

Giving animals a leg to stand on: Why sentient animals should have legal standing

Author: Linde Franken
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Summary

After years of incremental improvements in animal welfare laws, a growing number of animal advocates has been requesting legal standing for animals in lawsuits to protect their rights. This entails that animals would be recognized as a plaintiff in court (represented by a human person) and could allege a defendant for causing harm to them. The central question in this thesis is: 'From an ethical point of view, should sentient animals be eligible for legal standing?'. This includes both the question whether animals should be regarded as legal persons, and whether they should have the right to sue. I argue that the answer to both questions should be affirmative, for three reasons. First, animals can have some degree of moral personhood and therefore should be eligible for a passive form of legal personhood. Second, attributing legal personhood to animals enables us to increase our own moral personhood. Third, animals should have legal standing because this allows us to fulfil our duties towards animals who are co-citizens or denizens in our political community and animals who are citizens of their own sovereign communities.

1. Introduction

In 1457 in Savigny, France, a five year old boy was killed by a sow and her six piglets. The animals were prosecuted through a formal trial, including the showing of evidence and the defense of a lawyer (Girgen, 2003). The sow was sentenced with the death penalty, but the piglets were exonerated because they "were immature" and "raised by a rogue mother [...] and thus unable to internalize the proper codes of conduct for village-dwelling piglets" (McWilliams, 2013, para. 5).

Nowadays, most people would find the idea of judging nonhuman animals (hereafter animals) by human legal standards highly inappropriate. After all, animals cannot even understand the concept of a duty, so how could they ever be held liable for violating a duty we imposed on them? Having said that, court cases involving animals are on the rise again. However, this time the role of the animals is not that of the defendant but that of the plaintiff. An example is the case of chimpanzee Cecilia, who lived in the Mendoza Zoo in Argentina. In 2016, the president of animal rights organization AFADA filed a habeas corpus¹ lawsuit on behalf of Cecilia, alleging the Mendoza Zoo for illegitimately depriving the chimpanzee of her rights to bodily freedom and a dignified life. The court recognized Cecilia as a non-human legal person and ordered that she had to be transferred from the zoo to a sanctuary (Michigan State University College of Law, n.d.).

Cecilia's case is one of the few cases around the world in which animals (individually or as a group) have been attributed legal standing (Eco Jurisprudence Monitor, n.d.), which is the permission to act as a plaintiff in court – in this case represented by a human being – against a defendant who caused harm to the plaintiff.² Apart from these cases, there have been increasing attempts to request legal standing for animals, particularly in the United States (Eco Jurisprudence Monitor, n.d.). However, most of these attempts have been rejected by the courts, despite the fact that it is possible under Article III of the US constitution to attribute legal standing to animals (Sunstein, 1999).³ Although there may

¹ The writ of habeas corpus (Latin for 'you have the body') is used in lawsuits to determine whether a person's detention or imprisonment is lawful. The writ can be filed by any person illegally imprisoned or otherwise restrained in their liberty, or one acting on their behalf.

² I am not aware of explanations why Cecilia's case has not set a precedent for other cases yet, but part of the explanation might be that most lawsuits after Cecilia's case have taken place in other countries, in which the jurisprudence is different. Furthermore, some court judgments in which animals were granted legal standing have been reversed by a higher court (Montes Franceschini, 2022).

³ Since most attempts to request legal standing for animals have taken place in the United States, I take the legal context of this country as a basis in this thesis.

be other legal barriers to giving animals legal standing, I will focus in this thesis on the question whether we, as human beings, have a moral obligation to grant animals legal standing.

The central question in this thesis is: 'From an ethical point of view, should sentient animals be eligible for legal standing?'. The phrase 'be eligible for' is included, because an entity never has legal standing *tout court*: it always depends on the case. This is because, in order to be granted legal standing in a specific court case, an entity must first fulfil certain standing requirements. I will return to these requirements in Chapter 2, but for now it is important to stress that my aim in this thesis is to answer the question whether sentient animals are the kind of entities to which these requirements can (and should) be applied in the first place. I will argue that they are. Hence, my main thesis is that, from an ethical point of view, all sentient animals should be eligible for legal standing.

Before providing arguments for this position, I will first say a few more words about the relevance of the question whether animals should have legal standing. From a philosophical perspective, this question is of interest since it requires reflection on the meaning of legal personhood in relation to moral personhood. Furthermore, it requires an assessment of which kind of aspects (e.g. intrinsic and/or relational properties) are morally relevant and how much weight each aspect should have in granting an entity legal standing. These considerations are not only relevant for the animal rights debate, but also for debates concerning the moral and legal status of certain human beings (e.g. fetuses or mentally disabled humans) and AI entities.

From a societal perspective, the question of legal standing for animals is relevant and urgent for at least two reasons. First, although animals currently hold some rights in most countries – incorporated in animal welfare laws (GAL, n.d.)– these rights are often not adequately enforced and there are many exceptions as to which animals are entitled to these rights and under which conditions violations are permitted (Francione, 2004). Granting animals legal standing could be a way to change this. Second, the upcoming Rights of Nature movement, which is considered as “the fastest growing legal movement of the twenty-first century” (U.N. Secretary-General, 2019, as cited in Takacs, 2021), has until now mostly focused on advocating for the rights of entire ecosystems or nature in general (Putzer et al., 2022). Therefore, it is important to assess whether the individual

animals within these ecosystems should also have legal standing, especially since their rights may conflict with what is 'good' for the ecosystem.

The thesis will be structured as follows. In Chapter 2, I will explain the concepts of legal standing and legal personhood and their relation with moral personhood. I will discuss my own view on this and relate this to the animal rights debate in ethical literature. In Chapter 3, I will argue that the dominant Western conception of moral personhood falls short in explaining the moral consideration we owe to both humans and animals.

Therefore, I will combine the Western conception with Masolo's African account of personhood (Behrens, 2011) to argue that moral personhood should be seen as a continuum and that sentience is sufficient to have some degree of moral personhood.

In Chapter 4, I will build on Kurki's bundle theory of legal personhood (2019) to argue that moral personhood should be translated into legal personhood in the case of sentient animals. Furthermore, I will argue that we should not only attribute legal personhood to animals because of their intrinsic properties, but also because it enables us to increase our own moral personhood. In Chapter 5, I will bridge the gap between the patient-centred and agent-centred approaches of the previous chapters. Based on Donaldson and Kymlicka's citizenship-based animal rights approach (2011), I will argue that we owe sentient animals legal standing because of the political relationships we have with them. Lastly, I will respond to three objections to my main thesis. I will conclude in Chapter 6. An overview of the main theoretical concepts used in this thesis can be found in the Glossary.

2. Legal and moral animal rights

In this chapter, I will explain the main concepts and distinctions that are relevant for understanding my argumentation in the following chapters. First, I will explain what legal standing entails and how it relates to legal personhood and legal rights. Then, I will distinguish between legal personhood and moral personhood and between legal rights and moral rights, and discuss how these concepts are related to each other. Finally, I will place the discussion about legal standing for animals within the wider debate on animal rights within ethical discourse, and reflect on the place of my main thesis within this debate.

2.1 Legal standing and legal personhood

Legal standing

Legal standing can be defined as the permission to appear as a plaintiff in court by alleging a defendant for causing harm to the plaintiff (Staker, 2017). According to animal advocate and lawyer Steven Wise (2012), there are four requirements that an entity must fulfil to have legal standing in a particular court case: the entity must (1) be a legal person; (2) hold particular rights that can be defended; (3) have a private right to assert a cause of action to defend its rights; and (4) have personally suffered an injury that is traceable to the action of the defendant and that can be redressed by a favorable decision in court (U.S. Const. art. III., § 2, cl. 1).⁴

Wise (2012) describes these requirements together as forming an “Animal Rights Pyramid” (p. 1280), in which each level of the pyramid is a prerequisite for the next level. According to Wise, the attribution of legal personhood (level one of the pyramid) is the most important prerequisite for legal standing. This seems to reflect legal reality, because legal standing for animals has often been denied in lawsuits based on the assumption that animals are not legal persons. As a result, a human person can only file a lawsuit on behalf of an animal if the person itself is injured by the activity of the defendant, not if only the animal is injured (Nussbaum, 2023).

⁴ Note that requirements 1-3 do not depend on the specific court case, whereas requirement 4 (the standing requirements as laid down in the US constitution) does.

Some authors have questioned Wise's view and argue instead that the possession of particular legal *rights* rather than the attribution of legal *personhood* is fundamental for acquiring legal standing (Kempers, 2022; Kurki, 2021). However, I doubt whether the possession of certain legal rights would be sufficient to protect these rights in the current legal system. Indeed, many legal statutes are explicitly only applicable to persons, such as the writ of habeas corpus, which was used in Cecilia's case (mentioned in the Introduction). Furthermore, former slaves used to have some legal rights (e.g. the right against willful killing), but until they were recognized as legal persons, they had no standing in courts to defend these rights (Kurki, 2017). Therefore, I think both legal personhood and legal rights are fundamental for acquiring legal standing.

Apart from this, I think we should not jump too quickly from the question whether animals *are* to be seen as legal persons (both philosophically and ethically) to the question whether they *need* legal personhood (from a legal perspective). Indeed, the question whether animals should be viewed as legal persons is not only relevant for the possibility of attributing them legal standing, but also for how we view, treat and relate to animals outside of the legal setting (I will say more about this in Chapter 4). For these two reasons, I will explore the possibility of granting legal standing to animals based on the question whether they should be seen as legal persons. I will first explain what legal personhood entails, before relating this to moral personhood.

Legal personhood and natural personhood

In the Western world, legal persons are understood as human or non-human entities that are treated as persons for legal purposes, such as suing, owning property and entering into contracts. Human legal persons are called 'natural persons', whereas non-human legal persons (such as corporations, trusts and partnerships) are called 'artificial' or 'juristic persons' (Cupp, 2009; Kurki, 2019). Thus, there is a strict divide between natural persons and non-natural persons, but both can be legal persons. Furthermore, natural personhood in contemporary Western societies is strongly associated with humanity (Dyschkant, 2015). However, this assumption has been challenged by several authors (Behrens, 2011; Silva, 2017), which has led some of them to argue in favor of attributing personhood to animals (Francione, 2008; Rowlands, 2016). Before arguing in

Chapter 3 that animals can be natural persons, I will first discuss the relation between natural and legal personhood.

Legal scholar Ngaire Naffine makes a distinction between two views that authors have taken on the relation between legal personhood and natural personhood. The ‘Legalists’ hold that legal personhood is distinct from natural personhood in the sense that legal personhood is purely functional and does not say anything about what it means to be a natural person. According to them, anything can be a legal person as long as it serves a legal function. In contrast, the ‘Metaphysical Realists’ (hereafter Realists) hold that only natural persons can be legal persons, because being a legal person requires that one has certain intrinsic properties which are central to being a natural person (Naffine, 2009, p. 20). These properties, according to the Realists, are “sufficient in themselves to render morally obligatory the recognition of the entity as a legal person” (Kurki, 2019, p. 22).

Within Realism, different properties are proposed as necessary conditions for being a natural person (and therefore a legal person), including rationality, humanity and sentience (Naffine, 2009). Furthermore, there are two different conceptions of the term ‘natural person’: (1) a *moral* conception, according to which a person is an entity to which certain moral considerations are owed, and (2) a *metaphysical* conception, which holds that there are certain intrinsic (non-moral and non-legal) properties that make an individual a person (Mumford, 2012; Rowlands, 2016). In this thesis, I will mainly be concerned with the moral conception.

With regard to this moral conception, a further distinction has to be made between moral personhood and moral status. If an entity has moral status, it means that it has interests that are morally important in their own right. Moral status is often understood as a matter of degree (Warren, 1997). Although there are different views on the relation between moral status and moral personhood,⁵ it is commonly agreed that a moral person necessarily has moral status, but that moral status is not sufficient for moral personhood (Gordon, 2021). I will challenge this view in Chapter 3 and argue instead that the possession of moral status is sufficient for some degree of moral personhood.

⁵ Some argue that full moral status is a threshold for moral personhood (DeGrazia, 2023), whereas others argue that moral personhood is a sufficient condition for moral status (Regan, 1983).

2.2 Legal rights and moral rights

Apart from the distinction between legal and moral personhood, it is important to distinguish between legal rights and moral rights. Legal rights can be defined as any right that an individual is entitled to based on the legal context (e.g. laws and the constitution) of the society in which the individual lives (Regan, 1983). As a consequence, legal rights can differ between countries, time periods and individuals within one country. Moral rights, in contrast, are both universal and equal. This means that if an individual has a moral right because of a set of relevant properties, then any other individual with the same set of properties also has this right, and they both have it equally (Regan, 1983). A distinction can be made between two different views on the relation between legal and moral rights, which I will now discuss.

The mirroring view and the pluralistic view

The first view is what philosopher Allen Buchanan (2013) calls the “Mirroring View” (p. 14): for each legal right it is necessary that there is a corresponding, already existing moral right. According to this view, moral rights automatically give rise to legal rights. Buchanan criticizes this view (in the context of international legal human rights) by arguing that moral rights are just one of the potential justifications for attributing legal rights to an entity. Therefore, he offers an alternative, pluralistic view. According to this view, moral rights are not necessary nor sufficient for justifying legal rights.⁶

They are not *necessary*, because there can be other justifications for legal rights apart from the corresponding moral rights. For example, the legal right to health can be justified not only because it serves the moral right to health, but also because it serves countless other functions, such as contributing to social solidarity, increasing productivity of society and providing opportunities for individuals to engage in acts of beneficence. Furthermore, moral rights are not *sufficient* for justifying legal rights, because moral rights are by definition subject-grounded, whereas many legal rights

⁶ Note that the mirroring view and the pluralistic view cannot be one-to-one equated with Realism and Legalism. Although it seems likely that Realists would be in favor of the mirroring view and Legalists of the pluralistic view, this does not need to be the case. For example, one could argue from a Realist perspective that all natural persons are entitled to certain moral rights in virtue of being a natural person, but that these moral rights do not automatically give rise to legal rights.

require a justification based on their contribution to the public good, without reference to the inherent characteristics of one individual (Buchanan, 2013).

The pluralistic view implies that whether animals have moral rights does not say anything about whether they should have legal rights. On the one hand, there are no principled objections to attributing legal rights to animals if they have no moral rights, as long as there are other morally justifiable reasons for doing this. On the other hand, if one could convincingly argue that animals are entitled to moral rights, this could provide part, but not all, of the justification for attributing certain legal rights to them.

The importance of moral rights for animals

After having explained the main concepts related to legal personhood, I will now clarify my own stance on this. To begin with, I reject a Legalist justification for attributing animals legal personhood, because I think this leaves animals vulnerable to subordination to human interests. Indeed, the Legalists claim that any entity can be attributed legal personhood as long as it serves a legal function. Since animal interests are currently underrepresented in the law, this bias would be perpetuated if animals are attributed legal personhood based on a Legalist perspective. As a result, animals would be more likely to be recognized as legal persons when this serves a human function (such as recreational purposes) than when this serves the animals' interests. Therefore, there is a risk that the legal status of animals will not differ much in practice from that of companies, which are merely treated as legal persons because it serves a human function (Cupp, 2009).

Instead, I think that animals should be recognized as legal persons because it serves their own interests. In order to make this possible, however, animals first have to be recognized as entities that have their own interests. Therefore, I will argue from a Realist perspective that there are certain inherent characteristics that make animals natural persons and therefore, they should be regarded as legal persons.

With regard to the relation between legal and moral rights, I believe that there is some value in both the mirroring view and the pluralistic view. I think moral rights form an important justification for many legal rights, but I agree with Buchanan that they are not always sufficient.

In the case of animals, I think moral rights are especially important as a justification for legal rights, because animals currently have the legal status of property in the United States (and in most other countries) (Animal Legal Defense Fund, n.d.; Freyfogle et al., 2019),⁷ whereas humans are persons under the law. As a result, current legal rights that aim at improving animal welfare often fail to fulfil this purpose, because these rights are subordinate to human interests (Francione, 2004).

Thus, even though moral rights may not be necessary *from a theoretical philosophical point of view* to justify legal rights for animals, I think moral rights for animals are necessary *from a practical ethical point of view*, in order to make sure that these legal rights are taken seriously. Take for example the legal right to health. In the case of humans, the moral right to health is already generally agreed upon and therefore it does not seem crucial in justifying the legal right to health. However, in the case of animals, even basic moral rights are contested and therefore acknowledging these rights can be a crucial step in rendering legal rights for animals more meaningful.

Although I think moral rights for animals are important as a justification for the legal right to standing, I think they are not sufficient. Therefore, I will also provide two other justifications for giving animals legal standing, which are not based on their inherent properties but on relational aspects. In short, I will argue that the fact that animals are moral persons with moral rights is sufficient to recognize them as legal persons with basic legal rights, but that the right of legal standing requires other (relational) justifications in addition to only having moral rights.

2.3 Legal personhood in relation to the animal rights debate

In this section, I will place the question of legal personhood within the animal rights debate in ethical discourse. This is relevant not only for understanding the implications of my view for the debate on animal rights, but also for introducing the theoretical perspective that I will build on in Chapter 5 to argue in favor of legal standing for sentient animals.

⁷ This applies to both domesticated and wild animals. Whereas domesticated animals (including farmed, companion and research animals) are considered as private property, wild animals are considered as public property. The status of animals as property, however, differs from other types of property under the law, such as objects or resources.

The meaning of 'rights' in the animal rights debate

Broadly speaking, a distinction can be made between three strands within the animal rights debate: those who think that animals *should* have rights (the 'animal rights positions'), those who think that animals *should not* have rights (the 'animal welfare positions') and those who think that focusing on rights obscures the relational duties we have towards animals (the 'relational positions').

Rights, in this debate, are generally understood as moral rights. Although my view is that moral rights are conducive to granting animals legal rights, it is important to note that each of the positions in the animal rights debate could in principle be compatible with the view that animals should have legal rights. Indeed, those who believe that animals do not have moral rights, could still argue that animals should have certain legal rights in order to protect their welfare. The same counts for the attribution of legal personhood. For example, Favre (2009) rejects moral personhood for animals by arguing that animals should be seen as "living property" (p. 1023). Yet, he argues that animals can have "limited legal personality" (p. 1061).

From a relational perspective, some authors have criticized the animal rights positions for their exclusive focus on universal negative rights (Francione, 2008). Indeed, the animal rights positions focus on what should *not* be done to an animal (e.g. killing, torturing, confining), and attribute these rights to *all* animals that possess certain characteristics (Donaldson & Kymlicka, 2011). Proponents of relational positions argue that our obligations to animals should not be determined by universal principles but rather by the specific relationships we have with animals (Burgess-Jackson, 1998; Callicott, 1988; Palmer, 1995; Plumwood, 2004).

The citizenship-based animal rights position

Most of the authors adhering to relational positions consider their approach as an alternative to the animal rights position. Donaldson and Kymlicka (2011), however, explicitly bridge a rights-based and a relational perspective with their 'citizenship-based' animal rights approach (hereafter citizenship approach). Based on citizenship theory, they argue that animals should have both universal basic rights as well as positive relational rights.

I think this perspective is useful when exploring the question whether sentient animals should be eligible for legal standing. In fact, I think that a 'rights-only' view or a 'relationship-only' view is too limited to provide a solid justification for attributing legal standing to animals. I believe that the combination of inherent characteristics and relational duties between humans and animals is key to understanding why sentient animals should be eligible for legal standing.

In Chapter 3 and 4, I will provide both a rights-based justification and a relational justification for animal legal personhood. Whereas the former is *patient-centred* – focusing on the entitlements of animals as moral patients – the latter is mainly *agent-centred* – focusing on the responsibilities of humans as moral agents. In Chapter 5, I will bridge these two perspectives by arguing that sentient animals should be eligible for legal standing based on the political relationships we have with them.

3. Opening the door to moral personhood for sentient animals

Having explained the main concepts that are relevant for my argumentation, it is important to realize that many of these concepts find their roots in a time in which the view that animals are things was commonplace (Francione, 2008). However, as our knowledge about animals has expanded, this view is increasingly being challenged. This also means that the concepts we use when thinking and writing about animals may have to be adjusted (Naffine, 2009).

In this chapter, I will show that the dominant Western conception of moral personhood is inadequate to explain our moral obligations towards both humans and animals. Instead of seeing moral personhood as an all-or-nothing status, I will argue that it should be seen as a continuum. First, I will discuss two conceptions of moral personhood and argue why a combination of both is most suitable to reflect common sense moral intuitions without being morally inconsistent. Then, I will argue why the criteria for moral personhood often mentioned by philosophers are problematic and argue instead that sentience should be sufficient as a lower threshold for moral personhood. I will conclude that sentient animals should be seen and treated as moral persons.

3.1 Moral personhood as a continuum

I will start with defending the claim that moral personhood should be considered as a matter of degree. This is based on a combination of two normative conceptions of personhood as described by Behrens (2011): the Western bioethical account (hereafter the Western account) and the African account of Dismas Masolo (hereafter Masolo's African account) (Masolo, 2010). I will now shortly introduce these conceptions and explain how they play a role in my argument.

According to the Western account, moral personhood is related to moral status: only those who possess certain characteristics that are required for full moral status qualify as moral persons (DeGrazia, 2023). Thus, moral personhood is the state or condition of possessing full moral status (see Figure 1a). Masolo's African account, in contrast, holds that "personhood is not something an entity either possesses or does not, and full personhood is an ideal towards which one strives rather than a status that can be obtained" (Behrens, 2011, p. 110). This process of becoming a person is to be

understood, according to Behrens (2011), as developing virtues “through associating with others with whom we share a mutual dependency” (p. 110).

I think both these accounts are valuable for the discussion on moral personhood. In line with the Western account, I believe that there are certain characteristics that are required to be eligible for moral personhood. However, I also think that Masolo’s African account is right in suggesting that moral personhood is more than simply completing a checklist of relevant characteristics. Indeed, it requires virtue-building in relation to other persons we interact with and this determines how much of a moral person we are.

Therefore, I will use a combination of both perspectives, which results in the view that moral personhood is a continuum, which is only accessible for those entities that possess the relevant characteristic to be eligible for moral personhood. In section 3.3, I will argue that sentience is this relevant characteristic, in the sense that it is sufficient for some degree of moral personhood. This view is depicted in Figure 1b, in which sentience, instead of full moral status (as in Figure 1a), is the ‘key’ to moral personhood.

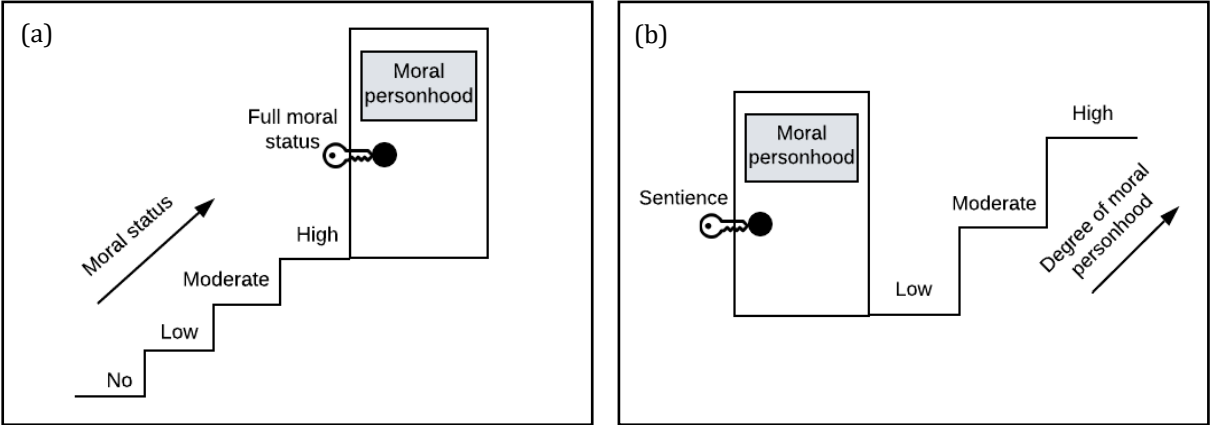


Figure 1: (a) moral personhood as the state of possessing full moral status (Western account); (b) moral personhood as a continuum that can be accessed through sentience (account proposed in this thesis).

In the remainder of this chapter, I will argue that the binary nature of the Western account is problematic as a full account of moral personhood, but that it is useful in setting a lower boundary for moral personhood. In Chapter 4, I will show how Masolo’s African account is relevant in determining which degree of moral personhood an entity possesses and what that means for human-animal relationships.

3.2 Problems with the Western account of moral personhood

I will start by highlighting a common problem for the Western account of moral personhood in the way it has been used by philosophers in the field of animal ethics. This problem is related to the fact that moral personhood, on the Western account, relies on the possession of certain inherent characteristics. Although there is no widespread agreement on which characteristics are required for moral personhood, some capacities that are often mentioned as relevant conditions are: human language, abstract reasoning, long-term planning, culture and moral agency (Donaldson & Kymlicka, 2011).

The problem is that, regardless of which capacities are deemed relevant for moral personhood, many human beings who we intuitively think of as persons, do not count as moral persons according to this view. For example, infants and severely mentally disabled people are not capable of long-term planning or abstract reasoning and they cannot be held morally accountable for their actions. Despite this, most people agree that their interests matter from a moral point of view. In philosophy, this is often called “the argument from marginal cases” (Dombrowski, 1997, p. 1).

Several authors have offered arguments to accommodate for this objection. In this section, I will discuss three views that can be used to defend the exclusion of animals from the category of moral persons without being vulnerable to the argument from marginal cases. These views are what I call: the ‘Agents Plus view’, the ‘Humans Only view’ and the ‘Persons Plus view’. I will argue that each of these attempts fails to provide an adequate justification for denying animals moral personhood.

The Agents Plus view

The Agents Plus view starts from the idea that only moral agents can be moral persons. A common definition of a moral agent is an entity that can be held morally accountable for its actions, which requires that the entity is able to understand and act on moral principles (Rowlands, 2012; Shapiro, 2006). Based on this, several authors have argued that animals cannot be moral persons, because they are not capable of moral agency. Legal scholar Richard Cupp (2009) offers a contractualist version of this argument.⁸ He

⁸ The basis of contractualism is that the attribution of rights to members of a society is justified if there is general agreement on the social responsibilities that come with these rights (Cupp, 2009).

argues that animals cannot have moral rights because they cannot have moral duties. In response to the argument from marginal cases, Cupp argues that humans who cannot bear moral duties should nevertheless be attributed moral personhood⁹ because of their potential humanity (in the case of infants) or their similarities with competent human adults (in the case of mentally disabled humans). Animals, in contrast, will never become human and therefore should not be seen as moral persons, according to Cupp.

I think there are at least two problems with this view. First, Cupp's claim that potential humanity is sufficient for moral personhood implies that fetuses – or in fact, all cells that could potentially be turned into a human being – should be seen as moral persons, which would render all abortions and many scientific experiments with human cells morally objectionable (Nobis, 2004). Second, it remains unclear why similarity to 'normal' human adults should play a role in the attribution of moral personhood. In comparison, some people with long beards are terrorists, but this does not mean that people who are similar to long-bearded terrorists are terrorists as well, or should be treated as such.

The Humans Only view

A potential response to the Agents Plus view is that it is not humans' capacity to bear moral duties that is relevant for being a moral person, but rather the membership of the human species itself. For example, Somerville (2010) says that "every human being has an "intrinsic dignity" that comes simply with being human; having that dignity does not depend on having any other attribute or functional capacity" (as cited in Donaldson & Kymlicka, 2011). This view amounts to what Peter Singer (1975) calls "speciesism" (p. 21), which is treating members of one species as morally superior to members of other species simply on the basis of the species they belong to. According to Singer, speciesism is problematic, because it violates the 'principle of equal consideration of interests' (hereafter the principle of equal consideration), which is the view that like interests should have equal moral weight. He thinks that the suffering of an animal with the same intensity and duration as the suffering of a human should count equally from a moral perspective (Singer, 1975).

⁹ This is why I call this the 'Agents Plus view' rather than the 'Agents Only view'.

In addition to this, Jaquet (2022) has offered a different but related argument against speciesism. He argues that speciesism is wrong not because it violates the principle of equal consideration as such, but because it does so *based on merely biological properties*. Indeed, merely biological properties are irrelevant for the moral consideration an entity is entitled to. Just like discriminating on the basis of skin color, sex or body shape is wrong, so too is discriminating on the basis of biological membership of a species. Therefore, I think the Humans Only view should be rejected.

The Persons Plus view

Although Singer's view became widespread in Western animal ethics, some authors have criticized his grounds for rejecting speciesism (Jaquet, 2022; Kagan, 2016). Instead of going into detail on these critiques, I will respond to an alternative (and in my view more plausible) view to speciesism proposed by Kagan (2016), which he calls 'modal personism'. According to this view, it is not the membership of the *human* species that is relevant for having special moral consideration, but rather the membership of *any* species whose typical adult members are persons. Kagan thinks this reflects the widespread intuition that it matters just as much when an extraterrestrial being is dying than when a human being is dying, since both are considered persons. Persons, in his theory, are to be understood as metaphysical persons, which Kagan (2016) defines as beings that are "rational and self-conscious, aware of itself as one being among others, extended through time" (p. 9).

According to modal personism, one does not need to be an *actual* person in order to have special moral consideration. Rather, the modal property of personhood is sufficient, which is the metaphysical fact that the individual *could have been* a person. For example, a child who is born with anencephaly¹⁰ lacks the necessary properties for being a person, but the child could have been a person if the defect that caused this condition would not have occurred. Modal personism implies that the interests of those beings who could have been persons should count more than the interests of those who could

¹⁰ Anencephaly is a birth defect in which the upper part of the brain does not develop because the neural tube does not close properly during fetal development. A child who is born with anencephaly is incapable of consciously experiencing its surroundings, as well as developing rational thought or self-consciousness (Kagan, 2016).

not have been persons. Kagan assumes that animals belong to the latter group. I think this view is problematic for two reasons.

First, I think Kagan too quickly assumes that animals cannot be actual persons. Indeed, there is a growing body of evidence suggesting that some animals (such as chimpanzees, whales and dolphins) are capable of rational thought and self-consciousness and that they perceive themselves as entities with a past and a future (Rowlands, 2016; Rowlands, 2019; Singer, 1979). Although this is an empirical matter which goes beyond the scope of this thesis, I think modal personism as a justification for favoring the interests of humans over that of animals has at least lost some credibility in light of these findings. Even though many Western people think that animals are not persons, we must be aware of the possibility that this can be wrong, especially since many people who live more closely together with animals (e.g. indigenous peoples and some animal scientists) often consider animals as persons (Bjørkdahl, 2018; Oriol, 2014). Therefore, it might be wise to adopt a precautionary approach – which has also been proposed with regard to animal sentience (Birch, 2017) – according to which we should treat sentient animals as persons until the opposite is proven.

Second, Kagan's view does not, in fact, rule out the possibility that animals can be modal persons, even though Kagan himself seems to suggest this. Suppose, for example, that it would be possible to transform a dog into a person through genetic enhancements. Then any dog would be a modal person, because it could have been a person if the technology had been applied to that particular dog (DeGrazia, 2016).¹¹ Although I agree with the outcome of this view (that all dogs would be moral persons), I do not think this is the right basis for attributing moral personhood to animals. The problem with Kagan's view, I think, is that it turns the possibility that an entity *could* be a person (which is an empirical matter) into the normative claim that that entity *should* deserve special moral consideration. This ignores the possibility that there might be reasons why turning non-person into persons is morally objectionable. For example, even if it would be technologically possible to turn AI entities into persons, one could argue that we should

¹¹ One could respond that, even if animals would be modal persons in this case, their personhood is extrinsic (dependent on substantial external interference) and therefore they should have less moral consideration than modal persons with the intrinsic potential to be a person. However, this would have the morally objectionable implication that humans who could undergo medical treatment to become a person (e.g. in the case that anencephaly would be a genetic disorder that could be cured with genetic treatment) would count less than humans who became persons through their intrinsic potential.

not do this because these entities might develop vicious behaviors towards humans. But one cannot agree with this while at the same time endorsing Kagan's view. Indeed, there would be no point in giving special moral consideration to non-person entities if we do not consider it morally justifiable to turn them into persons in the first place.

Towards a more realistic criterion for moral personhood

To summarize, I have argued that the Agents Plus view has morally objectionable implications, because it excludes some humans from moral personhood while at the same time including all cells that could potentially become human. Although the Humans Only View seems to fit better with our intuitions, this view is objectionable since it differentiates based on mere biological properties, which are not relevant to the ethical considerations an entity is owed. The Persons Plus view is not tenable either, because it fails to explain why the mere (technological) possibility of becoming a person has moral significance in determining how a non-person should be treated. Therefore, I think the moral consideration that a being is owed should not depend on what that being *could have been*, but rather on what that being *is*. Instead of relying on demanding criteria such as metaphysical personhood or moral agency, I think the threshold for moral personhood should be that the entity has sentience.

3.3 Sentience as the key to moral personhood

In this section, I will argue that the criterion of sentience should be sufficient for some degree of moral personhood. I will provide two reasons for this. First, being eligible for moral personhood requires that an entity has interests. It is, by now, widely agreed upon in Western ethics that sentient beings have interests (Kurki, 2019). Indeed, their capacity to feel pain generates an interest in not suffering, and their capacity to feel pleasure generates an interest in pleasant experiences. A much more contested matter is which animals are sentient and which are not. I will not discuss this here, but it is important to realize that most animals who are regularly subjected to abuse and exploitation (mainly farm and laboratory animals) are sentient beyond doubt (Donaldson & Kymlicka, 2011; Francione, 2004). Thus, those animals of which we know they are sentient are most in need of legal standing.

Second, sentience enables a subjective experience of the world: “To be sentient means to be the sort of being who is conscious of pain and pleasure; there is an “I” who has subjective experiences” (Francione, 2000, as cited in Donaldson & Kymlicka, 2011). Because sentient beings have a subjective experience, life can go better or worse for them and they can be wronged or benefitted by the actions of others. In other words, sentient beings can be the recipients of moral acts of others, which many philosophers refer to as “moral patients” (Regan, 1983, p. 152). Since moral patients have their own subjective experience on the consequences of the moral acts of others, they play a role in the moral realm (even if it is a passive role) and therefore they should be seen as moral persons.¹²

In short, sentient animals are moral persons, because they have interests and subjective experiences and therefore, what is done to them matters morally. I am aware that this definition of moral personhood is similar (if not identical) to what most philosophers currently refer to as moral status. However, this is not simply a terminological difference. The fundamental difference is this: on the Western account, moral status is a continuum which eventually culminates in the possession of moral personhood, whereas on my account, moral status – which is acquired through sentience – is the gateway to (different degrees of) moral personhood (see Figure 1).

This is an important difference, because moral personhood forms a powerful ethical justification for giving special moral consideration to the interests of those who possess it. By including the possibility that sentient animals can be moral persons, my approach aims to ensure that humans give equal moral weight to the like interests of animals and humans, rather than *a priori* assuming that the interests of animals count less because they only have some moral status whereas humans have full moral personhood. Thus, it is not only conceptually *adequate* to regard sentient animals as moral persons (as I have argued in this chapter), but it is also *required*, because the language we use to describe animals influences the way in which they are treated in practice. In the next chapter, I will investigate what this means for the attribution of legal personhood to animals.

¹² This makes sense when looking at the etymology of the term ‘person’. Indeed, the term once meant a mask that was worn by an actor, representing the persona or role they played (Naffine, 2009).

4. Legal personhood for sentient animals

In the previous chapter, I have argued that sentient animals should be seen as moral persons because that is conceptually both adequate and required. In this chapter, I will continue this line of argumentation to argue that animals can and should be seen as legal persons. I will provide two arguments for this. The first argument is of conceptual nature and holds that legal personhood, like moral personhood, should be seen as a matter of degree. Based on this, I will argue that, because animals have some degree of moral personhood (as argued in Chapter 3), they should also be eligible for a passive form of legal personhood. The second argument is of normative nature and holds that we should attribute legal personhood to sentient animals, because this enables us to increase our own degree of moral personhood.

4.1 From moral personhood to legal personhood

To begin with, the first argument can be summarized as follows:

- (1) Moral personhood should be seen as a matter of degree rather than a binary property.
- (2) Sentience is necessary and sufficient to have some degree of moral personhood – that is, to be eligible for moral personhood in the first place.
- (3) All moral persons are eligible for legal personhood.
- (4) Like moral personhood, legal personhood should be seen as a matter of degree.
- (5) Because sentient animals can be moral persons to some degree, they should also be eligible for a passive form of legal personhood.

In Chapter 3, I have argued for claim (1) and (2). In this section, I will defend assumption (3) and argue for claim (4), which will lead to conclusion (5).

I will start with defending assumption (3). In Chapter 2, I have argued that legal personhood for sentient animals should primarily be based on moral personhood, because not doing so would create the risk that animals' interests are not taken into account for their own sake. Therefore, I have rejected a Legalist perspective to legal personhood and instead endorsed the Realist view that legal personhood reflects what it is to be a moral person and that therefore moral persons are automatically eligible for

legal personhood. I will now respond to two objections to this assumption. After responding to the first objection, I will build on Kurki's bundle theory of legal personhood (2019) to argue in favor of (4) and (5). The second objection leads me to my second argument of this chapter, which I will discuss in the next section.

The rights-and-duties position

The first objection to assumption (3) is that moral personhood as such cannot be a justification for legal personhood, because the latter requires that an entity can have legal rights and duties, which is a requirement that not all moral persons fulfil. Thus, even if sentient animals can be moral persons, they cannot be legal persons, because they cannot have legal duties. This is what Kurki (2021) calls the "rights-and-duties position" (p. 50). This position has been used in several lawsuits to reject legal personhood for animals. For example, in the case *The Nonhuman Rights Project v. Lavery*, the court dismissed the plaintiff's request to release two chimpanzees from private captivity, by arguing that it is chimpanzees' "incapability to bear any legal responsibilities and societal duties that renders it inappropriate to confer upon chimpanzees [...] legal rights" (People ex rel. Nonhuman Rights Project v. Lavery, 2014, p. 4).

I think the rights-and-duties position should be rejected, because it is subject to the argument from marginal cases (mentioned in Chapter 3). Indeed, there are many human beings, such as children and mentally disabled humans, who have legal rights even though they cannot have legal duties (Kurki, 2021). This is morally acceptable – even required – because children and mentally disabled humans (just like any other human being) have claim-rights, which are rights that an entity is entitled to if someone else holds a duty towards that entity. According to Kurki (2019), the justification for claim-rights can be found in the interest theory of rights, which holds that X has a right if X's interests are served by Y's performance of a duty towards X.

Thus, even though legal rights and duties may be correlated, they do not always have to come together in one and the same person. Someone may have a right that is correlated to the duty of someone else to respect that right. Therefore, being capable of bearing legal duties is not required for being a legal person entitled to legal rights.

Kurki's bundle theory of legal personhood

An alternative to the rights-and-duties position is Kurki's (2019) "Bundle Theory of legal personhood" (p. 5). This theory distinguishes between two types of legal persons: passive and active legal persons. Each type of personhood requires that the entity possesses certain elements, which Kurki (2021) calls "incidents of legal personhood" (p. 52). In the case of passive legal personhood, it is sufficient to have interests, because if an entity has interests, someone else may have a duty to respect these interests. Since sentient animals have interests, they can be passive legal persons, according to Kurki. Active legal personhood, in contrast, requires that one can be held legally responsible for one's actions and that one can exercise their rights and duties, for example by choosing to waive or enforce a right. This requires levels of rationality that animals do not possess (Kurki, 2019).

The point of Kurki's theory is that each particular 'bundle' of incidents an entity possesses, determines to what extent and for which purposes an entity has legal personhood. Thus, an entity can be a legal person in differing degrees, and only for those purposes for which the incidents that the entity possesses are relevant (Kurki, 2019). For example, an animal could be a legal person for the purposes of habeas corpus,¹³ but not for the purposes of financial matters or being a party in contracts. Indeed, animals may have an interest in bodily liberty, but they cannot understand the meaning of financial matters or legal contracts. Thus, the capacities an entity possesses may be relevant for the *degree* of legal personhood the entity has – which will determine which particular legal rights and duties the entity holds – but not for *qualifying* as a legal person in the first place. For the latter, it is sufficient to have interests, which sentient animals certainly do.¹⁴

An implication of Kurki's theory is not only that animals can be passive legal persons, but also that some humans – especially those who cannot bear duties – can only be passive legal persons. However, this does not mean that they are less of a person, but rather that

¹³ Id. 1.

¹⁴ Although Kurki's argument does not rely on the claim that sentient animals are moral persons, I think his theory is most convincing if the legal personhood status of a being is grounded in its moral personhood status. The view of moral personhood I have presented in Chapter 3 therefore strengthens the claim that sentient animals should be attributed legal personhood based on the bundle theory.

they belong to a certain type of legal persons,¹⁵ with their own corresponding legal rights and duties. Their interests should be taken into account on an equal basis with all other entities that possess the same incidents of legal personhood.

A pluralistic view on legal personhood

So far, I have argued that the rights-and-duties position fails to refute the claim that moral personhood can justify the attribution of legal personhood. There is, however, a second objection to assumption (3). This objection holds that, even if moral personhood may partly justify the attribution of legal personhood, it is not sufficient in itself – just like moral rights are not sufficient to justify legal rights (according to the pluralistic view described in Chapter 2). According to this objection, moral personhood is only one of the many potential justifications for attributing legal personhood to an entity.

My second argument, which will be the topic of next section, will partly accommodate for this objection, by offering another justification for attributing legal personhood to sentient animals. I am aware that this may still not satisfy those who adhere to a pluralistic view for attributing legal personhood. However, I believe that the two justifications that I offer at least provide a solid basis for the claim that legal personhood for sentient animals should be an option in our legal system which may only be denied if there are strong moral reasons to do so.

4.2 How animals can make us more human

In this section, I will argue that we should attribute legal personhood to sentient animals, because this enables us to increase our own degree of moral personhood. First, I will make a distinction between three categories of moral personhood and suggest that there can be differences in the degree of personhood within each category. Based on this, I will argue that attributing legal personhood to animals enables us to increase our own moral personhood, because it enhances our possibilities, as well as our inclination, to

¹⁵ Since it is likely that there are differences in the incidents that animals possess and the incidents that humans who are passive legal persons possess, it might be necessary to further divide this category, for example in 'human persons', 'animal persons' and perhaps also 'AI persons' (in the case of personhood for AI entities).

exercise virtues towards moral patients. Then, I will show that this argument holds for some sentient animals even if one does not agree that moral patients are moral persons. Lastly, I will respond to an objection to my argument.

Three categories of moral persons

I will start with making a distinction between three categories of moral persons. In Chapter 3, I have argued that moral personhood should be seen as a matter of degree, which can be depicted as stairs consisting of several steps (see Figure 1b). These steps can be seen as different categories of moral persons, ranging from the category of moral patients to the category of moral agents. In between these two extremes, a third category can be distinguished, which is what Rowlands calls ‘moral subjects’. This category includes entities that can be motivated by emotions “that have an identifiable moral content” (Rowlands, 2012, p. 13). That is, they can act out of moral emotions, even if they are not able to reflect on these on a cognitive level (like moral agents can). I will come back to the question whether animals can be moral subjects later in this section, but for now it is sufficient to assume that sentient animals can at least be moral patients (as argued in Chapter 3).

The differences between these three categories are differences in what I call ‘inherent personhood’, because they are based on inherent properties, such as sentience, the possession of complex emotions, and the capacity of rational thinking. Apart from this, there can be differences in what I call ‘acquired personhood’ within the categories of moral subjects and moral agents. That is, within these categories, one can be more or less of a person depending on the extent to which one displays virtuous behavior and engages in virtuous relationships with other moral persons (see Figure 2).¹⁶ This is based on Masolo’s African account (introduced in Chapter 3), according to which personhood should be understood as a continuous process of acquiring virtues (Behrens, 2011).

¹⁶ The category of moral patients is excluded here, because entities within this category are not capable of virtuous behavior.

Based on this, I will now argue that our own degree of personhood depends on how we interact with other persons, including moral patients. More specifically, I will argue that attributing legal personhood to animals enables us to increase our own degree of acquired personhood.

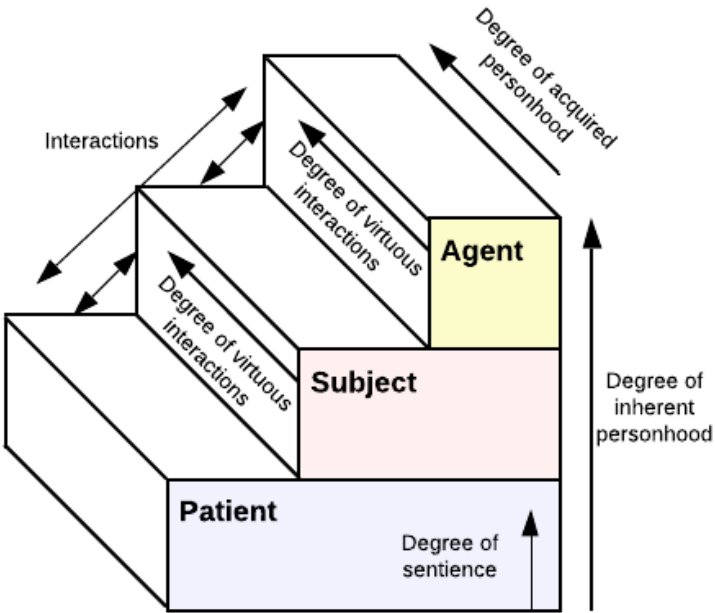


Figure 2 Different categories of moral persons and their corresponding degrees of inherent and acquired personhood. Within the category of patients, there can be differences in the degree of inherent personhood (vertical arrow). Within the categories of subjects and agents, there can be differences in the degree of acquired personhood (horizontal arrows).

Why recognizing animals as persons increases our own personhood

In general, the degree of acquired personhood increases as the opportunities to engage in meaningful relationships increase. This is because many virtues can only be adequately expressed in relation to other beings. For example, one cannot be generous if there is no one to be generous towards, and one cannot be loyal without someone else to be loyal towards. This does not necessarily mean that the more relationships we have, the more virtuous people we are. Rather, it means that, if we come to recognize a group of beings as recipients or participants of virtuous interactions (i.e. as moral persons), this increases our possibilities – or illuminates already existing possibilities – for exercising virtues. For example, legal personhood for animals may imply that animals’ interests should be taken into account in spatial planning (in a similar way as disabled persons’ interests should be taken into account in the design of public spaces). Institutionalizing requirements like this through law illuminates the possibilities for humans – in this case spatial planners – to act virtuously towards animals.

In addition to illuminating the *possibilities* for virtuous behavior on a societal level, I think attributing legal personhood to animals will also increase our *inclination* to act virtuously towards animals on an individual level. In other words, if animals are recognized as persons in legal matters, humans will start to see and treat them more like persons in their daily lives as well. As Stone (2010) puts it: “[T]here will be resistance to giving the thing “rights” until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it “rights” ” (p. 3).

Humans may start to see and value an animal ‘for itself’ both as the result of direct enforcement (through a court’s judgment) and as the result of a gradual process of recognition. This may not only discourage vicious behavior towards animals, but also encourage virtuous behavior. An example of the latter is when animals are recognized as legal persons in family law. This enables to take their interests into account in the court’s judgement, for example by assigning a dog to one of the parties in a divorce case because this person has more time to care for the dog. As a result of this, those who live with animals will be more inclined to put effort into finding out what the interests of the animal are and how these interests can be respected.

Thus, the point of attributing legal personhood to sentient animals is not only to recognize *them* as moral persons, but also to take *our own* responsibility as moral agents. By taking this responsibility, we increase our own degree of acquired personhood. Not attributing legal personhood to animals would therefore be a missed chance in terms of acquiring virtue and thereby developing ourselves as human persons. As Smuts (1999) puts it: “when a human being relates to an individual nonhuman being as an anonymous object, rather than as a being with its own subjectivity, it is the human, and not the other animal, who relinquishes personhood” (p. 118).

Just like recognizing women, slaves and black people as legal persons increased our degree of moral personhood, so too does the recognition of sentient animals as legal persons. Even though we might never be able to achieve the ideal of full moral personhood, as understood in Masolo’s African account, I think we should at least strive towards it by taking up possibilities to acquire virtues, both on a societal and on an individual level. Since attributing legal personhood to sentient animals increases our possibilities as well as our inclination to exercise virtues towards animals, we have a moral obligation to do so.

Animals as moral subjects

The argument I presented so far relies on the assumption that moral patients are moral persons. Indeed, the main premise of my argument is that our own degree of personhood depends on how we interact with other moral persons, including animal persons (which are moral patients). However, even if one is not convinced that moral patients are moral persons, my argument still holds for some sentient animals. This is because some sentient animals are more than mere recipients of the moral acts of others. They can act out of moral emotions and therefore classify as moral subjects (as explained in the beginning of this section) rather than as moral patients. This is based on a growing body of evidence showing that some animals can experience emotions such as compassion, sympathy, grief and courage, and exhibit behaviors such as empathy, trust, altruism, reciprocity and a sense of fairness (Donaldson & Kymlicka, 2011; Rowlands, 2012, Shapiro, 2006).¹⁷

When talking about these emotions and behaviors in humans, most people agree that they have at least some moral content (even though there might be other, nonmoral considerations at stake as well). Since the same emotions and behaviors have been observed in animals, I think there is no other option than to conclude that some animals can be moral subjects. In fact, many moral behaviors in humans are also driven by moral emotions without conscious ethical reflection (Donaldson & Kymlicka, 2011; Shapiro, 2006). For example, people who have run into a burning building to save someone often did not think about whether they were morally obliged to do this, but merely acted out of instinct. Still, we attribute moral value to these kinds of acts. Therefore, I think we should also ascribe moral value to these kinds of behaviors in animals.

This means that moral subjects, unlike moral patients, can be participants of virtuous relationships. Therefore, our own degree of moral personhood depends on how we interact with moral subjects. More importantly, this dependence is stronger than in the case of moral patients, because it is based on a reciprocal relationship – or at least, the

¹⁷ Some examples include: empathically motivated helping behavior in rats (Bartal et al., 2011); fair play in canids (Bekoff & Pierce, 2009); voluntary food sharing among bonobos (Hare & Kwetuenda, 2010); reciprocal food sharing in vampire bats (Carter & Wilkinson, 2013); and altruistic adoption by non-related chimpanzees (Boesch et. al, 2010).

possibility of such as relationship.¹⁸ So even if one is not convinced that animals who are moral *patients* should have legal personhood, I think we should at least attribute legal personhood to animals who are moral *subjects*. Having said that, I will now respond to an objection to the argument I presented in this section.

Legal and societal recognition: the chicken or the egg?

A potential objection to my argument is that it is based on an empirical claim – namely, that attributing legal personhood *will* make us act more virtuously towards animals – which could be falsified. For example, it might be that we will actually start to see animals more like our enemies rather than our friends or family members once they become our opponents in court. Although I cannot settle this matter entirely due to a lack of empirical data, I think it is important to highlight that in the case of previous legal recognitions of marginalized groups (such as slaves or women), these people came to be recognized as persons not only in law but also in society at large (Pietrzykowski, 2017).

One might respond that, in the cases I just mentioned, it was societal recognition that led to legal recognition, not the other way around. Therefore, it seems unlikely that attributing legal personhood to animals will result in the societal recognition of animals as persons. Although I agree that attributing legal personhood to animals may not in and of itself lead to a radical shift in public opinion, I think it can at least contribute to it, just like legal changes in other fields did. For example, Peel and Osofsky (2015) found that climate change litigation in the United States and Australia has contributed to increasing the representation of climate-related topics in politics and the public debate, as well as building community support for bottom-up climate initiatives. This suggests that litigation can contribute to (re)shaping public opinion. Therefore, I think legal personhood for animals, can and should form an important part of a set of strategies (including information campaigns, education and activism) which will eventually lead to the societal shift that is required for recognizing animals as persons.

¹⁸ Although it is contested whether animals can have interspecies duties, there are numerous examples of animals acting virtuously towards humans, such as wild dolphins who help rescue humans, dogs who comfort humans in distress, and a gorilla who acted in a caring way towards a human child who fell into her enclosure (Donaldson & Kymlicka, 2011; Shapiro, 2006). Examples like these suggest that at least some animals can have reciprocal virtuous interactions with humans.

5. From legal personhood to legal standing

In the previous two chapters I have argued that sentient animals should be attributed legal personhood based on their intrinsic properties, and because it enables us to increase our own personhood. However, as explained in Chapter 2, legal personhood alone is not sufficient to be eligible for legal standing. The latter also requires that the entity holds particular rights and that the entity has the right to sue if one of these rights is being violated. Thus, legal standing goes further than only having legal personhood. Therefore, the patient-centred and agent-centred approaches that I have used in the previous chapters to argue in favor of animal legal personhood, are insufficient on their own to justify legal standing for animals. In this chapter, I will provide the missing link for justifying legal standing for animals. Based on Donaldson & Kymlicka's (2011) citizenship approach, I will argue that sentient animals should be eligible for legal standing, because of the political relationships we have with them and the rights and duties that follow from these relationships. Lastly, I will respond to three objections to attributing animals legal standing.

5.1 Animals as members of political communities

In this section, I will first outline Donaldson and Kymlicka's citizenship approach. Within this approach, a distinction is made between three categories of animals: domesticated, wild and liminal¹⁹ animals. I will argue that animals within all three categories should be eligible for legal standing, based on their citizenship status in a particular political community.

A citizenship-based animal rights perspective

As explained in Chapter 2, Donaldson and Kymlicka (2011) combine an animal rights perspective with a relational perspective to provide an ethical framework for our treatment of animals that includes both negative universal rights as well as positive

¹⁹ Liminal animals are neither completely wild nor completely domesticated. They live in or close to areas inhabited by humans, either because humans have entered their natural habitat or because they have actively sought for human settlements themselves. Liminal animals generally benefit from living amongst humans (Donaldson & Kymlicka, 2011).

relational rights. They do this by drawing analogies with citizenship theory as applied in the human context. Citizenship theory starts from the idea that humans are not only persons entitled to universal human rights because of their personhood, but also citizens of self-governing nation states or political communities. Our membership of these political communities gives rise to certain rights and responsibilities towards co-citizens of the same political community.

Donaldson and Kymlicka (2011) note that, at first glance, animals seem to lack an important condition for citizenship, which is the ability to actively engage in the democratic decision-making process. Indeed, animals lack the levels of rationality required to engage in deliberative reasoning. However, Donaldson and Kymlicka point out that many humans (e.g. children and demented people) also lack the capacities required for political agency and they are nevertheless recognized as citizens. Furthermore, some mentally disabled people exercise a form of 'dependent' political agency, in which a 'collaborator' interprets the interests of the person and translates this into arguments for deliberation, thereby enabling the person to exercise political influence (Silvers & Francis, 2005). According to Donaldson and Kymlicka, animals are capable of a similar form of dependent agency and therefore can be regarded as citizens. Based on this, I will now argue that domesticated, wild and liminal animals should be eligible for legal standing based on their citizenship status.

Domesticated animals as co-citizens

According to Donaldson and Kymlicka, domesticated animals should be seen as co-citizens of our political community. They provide two arguments for this. I will show that both arguments speak in favor of attributing legal standing to domesticated animals, by making one additional point to each argument.

The first argument is concerned with restorative justice.²⁰ Donaldson and Kymlicka admit that historic processes of domestication were unjust, but since we have made domesticated animals irreversibly dependent on us (through selective breeding and genetic manipulation), the only way to restore that injustice is to treat domesticated

²⁰ Restorative justice is generally understood as restoring just relations between those who caused harm and those who suffer from this harm (Cohen, 2016).

animals as members of our political community. Although I agree with this, I think restorative justice cannot be separated from procedural justice²¹ in this case. More specifically, I think we cannot completely restore the injustice of domestication if we do not give domesticated animals access to (some of) the same democratic procedures that humans are entitled to (and that animals have been denied in the process of domestication), at least to the extent to which these procedures fulfil relevantly similar interests. Legal standing is one of these procedures, which is necessary to guarantee the fulfilment of basic interests in the case of violations.

The second argument is that domesticated animals have the capacities that are required to be citizens, which are: “(i) the capacity to have a subjective good, and to communicate it; (ii) the capacity to comply with social norms/cooperation; (iii) the capacity to participate in the co-authoring of laws” (Donaldson & Kymlicka, 2011, p. 103). I think Donaldson and Kymlicka provide a convincing justification for this argument.²² However, with regard to legal standing, it is important to add that (at least part of) the reason why domesticated animals are currently not recognized as citizens, is that their level of agency is largely underestimated *because* of the conditions under which they are kept (Blattner, 2021). In other words, we suppress the agency of domesticated animals to such an extent (e.g. through farming practices, authoritative pet-owner relationships and restricted research set-ups) that we are incapable of valuing them for what they are. This is relevant, because attributing domesticated animals legal standing will allow us to revalue and enable their agency.

Citizens of the wild

In contrast to domesticated animals, wild animals do not live close to humans and were not purposefully adapted to form social relationships with humans. As a result, the social norms, duties and relationships that exist between wild animals are very different from those that exist between humans and domesticated animals. Therefore, Donaldson and Kymlicka argue that wild animals should not be seen as co-citizens of our political community, but rather as citizens of their own sovereign communities. The relationships

²¹ Procedural justice pertains to the extent to which procedures by which outcomes are reached are fair, rather than the outcomes themselves (Vermunt & Steensma, 2016).

²² See Chapter 5, pp. 108-122 in Donaldson and Kymlicka (2011).

between human communities and sovereign animal communities should then be seen as political relationships, which should be regulated by norms of international justice (Donaldson & Kymlicka, 2011).

I think this way of thinking about our relation with wild animals supports attributing legal standing to them. To see this, it is helpful to make a comparison with indigenous peoples. Although indigenous peoples form their own sovereign communities, with their own political and legal institutions, they also have certain rights in our political community (such as the right to self-determination). If one of these rights is being violated, they are allowed to file a lawsuit against the (potential) violator. Thus, they need legal standing in *our* political community in order to maintain the sovereignty of their *own* political community. I think the same applies to wild animals. In fact, if they cannot claim their rights in front of the court (such as the right to a clean and healthy living environment), their very existence as a sovereign animal community is in danger.

Liminal animals as denizens

Liminal animals can be seen as an in-between category between domesticated and wild animals, because they tend to avoid direct contact with humans, but at the same time they have become dependent on human settlements for their survival (e.g. in terms of food or shelter). Thus, they cannot be seen as citizens of our political community, nor as citizens of their own sovereign communities (Donaldson & Kymlicka, 2011).

Because of their invisibility in our everyday worldview, liminal animals are often considered as nuisance-causing invaders that do not belong in 'our human territory', with the result that their interests are often neglected. However, since liminal animals have no other place to live (they often cannot survive in the wild, but they also lack the characteristics that enable domesticated animals to live together with humans), we cannot legitimately exclude them, according to Donaldson and Kymlicka. Rather, they argue, liminal animals should be seen as denizens or temporary visitors in our political community, who enjoy rights of residence but with a reduced set of rights and responsibilities compared to citizens.

I think one additional point should be made with regard to this argument. We should not only find ways of coexisting with liminal animals simply because they have no other

place to live, but also because we were (at least partly) responsible for the fact that they have no other place to live. Indeed, the reason why liminal animals encroached in human territories is that human influence on ecosystems and natural resources became so profound that previously wild animals were forced to evolve in ways that enabled them to live in human settlements (Donaldson & Kymlicka, 2011). This increases our moral responsibility to make sure that liminal animals have a place to live. Since the only viable option is to share our own habitat with them, we must also attribute them legal standing in our political community, even though they are not full citizens of this community.

To summarize, I have argued that there are two justifications for attributing animals legal standing: (1) they are citizens or denizens of our political community (in the case of domesticated and liminal animals) and justice requires that they have legal standing in this community; (2) they are citizens of their own sovereign communities (in the case of wild animals) and in order to maintain their sovereignty, they need legal standing in our political community.

5.2 An epistemic nightmare?

Even if the justifications I just presented are sound, one might still argue that we should not attribute legal standing to animals because we never know for sure what is in the best interest of the animal. Indeed, we only know the tip of the iceberg about animal welfare, not to mention individual preferences of animals. As a result, different experts and non-experts may make different claims about what is good for an animal. This raises the question who is the best advocate for a particular animal in court. Pardo (2023) draws attention to this issue by referring to the case *The Nonhuman Rights Project v. Breheny*, in which the NhRP requested the replacement of elephant Happy from the Bronx Zoo in New York to an elephant sanctuary:

NhRP describes Tommy and Happy as its “clients”, but if Happy were permitted to choose her advocate, would she prefer her dedicated caregiver and decades-long familiar environment at the Bronx Zoo? [...] Or, would Happy prefer her destiny be directed by an animal rights activist who is taking up her legal case as a means

toward the much larger goal of fundamentally changing what a society may or may not do with an animal? (Pardo, 2023, p. 10)

The issue, according to Pardo, is that there is a risk that those who take the role of representing animals in court are acting on human interests – even if these interests are philanthropic – rather than in the interest of the individual animal. Although this is a realistic concern, I think it should not be a reason to deny animals legal standing. I will now provide two arguments for this.

First, we do not need to know everything about animal welfare in order to know what is best for an animal in a particular situation. Most importantly, we need to know whether their current situation causes them suffering or unpleasant experiences and whether this can be reduced in an alternative situation. For some animals, scientists have already been able to detect signs of pain, distress or fear expressed through vocalizations, facial expressions and other signals (Hemsworth et al., 2015; Lezama-García et al., 2019; Manteuffel et al., 2004). Furthermore, preferences of individual animals can be identified through preference tests, in which the animal is allowed to choose between different environmental set-ups (Duncan, 2005; Baumans, 2005). Although these scientific insights cannot provide answers to all legal matters concerning animals, it is likely that they can at least help to assess whether some basic rights of animals are being violated.

Second, in the human context there are also cases in which we do not know what is in the interest of a particular legal person. For example, out-of-home placements of children are often a matter of dispute between a child protection agency and the parents of the child. Although there are cases in which the situation for the child is unsafe beyond doubt (e.g. violence or abuse), there are also borderline cases (e.g. addiction or financial debts) in which no one really knows whether it would be best for the child in the long term to stay or move to a host family. Despite this, the parents of the child can file a lawsuit on behalf of their child if they disagree with the out-of-home placement.²³ Thus, uncertainty about what is in the child's interest does not prevent us from attributing legal standing to the child. Similarly, I think we should not deny animals legal standing merely because we do not know for sure what is in the animal's interest.

²³ Above a certain age, the child can file a lawsuit on their own behalf.

An objection to this would be that, even if we do not always know for sure what is best for a child, we are still better able to estimate their interests than that of animals because the child belongs to the same species as us and is able to communicate their preferences through human language. Therefore, we are entitled to represent other humans in court, but not animals. This objection, however, neglects the fact that, even without attributing animals legal standing, we already decide on what should and what should not be done to an animal. Thus, if we are not entitled to make decisions for animals in court, then we should also not be entitled to make decisions about their lives in our daily practices. Indeed, it would be inconsistent to suggest that we should exercise epistemic humility towards animals in legal matters, while at the same time continuing to treat animals *as if we know* that their interests do not matter in the same significant way in which human interests matter.

5.3 Destabilizing effect on society

Another objection to granting animals legal standing is that it could have far-reaching implications for our current practices involving animals. As the court in the case *The Nonhuman Rights Project v. Breheny* commented, granting animals legal standing would have “an enormous destabilizing effect on modern society” by forcing “owners of numerous nonhuman animal species—farmers, pet owners, military and police forces, researchers, and zoos” to defend themselves against the claims made on behalf of animals (*The Nonhuman Rights Project v. Breheny*, 2022, as cited in Pardo, 2023).

I admit that this is a potentially tragic consequence of my view. Indeed, some of the people that are involved in practices like animal husbandry have built their entire life plans based on the expectation that they can continue with these practices. And they cannot be blamed for this, since the law has legitimized their practices, except for some incremental changes that were relatively easy to accommodate within their existing business models. But now, all of a sudden, they could be sued for violating the rights of their own animals, with whom they have been working for years and whom they might even have built relationships with. This seems unfair.

Before responding to this objection, it is important to realize that the extent to which attributing legal standing to animals is fair to humans will largely depend on how it is

implemented. For example, it matters *who* will be allowed to represent particular animals in court, *which* particular legal rights animals may defend in court, and *how much* time potential violators will get to adapt to this radical change in the legal landscape. I do not have space to discuss these matters here, but I assume that even if implemented in the fairest way possible, there will still be painful losses to some people involved in animal-related practices. In fact, some people might even lose their jobs, if it is economically infeasible for them to alter their practices in a way that respects the rights of animals.²⁴

Of course, we should do the most we can to compensate for these losses. However, I still think we should attribute legal standing to sentient animals, because this is what interspecies justice requires and at the same time it is in line with transitional justice.²⁵ I will now explain this in more detail.

Interspecies justice

According to John Rawls (1971), justice only applies in the “circumstances of justice” (p. 126), which are those circumstances under which it is possible for the one who owes justice to someone to respect the rights of the other without threatening their own existence. Although there have been times in which humans did not live in circumstances of justice with animals²⁶ – because we had to kill animals in order to survive – most of us nowadays live in societies in which it is possible to respect the basic rights of animals without risk for our own survival (Donaldson & Kymlicka, 2011).²⁷ Therefore, we have a moral obligation to do so. In other words, attributing legal standing to animals is necessary to realize interspecies justice. In the remainder of this section, I will show that attributing legal standing to animals is also in line with transitional justice.

²⁴ On the other hand, new jobs will be created, for example in animal sanctuaries, wildlife assistance, animal welfare research and animal-friendly spatial planning.

²⁵ I use the term ‘transitional justice’ here as a general notion of justice in the case of societal transitions. This differs from a commonly used description of transitional justice in philosophical literature, as a field of inquiry concerned with the transition of a state from repressive rule and war to a democratic and peaceful order (Turner, 2013).

²⁶ For some people (e.g. indigenous peoples) this might still be the case, as well as for our relationships with certain wild animals. I will get back to the latter in the next section.

²⁷ Although Rawls restricted his theory to humans, other authors have shown that his theory is, in principle, also applicable to animals (Garner, 2003; Rowlands, 2009).

Transitional justice

Realizing interspecies justice requires a transition and, just like with any other transition, it is of great importance that this transition is brought about in a just way for all parties involved. This requires, amongst others, that decision-makers clearly communicate from the outset what the goal of the transition is. Thus, if treating sentient animals as persons is the goal (which I think it should be), then we have a duty to inform those whose daily practices will be affected by the achievement of that goal. At the same time, practical measures have to be aligned with that goal in order to guarantee consistency of the message that is being proclaimed. Therefore, incremental changes to animal welfare laws, which leave the legitimacy of the system of animal exploitation itself unquestioned, are misleading to those involved in animal-related practices (Eskens, 2021).

In a similar way, I think Kempers' proposal (2022) to gradually expand animal rights, with the (potential) consequence of animal legal personhood, is misleading, because it sends two opposing messages. On the one hand, it says that some rights of animals should be respected, but on the other hand it justifies the denial of legal personhood to animals. I think it is more fair to those involved in animal-related practices to communicate from the outset that animals should be treated as persons (both in the moral and the legal sense). This prevents them from further investing in practices that will be prohibited in a few years anyways. Furthermore, it creates a level playing field for all people involved in animal-related practices. The latter is not likely to occur in the case of a gradual expansion of animal rights, because different practices may be hit harder by the implementation of different rights for animals. Thus, attributing legal personhood to animals is required for interspecies justice and at the same time promotes transitional justice.

5.4 Interspecies conflicts

Whereas the previous objection mainly applies to our treatment of domesticated animals, one might also raise concerns about the implications of my view for our interactions with wild and liminal animals. Indeed, the situation of domesticated animals is rather controllable, but wild and liminal animals can pose significant threats to human

safety, health and survival. According to this objection, giving these animals legal standing risks justifying significant harms to humans and may even violate our right of self-defense.

Although this concern is understandable, I think it is based on a misinterpretation of what legal standing for animals based on a citizenship approach entails. Indeed, attributing legal standing to animals does not mean that animals are entitled to the same rights as humans. Rather, which particular rights animals should have depends on the political relationships we have with them. I will now show how Donaldson and Kymlicka's (2011) citizenship approach can take away, or at least significantly reduce, the concerns related to interspecies conflicts involving wild and liminal animals.

Respecting the sovereignty of overlapping communities

In the case of wild animals, it is important to realize that we are not in the 'circumstances of justice' with some wild animals,²⁸ especially those that may kill or significantly harm humans. This means that, even if we grant wild animals legal standing, it will sometimes still be permissible to kill or harm a wild animal to defend ourselves or our co-citizens (including domesticated animals). However, this may only be done in a way that respects the sovereignty of the wild animal community, which means that we may not eradicate an entire species or population, but only defend ourselves against the particular threats they pose. One might think of this as some kind of 'law of war' for human-wildlife conflicts, which prescribes that lethal or harmful measures may only be used out of self-defense, and that the response must be proportional and avoid the use of cruel methods. For example, this would allow a farmer to kill one particular wolf that is attacking his sheep (if other methods have proven ineffective), but it does not allow him to shoot the entire population of wolves.

At the same time, respecting the sovereignty of wild animal communities means that we should try to prevent human-wildlife conflicts from occurring in the first place, by reducing the asymmetry in the distribution of risks between overlapping human and

²⁸ Apart from this, wild animals are also not in the 'circumstances of justice' with each other. Therefore, we do not have an obligation to protect them against predation, whereas we do have this obligation towards humans and domesticated animals, according to Donaldson & Kymlicka's citizenship approach.

wild animal communities. For example, humans are already altering shipping lanes and establishing monitoring systems to protect whales from deadly ship collisions (Donaldson & Kymlicka, 2011). This kind of measures limits the amount of lawsuits that are necessary to protect the sovereignty of wild animals in the first place.

Reciprocity of liminal animal denizenship

When it comes to liminal animals, it is important to realize that they are members (but not full citizens) of our shared human-animal communities. Therefore, we may impose certain responsibilities on them that come with membership in our political community, even though they cannot fulfil these responsibilities without our assistance. For example, liminal animals are unable to regulate their reproduction or mobility in a way that is required to respect the rights of others living in the same community (such as property rights or the right to health of humans). Therefore, humans have a right to exercise control over their population sizes and mobility (Donaldson and Kymlicka, 2011).

Thus, we do not have to be afraid that lawsuits on behalf of invasive species will prohibit humans from taking measures against their spread. However, lawsuits like these may put restrictions on the *methods* that are permitted to limit the numbers of liminal animals. Indeed, to prevent suffering and violation of the right of residency of liminal animals, only non-lethal and non-harmful methods – such as physical barriers, disincentives, reduced food supply or shelter opportunities – would be allowed. However, this should not be seen as a disadvantage, because these kinds of methods are usually far more effective in controlling population sizes than killing animals. Indeed, the latter often causes natural rates of reproduction to increase, which perpetuates or relocates the problem (Donaldson & Kymlicka, 2011).

In addition, just like in the case of wild animals, the amount of lawsuits on behalf of liminal animals that is needed can be significantly limited by addressing the root causes of nuisance from liminal animals, such as improper storage of food and waste, poorly design of park and gardens (which attract certain animals) and deliberate feeding (Donaldson & Kymlicka, 2011).

6. Conclusion

In this thesis, I have argued that we have a moral obligation to give sentient animals legal standing, both because of their intrinsic properties and because of the (political) relationships we (can) have with them. I have supported this claim by suggesting that animals should be seen as persons, both in the moral and the legal sense. In doing so, I have reconsidered the existing conceptual landscape of moral and legal personhood in the Western world. Instead of depicting moral personhood as the condition of possessing full moral status, I have argued that it should be seen as a continuum that encompasses all beings that possess moral status in virtue of their sentience. Furthermore, I have argued that the legal personhood status of animals can be justified by their degree of moral personhood. With this, I have strengthened the ethical justification for animal legal personhood based on Kurki's (2019) bundle theory of legal personhood.

In addition to the argument based on intrinsic properties, I have provided an agent-centred argument for attributing animals legal personhood. More specifically, I have argued that recognizing animals as legal persons enables us to increase our own degree of moral personhood and thereby brings us closer to the ideal of full moral personhood. In this regard, Masolo's African account is useful to highlight the importance of human responsibility as moral agents rather than only focusing on what animals are entitled to based on their intrinsic properties. This approach could be useful for shifting the focus in other debates as well, such as debates in environmental ethics, the ethics of AI or medical ethics.

Furthermore, I have bridged the gap between the patient-centred and agent-centred approaches by focusing on the relationships we currently have with animals. Based on Donaldson and Kymlicka's citizenship approach (2011), I have argued that animals can be citizens or denizens of political communities and that attributing them legal standing is crucial to respect and enable their agency within these communities, while at the same time redressing the historic injustices we have inflicted on them. I have come to the conclusion that sentient animals should be eligible for legal standing, because this is what interspecies justice requires, and at the same time it is in line with transitional justice. Lastly, I have shown that concerns about interspecies conflicts can largely be taken away by using Donaldson and Kymlicka's approach as a starting point for defining the terms on which legal standing for animals should be implemented.

Glossary

This glossary is based on common definitions in Western ethics and law. Although I challenge some of these definitions in this thesis, the aim of this glossary is not to provide an all-encompassing explanation of the concepts used, but rather to clarify the main differences between concepts that are related to but not identical to each other.

Artificial person

A non-human legal person, such as a corporation, trust or partnership. This is also called a 'juristic' person.

Legal personhood

The condition of being a human or non-human entity that is treated as a person for legal purposes. This category can be divided into 'natural persons' and 'artificial' or 'juristic' persons.

Legal right

Any right, created by humans, that an individual is entitled to, based on the laws and other legal context (e.g. the constitution) of the society in which the individual lives.

Legal standing

The permission to act as a plaintiff in court by alleging a defendant for causing harm to you.

Metaphysical person

An entity that is qualified as a person based on what that entity is, metaphysically speaking. It is generally thought that an entity is a metaphysical person if it possesses certain intrinsic (non-moral and non-legal) properties, such as being alive or having consciousness, identity or memory.

Modal person

An entity that either is or could have been a 'metaphysical person'. In the latter case, the entity once had the (genetical) potential to become a person, but lost that potential, for example due to a birth defect.

Moral agency

The capacity of being morally accountable for one's own actions, which requires that one is able to understand and act on moral principles.

Moral person

An entity to which special moral considerations are owed in virtue of morally relevant characteristics of that entity. An entity can only be a moral person if it possesses full 'moral status', which requires that the entity has 'moral agency'.

Moral right

A right to which a moral person is entitled if that person possesses certain morally relevant properties.

Moral status

The degree to which an entity deserves moral consideration. If an entity has moral status, it means that it has interests that are morally important in their own right.

Natural person

In law, a natural person is understood as a human legal person, as opposed to non-human legal persons. In philosophy and ethics, a natural person either refers to a 'moral person' or a 'metaphysical person'.

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