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Dialogue / FirstView Article / November 2013, pp 1 - 13

DOI: 10.1017/S0012217313000851, Published online: 28 November 2013

Link to this article: http://journals.cambridge.org/abstract_S0012217313000851

How to cite this article:

CHRISTIANE BAILEY Book Symposium/Tribune du livre*Zoopolis*, by Sue Donaldson and Will Kymlicka Oxford: Oxford University Press, 2012 Zoopolis: *A Political Renewal of Animal Rights Theories*. Dialogue, Available on CJO 2013 doi:10.1017/S0012217313000851

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Book Symposium/Tribune du livre

Zoopolis, by Sue Donaldson and Will Kymlicka Oxford: Oxford University Press, 2012

Zoopolis: A Political Renewal of Animal Rights Theories

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This new political approach to animal rights is a long-overdue improvement of existing animal rights theories. I say 'improvement' because Sue Donaldson and Will Kymlicka are not criticizing the extension of basic negative rights to other animals. *Zoopolis* is without a doubt an abolitionist theory, but argues that ending the property status of animals does not necessarily mean the extinction of all domesticated animals and the segregation of human beings from other animals.

A major appeal of Donaldson's and Kymlicka's ground-breaking political approach to animal rights is the move beyond the need to choose between rights and relationships. Relational approaches to animal ethics do not challenge traditional animal rights theories (ART), but complement and improve them. Resisting the idea that what is owed to an animal is owed to all animals with similar capacities, *Zoopolis* acknowledges relation-based obligations toward different

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© Canadian Philosophical Association/Association canadienne de philosophie 2013 doi:10.1017/S0012217313000851

animals (domesticated, liminal, and wild) depending on their relations to our political communities.

With the help of concepts such as citizenship, sovereignty, denizenship, colonization, migration and so on, Donaldson and Kymlicka decisively turn away from the framework of applied ethics (which mostly deals with animal rights issues in terms of individual responsibility) toward political theory to consider animal rights as issues to be addressed by political communities.

I will provide a brief overview of their argumentation, focusing on the way in which the political framework of *Zoopolis* avoids some of the major flaws of traditional ART (i) by discrediting the phantasm of wild animals leading their lives free from human interactions and deconstructing false dichotomies such as autonomy/vulnerability; (ii) by rejecting the over-intellectualized understanding of moral agency (often confused with rational moral reflection); (iii) by challenging our impoverished conception of animal agency; and, (iv) by moving beyond the parsimonious account of animal minds, limited only to sentience. Focusing on suffering makes it harder to secure the right to life and liberty (making us unable to express what is wrong with so-called 'humane' captivity and killing) and blinds us to the agency of animals—forcing us into the simplistic dichotomy between non-interference/domination insofar as we do not recognize the capacity of animals to co-author the rules of relationships.

1. Extending Basic Negative Rights to Animals

The second chapter offers a brief, but very instructive and convincing, overview of the strong rights view and answers common objections against the recognition of basic negative rights to other animals. For instance, many people find it simply obvious that a human life is more valuable than the life of another animal without understanding that judgments concerning the *value* of lives have nothing to do with fundamental *rights*. It may be more tragic when a young person dies than when an elderly person does, but that doesn't mean we are justified in killing the old to provide organs for the young: "The death of some individuals may be more of a tragedy or loss than the death of other individuals, within and across species, but they all possess inviolable rights: they all have an equal right not to be sacrificed for the greater good of others" (22).

Some people fear that recognizing basic rights of animals would *cheapen human rights*, but Donaldson and Kymlicka convincingly argue things go the other way around: "Any attempt to restrict inviolability to human beings can only be done by radically weakening and destabilizing the scheme of human rights protection, leaving many humans as well as animals outside the scope of effective protection" (23).

Other people recognize animals as sentient beings, endowed with conscious lives like us, but argue that, while sentience matters, it is insufficient for the possession of inviolable rights. In order to be entitled to basic negative rights, one needs more than selfhood; one needs to be a *person* and personhood requires sophisticated cognitive abilities (such as human language, abstract reasoning, long-term

planning, capacity for moral agreement, and so on). This line of reasoning fails to articulate the logical link between intellectual sophistication and basic moral consideration and deprives many human beings of fundamental protections.

This is known as 'the argument from marginal cases', but Donaldson and Kymlicka argue this expression misses the point. We should not think that the majority of human beings qualify for personhood, with the exception of a few marginal cases, since "the capacity for Kantian moral agency is, at best, a fragile achievement that humans have to varying degrees at varying points in their lives":

"If personhood is defined as the capacity to engage in rational argumentation and to conform to consciously understood principles, then it is a fluctuating characteristic that varies not only across human beings, but also across time within a life. To ground human rights in the possession of personhood in this sense would be to render human rights insecure for everyone" (27).

This would run afoul of the very purpose of human rights, which is precisely to provide protection for vulnerable selves. Selfhood—and not personhood, in any sophisticated sense—is the basis of fundamental negative rights. This crucial recognition has enabled the advances of human rights in the last decades, such as the rights of children and people with disabilities. Being a self is sufficient to be entitled to basic protections, there is no need to be a person in the Kantian sense because, as Donaldson and Kymlicka aptly phrase it, "what happens to sentient beings matters because it matters to them" (33).²

2. An Exercise in Moral Imagination: A Post-Abolitionist World

Extending basic negative rights to animals means that we should not harm sentient animals (right to physical and psychological integrity), enslave them (right to liberty) nor kill them (right to life), without necessity or against their own interests.³ As argued by animal rights theorists from Regan to Francione, this means we must put an end to all institutionalized forms of animal exploitation:

¹ The United Nations waited until 1971 to declare intellectually disabled people morally equal to the rest of humanity.

² Korsgaard also argues that we must regard animals as ends in themselves because there is no need to be a rational person in order to be an end in itself: "it is because we are animals, not because we are human beings or persons, that we ourselves have interests or a welfare" and "any being who has a welfare—a non-derivative and experienced good—is worthy of regard for its own sake." ("Animals, Personhood and the Law," 29-31).

³ These are not exhaustive, but considered the most basic rights. For a detailed analysis of these rights and their extension to non-human animals, see Valéry Giroux (2011) and Paola Cavalieri (2003, 137).

stop farming animals for meat, milk, eggs and fur, as well as outlaw circuses, zoos, hunting, trapping, and invasive experiments on animals.

What happens next? What would a post-abolitionist world look like? Traditional ART do not say much about our future relationships with animals: we should take care of existing domesticated animals, stop breeding them, and let wild animals alone. This simplistic view is understandable considering the urgency of securing basic negative rights for animals we breed and kill in ever-increasing numbers.

However, Donaldson and Kymlicka argue that the 'hands-off approach' favoured by the 'extinctionist' trend in ART is one of the reasons for the *political failure* of animal rights. These theories focus on a short list of negative rights to determine what we should not do to animals, but they say nothing about our positive duties to animals.

Holding on to a general principle of non-intervention in all cases is not only a 'political non-starter', but is *neither possible, nor desirable*. It leads us to ignore the variety and complexities of human-animal relationships and to work with a simplistic distinction between domesticated and wild animals, overlooking the case of liminal animals—i.e., animals living freely in our cities, towns and fields (like squirrels, racoons, sparrows and rats).

"These animals are affected every time we chop down a tree, divert a waterway, build a road, a housing development or a tower. We are part of a shared society with innumerable animals, one which would continue to exist even if we eliminated cases of 'forced participation'. [...] Ongoing interaction is inevitable, and this reality must lie at the centre of a theory of animal rights, not be swept to the periphery" (8).

We need to avoid the false dichotomy between exploitation or non-intervention and acknowledge that *relationships are inevitable*, so we need to determine the fair terms of interaction.

Traditional ART largely ignore the fact that relationships can be morally relevant and are thus unable to make sense of positive relational rights. According to Donaldson and Kymlicka, thinking only in terms of *intrinsic capacities* and disregarding the moral significance of *relationships* explains, in part, the political stagnation of animal rights, given the fact that the vast majority of our moral and political thinking has to do with relational and positive duties.

Existing relational theories in animal ethics mostly present themselves as *alternatives* rather than *complements* to rights-based approaches. *Zoopolis* argues that citizenship theory offers the possibility to reconcile basic negative rights with positive and differentiated duties given that, while human beings are all endowed with universal and inviolable negative rights, they also have different positive rights, depending on their relationship with a particular political community. In other words, being a person radically underdetermines one's legal rights and political status (52). The same should hold for other animals: because they are sentient beings, they all deserve the basic protection of negative rights, but their positive rights may vary according to their relation to our political communities.

3. Domesticated Animals as Citizens

Domesticated animals are the ones we have selectively bred over many generations. Their physiological, psychological, and behavioural traits have been modified, sometimes radically. We have brought them into our society so they may serve our interests in various ways. The result is that they are now part of our society, they belong here, they are members of our communities, but are treated as a lower caste group to serve our interests. Acknowledging this membership does not mean seeking the extinction of domesticated animals, but granting them no less than citizenship.⁴

Most people (as I did before reading *Zoopolis*) think animals cannot be citizens because they cannot participate in democratic life, vote, protest, and so on. But, as Donaldson and Kymlicka explain, there are many functions of citizenship:

- (1) Nationality: To be a citizen is to have the right to reside in a country.
- (2) Popular sovereignty: To be a citizen is to be a member of the 'sovereign people' and to have your interests counted in the determination of the public good.
- (3) Democratic political agency: To be a citizen is to have the right to be an active participant in the democratic process and the co-authoring of laws (55-56).

Reducing citizenship to this third function prevents us from understanding the status of many citizens, such as children and people with severe cognitive disabilities, who "do not simply have universal human rights, on a par with tourists or business visitors," but also certain fundamental citizenship rights which are independent of capacities for political agency (57). Even if we denied political agency to animals, we would still have to grant that domesticated animals can be considered as citizens of our political communities in the first two senses: they have the right to live on this territory (sense 1) and their interests must be accounted for in the public good (sense 2).

However, Zoopolis goes further and argues that domesticated animals can legitimately be considered citizens in the third sense, insofar as they can

⁴ In the historical process of domestication, animals were victims of many injustices and seeking the extinction of domesticated animals might not be the best way to do justice to them. The situation is not unlike that of African Americans. Former slaves were members of the community and acknowledging this membership did not mean sending them back to Africa, but welcoming them as equals by granting them full citizenship. For a defense of this analogy which opens up the difficult question of whether animals have reproductive interests, see Zoopolis, 79-81. On the possibility that citizenship for domesticated animals might be another way to exploit the vulnerability of inherently dependent beings, see Zoopolis, 82-86 as well as Donaldson's and Kymlicka's forthcoming paper "Citizen Canine".

contribute to the elaboration of the implicit rules of cooperation. Relying upon the mechanism of 'dependent agency' developed in contemporary disability theory, Donaldson and Kymlicka argue that domesticated animals can only be excluded from political agency if we understand political participation in a rationalist or intellectualist way—which would not only exclude animals, but also many humans. Domesticated animals can be citizens insofar as (i) they have a subjective good and are able to communicate it; (ii) they have the capacity to comply with social norms; and, (iii) they also have the capacity to participate in co-authoring the norms of cooperation.

Zoopolis does not extend the limits of our actual community, but reveals that we already live within a mixed human-animal society. Domesticity requires, but also makes possible, citizenship. We have special relationships with our co-citizens and must be able to communicate with and trust one another. We do not share these intimate and trusting relationships with all animals, but we do with domesticated animals who share our daily lives and our houses. Together, we engage in various forms of cooperation, develop meaningful relationships and strong affective bonds. This is why they are *familiar animals*: we understand them and, in many ways, they understand us as well.

Donaldson and Kymlicka are well aware of the difficulties of considering animals as agents able to make their own choices. The scope of agency of domesticated animals is an uncharted territory because what they want never really interested us. In a forthcoming paper entitled "Citizen Canine," they develop an important distinction between *micro* and *macro* agency to help us navigate in the troubled waters of adaptive preferences.

In animal studies, many cases presented as respectful of animal agency are in fact examples where micro agency serves "as a rationalization for a relationship in which domesticated animals are presumed to exist to serve the needs, interests and desires of humans". One of the goals of *Zoopolis* is to enable the *macro agency* of animals on the basis that "given a range of non-coercive alternatives, animals can express their preferences ('vote with their feet') about how they want to live their life and under what circumstances, if any, to engage with humans" (66).

4. Wild Animals as Sovereign Nations

By definition, wild animals are not part of our mixed human-animal societies; they do not depend on humans to satisfy their basic needs, to survive and flourish. They take care of themselves, form their own communities, have their own social organization, know how to take care of their young, socialize them and bring them to adulthood. Consequently, we should respect their autonomy, their abilities and rights to self-determination.

Donaldson and Kymlicka, "A Defense of Animal Citizenship. Part 1: Citizen Canine: Agency for Domesticated Animals."

However, claiming we should 'let them be' is insufficient and misleading insofar as we cannot hope to fulfill our duties by designating "no-go zones" (64). It is simply impossible to transform their habitats into protected areas. According to the Wildlife Conservation Society, 83% of the planet is directly influenced by humans. Wild animals live 'in the wild', but they do not live in a pristine nature untouched by humans.

We need a theory of animal rights able to deal with these inevitable entanglements between humans and wild animals. Some animals really live in remote areas untouched by human activity, but most live in small "pockets of wilderness" (68) surrounded by human development and must deal with our roads, fences, bridges, shipping lanes and so on. This does not mean we should stop extending protected areas, but this is hardly sufficient. By turning to concepts like sovereignty and international justice, Donaldson and Kymlicka are trying to think of the situation in *political*—and not only in *conservationist* terms, and suggest we consider wild animals as self-governing communities.

In contrast to the *stewardship model*, which treats animals as "incompetent and passive recipients of our (benign or harmful) actions", the sovereignty model relies on the idea that wild animal communities should not only be free from colonization and exploitation but also from external paternalistic management insofar as "they have the ability to pursue their own good and to shape their own communities" (170).

The most drastic consequence is that we must put an end to the expansion of human settlements. We must stop the colonization of wild animal territories, as well as preserve and restore their habitats. It is not enough to grant them property rights to individual nests or dens, as is often suggested in animal rights literature; we must recognize their territorial rights so that they can maintain their way of life (178). We should also reduce speed limits, redesign cars, create wildlife corridors to help animals crossing our highways and cities, and so on.

Contrary to the 'hands-off approach' favoured by traditional ART, to consider wild animals as sovereign nations does not mean we cannot help, but that intervention must be made in order to preserve or restore the autonomy of wild animal communities. We should not intervene in ways which violate their existence as self-determining communities and place them under our permanent management, but we have a duty to help when this is compatible with their autonomy and sovereignty (179-182).

Communities of wild animals have the capacity to take care of themselves, feed and protect themselves, construct their homes, navigate long distances and orient themselves in the world. They do this in amazing ways. Recognizing their sovereignty means acknowledging they have the right to be where they are as much as we do.

5. Liminal Animals as Denizens

Liminal animals are animals who live freely in our cities, towns and fields. They have been largely ignored by traditional ART and, despite being everywhere around us, they are largely invisible. We do not pay much attention to the squirrels, pigeons, rats and racoons who live among us. They become visible only when they disturb our activities and are then treated as pests. Virtually without protection, liminal animals are often seen as intruders, despite the fact that their legitimate place, their 'natural habitats', are our cities, sewers, parks, fields, and so on. The majority of liminal animals are descendants of opportunistic animals who have evolved alongside our agricultural practices, roads, dumps and buildings.

Liminal animals live in our midst, but they do not share with us the intimate relationships we have with domesticated animals, so citizenship may not be the right political status for them. Yet, we need to acknowledge their existence and rights of residency. There is no way we could 'liberate' these animals so that they could be considered sovereign nations because, in contrast to wild animals, they actively seek our cities and towns. Since neither citizenship, nor sovereignty, is in their best interests, *Zoopolis* suggests granting them *denizenship*.

Well aware that this political status can easily become a source of exploitation and oppression, Donaldson and Kymlicka are nonetheless confident that denizenship doesn't have to lead residents into a permanently subordinated caste and can be a great political tool to create just relationships and accommodate the distinctive interests of liminal animals themselves (214). Our understanding of the distinctive and various needs of this immensely heterogenous group of animal residents will get more sophisticated as we become attentive to the lives of liminal animals in urban and rural settings, but this approach is an improvement over traditional ART which largely ignores them.

Liminal animals remind us how wrong we are to think that humans are the only initiators of human-animal relationships and that, if we stop interfering with them, these relationships would cease. Taking seriously the various forms of agency exhibited by animals is one of the greatest achievements of Donaldson's and Kymlicka's book.

6. Rethinking Dependency, Autonomy, and Vulnerability

Traditional ART mostly works within the 'domesticated versus wild animal' dichotomy: on the one hand, domesticated animals are dependent, vulnerable and condemned to oppressive relationships and, on the other, wild animals are considered free and independent beings who only need to be left alone. One of the most significant contribution of *Zoopolis* is to deconstruct this myth.

Wild animals may not be vulnerable and dependent the same way as are domesticated animals (insofar as they do not depend on specific individuals), but they have often adapted to very specific habitats, hence they are highly vulnerable to changes in their environment. Domesticated animals may be dependent on specific human beings and thus more vulnerable to negligence and abuse, but this does not reduce them to a lower ontological status, as it is often implied in ART and environmental ethics.

This point is particularly well argued by Donaldson and Kymlicka, who lament that, despite decades of feminist and disability theories revealing the fallacies of hierarchical dichotomies such as autonomy/dependency, ART continue to conceptualize dependency as inherently undignified.

Instead of thinking on a simple scale from dependency to autonomy, we should use a multidimensional scale, including many aspects such as inflexibility and specificity. A hamster is highly dependent in both senses, whereas racoons and squirrels are highly flexible. Donaldson and Kymlicka describe their amazing ability to defeat "every new generation of 'squirrel-proof' garbage bin" (67). Contrary to liminal animals, who are mostly opportunistic and able to adapt to changes in their habitat, wild animals are often 'niche specialists', highly vulnerable to the side-effects of human activities. Even animals living in remote wilderness are often dependent on complex programs of rewilding.

Zoopolis offers a sophisticated understanding of these forms of dependency. Its theoretical framework allows for a complex conception of agency, where agency is not conceived in opposition to dependency—hence the meaningfulness of the notion of 'dependent agency'—and where dependency doesn't intrinsically involve a lack of dignity. For social beings, interdependence is a necessary condition for developing capacities to express preferences and choices.⁶

7. Rethinking Moral Agency on a Continuum

Talking about agency, citizenship and sovereignty in the case of non-human animals might sound bizarre at first because they are traditionally considered, at best, as moral patients. We suppose animals can be the beneficiaries of morality, but cannot be moral agents insofar as they do not reflect on the principles governing their actions and cannot be held accountable for them.

The distinction between *moral agents* and *moral patients* is important to understand that one can have rights without duties against the standard contractualist view, according to which we do not owe justice to those who have no sense of justice. However, conceiving of animals as being simply moral patients runs the risk of blinding us to their agency and of encouraging an overly rationalist conception of moral agency.

⁶ "Dependency doesn't intrinsically involve a loss of dignity, but the way in which we respond to dependency certainly does. If we despise dependency as a kind of weakness, then when a dog paws his dinner bowl, or nudges us winningly to remind us it is walk time, we will see ingratiation or servility. However, if we don't view dependency as intrinsically undignified, we will see the dog as a capable individual who knows what he wants and how to communicate in order to get it—as someone who has the potential for agency, preferences, and choice" (Zoopolis, 84).

⁷ The distinction between moral agents and moral patients—i.e., between beings who can be held morally responsible for their actions and those who cannot, but can still be the objects of moral consideration, such as infants and people with intellectual disabilities—has been developed at length by Tom Regan in The Case for Animal Rights (Regan 1983, 151-155).

In traditional normative theories, rationality is intrinsically tied to moral agency because it enables the autonomy or normative self-government (Korsgaard) and the impartiality (Singer) considered to be at the core of morality. Rationalist conceptions have a point in refusing to equate morality and altruism as some scientists do, but they tend to idealize our moral lives, lead us to deny the apparent moral dimension of parental care and unreflective acts of benevolence, and fail to recognize the central role of emotions.

I suggest we should deepen our understanding of moral agency by distinguishing between moral agency and rational moral reflection.

- (1) Moral agency: linked to prosocial or other-regarding behaviours, empathy and reciprocity, moral agency refers to the ability to learn to behave according to social norms and to distinguish between what is right and wrong, correct and incorrect, according to these implicit or explicit norms.⁸
- (2) *Rational moral reflection*: the ability to critically reflect upon the principles governing our actions, to debate and revise these principles enables the normative self-government and impartiality identified by traditional normative ethical theories as being essential to morality.⁹

Animals may not be moral agents in the second sense, but this is arguably an intellectualist conception of our own moral lives. Most of the time, we do not reflect upon the principles of our actions and critically evaluate them, but simply follow social norms we have internalized through habits. In everyday life, we conform to the rules of ordinary morality and this is sufficient to be moral agents in the wider sense.

It is true, however, that moral agency does require a form of *self-restraint* and *responsiveness to shared norms*, but there is no need to understand these capacities in an idealized way. Social animals can learn the implicit rules of their community: through a learning process akin to our own socialization, they learn what they should and should not do and are able to distinguish what is right and wrong, correct and incorrect, and to reinforce this in others through a process of rewards and punishments akin to blame and praise.

This is the meaning of moral agency we find in the ethological research of scientists such as Bekoff and Pierce (2009), who associate morality with other-regarding behaviours, as well as in DeWaal (2006), who identifies the first stages of morality in empathy and reciprocity.

This sense of moral agency is found in Kantian deontologists who associate morality with autonomy and normative self-government (Korsgaard, 2006) and in utilitarians who link morality with the ability to take an impartial perspective, thus requiring rationality (Singer, 2006).

As Donaldson and Kymlicka argue in their forthcoming paper "*Unruly Beasts*," we should think of capacities for moral and political agency on a continuum. On the one hand, ethological studies have shown that "many animals, far from being unruly, display norm-responsiveness rooted in a range of pro-social behaviours (cooperation, empathy, reciprocity, conflict-resolution, sense of fairness)." On the other hand, phenomenologists and moral psychologists have drawn attention to the unreflective character of our own moral agency which "is not exclusively or even primarily about rational reflection on propositions, but rather is embodied behaviour grounded in moral sentiments and pro-social impulses, and is largely intuitive and spontaneous".¹⁰

We sometimes reflect on the principles of our actions, to debate and revise them, and this does enhance our responsibility, but this doesn't mean that animals and children are not responsible for their actions. Their movements are *voluntary* actions even if they are not the result of a rational deliberation. As Kristin Andrews recently argued, we do treat animals and children as being responsible for their actions to a certain extent, insofar as they were able to do otherwise. Rethinking moral agency and responsibility on a continuum enables us to see animals as social agents like us and not as mere objects of our paternalistic decisions

8. Moving Beyond the Parsimonious Understanding of Animal Minds

While it is important to focus on the capacity to suffer, insisting exclusively on suffering prevents us from understanding what is wrong with captivity and killing. Focusing on vulnerability and suffering runs the risk of locking us in a paternalistic model which cannot recognize animals as agents leading their own lives—whether as other nations, as residents forming their own communities, or as citizens of our mixed human-animal societies.

Securing the rights to life and liberty of sentient beings is difficult when we work with an impoverished conception of the lives of animals which obscures the fact that we are dealing with *someone* else, with a being endowed with a psychological life who is able to feel, to care, to remember, and to learn, who enjoys exploring the world and developing meaningful relationships with others.

We often say that animals are stuck within the *struggle for survival and reproduction* whereas we, humans, seek not merely to live, but to live well and be happy. We see ourselves as having a biographical life (*bios*) and animals as

Donaldson and Kymlicka, "A Defense of Animal Citizenship. Part 2: Unruly Beasts and the Threat to Democracy."

See Aristotle's distinction between voluntary action (*hekousion*) and deliberation or rational choice (*prohairesis*): "For both children and the lower animals share in voluntary action, but not in choice, and acts done on the spur of the moment we describe as voluntary, but not as chosen" (*Nichomachean Ethics*, 1111a34-35).

having only a biological life $(zo\bar{e})$. But, properly speaking, growth, nutrition and reproduction are the functions of what Aristotle called the "nutritive soul", the goal of what is 'merely living' $(o\bar{u} z\bar{e}n \ monon)$, the *telos* of plants.

Animals are not only living beings, but sentient beings, subjectivities endowed with sense-perception and affective dispositions, memory and foresight, desire and representation (*phantasia*). Each has its own personality, which develops through various interpersonal and social relationships. In other words, an animal is not merely alive, but has *a life*.

This allows us to understand the strange ending of the *De Anima* where non-human animals—or the other animals (*to alla zoia*), as Aristotle called them acknowledging long before Darwin that humans are animals too—are said to have the capacity to smell, hear and see not only "for their being, but for their well-being [*eu zen*]" (*De Anima*, 435b19). Animals seek not only *to live*, but *to live well* (*eu zen*): to be happy, to have good lives.

One of the greatest achievements of *Zoopolis* is to expand *our moral imagination* in ways that make us "see animals not solely as vulnerable and suffering individuals but also as neighbours, friends, co-citizens, and members of communities ours and theirs" (24). Donaldson and Kymlicka succeed in arousing interest about interspecies ethics and the prospects of justice for animals by providing both a seductive long-term vision—not only abolishing exploitation, but building just relationships—and practical short-term strategies that go far beyond humane treatment.

In offering a glimpse of a world where humans and other animals can "co-exist, interact, and even cooperate on the basis of justice and equality" (24), this book might be exactly what is needed to push ART out of their intellectual and political impasse.

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