

Author's Response

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Response to Alasdair Cochrane

Cochrane presses me to clarify my position about animal citizenship. He says that I leave essential questions unclear, in particular whether citizenship belongs only to companion animals or also to wild animals. Actually, my position on this matter is utterly clear, though at a high level of generality. Chapters 5 and 12 argue that all sentient animals are subjects of the “virtual constitution” supplied by the capabilities norms for each species, and therefore all have rights that must be legally enforced. My argument for rights follows Korsgaard (113–14). I later conclude: “Rights and law, I argued in chapter 5, are conceptually interdependent. And rights mean that, where those structures do not yet exist, all humans, having the monopoly of law-making in this world, have a collective duty to create them as best we can” (279). If to have enforceable rights is to be a citizen, then all sentient animals are citizens. Whose citizens? A rough answer is, “Citizens of our world.” And this ironclad commitment of mine makes clear the fact that I firmly reject the exclusion of wild animals from citizenship proposed by Sue Donaldson and Will Kymlicka. But, as I go on to say, going further presents huge practical problems, especially given the weakness and inadequacy of international treaty law as it presently exists (for humans too).

The CA is a theory about defensible goals, not (for humans either) a theory of political structure. There is a division of labor, and I do not feel ready to offer a knock-down argument for or against the nation state as a site of justice, although I believe that Grotius is correct: It is the largest existing entity that gives autonomy to creatures (autonomy being defined as self-given law), and that is responsive to the voices of the affected. All forms of international

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organization known to me have been hopelessly inefficient and corrupt. But there are many different nation-type structures, some federal, some not, some with and some without strong judicial review, and I have not made context-independent arguments as to the preferability of any specific structure, although I have repeatedly argued that an independent judiciary and a written constitution are essential for all creatures. Of course other things are also important, such as free and fair elections. But some democratic theorists neglect the importance of fixing rights beyond the reach of majoritarian overthrow, and I follow my legal hero B. R. Ambedkar in thinking this neglect very bad for the powerless, *a fortiori* for animals as well as non-privileged humans.

My emphasis on legal standing comes from exactly this source: if a right is constitutionally guaranteed and is not being implemented, then the powerless have to have a way of challenging the non-implementation. That is why Ambedkar, a *dalit*, authored for a hierarchically stratified India not a British constitution but one with a written bill of rights. He argued that only in this way could minorities protect themselves. But constitutional litigation requires qualified litigants, and standing is necessary for being qualified. Four nations currently offer animals standing: Colombia, Ecuador, Argentina, and India. All others must quickly follow their lead. Otherwise animals are at the mercy of existing statute law, which is likely to be excessively influenced by financial interests hostile to their rights (for example, the meat industry in the US, as I document in Chapter 12 by examining our federal statutes as they currently exist).

Beyond this, however, I felt able to offer in the present book only examples of how the implementation of animal rights might work in a world like our own, by selecting a few issues from each level—city, state, nation, and transnational treaty law—and saying what has been well or badly done. I said repeatedly that this material is just a set of examples and is meant to be incomplete. Even so, my recommendations are not confined to the idea of a ministry of animals, mentioned by Cochrane: that is but one of the many ideas I pursue. *Inter alia* I discuss the need to provide access to free space to move, the need to stop practices such as declawing and tail docking, the urgency of banning the sale of dogs from puppy mills (as Chicago has), the need for veterinary health insurance, and much more. I conclude that “companion animals [later I add farm animals] are equal citizens whose interests should be taken into account when public decisions are made. Their voices should be heard.” (204). I come to the same conclusion about wild animals in the next chapter. Earlier (Chapter 5) I insist on treating all animals as active citizens (76–7), developing that idea rather fully in my critique of Korsgaard’s idea of “passive” citizenship. I thought I had spoken clearly; evidently I have not been understood.

Clearly, there is a great deal more to be done, and I know that Cochrane’s work will help me pursue these and other issues further.

Response to Daniel Engster

Engster presents a lucid, precise, and beautifully written account of the role of wonder in my book. He zeroes in, as do I, on a specific type of wonder (not the only type, as I mention perhaps too briefly on p. 11) that is connected to our awareness of striving and thence to the question of injustice, which I define in terms of “*significant striving* blocked by not just *harm* but also *wrongful thwarting*, whether negligent or deliberate.” (8, emphasis original).

Engster does not dispute my claim that the wonder we experience looking at automata does not lead us to perceptions of injustice (127). Some philosophers of artificial intelligence might dispute this, but since he does not, I shall not pursue that issue further. What concerns him is the role of *sentience* in my account: why do I think it is the source of a “line” in nature, despite rejecting other forms of line-drawing, in particular the sort associated with the old idea of the *scala naturae*? In brief, the *scala naturae* idea distorts nature, as I argue in Chapter 2, whereas the sentience idea does not. Not all line-drawing is bad, and, as he notes, mine is humble and revisable as to particular cases (120). But since Engster thinks that my line also distorts nature, I must say more to show how the book answers him.

The core idea of sentience, as used by scientists whom I respect and follow, is the idea of subjective experience: the world looks like something to these creatures—or, as the scientists like to say, there is someone “at home” in there. This property is connected to justice through the idea of “significant” striving. Because their responses are meaningful to them, their seeking and avoiding are not merely mechanical. As Engster notes, I set out several criteria for ascribing sentience, and follow this up by showing in detail how scientists apply these criteria experimentally, often through research on the subjective perception of pain. Although pain is just one aspect of sentience, it is the easiest to test. To ascribe sentience, scientists do not simply look for behavior that appears goal-directed. They also use “inference to the best explanation,” asking whether the ascription of subjective perception is the best way of explaining the behavior they see. And in the process they must examine the creature’s anatomy, asking where in the creature that ability to perceive subjectively could be located. For a long time, it was believed that birds could not be sentient because they lack a neocortex. Now scientists believe that by convergent evolution those same abilities are realized in a diffuse neural network.

Engster’s main worry is about plants. He misstates my argument for denying them sentience. My argument is not simply the one he cites that plants are cluster entities (by which I mean not a grove of trees, but rather the fact that any tree can live again from a cutting rooted elsewhere, so there is a great unclarity about when an individual can be said to die (151). That was just an addendum. My primary arguments are that there is no plausible physiological seat for that sort of subjective perception, and, second, that to

explain the behavior of plants it is not necessary to ascribe sentience—we can predict and explain their behavior without this, largely because their tropisms “do not exhibit the sort of individual variation in reactions, the flexible agency, that is characteristic of fish and birds” (151). I discuss scientific views on both sides of the plant-sentience question, including those of recent “plant neurobiologists” who compare information networks in plants to animal nervous systems (150). But mainstream botanists have rejected their views as “founded on superficial analogies and questionable extrapolations” (150). So: plants flunk the neuroanatomical condition and the behavior-explanation condition. If Engster wants to dispute my view, he needs to get much further into the details of this research, or challenge my criteria for sentience. The ball is in his court. He might begin by stating my arguments correctly.

Nonetheless, I also do not conclude that we owe nothing to plants. They cannot be subjects of injustice, but they can be harmed (152). “Ethical concern of some sort still seems essential” and we have “ethical duties” to attend to the natural environment (152). I do believe that we experience wonder of a sort when we look at plants (and other natural entities) and that this wonder should lead to an awareness, here, of a genuine ethical duty. It just isn’t a duty of justice. Engster may still not agree, but then he must dig deeper into the structure of my argument and tell me which piece he would replace. In any case he has raised an important issue.

Reply to Josh Milburn

To Milburn I simply say, Yes, two good ideas. No surprise, because, as he notes, I endorse both food tech and humane farming in the book.

What puzzles me deeply, however, is that he treats my view on eating fish as taking the form of a tragic dilemma, and concludes that I leave unclear the status of fish-eating—on which he appears to focus in his snarky title, which casts me as a callous Marie-Antoinette. But before Chapter 8, the tragic dilemma chapter, there was Chapter 7, devoted to the fish question. First, I develop (or repeat, since I developed it in earlier publications) a detailed philosophical argument about what the harm of death consists in. I conclude that death is a harm to a creature only when it interrupts temporally extended valued projects that the creature is pursuing. I apply this argument to the case of fish, arguing that because they do not have such projects but live in the moment, they are not harmed by death if they die painlessly in the course of a decently flourishing life. I mention the support of this general type of argument by R. M. Hare and by Peter Singer, at least in 1999—though I firmly reject Jeff McMahan’s contention that all non-human animals live in the moment. I admit in the chapter that I could be wrong about fish, but point out that a leading fish scientist, Victoria Braithwaite, ate humanely killed fish for some such reasons.

Of course I could be wrong about my normative argument, or, as I say, wrong about fish, or both. But it seems very odd not to mention my argument or to engage with it.

Reply to Alice Crary and Lori Gruen

This response, by two philosophers whose work I admire, is the oddest of all. Its central idea—that I am simply applying a finished theory to new cases, is one big distortion, since the theory itself has to change in many ways, large and small, to deal with the demands of the new case. Chapter 5 is all about those required changes, and is a very long chapter. But here is a list of their other problematic claims.

1. I am said simply to have elaborated a theory developed by Amartya Sen. It is true that my dear friend and colleague first proposed capabilities as a comparative measure. But the entirety of my normative political theory, based on capabilities and using a list of central capabilities, is all my own, and most of it has been rejected by Sen, who has always refused to advance a normative theory of political justice or to enumerate the most important capabilities. When he did advance an idea of justice in his 2008 book, *The Idea of Justice*, it was based on ideas from social choice theory and is utterly unlike my theory. All this is made clear by both of us in many publications.

2. I am said to hold that the political and economic structures of our world are basically ok—even though I hold that the legal systems, the constitutions, and the list of basic rights in every nation of the world are all grossly unjust, and that the system of international law is in a total shambles where animals are concerned. This may not be the type of critique the authors would like me to make, but it certainly is a very stringent critique and not complacent acceptance of the status quo.

3. My claim that all humans bear “collective responsibility” for making our world just to animals is interpreted, very oddly, as the claim that all current humans have equal responsibility for the harms that have occurred in the past. Nobody reading my scorching critique of the factory farming industry or the greed that underlies it could possibly understand me that way. What I mean by “collective responsibility” is made clear throughout the book, not least in its conclusion: it is the job of all of us to correct bad practices and to create a just world in the future.

4. My focus on theory is taken to imply that I think I do not need to know, and do not know, very much about the animals for whom I advocate. But the book is stuffed full of the latest scientific research on animals, especially in Chapters 6, 9, 10, and 11: animals including fishes, birds, dogs, cats, horses, marine mammals, elephants, and many more. I have particular expertise in the lives of elephants and marine mammals, as my citations in the book to my prior publications show (especially three articles on whales co-authored with my late daughter). I can now add that I have repeatedly been asked to submit,

and have submitted, amicus briefs through the Nonhuman Rights Project for cases concerning elephants, and my book was cited recently by a federal district court in Colorado that found that “[a]s a matter of pure justice ... elephants are entitled to be treated with the dignity befitting their species; and that that cannot be done, no matter how conscientious those who care for them may be, if they are confined in zoos that lack the substantial acreage needed to allow them to flourish.”¹ In addition to the publications cited in the book I have published two more articles that show my expertise: one on animal social learning,² and one focused on the current situation of whales.³

5. In the service of their inaccurate claim about the state of my knowledge, the authors cite a statement of mine in Chapter 11 that I have currently no friendships with animals. But this is in the context of a philosophical analysis of friendship that holds that—unlike love, which can be unidirectional and can take place at a distance—friendship requires lengthy living-together and reciprocity. I say that this sort of relationship with wild animals is occasionally possible—for researchers who live for years with members of a given species. (I discuss *inter alia* Barbara Smuts’s work with baboons and Joyce Poole’s with elephants.) I conclude:

These are cases of friendship, but they are predicated on going into the animals’ world for long periods of time, which is rarely possible for most of us ... The writings of these researchers give us, however, an imaginative paradigm of what such a friendship can be like. We can all cultivate the type of curiosity, empathy, and responsiveness to animal forms of life that these researchers learned in their work. And if friendship still eludes us, we can have unrequited love. (270–71)

I do in fact love elephants and whales. And I don’t think that even researchers can have friendship with whales: either they are in the deep or they are being abused in captivity, and I argue that friendship with wild animals in captivity is almost never possible.

Why don’t I have friendships with companion animals, for me dogs in particular? (Allergies prevent me from living with cats, and I have always loved dogs more anyway.) I have had such friendships, when I lived in a suburban house with a large back yard. But, as I argue in Chapter 10, it is unethical to bring a dog into your life if you live in a city with few dog parks and no way for the dog to get sufficient exercise off-leash. Nor is it ethical to live with a dog if you travel a lot. I live in a small condominium in Hyde Park Chicago, a city with very few dog parks; and I travel a lot. It grieves me to see five dogs being walked on leashes by an employee of my building hired for

¹*Nonhuman Rights Project v. Cheyenne Mountain Zoological Society*, District Court El Paso County Colorado, December 3, 2023.

²“What We Owe Our Fellow Animals,” *New York Review of Books* 69 (March 10, 2022): 34–36.

³“Where the Orcas Swim,” *New York Review of Books* 70 (November 2, 2023), 91–94.

the purpose. That is no life for a dog. So I love some particular dogs that I meet and know—for example, the dogs Lupa and Remus who lived with George Pitcher and Ed Cone in their Princeton home, where I was a frequent visitor. (Several chapters refer to Pitcher's book.) But I don't think it moral to live with a dog, given the circumstances of my life; friendship cannot be predicated on injustice.

The authors also cite my claim that I don't know of any real pig who is treated very well, as evidence that I lack concern for particular animals. (In the book that claim introduces my use of a fictional pig for an example.) Well, where would they find one? The vast majority of pigs, millions on millions of them, are living in the brutal conditions of the factory farming industry, which I describe. Even on a humane farm, a pig is being reared to be killed and eaten, which to me is injustice. Could someone adopt a pig and treat that pig well? Only if that pig was given a lot of outdoor space to move around in and ample opportunities to interact with other pigs and other farm animals. I know of no case like that, though the authors may. Might pigs in animal sanctuaries do better? Given that they arrive traumatized, they are particularly in need of a supportive social community of other animals if they are to flourish, and we would need to study each sanctuary to see what they provide.

6. The authors say that I contradict myself about veganism by criticizing its views about the benign use of animal products but then citing the views of "two vegans" (Donaldson and Kymlicka), who do not make this mistake. But what I say is that "unlike some vegans and like Donaldson and Kymlicka, I have no principled objection to the human use of animal products, so long as the animal is able to carry on its characteristic animal life" (221). I see no contradiction there, and Donaldson and Kymlicka, vegan in diet, are highly critical of a prevalent vegan position on animal products.

At the end of their article the authors complain that I do not pay enough attention to other philosophers' work. The whole point of my book was to address intelligent and curious members of the general public. For this purpose I decided to single out three major philosophical theories and their current practitioners—anthropocentric, utilitarian, and Kantian—and use my critiques of those distinctive approaches to motivate my own approach. Extensive references to the huge philosophical literature, in the context of that particular project, would, I judged, be distracting—though extensive discussion of current science would not. That was my plan. However, in other publications I have discussed other books and people, and indeed am planning a third piece for the *New York Review* on animal studies and environmentalism. I have Crary and Gruen's book in the pile of books possible for inclusion that the editor has just sent me. If I select it, I will offer it a meticulous and attentive reading.