

Justice, Democracy, and the Political Turn in Animal Ethics

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Martha C. Nussbaum's *Frontiers of Justice* was a ground-breaking work of political philosophy, and had particular influence in the field of animal ethics.¹ By arguing that animals ought to be considered recipients of justice, and not just of moral concern, her book helped to launch the so-called 'political turn in animal ethics'. The political turn accepts familiar claims in animal ethics about the moral status of animals, but extends them in at least two ways.² First, the political turn does not just see our obligations towards animals as a matter of personal morality but claims that we also have duties of justice that demand enforcement by—and transformation of—our collective institutions. Second, the political turn asks us not only to change our collective institutions, but to also reframe our understanding of the communities that they are designed to serve. We must recognize—and formally acknowledge—that our communities are 'multispecies' and comprised of nonhuman animal members.

Nussbaum's latest book, *Justice for Animals*, does an excellent job in vindicating these claims through refining a theory of justice for animals grounded in her Capabilities Approach (CA). What is surprising, however, is how little it engages with the theories of animal justice that her previous work helped to inspire. Indeed, Nussbaum's choice of foils in this book—Steven Wise's legal personhood, Benthamite utilitarianism, and Christine Korsgaard's Kantianism—are not theories of political justice for animals. The first is a theory about the legal status of animals, and the others are primarily theories about

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¹Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (London: Belknap Press of Harvard University Press, 2006).

²See Alasdair Cochrane, Robert Garner, and Siobhan O'Sullivan, "Animal Ethics and the Political," *Critical Review of International Social and Political Philosophy* 21 (2018): 266–77; Tony Milligan, "The Political Turn in Animal Rights," *Politics and Animals* 1 (2015): 6–15; Svenja Ahlhaus and Peter Niesen, "What is Animal Politics? Outline of a New Research Agenda," *Historical Social Research* 40 (2015): 7–31.

animals' moral value, with little concern for political transformation. This is not to deny that these theories have political implications, but none offers proposals on how we ought to transform our collective political institutions to live in more just multispecies communities.

An important reason to address the growing literature in the political turn is its engagement with democratic theory. This scholarship claims that securing justice for animals as members of our political communities requires confronting their role in our collective decision-making. While Nussbaum does not ignore this question altogether, her primary emphasis is achieving justice through the courts via legal standing (Chapter 12, "The Role of Law"). Now, it is obvious that transformed legal mechanisms are vital if animals are to enjoy justice: they must have a robust set of rights that can be enforced in court on their behalf. But legal transformation is insufficient. For if our politics is not just for humans, but also for fellow animal members, animal interests must feed into and shape what we decide to pursue as a community. As I argue elsewhere, the interests of animals should not just constrain policy-making so it avoids harm, but should also put new policy issues on the agenda, reframe existing policy options in terms that are less anthropocentric, and establish laws that allow animals to live well,³ or as Nussbaum puts it, to "flourish."

At points, Nussbaum recognizes the importance of this issue. "The CA is basically about giving striving beings a decent chance to flourish. That is how it views the role of law and government." (111). She attempts to address how this principle might be operationalized, through advocating the use of "duly qualified animal 'collaborators' ... charged with making policy on the animals' behalf" (98). But while this engagement with the role of animal interests in policy-making is welcome, it leaves unanswered a whole range of crucial issues that have been the subject of much debate in the political turn. First of all, for whom should the institutions of government be making policy? This controversial issue in the political turn is not one with which Nussbaum engages. This is because she fails to address the question of which animals should count as fellow members of our political communities. In their important contribution to the political turn, Sue Donaldson and Will Kymlicka believe that membership can only extend to domesticated animals, on the grounds that they alone have been bred to live amongst us, and have the requisite social traits to constrain their behaviour and cooperate socially.⁴ Arguing against this, I have claimed that wild animals can and should be thought of as fellow members of our communities, on the grounds of our

³Alasdair Cochrane, *Sentientist Politics: A Theory of Global Interspecies Justice* (Oxford: Oxford University Press, 2018), 38–42.

⁴Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011); see also Kimberly Smith, *Governing Animals: Animal Welfare and the Liberal State* (New York: Oxford University Press, 2012).

interwoven lives and entangled fates.⁵ Others have argued that animal membership should be determined by principles from democratic theory, such as the all-affected principle⁶ or the all-subjected principle.⁷

Nussbaum's position on this crucial matter is unclear. On the one hand, she is sympathetic to positive assistance for wild animals, and to recognition of our entangled fates (Chapter 10). But on the other, in her discussion of who should protect wild animals that wander across borders, she seems wedded to extant forms of political community, and hence reluctant to consider alternative forms of membership (283). Without knowing where she stands on the boundaries of membership, her theory of animal justice is incomplete.

In addition to this "boundary problem," we need to consider how animal interests can properly feed into policy-making. One of the important debates on this question relates to animals' political agency.⁸ For some, certain animals can directly participate in the co-authoring of laws themselves.⁹ For others, animals lack the requisite forms of political agency to deliberate over policy options, meaning that translating their interests into law necessarily requires representation.¹⁰ Once again, Nussbaum's position on this crucial matter is ambiguous. On the one hand, she argues for what she calls "active" over "passive" citizenship for animals, claiming that they are fully capable of "taking part, somehow, in shaping the conditions that govern our shared existence on this planet" (77). In her sole engagement with literature from the political turn, she endorses Donaldson and Kymlicka's model of "animal citizenship" for companion animals (205).

⁵Cochrane, *Sentientist Politics*, chapter 5; Alasdair Cochrane, *Should Animals have Political Rights?* (Cambridge: Polity Press, 2020), 84–85.

⁶Robert Garner, "Animals and Democratic Theory: Beyond an Anthropocentric Account," *Contemporary Political Theory* 16 (2017): 459–77; Janneke Vink, *The Open Society and its Animals* (Basingstoke: Palgrave, 2020); Pablo Magana, "Nonhuman Animals and the All Affected Interests Principle," *Critical Review of International Social and Political Philosophy* (forthcoming); and Ioan-Radu Motoarca, "Animals' Voting Rights," *Analysis* (forthcoming).

⁷Peter Niesen, "Which 'All-Subjected'-Principle for Animals?," paper presented at "Talking, Animals, Law and Philosophy," Cambridge Centre for Animal Rights Law, December 1, 2022.

⁸Sue Donaldson, "Animal Agora: Animal Citizens and the Democratic Challenge," *Social Theory and Practice* 46 (2020): 709–35.

⁹Donaldson and Kymlicka, *Zoopolis*; Eva Meijer, *When Animals Speak: Toward an Interspecies Democracy* (New York: New York University Press, 2019); Clemens Driesen, "Animal Deliberation," in *Political Animals and Animal Politics*, ed. Marcel Wissenburg and David Schlosberg (Basingstoke: Palgrave, 2014), 90–104.

¹⁰Cochrane, *Sentientist Politics*, 40–41; Angie Pepper, "Political Agency in Humans and Other Animals," *Contemporary Political Theory* 20 (2021): 296–317; Christopher Hinchcliffe, "Animals and the Limits of Citizenship: *Zoopolis* and the Concept of Citizenship," *Journal of Political Philosophy* 23 (2015): 302–20.

In terms of the details, however, Nussbaum's proposals fall well short of the visions of co-authorship and political agency proposed by others.¹¹ What she offers is much closer to a model of fiduciary representation. Indeed, with respect to companion animals, she argues that every city or state should have "an Office for Domestic Animal Welfare, whose human members would be charged with systematically examining the welfare of dogs and cats and promoting that welfare" (206). But leaving aside the question of why and whether such offices should be restricted to companion animals, other issues remain. For one, separating animal representation from other policy-making institutions might lead to the ghettoization and subordination of their interests. In addition, the proper means to select and hold these representatives to account needs careful consideration.¹²

While *Justice for Animals* offers a compelling restatement of the CA as a basis for acknowledging animals as the subjects of political justice, its lack of engagement with other theories of animal justice leaves it incomplete. If the fundamental role of law and government is to provide all members with a decent chance to flourish, it is crucial to reflect on how we might include animals within our collective decision-making. It would be fascinating to hear Nussbaum's thoughts on the burgeoning and lively debates on how this might be done.

¹¹Donaldson, "Animal Agora," 725.

¹²Cochrane, *Sentientist Politics*, chapter 3; and Vink, *The Open Society*, chapter 4.