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The Case for an Interspecies Theory of Democracy

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The Open Society and Its Animals. By Janneke Vink. (Basingstoke, England: Palgrave Macmillan, 2020. Palgrave Macmillan Animal Ethics Series. 375 + xvi pp. Hardback. £69.99. ISBN 978-3-030-41923-3.)

Abstract: This review seeks to locate Vink's book, The Open Society and Its Animals, within the wider terrain of the political turn in animal ethics. It explains what is meant by a nonanthropocentric interspecies theory of democracy, and how it might be justified, and sets out Vink's distinction between the political and legal representation of animals together with her preference for the latter. While agreeing that there is a strong case for a nonanthropocentric theory of democracy, and that an enfranchisement model is preferable to one based on citizenship, the review argues that Vink overestimates the problems associated with the political enfranchisement of animals and underestimates the difficulties associated with their legal enfranchisement.

Key words: political turn in animal ethics, democracy, representation, citizenship, political and legal enfranchisement

One of the new directions taken by animal studies scholars in recent years is toward a “political turn” in animal ethics (Cochrane et al., 2016). There is a dispute about what this political turn consists of. Defined broadly, it is about the use of political concepts, ideas, and theories to engage with the debate about what we owe to animals morally. The breadth of this definition allows the inclusion of a number of different themes. One is conceiving of our obligations to animals in terms of the *political* concept of justice as opposed to morality (Cochrane, 2010; Garner, 2013; Nussbaum, 2006), which, in turn, has led to a consideration of the role of the state (Schmitz, 2016). Other dimensions focus on the avoidance of first principles in preference to a consistent application of established, and noncontroversial, norms (O’Sullivan, 2011; Smith, 2012) and the embellishment of traditional animal ethics by the employment of relationships. That is, our moral obliga-

tions to animals are not, or not only, determined by their cognitive capacities, but also by relationships that we have with them (Donaldson & Kymlicka, 2011).

The political representation of animals is also a significant part of the so-called “political turn” in animal ethics because it explains why, despite 40 or so years of convincing arguments for the moral considerability of animals, so little has actually changed in the way they are treated in practice. A convincing answer is the classic utilitarian argument that the interests of animals are more likely to be taken into account if there is a formal institutional arena where these interests can be made to count. That is, as long as decision makers only have to take account of the interests of humans in the political arena, then not much will change.

The starting point is a recognition that in conventional democratic theory and practice, the relationship between democracy and the degree of protection afforded to nonhuman animals is a contingent one. This is because democracy, as it is conventionally conceived, is anthropocentric, or human-centered. The degree to which the interests of animals are advocated in the political arena is entirely dependent upon how far human beings want them to be. In an anthropocentric theory of democracy, then, the representation of animal interests is only indirectly achieved through the wishes of humans. Democracy exists for humans. Only humans count politically.

JUSTIFYING A NONANTHROPOCENTRIC THEORY OF DEMOCRACY

Two questions follow from this description of the anthropocentric theory of democracy. First, is a nonanthropocentric, or interspecies, theory of democracy normatively desirable? Second, what would such an interspecies theory of democracy look like? There has been some literature that attempts to answer these questions (see, in particular, Cochrane, 2018; Donaldson & Kymlicka, 2011; and Garner, 2017), but Janneke Vink, a Dutch scholar, has provided the first comprehensive, book-length account that attempts to answer both questions. It is by no means an entirely original account in that a substantial proportion of the book is devoted to explicating and considering the ideas of other thinkers in the field. However, the book is all the better for that. For one thing, it serves as a primer for those interested in interspecies democracy. For another, by taking a gradual step-by-step approach, the significance of Vink’s own position in the debate is made much clearer.

In the first part of Vink’s book, the normative case for the enfranchisement of animals follows familiar territory. She argues that the enfranchisement of animals is justified by the principle of equality already accepted as a central part of liberal democracy. Animals are sentient beings with interests and therefore have what she calls a “consideration right.” Thus, just like children and other “political patients,” sentient nonhumans ought to be represented politically and/or legally. That is, Vink rejects the view that political agency is a necessary condition for political rights. Indeed, she wants to go further. To remain legitimate, liberal democracies cannot continue to refuse to consider the interests of animals independently of those of humans. Vink convincingly argues, in other words, that liberal democratic principles require, and not just facilitate, the enfranchisement of

nonhuman animals and the serious consideration of their interests by liberal democratic states. Put more abstractly, in what Vink describes as “one of the most important questions in current political philosophy” (p. 100), she asks: Is a political system that does not directly incorporate the interests of animals entitled to describe itself as a genuine democracy?

Vink’s claim that animals ought to be regarded as our political equals is underpinned by the adoption of the all-affected principle. Again, this move is not original. The all-affected principle is regarded by many democratic theorists (and green political theorists) as the only possible solution to the boundary problem in political democratic theory. That is, when asked who is to count as a member of the polis, one convincing answer is all of those who are affected by decisions taken by that polis. As I have pointed out (Garner, 2017), this principle allows for the inclusion of animals if and when their interests are affected by decisions made. It is clear that many political decisions that are made do impact, often detrimentally and profoundly, animals.

Vink recognizes that consistent application of the all-affected principle would seem to require not just the inclusion of animals but also future generations of humans. Vink, however, rejects this move partly on the grounds of the “ambiguous ontological status” of future people (p. 48). I think the claims of future generations are rejected too quickly here and not much damage to the overall argument of the book would occur as a result of granting political rights to future people. At the very least, greater consideration of the “ambiguous ontological status” referred to is necessary not least because, if accepted, her rejection of a considerable moral status for future generations has serious consequences for the validity of a genuine environmental ethic.

TYPES OF INCORPORATION

The majority of Vink’s book is concerned with answering the second question: What would a nonanthropocentric theory of democracy look like? How, exactly, should animals be incorporated in a genuine interspecies theory of democracy? In the first place, Vink develops an enfranchisement criteria that must be met by a genuine interspecies democracy. The central part of this is that it must, unlike the current anthropocentric model, be noncontingent in the sense that the interests of animals must be considered independently of human interests. Crucially, too, Vink uses a very broad definition of enfranchisement “indicating some type of political or legal recognition of nonhuman animals in basic institutional structures, not (just) in the narrow sense of extending voting rights to non-human animals” (p. 11). The basic distinction Vink wants to make is between political and legal representation. Crucially, she rejects their political enfranchisement in favor of assigning sentient animals fundamental legal rights to be protected through the constitutional arrangements of liberal democratic states.

Vink considers varieties of political representation and rejects them as inadequate. She starts by rejecting the citizenship model as developed by Donaldson and Kymlicka (2011). In a rich and innovative analysis, applying Kymlicka’s long-held advocacy of group-

differentiated rights, Donaldson and Kymlicka argue that it is useful to map our obligations to animals through the utilization of citizenship theory. In other words, the moral worth of animals is cashed out, at least in part, through their membership of political communities. They envisage three categories of animals, informed by a relational ethic based on citizenship theory. Of greatest import is the category of domesticated animals (to be contrasted with liminal animals, who do not have the rights of full citizenship, and free-living animals who are equivalent to separate sovereign communities). Domesticated animals, those who are part of our societies, are equivalent to co-citizens and have certain particular rights because of their relational status with humans. The interests of domesticated animals, then, are incorporated into the polity by Donaldson and Kymlicka in their role as citizens.

Vink questions, rightly I think, the compatibility of citizenship with animals' lack of political agency. That is, it is by no means obvious that they can qualify as citizens, at least if a traditional definition of the concept is adopted. Traditionally, citizenship has been held to be applicable only to those who are self-reflective about their own good and about social norms and who are able to participate in the co-authoring of laws (Donaldson & Kymlicka, 2011, p. 103). It therefore requires responsibilities as well as the distribution of rights. Donaldson and Kymlicka (2011, p. 55) themselves recognize this and, because animals are not self-reflective moral agents, seek to revise the characteristics necessary for citizenship.

Whether or not Donaldson and Kymlicka's (2014) revision of the terms of citizenship is successful—and some commentators have claimed that it stretches the meaning of citizenship far too wide (Hinchcliffe, 2015)—is one thing. What is equally important is that even Donaldson and Kymlicka's revised qualification test for citizenship requires a level of cognitive competence that is contentious. According to this revised version, animals have a good, but they do not need to have the capacity to understand or reflect on it. This good, they argue, can be communicated by animals to human companions in a number of ways. The revised version requires animals to “exhibit norm responsiveness and intersubjective recognition in actual interactions” and this, in turn, is dependent on ethological evidence that animals,

experience and act on the basis of moral emotions such as love, trust and empathy, engage in a variety of co-operative tasks requiring impulse control or delayed gratification, are socialised into norms of behaviour which can subsequently be modified, resisted and/or renegotiated, and exercise self-restraint and self-sacrifice out of concern for others, fear of consequences, or even a sense of fairness. (Donaldson & Kymlicka, 2014, p. 34)

The revised version of citizenship envisaged by Donaldson and Kymlicka (2014), therefore, depends upon certain (disputed) capacities, as they recognize (p. 108), namely: to “have and communicate a subjective good,” to “comply with schemes of social cooperation,” and to “participate as agents in social life.”

An alternative form of representation is the political enfranchisement model whereby animals' interests are represented by human proxies. Political theorists have developed,

sometimes ingenious, schemes in which humans act as proxies for excluded, so-called “mute,” interests such as future generations and nature whose representatives are allocated some seats in legislative assemblies, and counter-majoritarian devices are suggested to impede the will of the majority (an example of the former is Dobson, 1998; an example of the latter is Ekeli, 2009). The same could be envisaged for animals. Operationalizing this principle would require institutional reform whereby some humans are elected (possibly by a constituency made up of organizations concerned about the well-being of animals) to represent the interests of animals. Crucially, this representation would take place irrespective of the level of concern for animals in wider human society.

Vink argues that political enfranchisement is not an optimum model for representing animals’ interests. One major problem, she suggests, relates to the fact that animals cannot act politically and therefore cannot instruct and control hypothetical representatives. As a result, there are democratic costs because animal trustees are not directly elected. In addition, unaccountable animal trustees might not only fail to represent the interests of animals well, but also potentially abuse their political power. Here, institutional safeguards might be the answer. These could be the screening of animal representatives—perhaps by those in the animal advocacy movement—or by appointing or electing them for one term only or by making them accountable to a commission especially set up for the purpose. However, Vink argues that none of these measures “can guarantee” that animal trustees will represent the interests of animals well.

Another issue is the problem of determining how much political power animal trustees should have. Too much, for example, by giving them a veto power, and human interests might be disregarded; too little, for example, by giving them merely an advisory role, and the interests of animals are likely to be neglected. Giving animal trustees equal representation is contentious not least because it does not account for the increased weight that human political agency demands. Any other weighting seems arbitrary with little normative justification. Yet another problem is that nonhuman animal species, of course, have different interests that may, at times, conflict, and it is not clear how animal trustees would take this into account.

In light of the problems associated with politically enfranchising animals, Vink argues that the most normatively desirable form of enfranchisement for animals, one which best achieves the goals of a genuine noncontingent representation of animals’ interests, is the assigning to them of fundamental legal rights that create legally binding duties for humans to respect. Vink recognizes that a move toward the granting to animals of fundamental legal rights is no small step and is not going to be achieved overnight. As a result, she suggests that an intermediary step toward this objective is the establishment of state objectives on animal protection within the constitutions of liberal democracies. Such provisions (which exist already in the constitutions of some liberal democracies) are not ideal because they are only aspirational and have little legal force. Nevertheless, they do provide a notice that animal interests are important and this can influence legislators. As a result, they are a useful first step toward the achievement of fundamental legal rights for animals.

The introduction of state objectives is one, but only one, way of reforming, rather than abolishing, the anthropocentric system of representation. Other political rather than legal moves are possible here too. Vink does mention the role that animal advocacy parties and an emphasis on democratic transparency and free speech can play in furthering the protection of animals. She might also have mentioned electoral reform, which, in the British context in particular, would benefit smaller parties who represent minority interests and concerns such as animal protection. A more substantial reform, surprisingly not mentioned at all by Vink, involves the adoption of a more deliberative system of representation. There is no space here to consider this question but it has been claimed that deliberative democracy is likely to produce more ecologically desirable outcomes than the conventional aggregative form of democracy (see, for example, Smith, 2003), and it is worth speculating how far this assertion is valid in the case of debate and decision-making in the case of animals (see Garner, 2018).

AN ASSESSMENT

Without doubt, Vink has provided the most thorough discussion to date of the political enfranchisement of animals. The objections she raises are thoughtful and undoubtedly important. One specific rejoinder is that it is inconceivable that any institutionalization of animal trustees would lead to the disregarding of human interests. In more general terms, here, there is a good case for arguing that Vink's expectations are too high. Institution building is difficult and invariably imperfect when it involves the representation of human interests, and the same could be expected of an attempt to incorporate the role of animal trustees into liberal democratic political systems. It does not mean, however, that, with experience, problems cannot be ironed out and the system improved.

Conversely, Vink's characterization of the legal enfranchisement of animals underestimates the difficulties that are associated with such a move. First, it requires, unlike the political enfranchisement model, a—highly contentious—acceptance that animals actually do have fundamental rights. Vink spends some time, as a result, seeking to defend an interest-based theory of animal rights. Much of the work here, therefore, is being done by conventional moral philosophy whereas the political enfranchisement model, which requires only that animals are sentient, has a stronger claim to be part of a genuine political (or legal) turn in animal ethics. Second, while legal limitations on the legislature and executive is certainly consistent with the liberal part of *liberal* democracy, there is a long-standing debate about how democratic such a move is (see, for instance, Waldron, 1999, Chapter 13). Third, to adopt a parochial position for a moment, the constitutional route is not appropriate for a country such as the United Kingdom that does not have a codified constitution.

Fourth, it is important to note that constitutions do not merely confer legitimacy but are bodies of rules that are themselves judged for their legitimacy. Put simply, a constitution is only legitimate when it reflects widely held beliefs and values. Therefore, the legal route is not, as the book suggests, somehow independent of human endorsement.

Rather, to include the protection of animals within a constitutional settlement will not work unless there is sufficient political support for granting animals fundamental rights such as the right to life. Finally, it is not clear why we have to regard the legal and political enfranchisement of animals as mutually exclusive. Is there not scope for both?

In conclusion, it is my judgment that Vink overestimates the problems associated with the political enfranchisement of animals and underestimates the difficulties associated with their legal enfranchisement. Nevertheless, Vink's book provides the most rounded and inclusive account of the representation of animal interests currently in existence that goes beyond first principles—the establishment of a consideration right for animals—to engage with many of the practical difficulties of enfranchising animals. It is therefore an important contribution to the burgeoning political turn in animal ethics.

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