldson and Will Kymlicka put it: “It is clear that apes and dolphins are not persons in the Kantian sense. But it is equally clear that many humans are not persons in this sense either” (2011, 27).

Personhood is a fragile concept. Personhood is more than the selfhood described in chapter 2. Personhood is more than just “being someone” (Donaldson & Kymlicka, 2011, 26). This is where some animal rights theorists go astray. Because animals have, according to them, selfhood, they are persons. But being a person, critics say, requires something more than just being alive and to be a self.

But what ‘more than just being someone’ means exactly, remains unclear. It could mean that someone is able to learn a language, can enjoy culture, can join in debates or is able to plan life on the long term. What is clear, is that it is not enough to just exist to be entitled to inviolable rights: a person should be able to function cognitively (Donaldson & Kymlicka, 2011, 26).

The concept of personhood is vague, however it is used persistently to distinct humans beings from animals, and consequently also divides humans in different groups. Because when personhood is mentioned, it is almost immediately followed by the question: if babies, the mentally ill, people in a coma etc. are not really persons, according to the definition of personhood, what to do with the human beings who do not fit the description of a person?

David DaGrazia, an advocate for animal rights and professor in philosophy wonders if the term ‘personhood’ lives up to its importance or that the moral weight that has been given to the concept of personhood is not too heavy (DeGrazia, 1997, 301). He even doubts whether autonomy is even that important to being a person, since people who are

mentally disabled do not have that autonomy and are still persons. People, who are not able to speak, are still persons, and political actors. Animals, who do not have a language, are not eligible for personhood (DeGrazia, 1997, 304).

However, as Eva Meijer of the University of Amsterdam claims, stating that animals cannot communicate does not do them justice. According to her, there are definitely ways in which animals can communicate with human beings, for example by means of sign language. She illustrates this assumption with the example of a chimpanzee in the Welsh Mountain Zoo that used sign language to convince visitors to set him free, by pointing to the bolt at the door (Meijer, 2012, 7).

Animals are not capable of complex cognitive functioning. Conversely, this is also the case with some people. Not only people who are impaired in one way or another, but also children and the elderly do not have the moral capacities to be considered a person. No person can meet the Kantian requirements for moral agency/personhood, their entire lives (Donaldson & Kymlicka, 2011 27). This is another reason why the concept is vague and therefore hardly applicable as a required condition for being entitled to rights. Donaldson & Kymlicka prefer that rights are entitled to those with selfhood, or as they say; when “someone is home”. This applies to a lot of animals (2011, 37).

Savage treatment

This does not change the fact that Kant makes no room for animal rights. He explicitly states in his work *Metaphysical Elements of the Doctrine of Virtue* that people have no duties towards other creatures than human beings. Doing harm to an animal does harm to oneself as a person: “it is undoubted that a savage and cruel treatment of them is yet more inly repugnant to what man owes to himself” (Kant, 1886, 259-260).

He supposes that treating other animals cruelly, is at the expense of one’s sympathy and that one’s moral capabilities will weaken (Kant, 1886, 260). Thus, refraining from treating animals badly is not something one wants to do for the sake of the animal, but merely for his own good. Yet again this clarifies that applying Kant’s arguments to animals is a quite the challenge.

4.2 John Rawls on humans and animals

John Rawls is a liberal philosopher who followed the tradition of Immanuel Kant. In his main work, *A Theory of Justice*, Rawls wants to build an overarching, generalizing theory in which a just liberal society is the point of attention. While doing this, he applies existing theories from philosophers such as Locke, Rousseau and Kant who play a significant role in the field deontological ethics (Rawls, 1999, 10). Rawls strongly opposes the utilitarian movement because he does not believe some individuals should sacrifice themselves or be sacrificed for the greater good (Rawls, 1999, 3).

To achieve equality, and therefore a just redistribution of the primary goods, Rawls makes use of a thought experiment he calls the Original Position. In this thought experiment people are behind a 'veil of ignorance'. This means that people are behind a veil that covers up certain facts about their life, for example their place in society or whether they have qualities such as being intelligent or physically strong. Rawls believes that when one does not know how he or she turns out in society, a person is more objective to rationally decide what a just society is (Rawls, 1999, 118-119). Rawls states this as follows: "They know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are" (1999, 123).

The reason why this part of Rawls' theory is important for this thesis, is because it does not only show that a just society is not a given, but it also shows that Rawls includes human beings in the principles of justice, because they are rational.

Reciprocity

Because of this rationality, humans are the ideal creatures to receive just treatment, since this capability gives them the opportunity to act for themselves and on their own accord. According to Rawls, this reciprocity makes it fair, since everyone can follow the principles of justice. As Rawls himself puts it: "... equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation (1999, 442).

And if human beings would have to choose for themselves what is equal justice, without knowing what their position will be eventually, they will make the safe choice, so that they end up well when they are the less advantaged. These are the two principles Rawls comes up with when adapting the original position. They are meant to be 'the basic structure of a society' (Rawls, 1999, 50):

"First principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all"

*"Second principle: Social and economic inequalities are to be arranged so that they are both:
(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
(b) attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls, 1999, p. 266)"*

These principles work for human beings only, and in the theory of Rawls there is no room for animals at all. When it comes to Rawls he believes that there are three levels where the principles and the 'concept of equality' can be applied. The first level is 'to the administration of institutions as public systems of rules', which means that when certain cases are the same, they should receive an identical treatment. The second level is to the 'substantive structure of institutions'. On this level it is important that all people are entitled to the same basic rights and that no one is left out (Rawls, 1999, 441-442). The third level is about quality and who are entitled to justice.

Compassion for animals

While explaining the second level, Rawls assumes that animals are excluded since they do not have the same status that persons have. However, animals do have 'some protection' (Rawls, 1999, 442). It remains unclear what this protection exactly entails. But the third level does give more information about which creatures can be granted equal

justice.

Rawls refers to these creatures as 'moral persons' and they have two features: "they are capable of having (and are assumed to have) a concept of their good (as expressed by a rational plan of life)" and 'they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and act upon the principles of justice, at least to a certain minimum degree' (1999, 442). In order for the principles to be lived by, all parties should be able to understand them and have a concept of justice. Therefore the ones who act in a manner that agrees with the public understanding of the initial situation should be granted equal justice (Rawls, 1999, 442).

Since animals do not have the capacity for 'a sense of justice', and therefore they lack a moral personality, Rawls believes that people are not required to do animals any form of justice. However this does not mean that human beings are allowed to be cruel to animals and treat them unjust. Because animals are able to experience both pain and pleasure, people do have some duties towards them and need to show compassion (Rawls, 1999, 448). Rawls does not explain what these duties behold and only states that animals cannot fit in a theory of justice.

Less advantaged

This thesis is not the suitable platform to completely elaborate on Rawls' theory of justice. The most important thing is that his theory tries to offer society a basic structure but it completely excludes animals that are part of said society. It should be noted that Rawls excludes animals because of the fact that animals lack the ability to reason or understand concepts of justice, but he protects people who miss this capacity as well.

But how exactly do these 'non-capable' human beings differ from animals when reasoning ability is the ground rule for being included in a social contract? On which grounds does Rawls grant the group non-capable people protection, but excludes the other group from taking part in a just society? These questions remain unanswered in *A Theory of Justice*.

Nevertheless, he does say that the ability "to take part in and to act in accordance

with the public understanding of the initial situation”, a sense of justice is not a *necessary* but a *sufficient* condition. He states that the just institutions will be in jeopardy when people are excluded from the justice-realm, because they cannot reason, for example; people who are mentally challenged. Rawls seems to construct his own escape on the matter, by stating that this is not a realistic problem, since most of the people have a sense for justice (1999, 443). To fully exclude animals, he adds; that even though the sense for justice is not necessary, this still does not mean justice can be owed to ‘creatures’¹⁵ who lack this ability (Rawls, 1999, 448).

Protection of animals

Equally important is the second principle, in which Rawls states that social and economic inequalities should be in favor of the least advantaged in a society. He even makes an appeal to the stronger members to protect the ones that are weak and refrain from taking advantage of them. With the least advantaged Rawls means people who were born in less-fortunate families or in a lower class-family, people whose “natural endowments” restrict them from doing good in life or follow their plan of life and people who have had bad luck in life. It is important that these people can still act as citizens that are engaged in social cooperation; people with a sense for justice, thus moral capabilities (Rawls, 1999 ,84)

What about people that are severely handicapped? These people have certain complex handicaps and are not able to fully participate in society due to them lacking particular abilities. Since animals ‘lack’¹⁶ an ability too, the ability to reason, they should not be used or taken advantage of, but experience protection from society. If animals are not able to reason, should they not be accounted as the less fortunate and actually receive help instead seeing them as being less valuable for a society because of their disability to reason? This is indeed an argument based on the marginal case and it is questionable how

¹⁵ I assume that with creatures Rawls refers to animals, since human beings are creatures as well. But this statement follows the following sentence: “... but no account of right conduct in regard to animals and the rest of nature” (Rawls, 1999, 448). So it is safe to say that ‘creatures’ means ‘animals’ in this case.

¹⁶ ‘Lack’ as in lacking according to people, animals themselves probably do not think they lack rationality since they are not aware it exists.

fair the comparison is between people with no moral capacity and animals with no moral capacity. In the case for the animals: if there really is a distinction between human beings and animals, humanizing animals might not be the right direction when looking for animal rights.

Another point of attention is Original Position. What would creatures that are able to reason choose as what is just when they are behind the veil and they can end up as nonhumans as well? The two principles of justice will probably look completely different and will at least have some attention for animals.

4.3 Animals as part of the political discourse

Chad Flanders, professor at Saint Louis University, focuses on Rawls' *A Theory of Justice* in *Public Reason and Animal Rights* that is published in *Political Animals and Animal Politics*. He states that nowadays animals are not part of the political discourse, and he wants to research whether it is possible to include animals. This is important because the notion of 'rights' is above politics (Flanders, 2014, 44), so in order to grant animals certain rights, there should be a way to involve them in politics as well.

The reason why Chad Flanders is addressed here, and not in chapter 2 in the section about animals in politics, is because he tries to study the position of animals in politics considering the theory of Rawls, in which animals are placed 'beneath politics'. The problem with Rawls' theory is that it excludes animals. But according to Flanders, the theory can be interpreted differently as well, and in his book *Political Liberalism*, Rawls does make room for animals. Flanders wants to use Rawls' theory to describe 'animal politics' (Flanders, 2014, 45). Flanders explains that Rawls does not see the issue with animals as one that belongs in the realm of justice, but Rawls believes that animals belong to the metaphysical domain. With the metaphysical realm Flanders means the world outside relations between humans beings (the realm of justice) (Flanders, 2014, 46).

Flanders believes that in *Political Liberalism* John Rawls is not that strict about animals as he was in *A Theory of Justice*, where he stated that we do not have duties towards animals at all. "The question when it comes to political liberalism is more

simple”, Flanders argues, “what sorts of considerations are reasonable in a pluralistic society when it comes to our treatment of animals?” (Flanders, 2014, 47).

Even though Rawls believes that animals belong in the metaphysical realm, there are ways in which political consideration seems fitting (Rawls, 1995, 245). The importance of protecting nature and its animals is described by Rawls in *Political Liberalism* as follows:

“There are numerous political values here to invoke: to further the good or ourselves and future generations by preserving the natural order and its life-sustaining properties; to foster species of animals and plants for the sake of biological and medical knowledge with its potential applications for human health; to protect the beauties of nature for purposes of public recreation and the pleasure of a deeper understanding of the world. The appeal to values of this kind gives what many have found a reasonable answer to the status of animals and the rest of nature” (Rawls, 1995, 245)

This has much in common with Kant’s perception of animals, as he is also convinced that animals should not be mistreated, but because it causes harm to human beings, not for the benefit of the animals themselves. This assigning value to animals for the sake of human beings can be used to transfer animals to the public realm. In this case one does not look to what we, human beings, can do for animals, but what animals can do for us.

Flanders states that even though this might only be a small victory for the animal rightists, it is a starting point (Flanders, 2014, 56-57). To change something, and to obtain rights for animals, support from the public is imperative. Controversy is a deathblow for change, it seems when reading Flanders. But if people value something, they are willing to protect it, and this goes for animals as well.

Flanders believes that a step-by-step process inspired by Rawls’ framework is the way to go and he is very hopeful about the future: “Insofar as public reason is mutable, and the consensus at any one time is not fixed for all time, it may be that the more claims of animal rights activists might be absorbed in the public political culture” (Flanders, 2014, 56).

Utilitarianism for animals?

This of course is an original view on the case, and the step-by-step process is logically sound. However, Flanders seems to pull Rawls to the 'welfarists' side by pleading that less animal suffering is already a step in the right direction. This is not what Rawls' theory for human beings entails, and extending his views into the animal realm seems far-fetched. If the word 'animal' is replaced by the words 'human being' it is easy to notice that the essentials of Rawls' theory fall apart due to Flanders' interpretation. Flanders believes that animal welfare is "nearest to what a consensus is" (2014, 57), but as described in chapter one, animal welfare mostly fits a utilitarian approach and this is exactly what Rawls opposes by writing *A Theory Of Justice* (Rawls, 1999, 3). This is what Robert Nozick, American philosopher, called "utilitarianism for animals and Kantianism for people" (Nozick as cited in Donaldson & Kymlicka, 2012, 20)

The right not to be killed is not an absolute right since some exceptions are plausible (self-defense and ending a life when an animal is clearly suffering), but it is more than reducing suffering as advocated for by welfarist movements and the right should be inviolable. The right is not restricted to a certain species (Flanders advocates a better treatment for dogs as an example, since dogs are close to human beings); in principal all animals are included¹⁷.

Still no animals in the justice realm

Nevertheless, Flanders' attempt to apply John Rawls' theory is at the least a sympathetic approach and does show a whole different perspective on how to make animals more political. He emphasizes the importance of support from the public domain when the goal is change. When people value animals more, it is more likely they will agree with animals obtaining rights. In order to achieve this, people need to see that animals are of value for them, like in the examples Rawls wrote In *Political Liberalism*.

¹⁷ Which animals are capable for having rights, will be discussed in the next two chapters when the theories of Tom Regan and Martha Nussbaum are described.

Chapter 5

The voices of those who cannot speak

5.1 The approach of Tom Regan

Tom Regan is an American philosopher who received a lot of attention when he published his book *The Case for Animal Rights* in 1983. There is no way around it: Regan disapproves of any form of animal-use (food, leather, zoos, research etcetera) and believes that all humans and nonhumans are subject-of-a-life, which means that they have 'inherent value'. This makes humans ideal candidates to have rights assigned to them. But animals too, Regan believes.

Even though Kant and Rawls have some similarities in their theories, they both are convinced that it is rationality and moral capability that are the conditions one must have so that he or she can have rights. If there are creatures that do not have these capabilities, they are excluded from the realm of justice.

Regan has a problem with Kant's and Rawls' exclusion of animals in their theories, based on the perspective that only moral agents have inherent value (Regan, 2004, 239) and he comes up with an alternative in which the notions of a subject-of-a-life and the respect principle are significant.

Moral agents and patients

First of all, it is of importance that Regan makes a distinction between moral agents and moral patients. It is key to fully understand what Regan means with those two groups, in order to understand his notion of subject-of-a-life and why (some) animals are entitled to have rights. Moral agents are, according to Regan:

"... individuals who have a variety of sophisticated abilities, including in particular the ability to bring impartial moral principles to bear on the determination of what, all considered, morally ought to be done and, having made this determination, to freely choose or fail to choose to act as morality, as they conceive it, requires. Because moral

agents have these abilities, it is fair to hold them morally accountable for what they do, assuming that the circumstances of their acting as they do in a particular case do not dictate otherwise” (2004, 151-152).

This is basically the description of a ‘normal’ human being, since (for now) there are no other creatures than human beings that have these capacities and abilities. Also, moral agents can form a community, since their acts affect those around them (Regan, 2004, 152). For example, if my neighbor wants to do me wrong and steal something from me, this act affects me. The fact that the acts of one person affect another person, means that they are in a so-called moral community. When it comes to animals, Regan rather calls them moral patients. Moral patients do not have the ability to take responsibility for the things they do; they are not able to control their behavior in the same way moral agents can. They do not know what is right or what is wrong (Regan, 2004, 152).

Within the group of moral agents, Regan makes a division between two categories. There is category A in which the individuals are sentient and conscious and therefore can experience pain and pleasure but do not have certain mental abilities; and category B in which the individuals are also conscious and sentient, can experience pain and pleasure but also have some other mental abilities (belief and memory). These individuals are able to “act intentionally, have a sense of the future, including their own future (i.e. are self-aware or self-conscious), who have an emotional life, who have a psychophysical identity over time, who have a kind of autonomy (...), and who have an experiential welfare” (Regan, 2004, 153).

Animals are not the only ones that can be accommodated in category B, there are also human beings, young children and people with mental handicaps, who fit the criteria. Moral patients cannot do right or wrong, which is the greatest difference with moral agents. However, moral patients can be affected by moral agents’ acts, right or wrong,; just as moral agents themselves can be affected by their own acts, of acts from other moral agents. Hence, there is no reciprocity between the two groups. This does not mean that everything can be done to moral patients: hurting a child is considered to be wrong, even

when the child is not able to hurt others. To define the concept of moral patients even more detailed; moral patients are “mammalian animals, aged one or more, and those human moral patients like these animals in the relevant respects” (Regan, 2004, 154-239). Moral agents do not have direct duties towards moral patients, only indirect ones. (Regan, 2004, 154).

Indirect and direct duties

With indirect duties Regan means that humans have no duties *to* animals, but they do have duties *involving* them. He illustrates this by giving the example of preserving endangered species. It is not for the sake of the animals that these species are protected, humans do not owe these animals anything; it is for the future generations of humans. In contrast to indirect duties there are, direct duties. One of these duties is for example that humans should not hurt animals. It is mostly utilitarian movements who advocate for direct duties towards animals (Regan, 2004, 150-151).

Regan refers to Rawls’ work as well and describes how Rawls is vague and clearly has issues with the question to whom justice is owed. But Regan also interprets Rawls’ theory in a way that there are no duties towards moral patients. However, it is not clear whether Rawls means direct or indirect duties. Rawls does say that human beings should not be cruel to animals and Regan assumes that Rawls can be interpreted as followed: “we have some direct duties to animals, despite the fact that they are not moral agents (i.e. persons), but we do not have a duty of justice to them” (Regan, 2004, 166-167).

As seen in the previous chapter Kant, in contrast to Rawls, is not vague at all about duties human beings have, or do not have, towards animals. Since animals are not moral agents, people have no *direct* duty towards them. As stated before, in Kantian terms, human beings have the indirect duty to not treat them badly, since this changes one’s morality.

The notion of subject-of-a-life

Regan does not only make a distinction between moral agents and patients, he also introduces the notion of being a 'subject-of-a-life'. This is not just a subject that breathes and has a pulse, a subject-of-a-life means that the individual has "beliefs and desires, perception, memory and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain" (Regan, 2004, 243). Furthermore individuals know what they want and what is good for them, they know that they have to take certain steps in order to reach their ends, they grow a psychological identity and they take notion of how life fares for them. Because of this, they are subjects-of-a-life and should therefore not be used as an instrument (Regan, 2004, 243). Note that the description of a subject-of-a-life shows evident similarities with the concept of moral patients, category B.

Inherent value

This subject-of-a-life is closely connected with the concept of what Regan calls 'inherent value'. Inherent value means that individuals have a value within themselves. Moral agents have an inherent value which is not dependent on how they live their lives i.e. someone who has a more enriched life does not have more inherent value than those who are unhappy (Regan, 2004, 235-236)

The Kantian perspective would say that inherent value only applies to moral agents. Tom Regan applies the concept to moral patients - "mammalian animals, aged one or more, and those human moral patients like these animals in the relevant respects" (Regan, 2004, 239) – as well. They have inherent value too, Regan states. Moral agents and moral patients do have their differences, but there is one characteristic that connects the two groups: they are all alive. However, being alive and consequently having inherent value, is not enough, Regan argues. Then a flower would have inherent value too, since it is alive as well. He believes that the subject-of-a-life-criterion makes a stronger case in order to find out if someone has inherent value (Regan, 2004, 241-243).

Regan discovers other characteristics that connect moral agents and moral patients, that makes them ideal candidates to have inherent value according to the subject-of-a-life criterion. Namely that they are all “subjects of a life that is better or worse for them”, they act independently and do not exist for others to use them or are the “object” of someone else’s interests. Besides that there is no gradation in being a subject-of-a-life. Someone cannot be more a subject-of-a-life when he or she is very good at sports, for example. Finally, moral agents and moral patients have duties to one another, but not to everything that is alive. This criterion states that only the subjects-a-life with inherent value have duties towards each other and not to others who are not subjects (Regan, 2004, 244).

Connected to these concepts of inherent value and the subject-of-a-life is the principle of respect for individuals. This principle assures individuals that they are treated in a way that respects their inherent value. It is Regan’s way of shaping a just society and thinking in terms of principles of justice. It is not an inactive principle: when someone else’s inherent value is imposed one has to duty to help that individual in order to protect their inherent value. And because of that inherent value, possessors of inherent value also have rights (Regan, 2004, 248-249)

Four men and a dog

To challenge the notion of inherent value, Regan introduces the thought experiment of the lifeboat. The boat carries five survivors, four men and a dog. Unfortunately, the boat is sinking and one of the passengers has to be thrown overboard, or everyone will drown. Who will it be? Intuitively people will say: the dog. And the rights movement does agree. Even though all of the passengers have equal inherent value “and an equal prima facie right not to be harmed” the dog is the one that has to leave the boat.

The right movements justify this choice by stating that the loss of a dog has less impact than the death of a human being. Throwing a dog overboard causes less harm than disposing of one of the humans, because that would make the individual “worse-off (i.e. would cause that individual a greater harm) than the harm that would be done by the

dog” (Regan, 2004, 324-325).

5.2 Weaknesses in Regan’s theory

However, there are weak points in Regan’s alternative and the whole thought experiment of the lifeboat is one of them. “All on board have equal inherent value and an equal prima facie right not to be harmed” (Regan, 2004, 324). The majority will choose for the dog to be thrown out of the lifeboat. And the rightists camp agrees: the death of a human being is a greater loss than the death of a dog.

The point Regan that wants to make is clear. But there are some discrepancies in his thought experiment, since Regan considers all passengers to be equal, according to their inherent value. However what if we change the thought experiment and say that there are five people in it, one of the persons has less friends than another. Therefore, the loss of this person is not as great as another person who has many more friends. The point is: the impact of one’s death should not be a factor that decides who should be sacrificed. Regan also states that it is about the impact on the individual. This is not logical at all: it is not measurable which person (or animal) can be discarded easier than the other.

Carl Cohen, professor of philosophy, is pointing out another weak point in Regan’s theory. He is not convinced by the inherent-value argument by Regan that compels that both animals and humans have interests, thus they are both inherent valuable (i.e. they are both subjects-of-a-life). Since humans have some similar interests to animals and humans have rights, animals should have rights too. This is illustrated by the example where the chicken runs away from a fox so that the fox will not catch her and the chicken will stay alive. This proves, according to Regan that animals at least have interests (Cohen, 2004, 26)

Regan’s argument is as following:

Individual (animal/person) has interests/subjective experience → inherent value → rights.

This is, according to Cohen, where Regan chooses the wrong path: rights are not derived from the interests human beings have. He thinks that Regan does not fully understand the term of inherent value and Cohen comes up with two different concepts of inherent value. The argument is “fallacious” because the kind of inherent value Regan believes to exist from subjective experience cannot be the same inherent value that is a base for rights. There are two kinds of inherent value, one is moral, the other one is not. The first one discussed is the kind of inherent value where every living thing has “worth in itself” and can never be replaced by another living being. It means that the living being is unique, even though it has no special capacities: because there is only one of its kind, it has inherent value (Cohen, 2003, 26).

The second kind of inherent value refers to the value one has when a creature is able to make moral judgments and be conscious about the duties one has. Cohen refers to the Kantian thinking where agents that have these capacities are to be treated as ends and not as means (Cohen, 2003, 27).

Cohen thinks it is ridiculous to even think that animals in the wild have the second form of inherent value. Animals may indeed have interests, but that does not automatically mean that they have inherent value and consequently have rights. And it is not because humans are subject-of-a-life, thus a consequence of their beings, that they have rights. It is because they also belong to the second form of inherent value (Cohen, 2004, 27).

In the preface of a recent print *The Case for Animal Rights* Tom Regan responds to this critique. He replies by saying that he never stated that inherent value means that one is unique or irreplaceable and he also never wrote that all human beings are equally valuable because they are all moral agents. Tom Regan states:

“On my view, billions of human subjects-of-a-life have not been, are not now, or never will be moral agents, facts that in no way undermine their having inherent value that is equal to the inherent value possessed by those human subject-of-a-life who are moral agents, It must be false, therefore, that I equivocate in the manner in which Cohen says I do; and it is, in any event, false that I equivocate at all.” (Regan, 2004, xxv-xxvi)

Chapter 6

Catching capabilities

6.1 The approach of Martha Nussbaum

Both sides, Rawls and Kant versus Regan (and authors like Francione), cannot give a definitive answer to the research question, whether and how animals should be granted a right not to be killed. An author who takes another approach is Martha Nussbaum who came up with the capabilities approach. She cannot be placed among the animal rightists or the animal welfarists; she considers the treatment of animals as an 'issue of justice' and believes that there is no reason why animals should not be entitled to basic notions of justice (Nussbaum, 2004, 299-300).

Nussbaum has some problems with Kant and Rawls. She calls the Kantian view 'unpromising' since he does not see that human beings could have direct duties towards animals, only indirect ones. Even though Kant states that one should not be cruel to animals, he does not mean that animals should be treated well because they deserve it; he only states that humans should not treat them cruel because it could lead to mistreatment of other humans as well and it affects one's morality. This perspective shows that Kant does not believe that people have moral duties towards animals or that they have dignity (Nussbaum, 2004, 300.) He does not believe human beings have duties towards animals at all: animals have no 'independent value' but only relative value "in relation to human ends", since they lack the "complex capacity for moral reasoning" (Nussbaum, 2006, 131).

Domain of justice

The problem Nussbaum has with Rawls is that firstly he does not believe that animals should be involved in the domain of justice at all, only because human beings have the ability to make moral decisions. Rawls's strong belief in rationality as a base for what a person entails and why a person can claim just treatment does not convince Nussbaum at all. While establishing justice by using the Original Position one has to ask two questions: "Who frames the principles? And for whom are the principles framed?"

(Nussbaum, 2004, 301). This is true when rationality enters the domain: human beings decide for themselves what justice entails and how they want a just society to be. Since animals are not able to put themselves in an Original Position, they are not able to think about what is just and are therefore no suitable agents to engage in a social contract.

Nussbaum too states that in the theories of Rawls and Kant there is a problem with the exclusion of animals and argues that if they exclude nonhumans from the social contract based on the notion that animals do not have the moral capacities to engage in a just society, they should exclude people with “severe mental impairments” as well (Nussbaum, 2006, 133-134). However, people who have these mental disabilities are capable of forms of reciprocity but in different ways than ‘normal’ people would. She believes that even though this reciprocity might not count as politically valid, but it still is of value. And that both Kant and Rawls do not acknowledge this is a “large defect” in their theories, Nussbaum states (2006, 134).

People with these mental disabilities do not seem to participate in Kant’s moral community or in Rawls’ perception of social cooperation. Nussbaum states that Rawls did not find a solution to this in his theory and that people with these disabilities are not considered to be “full-fledged citizens”. They have the same status as animals (Nussbaum, 2006, 135).

Solutions?

Nussbaum offers two solutions for this problem, based on ideas from American philosopher Thomas Scanlon. First the people who are able to engage in the social cooperation can act as trustees for the people who cannot. And secondly, it should be acknowledged that Rawls’ theory only addresses one part of morality and there should be an additional part for the situations that deal with “extreme dependency”. The first one does not have Nussbaum’s preference at all, since the solution splits society in half: there will only be people who are capable of being rational and people who are not. Nussbaum believes that persons with for example Down’s syndrome can be rational and a citizen in their own way (Nussbaum, 2006, 135-138).

Nussbaum finds the second ‘solution’ most fitting: acknowledging that *A Theory of Justice* is not complete and might need some refinement. As Nussbaum states as well, Rawls does not focus on the cases that are extremely dependent on others. There is a part that still has to be done and written (Nussbaum, 2006, 138-139). In the case of disabilities of human beings, this is hopeful, since Rawls can still come up with principles for them so that they enjoy living in a just society as well. When it comes to animals however, the cards have been dealt. Rawls explicitly states that animals do not belong in the realm of justice. To them, this is a closed door.

6.2 The capabilities approach

First of all, what is a human being according to Martha Nussbaum? Actually, humans are animals, she states, who are vulnerable but also “naked, needy and weak” (Nussbaum, 1998, 274). A person has basic needs, such as food, water, shelter and medicine in time of illness. Also human beings need to be protected from the outside world and they have dignity. “They have as Kant would say, a worth, not just a price” (Nussbaum, 1998, 274).

Not only human beings are objects of interests for Martha Nussbaum, as she opens the door to animals. She believes that animals belong in the realm of justice. She introduces the capabilities approach for human beings and states that this approach can be extended to the nonhuman beings as well. With this capabilities approach, that exists of ten core entitlements, Nussbaum wants to show that animals have inborn abilities that makes it possible for them to live a “flourishing life, a life worthy of the dignity of each creature” (Nussbaum, 2006, 392-393). Because of this capacity animals should be included in theories of justice, she claims.

Important in her theory is that the justice for animals is based on the notion of dignity and an Aristotelian view on the good life, namely that lives should be flourishing. In order to realize this flourishing life, Nussbaum introduces ten entitlements one should be able to live by.

First of all, Nussbaum wants to make clear that the list she provides is not complete and that she just wants to offer a basic set of fundamental entitlements that can be applied to all citizens (2006, 155). It is not based on a social contract, as in the cases with Rawls and Kant, because Nussbaum does not believe that mutual advantage is a priority, and that this reciprocity will find its way. This is in contrast to Rawls, for whom reciprocity is a necessity in a society. The list is as follows: (1) life, (2) bodily health, (3) bodily integrity, (4) senses, imagination and thought, (5) emotions, (6) practical reason, (7) affiliation with others and the social bases of self-respect, (8) a meaningful relationship with other species and with nature, (9) play, and (10) political and material control over one's environment (Nussbaum, 2006, 76).

She uses the list as a guideline for more justice for animals. In contrast to what Kant says, that mistreating animals is a way of mistreating oneself, Nussbaum is convinced that the mistreatment of animals is not fair towards the animals. This means that people have *direct* duties towards them. Animals have a potential good and they should be able to pursue that good. Blocking animals from reaching their ends, means we treat them unjust. The capabilities approach considers animals to be agents "seeking a flourishing" existence. This is one of the greatest strengths of the capabilities approach, Nussbaum pleads (Nussbaum, 2006, 337).

Nussbaum states that there is a very small overlap with the contractarianism camp, where Rawls and Kant belong, and opposes even more against utilitarianism (Nussbaum, 2006, 337-338) The capabilities approach does not directly focus on animals, however there is a way of extending it. The starting point from the regular approach is that all humans have dignity and a life worth living. Nussbaum believes that all animals should be able to live flourishing lives, and that no animal should be prevented from pursuing this. Without being a species, Nussbaum states that animals should live a life with dignity according to their species. In contrast to contractarianism this means that people have direct duties to the animals and in opposite to the utilitarian approach, no animal should be sacrificed for the good of someone else, or a society (Nussbaum, 2006, 351)

Life

In light of this thesis, the most important capability is the first one, life. This is not the right place to discuss all ten entitlements, but they are important since the probability of the right for animals not to be killed is examined. Nussbaum believes that killing an animal is doing harm, since she is convinced that some animals have a memory and a notion of what life entails. Killing when an animal is suffering is questionable: human beings do not directly choose for euthanasia when they are suffering or in pain, but when an animal suffers, euthanasia seems to be the road often travelled. The lives of animals who are suffering are considered to be less worthy than the lives of human beings who are suffering. Nussbaum however believes that there is no harm in killing an animal when the “alternative is life with pain or decrepitude” (Nussbaum, 385-386).

Killing for food is not in all cases permissible, only when it is necessary, and Nussbaum explains that the harm that is done to farm animals for instance is mostly during their lives when they are not able to walk around freely (Nussbaum, 2006, 386). In her later work, *Creating Capabilities*, Nussbaum is more persistent. Here she states that the “factory food industry inflicts great injustices and should be ended, as should hunting and fishing for sport, cruel practices associated with product testing and non-necessary harm to animals in research (Nussbaum, 2011, 163)

Protecting mice from cats

In *Frontiers of Justice* Nussbaum writes that human beings have a duty towards vulnerable animals to protect them from predators. She goes even further. As mentioned before, Nussbaum does not believe reciprocity is necessary in order to distribute justice in a society. When only one party is morally capable, this is sufficient. That can lead towards the following assumption, as interpreted by Wissenburg: “In so far as animals (including humans) do not have a capacity for moral action, humans have a duty to see to it that animals-as-subjects are not unnecessarily harmed or killed by other animals, and in so far as animals act contrary to their moral duties, humans have duty to stop them” (Wissenburg, 2008, 8). Wissenburg follows with wondering how absurd it is that

Nussbaum would like to see that everyone marches into nature and stops “lions living in the wild from hunting and eating their prey” (2008, 8).

In an interview with the University of California Television she explains this argument:

“We cannot avoid the conclusion that we are implicated in the lives of all the species everywhere in the world now. Human activities determine what the habitat is, what goes on in that habitat, what nutrition the animals have... So the only alternative to complete neglect and chaos is for us to exercise intelligent stewardship. Which means things like contraception, and protection of habitats and so forth (...) That idea that we just let the animals tear each other from limb to limb rather than figuring out what we actually want to do: and that was what I was criticizing.” (Nussbaum in an interview with University of California Television, 2011)

She illustrates this argument with the example of an elk population that grows out of proportion and people wanting to do something about this. But human beings tend to want to solve this problem the natural way, so they make sure to bring in wolves to kill some of the elks to make the population more balanced. Nussbaum calls this “stupid” because deaths that are caused by the wolves are far more painful than just a bullet in the brain (UCTV, 2011). Hence, she does not directly mean that people should be walking around in nature and stopping lions from killing other animals, she means that when animals are captivated, one could stop one animal from killing another (Nussbaum, 2006, 374). Humans affect the habits of animals endlessly, so why not protect them?

Species norm

Many philosopher's, such as Rawls and Regan, state that animals cannot belong to a certain social contract or community, based on their (moral) capacities. This notion is shared by Will Kymlicka and Sue Donaldson in *Zoopolis* on Martha Nussbaum and her capabilities approach: Nussbaum ‘forgets’ that humans and (domestic) animals are already

engaged in a particular community (Donaldson & Kymlicka, 2011, 95-96)

The authors also have a problem with the *species norm* introduced by Nussbaum. With this norm she claims that there is a certain 'benchmark' for a certain type of animal or specie that decides if and how a creature can lead a flourishing life. To judge whether an animal is living a just life means one has to look at which specie an animal belong to; the type of specie and to which community the animal belongs determines what a specific animal needs and wants (Nussbaum, 2006, 365)

The problem Kymlicka and Donaldson have with this perspective, is that it only works in the case of animals in the wild, since she assumes that animals and humans live separately. However, this is not the case in today's society: there are animals that live in their own communities but there is also a massive number of animals living *in* the 'humans-community'. Relevant capabilities of the same species differ in the different communities: that of their own in the wild or the interspecies community with humans they are living in (Kymlicka and Donaldson, 2011, 97).

Other critics state that the capabilities approach is not developed enough and that her argument is "too invasive, utopian and undesirable" and has "surprising consequences" when taking it to the extremes. (Wissenburg, 2008, 17-19).

Chapter 7

Conclusion

In today's literature a definite answer to the question **whether animals should be granted the right not to be killed**, and on which grounds, can hardly be found. Many philosophers do not directly address the question if a right for animals is possible, but they do question whether it is possible to grant animals rights, and on which grounds. Arguments in favor of animal rights are scarce and the discussion on whether these rights can be granted is still in its early stages. The marginal-cases argument for instance states that animals are entitled to rights since they do not fundamentally differ from people who do not have the moral capacity to take responsibility to their actions.

In the theories discussed, the focus is mainly on what the characteristics are which decide whether a creature is or is not entitled to rights. The overarching argument in the theories of Kant and Rawls is that animals cannot have rights, since they cannot live up to these rights themselves. They are not able to respect other creature's rights since they cannot think like human beings can: they are not *rational*. Both philosophers are clear that animals do not and cannot have their place in the realm of justice. Even though both agree that they should not be treated in a cruel manner, granting them rights is takes it too far.

Tom Regan does an attempt with his theory that involves the subject-of-a-life in which the focus lies on the assumption that there are moral agents and moral patients and both are able to have inherent value. And when an individual has this value, this individual is entitled to rights. This is a very promising argument, since it focuses on the similarities animals and human beings have, rather than on how they are different. However, as can be seen in the example of the lifeboat thought experiment, Regan's theory does not hold water when it comes to a right not to be killed.

His perspective even has some utilitarianism to it, when he states that sacrificing a dog is justified to save human beings, since their deaths are a greater loss than the death of a dog. In this way, he undermines the perception of inherent value he passionately described in previous chapters. If inherent value was the inviolable trait as Regan makes it

appear there would be no solution to the lifeboat thought experiment, other than letting them all sink or maybe wait for someone to sacrifice him or herself.

Nussbaum's capabilities approach comes close to justify a right for animals not to be killed. Even though she does not directly state that the killing of animals is *always* wrong, she does extend her capabilities approach theory to animals by which she indirectly states that she considers animals to be of the same value as human beings. The first capability is already the most important one, namely the capability of life. Here she states that killing is doing harm, since it prevents animals from having the flourishing life they would be able to. Even though critics consider her theory to be utopian, the points she is making are fair.

Animals indeed have no ability to do justice to others i.e. they are not aware what is right and what is wrong. This does not mean that animals should be treated bad, and can be killed for whatever reason comes along. She believes that animals should have a right to life and that human beings have the direct duty to protect that life. Not because they can, but because that is part of their membership in a just society.

Nussbaum comes closest to why animals should not be killed: because they are individuals that want to pursue their own good, and when people stagnate this pursuit they cause harm to animals, which is unjust. She does not explicitly state that killing is the worst thing to do, she even opts when killing could be fully acceptable, but killing prevents the possibility for animals to live a flourished life.

This is actually the essential of a right not to be killed. Just as is the case with human beings, taking someone's life is – certain exceptions excluded - the worst thing one can do. It is more than just stopping them from breathing: it means that one is robbed off the time and subsequent possibilities to complete their lives and to fulfill their dreams or future prospects.

Nussbaum lays the responsibility in the hands of human beings, since they are the only agents that are able to handle these responsibilities. Since human beings "design" nature, they can also design how and when an animal can die. This is what Nussbaum means with the duty to prevent animals from harm by another animal. She does not mean

that crocodiles should become vegans, she just means that it might not be wise to set foxes free in a yard filled with chickens. Manipulating nature means a person has the responsibility to protect that nature, animals included.

Utopian is a word that critics use to describe Nussbaum's theory, and yes, utopian it is. Is it feasible? No, probably not, since – as described in chapter 2 – when it is about rights, politics is included, and consequently the state should play a role as well. How will it look like when human beings have to protect animals: should people get punished because a hamster ate her offspring and the humans should have prevented it? Maybe.

That is where Chad Flanders was correct: in order to change the position of animals people should realize what they can gain from these animals. As said in section 4.3: “controversy is a deathblow for change”. Nussbaum is, for the time being, too controversial. Her perspective is far-fetched and cannot be applied to today's society, but she did emphasize the individuality of animals and why they should be entitled to have rights. Her theory might not be applicable now in the political realm, but her moral argument and the capabilities approach are very convincing. Rights for animals are definitely a possibility in the future.

Further research

A point of attention is the responsibility she believes that human beings have. Human beings already take this responsibility on a small scale and prevent animals from being killed in for example bullfights. Lifelong traditions are broken and maybe the step-by-step approach Chad Flanders introduced is not that bad after all (however, the consensus he believes that can be found in the welfarist approach, can never be a solution to the ‘rights’-problem). There are three things that can be suggested for further research.

1. Support for animal rights: nowadays the support for animal rights is minimal, even though people do worry about the environment and the welfare of animals. How to cure, as Francione names it, moral schizophrenia?
2. Conditions for having rights: rights are a social construction. Philosophers think of new conditions that should be met to have rights all the time. It might be time

to build a clear definition of what a right actually entails, and how an individual gets a right. For now, the conditions for having a right is too susceptible for interpretation, which makes it more difficult to grant animals rights.

3. The capabilities approach of Martha Nussbaum is promising and convincing, and needs some refinement. It would be interesting to examine where the weak points are exactly and how the theory could become more feasible.

There is much to do for the animal rights movement, however great progress is made on a daily basis. From theories in which animals have no status at all to a very convincing approach that emphasizes on the possible lives animals can live, when human beings let them be.

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