

Chapter 1

Animal Rights: A New (Non)Human Rights Revolution?



Rights are subject to evolution, if not revolution: both the transformation of currently recognized rights and the introduction of new rights altogether. *Schulz and Raman (2020), p. 6.*

Animal rights is an idea whose time has come.¹ This book looks at animal rights through the lens—and as a phenomenon—of new human rights.² It revisits a question once famously asked by the philosopher Paola Cavalieri: are human rights *human*?³ In other words, can and should animals have some of the same fundamental rights that have traditionally been reserved for humans in the guise of ‘human rights’?

Not long ago, the very notion of *human* rights for *nonhuman* animals⁴ was easily dismissed as nonsensical.⁵ After all, human rights are considered to be ‘literally the rights that one has simply because one is a human being’.⁶ On the other hand, Christopher Stone reminded us that throughout legal history, each extension of rights to some new group has been ‘a bit unthinkable’.⁷ When Olympe de Gouges (1791) and Mary Wollstonecraft (1792) first proclaimed the rights of woman in the wake of the 18th century’s declarations of the rights of man, the bold proposition that human

¹See Stucki (2020), p. 560 (noting that ‘we may presently be witnessing a new generation of legal rights in the making—legal animal rights, simple and fundamental’).

²On new human rights, see generally von Arnould et al. (2020); Brysk and Stohl (2017); Bob (2009).

³Cavalieri (2005).

⁴Nonhuman animals will hereinafter be referred to as ‘animals’ and human animals as ‘humans’. Furthermore, when speaking of ‘animals’, what I primarily mean is *sentient* animals.

⁵See e.g. Schulz and Raman (2020), p. 148 (noting that the ‘notion that nonhuman animals may be awarded rights is one that many human animals have a hard time taking seriously’); Jowitt (2016), p. 72 (noting that ‘it might seem counter-intuitive to be speaking of “human rights” . . . for subjects who are, unequivocally, not human. One might consider it axiomatic that human rights apply exclusively to humans’).

⁶Donnelly (2013), p. 10.

⁷Stone (1972), p. 453.

rights might also be women's rights was met with much the same incredulity and ridicule as animal rights are today.⁸ Indeed, Thomas Taylor (1792) responded to Wollstonecraft's *A Vindication of the Rights of Woman* with the satire *A Vindication of the Rights of Brutes*, likening the case for women's rights to the case for animal rights—of course intended as a *reductio ad absurdum*. Over two centuries later, we can affirmatively state that women's rights *are* human rights,⁹ and we may ask in more earnest: are animal rights the next frontier of human rights?

1.1 Animal Rights as New Human Rights. . .

1.1.1 What Are Animal Rights?

Animal rights are moral and/or legal rights that protect certain aspects of an animal's existence, well-being, intrinsic value, integrity, or other interests.¹⁰ The term 'animal rights' tends to be used differently in theory, practice, and common parlance.¹¹ In a *broad* sense, it often serves as an umbrella term that covers any kind of (even marginal) protections for animals. For example, *simple* animal rights are the weak and oftentimes odd legal rights that animals may be said to have based on existing animal welfare legislation, such as a right to be slaughtered with prior stunning or a right of chicks to be killed by fast-acting methods, such as homogenisation or gassing.¹² More commonly, however, the notion of animal rights is distinguished from animal welfare law, and conceived as a temporal successor thereof and as a substantive progression therefrom.¹³ In a *narrow* sense, then, the term 'animal rights' is typically reserved for a distinctive and more robust kind of normative protection in the form of basic rights, such as the right to life, liberty, and bodily integrity. These *fundamental* animal rights are strong legal rights along the lines of human rights that protect fundamental interests and are not easily overridden by countervailing considerations.¹⁴

⁸Hunt (2007), p. 18, reminds us that 'We should not forget the restrictions placed on rights by eighteenth-century men'.

⁹But see MacKinnon (2006).

¹⁰For an overview, see Stucki and Kurki (2020).

¹¹On the different, broad and narrow senses of animal rights, see Francione and Charlton (2017), p. 25; Kymlicka and Donaldson (2018), p. 320; on the distinction between simple and fundamental animal rights, see Stucki (2020), p. 551f.

¹²Stucki (2020), p. 549.

¹³See Corte Constitucional del Ecuador, Final Judgment No. 253-20-JH/22 ('Estrellita Monkey' case) of 27 January 2022, para 77 (noting that 'the recognition of animals as subjects of rights constitutes the most recent phase in the development of their legal protection, which is based on the recognition of animals as living beings with an intrinsic value that makes them holders of rights'); see also Stucki (2023).

¹⁴See Stucki (2020), p. 552.

This book, like most of animal rights theory, is concerned with fundamental animal rights. In this sense, the idea of animal rights is about ‘universal basic rights for animals’ in virtue of their sentience or ‘selfhood’¹⁵—as it were, fundamental rights that animals have *simply in virtue of being animals*. This dominant understanding echoes that of human rights—the fundamental rights that humans are said to have simply in virtue of being human—and connotes what might be cumbersome called ‘human rights-like animal rights’. Even though animal rights theory has from its inception gravitated towards the natural rights and human rights tradition,¹⁶ contemporary animal rights discourse has taken a more explicit human rights turn. There is now a growing trend to frame animal rights in the language of human rights, and to assert human rights claims on behalf of animals. As a result, animal rights are today considered among an eclectic group of new human rights candidates.¹⁷

1.1.2 What Are New Human Rights?

New human rights—or claims to such—are novel (contested) rights that seek to enlarge the ‘protective umbrella of human rights’ beyond the currently accepted catalogue of rights in order to address an extant protective gap or new protective need.¹⁸ New human rights discourses are a constant companion to the established human rights order. This is because human rights, by their very nature, are subject to evolution and revolution; they carry in them the permanent possibility of generating new human rights or extending old human rights to new right-holders.¹⁹ For example, women and children were once new human rights-holders, and today, the right to a healthy environment may be considered one of the newest human rights.²⁰ Human rights are not static, but rather, in a perpetual state of ‘evolutionary flux’²¹ and in ongoing need of extension, refinement, and revision.²² It is this

¹⁵Donaldson and Kymlicka (2011), p. 19ff, 31.

¹⁶See notably Salt (1892); for an overview of the historical affinity between animal and human rights, see Fasel (2019), chapter 1.

¹⁷On animal rights as new human rights, see Pietrzykowski (2020); Schulz and Raman (2020), p. 148ff.

¹⁸von der Decken and Koch (2020), p. 7.

¹⁹See Schulz and Raman (2020), p. 37 (human rights “contain the seeds for their own expansion.” Sometimes that expansion builds upon current rights in an evolutionary way; other times it reflects the designation of a rights revolution, an expansion of the category of rights holders to a new set of people or new entities’).

²⁰The human right to a healthy environment was recognized by UN Human Rights Council Resolution 48/13 (8 October 2021) and UN General Assembly Resolution A/RES/76/300 (1 August 2022); on the ‘environmental rights revolution’ see Boyd (2012).

²¹Alston (1984), p. 616.

²²Winston (2007), p. 286.

inherent dynamism that enables human rights to respond to changing social, political, ethical, or environmental needs and challenges, and therefore to meet the ‘problems that people face in a modern-day world.’²³

The present era is often referred to as the Anthropocene—the new human-dominated geological epoch in which humankind has become a central force in shaping the global environment, and in which the destructive and escalating impacts of human activities on planet Earth are becoming evermore manifest.²⁴ In the Anthropocene era, humanity is confronted with a number of new existential risks. These stem from a cluster of interrelated environmental and health crises such as anthropogenic climate change, biodiversity loss, and zoonotic diseases—all of which are intimately linked to our destructive and exploitative relationship with animals and the wider natural world.²⁵ Contemporary ‘Anthropocene problems’²⁶ are profoundly changing the ‘safe operating space’²⁷ for human rights, and may give rise to new (non)human rights at the human-animal-environment interface.²⁸ It is in this specific historical context that animal rights as new human rights articulations have started to flourish—fuelled not only by an evolving sense of animal justice, but perhaps more so by an acute awareness of ecological pressures.

1.1.3 *Are Animal Rights New Human Rights?*

At present, animal rights are new human rights *claims* and as such ‘merely candidates for legal recognition’.²⁹ Broadly speaking, we can distinguish three stages in the ‘birth process’ of a new human right: from its intellectual inception (the idea phase), to its gradual reception and consolidation in legal and political arenas (the emergence phase), to its eventual legal recognition and codification (the recognition phase).³⁰ Animal rights are currently located in between the first and second stage of this ‘lengthy period of gestation’.³¹

²³ von der Decken and Koch (2020), p. 20; Alston (1984), p. 607ff.

²⁴ On the Anthropocene, see Crutzen and Stoermer (2000); Crutzen (2002); Kotzé (2019).

²⁵ See generally Sebo (2022).

²⁶ Purdy (2015), p. 230.

²⁷ On the notion of a ‘safe operating space’ within the planetary boundaries framework, see Rockström et al. (2009).

²⁸ See e.g. Chapron et al. (2019).

²⁹ von der Decken and Koch (2020), p. 8.

³⁰ See von der Decken and Koch (2020), p. 7ff; Hannum (2016), p. 410 (the ‘imagining, proclamation and eventual codification’ of new human rights).

³¹ Alston (1979), p. 38 (noting that the process of recognizing a new human right is a lengthy one and involves, inter alia, ‘the perception and articulation of a need, the mobilization of support . . . and widespread acceptance of both the validity of the need and the responsibility of another party for its satisfaction’).

New human rights start out as (oftentimes fringe) discursive articulations by intellectual and political ‘norm entrepreneurs’ expressing a need to develop existing human rights law.³² In animal rights discourse, we can clearly discern a human rights turn—a rising trend to articulate and integrate animal rights in the language, concepts, and frameworks of human rights. In animal rights *theory*, a growing body of scholarship casts animal rights as a ‘necessary dialectical derivation’³³ or ‘logical extension of the doctrine of human rights’,³⁴ and explores the continuities and interconnections between human and animal rights.³⁵ Conversely, the idea of animal rights is gradually permeating human rights theory,³⁶ where the ‘universal rights of animals’ are starting to be considered as a possible ‘fourth generation of human rights’.³⁷ In animal rights *practice*, we can observe a push to have animals’ fundamental or human rights legally recognized through legislative or judicial means. For example, a citizens’ initiative in the Swiss Canton of Basel-Stadt demanded a constitutional amendment recognizing the fundamental rights of nonhuman primates (which was, however, rejected at the ballot box in 2022).³⁸ Others have attempted to invoke before courts human rights on behalf of captive animals, such as the right to a fair trial,³⁹ the prohibition of slavery,⁴⁰ or—such is the litigation strategy of the US-based Nonhuman Rights Project—the right of *habeas corpus*.⁴¹ These activities are typical for the first, *idea phase* of new human rights: scholars engage in fleshing out the conceptual foundations and contours of animal rights, while strategic litigation takes first steps to attain human rights for animals in practice.⁴² Overall, the once

³² von der Decken and Koch (2020), p. 9.

³³ Cavalieri (2001), p. 143.

³⁴ Donaldson and Kymlicka (2011), p. 44; Goodkin (1987), p. 260 (viewing animal rights as ‘logical progression in the evolution of natural rights theories’ which also gave rise to modern human rights theory).

³⁵ See Cochrane (2013) (viewing human and animal rights as ‘part of the same normative enterprise’ and making a case for their reconceptualization as ‘sentient rights’); Fasel (2019); Peters (2016, 2018); Kymlicka (2018); Gearty (2009); Abbey (2017); Pocar (1992).

³⁶ See e.g. Douzinas (2000), p. 184ff; Edmundson (2012), p. 153ff; Fellmeth (2016), p. 51ff.

³⁷ Vincent (2010), p. 147.

³⁸ See Fasel (2023); in a similar vein, the Finnish Animal Rights Law Society proposes to constitutionally recognize fundamental rights of animals. See <https://www.elaintenvuoro.fi/english/>.

³⁹ *Balluch v Austria* App no 26180/08 (ECtHR, 4 May 2008) and *Stibbe v Austria* App no 26188/08 (ECtHR, 6 May 2008). The ECtHR rejected the application for incompatibility *ratione personae*.

⁴⁰ *Tilikum v Sea World* 842 F Supp 2d 1259 (S.D. Cal. 2012) (the case was dismissed for lack of subject matter jurisdiction. The court held that the prohibition of slavery applies only to human beings, or persons, but not to orcas, or non-persons).

⁴¹ See, notably, *Tommy v Lavery* NY App Div 4 December 2014, Case No 518336 (rejecting a ‘rights paradigm for animals’ and determining that ‘a chimpanzee is not a “person” entitled to the rights and protections afforded by the writ of habeas corpus’); but see New York Court of Appeals, *Tommy v Lavery* and *Kiko v Presti*, decision of 8 May 2018, motion no 2018-268, concurring opinion Judge Fahey (stating that the question whether an animal can be entitled to release from confinement through a writ of habeas corpus will have to be addressed eventually).

⁴² See generally von der Decken and Koch (2020), p. 9.

quixotic idea of extending human rights to animals is gaining wider traction in the political and legal sphere.⁴³

Moreover, marking the beginning of the next developmental phase, there is a nascent but growing global animal rights *case law*. Over the past decade, some pioneering courts have embarked on a path of judicial recognition of fundamental animal rights, arriving at them either through a dynamic-extensive interpretation of constitutional (human) rights or via a rights-based interpretation of animal welfare law. Most notably, courts in Argentina⁴⁴ and Colombia⁴⁵ have extended the fundamental right to *habeas corpus*, along with the underlying right to liberty, to captive animals. In another *habeas corpus* proceeding, the Constitutional Court of Ecuador has recognized a range of basic animal rights as part of the rights of nature.⁴⁶ Meanwhile, the Supreme Court of India and Indian High Courts have developed a remarkable case law recognizing and fleshing out the fundamental rights of animals, such as the right to life, dignity, and freedom from torture⁴⁷—or the fundamental right of birds ‘to fly in the sky’.⁴⁸ The Islamabad High Court has also affirmed a range of fundamental animal rights, and further underscored their nexus with human rights and the ‘interdependence of living beings’.⁴⁹ Lastly, albeit more tentatively, the Swiss Federal Supreme Court has confirmed the legal possibility of fundamental

⁴³ See Sparks et al. (2020), p. 149f (noting that the ‘once quixotic idea of animal rights has . . . turned into a viable legal possibility’).

⁴⁴ Tercer Juzgado de Garantías de Mendoza 3 November 2016, Expte Nro P-72.254/15 (the judge held that great apes are nonhuman legal persons who possess inherent fundamental rights, such as the inalienable right to live in their habitat, to be born free, and preserve their freedom); this landmark decision was preceded by an *obiter dictum* in Cámara Federal de Casación Penal Buenos Aires 18 December 2014, SAIJ NV9953, para 2 (expressing the view that nonhuman animals are right-holders and ought to be recognized as legal subjects).

⁴⁵ Corte Suprema de Justicia 26 July 2017, AHC4806-2017 (MP: Luis Armando Tolosa Villabona) (the judge held that the constitutional right of *habeas corpus*, which serves to ensure the ‘supralegal’ guarantee of liberty of the person, can be extended to animals in order to safeguard their respective right to liberty); this ruling was later reversed by the Constitutional Court of Colombia 23 January 2020, Expediente T-6.480.577—Sentencia SU-016/20 (MP: Luis Guillermo Guerrero Pérez), with a noteworthy dissenting opinion by Judge Diana Fajardo Rivera.

⁴⁶ Corte Constitucional del Ecuador, Final Judgment No. 253-20-JH/22 (‘Estrellita Monkey’ case) of 27 January 2022.

⁴⁷ See Kerala High Court 6 June 2000, AIR 2000 KER 340 (‘If humans are entitled to fundamental rights, why not animals?’; para 13); Supreme Court of India 7 May 2014, civil appeal no 5387 of 2014 (deriving a range of animal rights from the Prevention of Cruelty to Animals Act and, by reading them in the light of the Constitution, elevating those statutory rights to the status of fundamental rights).

⁴⁸ Delhi High Court 15 May 2015, CRL MC no 2051/2015, paras 3 and 5; Gujarat High Court, *Abdulkadar vs State*, judgment of 12 May 2011, SCR.A/1635/2010.

⁴⁹ Islamabad High Court 21 May 2020, W.P. No.1155/2019, paras 59-60 (noting that human rights are natural rights and have a ‘nexus with “life”’, which makes them available to other living beings. On this basis, the court spelled out a range of natural animal rights, notably the right to live in an environment that meets the behavioural, social and physiological needs of an animal; the right not to be treated in a manner that subjects an animal to unnecessary pain and suffering; and the right not to be tortured or unnecessarily killed); for a discussion of this judgment, see Stucki and Sparks (2020).

animal rights in principle.⁵⁰ Suchlike (as yet still isolated) acts of judicial recognition of animal rights correspond with the early stages of the second, *emergence phase* of new human rights. This stage is characterized by the occurrence of legal activities that are more immediately relevant to the formation of rights, such as courts corroborating the idea of extending fundamental or human rights to animals.⁵¹

Overall, recent developments in theory and practice suggest that legal animal rights are on the horizon, and that fundamental animal rights may be emerging as a new generation of (non)human rights.⁵² We may thus be at the onset of the next, and perhaps most profound, human rights revolution—a *nonhuman rights revolution*: the extension of old human rights to a new class of nonhuman right-holders.

However, animal rights have yet to progress into the final developmental stage of new human rights: legal recognition and codification. Until such wider institutional, political, and legal validation occurs, they remain contested claims or ‘wannabe rights’.⁵³ Indeed, among the potpourri of new human rights claims, animal rights are particularly controversial, and contestation and opposition to them perhaps strongest.

1.2 ... or the End of (Old) Human Rights?

As new human rights claims, animal rights are met with strong resistance, if not ridicule or hostility—especially by human rights scholars.⁵⁴ For one thing, the ongoing expansion and proliferation of human rights has generally given cause for concern.⁵⁵ Critical voices warn against such human rights inflation, as it risks undermining the currency, legitimacy, and universality of human rights.⁵⁶ These

⁵⁰Swiss Federal Supreme Court, judgment of 16 September 2020, 1C_105/2019 (confirming the legal validity of a citizens’ initiative on primate rights).

⁵¹See generally von der Decken and Koch (2020), p. 10.

⁵²See also Stucki (2020), p. 533, 560.

⁵³Hannum (2019), p. 61 (noting that these rights ‘should perhaps be called “wannabe” rights, rights whose legitimacy has not been confirmed ... However, mere wishing or proclamation does not create law’); Susi (2020), p. 30 (noting that theoretically articulated new human rights claims move to the next ‘stage of contestation from the political establishment and academia’).

⁵⁴See Schulz and Raman (2020), p. 148f (noting that ‘Among the most sceptical are human rights advocates ... This indifference or maybe even hostility toward animal rights is ironic, given that many in the animal rights movement either began their careers as human rights activists or took their inspiration from the struggle for human rights’).

⁵⁵On the phenomenon and critiques of human rights proliferation, see generally Alston (1984); Hannum (2019); Tasioulas (2019); Wellman (1999).

⁵⁶See e.g. Ignatieff (2001), p. 90 (warning that ‘rights inflation – the tendency to define anything desirable as a right – ends up eroding the legitimacy of a defensible core of rights’); Hannum (2016), p. 413, 438 (‘Human rights are on the verge of becoming a victim of their own success’); Sumner (1987), p. 15 (noting that the ‘proliferation of rights claims has devalued rights by eroding their argumentative power’).

concerns may appear even more acute with regard to animal rights, considering the sheer number—billions—of potentially entitled animals and the ensuing exponential growth of new human rights-holders and conflicts.⁵⁷ Moreover, human rights are already under pressure. In practice, they are undermined by widespread and persistent violations, illiberal backlashes, and an implementation or theory-practice gap.⁵⁸ In theory, human rights are an ‘essentially contestable concept’⁵⁹ that suffers from remarkable foundational uncertainty⁶⁰ and are the target of penetrating critiques and challenges.⁶¹ As one commentator has put it, ‘Virtually everything encompassed by the notion of “human rights” is the subject of controversy’,⁶² and as a recent review of human rights theory has concluded, there is a ‘diversity of positions . . . with no prevailing philosophical view even on fundamental issues like what a human right is’.⁶³

Amidst the plethora of problems, one seemingly banal assumption has remained relatively uncontested and operative in most of human rights discourse: that human rights are *human*, i.e., rights held by human beings simply in virtue of their humanity.⁶⁴ In this respect, animal rights obviously differ from other new human rights claims in that they aim at a rights expansion *not within but beyond* the human species. Animal rights thus challenge a (perhaps *the*) core axiom of human rights, which may be perceived as a further corrosive trend undermining the viability of human rights. Indeed, against the gloomy backdrop of talk of an ‘endtimes of human rights’⁶⁵ or a ‘post-human rights era’,⁶⁶ the very idea of taking the ‘human’ out of human rights⁶⁷ and introducing some form of dehumanized,⁶⁸ post- or nonhuman

⁵⁷In this vein Glendon (1991), p. xi (cautioning that a ‘rapidly expanding catalog of rights’—extending to animals and trees—would problematically multiply the sites of collision and risk ‘trivializing core democratic values’).

⁵⁸Against this backdrop, the result of promoting new human rights ‘may be simply to expand the number of rights that are routinely ignored’. Hannum (2019), p. 79.

⁵⁹Griffin (2001), p. 307.

⁶⁰See e.g. Sen (2004), p. 315f (noting that the idea of human rights is seen by many as ‘foundationally dubious’ and met with ‘intellectual scepticism about its conceptual soundness’); Hoffmann (2006), p. 404 (noting that the foundations of human rights are commonly ‘only hazily assumed, rather than clearly articulated’).

⁶¹For a discussion of different human rights critiques, see O’Connell (2018); Dembour (2017); Chandler (2016).

⁶²Brown (1999), p. 103.

⁶³Cruft et al. (2015), p. 4.

⁶⁴See Isiksel (2016), pp. 295–297.

⁶⁵Hopgood (2013).

⁶⁶Wuerth (2017).

⁶⁷See e.g. Lafont (2016).

⁶⁸On the ‘dehumanization of human rights’—the process of articulating claims of non-humans ‘with concepts, language, and standards borrowed from human rights discourse’—in the context of corporate human rights, see generally Isiksel (2016) (noting, *inter alia*, that ‘human rights are in the process of being appropriated to protect transnational corporations.’ *Ibid.*, p. 297); Gear (2007) (critically interrogating the ‘corporate colonisation of human rights’).

rights might be feared to herald the end of human rights. As Costas Douzinas has summarized these sentiments, ‘to question human rights is to side with the inhuman, the anti-human and the evil.’⁶⁹

This book addresses two sets of objections against animal rights in particular: *philosophical* or *conceptual* and *political* or *practical* ones. The first group of concerns relates to the conceptual nature of human rights, which one might say is ill-suited to accommodate animals, because it is intrinsically linked to humanity. Any attempt to insert the nonhuman would be incompatible with, and lead to a collapse of, the very concept of human rights. The second group of objections concerns the practical undesirability of extending human rights to animals. It is often assumed that animal rights are bad for human rights and will lead to harmful consequences, such as levelling down the normative status of (non-paradigmatic) humans.⁷⁰ For both types of objections, *opposition to animal rights* is considered a necessary position *in defence of human rights*.⁷¹

This book seeks to defend animal rights against both the conceptual objection (which maintains that only humans can, and animals cannot, have human rights) and the practical objection (which maintains that only humans should, and animals should not, have human rights). It argues that the inclusion of animals under the human rights paradigm is justified on both philosophical and practical grounds; that is, it is conceptually sound and politically warranted for both principled and prudential reasons. In other words, this book seeks to show that human rights need not be predicated on the exclusion of animals, and that tending to animal rights may ultimately help save human rights.

1.3 Something Old and Something New: One Rights

In a nutshell, this book submits that (some) human rights can and should be extended to animals, and advocates the recognition of animal rights as new human rights. It argues that there are compelling conceptual, principled, and prudential reasons for modernizing and expanding the human rights paradigm anew, and for including animals in its protective ambit. Ultimately, this book advances a holistic understanding of human and animal rights as part of the same family of fundamental rights: One Rights, indivisible and interdependent.

The novel term ‘One Rights’ is proposed here as a normative companion to the scientific One Health approach.⁷² One Rights encapsulates the union of (old) human

⁶⁹Douzinas (2000), p. 8.

⁷⁰On this concern (and its refutation), see generally Wills (2020).

⁷¹See Kymlicka (2018), p. 777 (observing a ‘marked trend in the past decade to reassert species hierarchy within the theory and practice of human rights’ in an effort to preserve human rights).

⁷²On One Health, see Zinsstag et al. (2021); One Rights was first proposed by Stucki and Sparks (2020) (noting that ‘Increasing awareness of the interconnectedness of human, animal and

rights and (new) animal rights under a shared normative framework. On this understanding, animal rights are located not alongside or below human rights, but form an integral part of an updated and broadened conception of (post-)human rights. As will become clear throughout this book, the One Rights approach is based on the idea that, for all their nuances and differences, human rights and animal rights share a deep conceptual kinship and practical interdependence. The One Rights approach asserts that in a conceptual sense, human rights are animal rights and animal rights are human rights, and that in a practical sense, protecting human and animal rights in concert promises to yield better outcomes for humans, animals, and their shared planetary home.

1.4 Approach and Structure of the Book

This book brings together the seemingly disparate theories of human and animal rights, and consolidates them under a novel One Rights paradigm. It approaches the question whether animals can and should have human rights through an extensive interrogation of contemporary *human rights philosophy* and the justifications most commonly advanced therein. The animal question raises foundational issues about the nature and grounds of human rights. ‘What are human rights, after all?’⁷³—and why do all (and only) humans have them? These questions are surprisingly difficult to answer, not least because the concept of human rights is highly indeterminate and ‘nearly criterionless’.⁷⁴ Human rights law—the legal field dealing with institutionalized human rights—is of little avail in finding answers to these fundamental questions. Perhaps because human rights are today so firmly entrenched in international and constitutional law, lawyers take the institution of human rights for granted and rarely feel the need to reflect on its foundations. As Samantha Besson notes, legal scholars tend to treat human rights as axiomatic or ‘self-justificatory, an irreducible value that is not in need of further justification’.⁷⁵ Rather than looking to human rights law, the animal question leads us deep into human rights philosophy, which is tasked with justifying—giving reasons—for human rights.⁷⁶

The philosophical landscape of human rights is marked by a bifurcation into *naturalistic* and *political conceptions*. Briefly put, naturalistic conceptions contemplate human rights as inherent moral rights deriving from some abstract human

ecosystem health has led to an integrative One Health (or One Welfare) approach in the natural sciences. Perhaps the time has come for a corresponding, holistic “One Rights” approach in law: human rights are animal rights, and animal rights are human rights’.

⁷³Hoffmann (2006), p. 406.

⁷⁴Griffin (2008), p. 14.

⁷⁵Besson (2018), p. 22.

⁷⁶See Besson (2018), p. 23, 25; see also Sen (2004), p. 318 (noting that the ‘difficult questions regarding . . . human rights arise in the domain of ideas, before . . . legalization occurs’).

nature, whereas political conceptions centre on the practical functions of human rights as derived from concrete political practice. While naturalistic and political conceptions of human rights are often cast as opposing theoretical accounts, there is good reason to think that this dichotomy might be overdrawn.⁷⁷ Matthew Liao and Adam Etinson argue that naturalistic and political conceptions can be seen as mutually complementing rather than incompatible theories, since they address different aspects of human rights that do not necessarily overlap.⁷⁸ Indeed, naturalistic conceptions are primarily concerned with the nature and grounds of human rights (and with the innate qualities of their *individual* holders), whereas political conceptions are primarily concerned with the functional role of human rights (and the *institutional* dimension of their protection).

For the purposes of this book, it seems sensible to adopt a pluralistic approach that takes into account both naturalistic and political conceptions of human rights, in order to fathom both the conceptual and practical side of the animal question. Naturalistic theories, which analyse human rights in terms of their *conceptual nature*, are more pertinent for illuminating the conceptual issue whether animals can have human rights, whereas political theories, which explain human rights in terms of their *practical functions*, are more instructive for evaluating whether there are good practical reasons for affording animals human rights. Accordingly, this book pursues a two-pronged analysis that looks at animal rights through the lens of both naturalistic and political theories of human rights. In doing so, it takes a parsimonious approach that is agnostic to the issue of which conception of human rights is correct.⁷⁹ The aim of this book is not to determine the ‘true’ meaning of human rights, but rather, to examine whether animal rights can and should be an integral part of human rights, however properly understood.

Chapter 2 deals with the conceptual question whether animals *can* have human rights. It examines a range of naturalistic human rights theories in terms of their potential for providing a conceptual home for animal rights. It distinguishes between exceptionalist and non-exceptionalist conceptions of human rights: two families of naturalistic theories—resting on either ‘old’ or ‘new humanism’—that differ in terms of their investment in human exceptionalism and their exclusiveness towards animals. As will be shown, the demarcation from and exclusion of animals is conceptually built-in to the first, exceptionalist conceptions, whereas the second, non-exceptionalist conceptions are only incidentally exclusive but conceptually open to animals. This chapter ultimately argues that the modern human rights paradigm is one of accidental yet inherent transspecies inclusivity, and therefore need not, indeed cannot consistently, be limited to the human species.

Chapter 3 addresses the practical question whether animals *should* have human rights through the lens of political conceptions and the functions they commonly attribute to human rights. This chapter argues that extending human rights to animals

⁷⁷ See generally Liao and Etinson (2012); Horn (2016).

⁷⁸ See Liao and Etinson (2012), p. 343.

⁷⁹ I thank Sergio Dellavalle for pointing this out.

is politically warranted for both principled (intrinsic) and prudential (instrumental) reasons. As a matter of justice, animals deserve and need human rights as a normative response to their experiences of violence, discrimination, and oppression. Moreover, animal rights also serve the indirect function of alleviating some of the gravest human rights threats such as dehumanization and environmental crises, and so have beneficial effects for humans too. This chapter thus challenges the dominant narrative of a principally antagonistic relationship between human and animal rights, and recasts it as one of synergism and interdependence. It argues that in light of their socio-political and ecological interconnectedness, human and animal rights are best protected in concert.

Chapter 4 synthesizes the insights drawn from naturalistic and political justifications of human and animal rights, and outlines the holistic One Rights approach as a new (post-)human rights paradigm for the Anthropocene.

Lastly, an important caveat is in order. The goal of this book is to introduce the novel concept of One Rights, and to substantiate its theoretical foundations along the dominant strands of human rights theory. In doing so, this book seeks to take the first steps towards a post-anthropocentric paradigm shift in the traditionally anthropocentric terrain of human rights. What this book does not aspire to do, however, is to develop a full-fledged and detailed account of One Rights as a legal paradigm. This would include, for example, an examination of what particular (human and nonhuman) right-holders hold which specific rights, what legal mechanisms may serve to resolve rights conflicts, and by what means to operationalize legal institutionalization, implementation, and enforcement. These questions are beyond the scope of this book, and may hopefully be the subject of future research.⁸⁰

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⁸⁰I thank one of the anonymous reviewers for pointing this out.

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