

# **Nussbaum's Capabilities Approach and** **Animal Rights**

**How animal capabilities would be the best foundation  
of rights**

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## Introduction

The rights of animals are not typically a concern for most people. Animals have lived amongst human-beings as long as we can remember, sharing living space and communities and changing each other's lives for better or worse. The interest for animal rights has strongly developed in the last few centuries, with more people arguing that we should take animals and their interests into account. They are not merely means to an end, but they are living beings, with an interest to live a life worth living. This development can be seen in, for example, the rise of political parties that have animal rights and environmental issues as their main objective. In Europe, the rise of political animal parties has been apparent, with right now around 10 parties in different countries who are vouching for the importance of animal justice.<sup>1</sup> Even more movements are being introduced, like the Animal Euro 7. This is the coalition of 7 of the before mentioned parties, who are together trying to win seats in the European Parliament to fight against speciesism and for more animal rights throughout Europe.<sup>2</sup> Apart from political parties, there are numerous non-governmental organizations that make an effort for animals. One of the most important ones is PETA, the largest animal rights organization in the world. It is safe to say that people are increasingly more concerned with animal rights. But still, there is a lot of work to do.

The increasing world population and the demand of meat have greatly worsened the conditions of animals in the meat industry. The amount of animal abuse has made it necessary for organizations to step in and demand more care for the animals. These conditions include situations like experiments on animals, where the animal is used to test products on that will be used for humans. They are frequently brought into contact with large amounts of chemical products, dripped in their eyes or injected into their bloodstream. A lot of the animals do not survive, and there is also a large number of animals who have never been used, but are killed because there are too many of them.<sup>3</sup> Under the right circumstances and with substantial funding, these experiments could be lessened.<sup>4</sup> Animal rights organizations thus try to convince companies to look for other ways of testing that does not include animals.

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<sup>1</sup> <http://www.esdaw-eu.eu/animal-welfare-parties-in-europe.html>

<sup>2</sup> <http://worldanimal.net/world-animal-net-blog/item/363-animal-politics-the-rise-of-animal-advocacy-parties>

<sup>3</sup> Information about animal testing can be found on the website of PETA, here:

<http://www.peta.org/issues/animals-used-for-experimentation/animal-testing-101/>. A page of the Dutch government about the surplus of animals that are killed in certain years can be found here:

<http://www.nkca.nl/dierproeven/feiten-en-cijfers/zorg-voor-proefdieren/overtollige-en-ongeschikte-dieren/>.

It says that for example in 2012, 524.735 animals were killed before they were even tested upon. This occurs for different reasons, such as that they are too old or their genotype is not right. For comparison: in that year there have been 589.056 tests on animals. The amount of animals that has been killed without testing is thus almost half of the animals that are meant to be tested upon.

<sup>4</sup> See, for example, this book: Jukes and Chiuia, *From Guinea Pig to Computer Mouse*.

There are many more reasons that organizations and political parties have begun to stick up for animal rights. Think about fur that is used for human clothing, shooting wild animals, the increasing number of endangered species due to different reasons (including global warming), and animals used for entertainment. All over the world, animal rights and interests are not considered for different reasons and with different objectives, most of them beneficial for humans. Due to overpopulation, tourism, overconsumption, and technical advancements, the abuse of animals has become much more frequent and differentiated. Hence, it is not a coincidence that the concern for animals has risen the last few decades. People become vegetarian or vegan or try to contribute to animal welfare in other ways. It seems that the use of animals has gone far beyond intentions necessary for survival, and for this reason increasingly more people advocate in the name of animals.

Still, a large part of the world is not convinced by these developments and maintain that using animals is justified. They would argue that people have always been meat-eaters, for example. Another frequently used argument is that animals kill each other in the wild too. Why would we be concerned with animal welfare, when animals amongst each other are not? Why would it be bad to use animals for human goods, when they clearly use each other too?

Multiple scholars have come up with theories about this subject, ranging from animal welfarist accounts to critics who deny the possibility of animal rights. Peter Singer is one of the most important philosophers in the animal rights realm. Singer is a utilitarian, drawing on the theory of Jeremy Bentham.<sup>5</sup> He and Bentham agree about the basis which must be used to criticize what we should take into account when we want to decide about principles of justice. This is for them suffering. According to Singer, what makes it an obligation for us to consider animals in our principles of justice is the fact that they can suffer. Thus, he is primarily concerned with sentients. Singer argues that the fact that we are willing to use animals as mere means to an end, for example when we eat them or experiment on them, is discrimination. When we recognize that animals can suffer, we cannot just ignore the suffering we cause when we use them for our own, as we would not do that with any human-being. Moreover, when we admit that animals are capable in preferring some life above another, we must take that into account and be sure that their interests are being preserved. Singer is mainly concerned with suffering and he attacks concepts like dignity, which he thinks are flawed and point to speciesism.

Tom Regan is another philosopher who is concerned with animal rights.<sup>6</sup> He too is a utilitarian, and is compelled by utilitarianism by its egalitarian approach; everyone's interests are weighed in deciding which outcome is best, and every interest is weighed in equally, such

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<sup>5</sup> LaFollette, *Ethics in Practice*. P. 174-179.

<sup>6</sup> Sadly, during the development of my thesis, Tom Regan passed away. I greatly admire his work and thank him for the valuable contributions he has made to the field of animal rights.

that no one is more important than another. For Regan, this means that animal interests must be considered too. Animals, like humans, have inherent value, independent from any other living being, and we must respect that inherent value and treat animals accordingly. This inherent value comes from the fact that we are all "experiencing subjects of life".<sup>7</sup> Thus, Regan argues that everyone who is a living being must be treated with some kind of respect and consideration to their values.

There are many more theories about animal rights, and I will elaborate about some of them further in my paper. The point here is that the transition from a developing world in which animals are mistreated to upcoming theories about animal rights in philosophy is a logical one that should not be underestimated. Not only scholars concern themselves with the fate of animals. In my paper, I will defend that such a concern is a logical one, and we should expand the realm of justice to include animals as well.

We should aim at a theory that can provide a solid and, hopefully, also intuitive sound groundwork for considering animals in principles of justice. Although these above mentioned theories are of great importance, I will argue that there is one theory that appeals to the task at hand and that is the Capabilities Approach of Martha Nussbaum. Her theory states that we should aim at preserving dignity for all living beings. We should do this by identifying the capabilities they have that enable them to lead a flourishing life, and trying to protect these capabilities. Her theory makes a strong argument especially for marginal cases, meaning people who lack certain traits that normally are used as a basis to value human beings. For example, one of the cases she uses is mentally disabled people, who are human-beings but can lack rationality. Rationality is a basis for a lot of theories that value humans above, for example, animals. She then uses the same Capabilities Approach, which defends human dignity on other grounds, to make a case for animal rights. In her account, animals have inherent value because they have capabilities that can make their life valuable. We should respect these capabilities and aim at not obstructing them.

I will argue for this theory and show that it is the best one we have for arguing for animal justice. I will do this by first considering what the Capabilities Approach has been to this point, contrasting it with other theories. In this first part, I will show that the Capabilities Approach has a large advantage in comparison with the other theories I just mentioned. The Capabilities Approach can look beyond standard presuppositions about the species that one belongs to, or race, or gender, etcetera. It rather aims to look at the individual and the capabilities and needs it has. It has the advantage over a utilitarian doctrine because it does not look at outcomes or allows aggregating results. It will become obvious, throughout my thesis, that justice is not only

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<sup>7</sup> LaFollette, *Ethics in Practice*. P. 210.

served when people and animals have the same opportunity for goods, but also when they have the same opportunity to enable their capabilities.

This connection between capabilities and rights will be strengthened by the recognition theory of Paul Ricoeur in Chapter Two of my thesis. There I will show that the reasons that people desire justice is the same as why animals should be partakers. Ricoeur's theory contributes to my thesis the necessary relation between capabilities and rights. He shows that the recognition of functioning we have in ourselves, leads to the same recognition in others. When we acknowledge the importance of our own and other's capabilities and the necessity for functioning to be a thriving individual, we will concede that justice has to be aimed towards defending these capabilities.

In the other two parts of Chapter Two, I will develop and defend my theory and how it will contribute to society. In order not to conflate the questions of who receives justice and who frames justice, we need to answer to not only human, but also animal capabilities. First, we should broaden the scope of existing rights to all beings inhabiting distinctive capabilities corresponding to those rights. Furthermore, we have to rely on science to tell us about animal capabilities, and incorporate the capabilities in our justice system. In the last part of the body of my thesis, I will explore some implications, and claim that the Applied Capabilities Approach is not meant to grant animals citizenship.

My goal for this thesis is not to presume or develop a moral theory. Rather, I would like to propose the Capabilities Approach as a theory of rights that needs to be used as a safeguard for justice. Note that my aim is not to defend that animals are moral beings themselves, who can act good or bad, just or unjust. My claim is that we have as much reason to defend animals as well as humans. My mission will be to convince the reader of the two following notions: first, capabilities in themselves are valuable, because they promote the flourishing of beings. They must be protected because without capabilities, animals – human or non-human – cannot live a dignified life worth living.. Secondly, capabilities are the best foundation of rights, because they are the only legitimate basis that can support a claim for a right. Capabilities, in short, are the means as well as the end of a theory of justice.

## ***Chapter One: The Journey of the Capabilities Approach***

As I have said, most scholars who defend animal rights draw upon some kind of similarity between humans and animals, which defeats a non-inclusive argument. This seems the most compelling strategy; because, if we can prove that the argument that people use to exclude animals will lead to certain humans to be excluded too, that argument is not solid. I have mentioned the main examples in my introduction, and I will mention some more in the parts that have yet to come. For now, consider first this: why do we have to look for resemblance of human in animals? Why is that necessary to make a valid argument against the abuse of animals? In using this tactic, do we not just strengthen our anthropocentric world-view?

I have struggled with this question in the beginning of my search to the best way to tackle the problem of animal ethics. What bugs me the most is that I think we should be able to move past our conception that only what we, humans, can perceive, is valuable. There is proof all over that some animals are in certain ways much more intelligent than we are. Darwin, as the leader in findings about animal social behavior, sees this in monkeys that pick each other's fur and in pack-hunting.<sup>1</sup> People would need endless amounts of planning and communication to reach the level of effective hunting that animals have reached. Intelligence and language proves to not always be the significant factor in successful cooperation. Social behavior can take place in different species, in different ways. So why do we have to break every single animal down in human terms of achievement? How are their ways of being less meaningful than ours?

I think the best way of reaching a somewhat acceptable conclusion is to find a way in which we do not exclude animals because they are less, but define everyone as what they are in comparison with each other, namely, *different*. Each species of animals differs in needs, ways to flourish, capacities, and all other relevant qualities that have to be taken into account while sorting out our behavior towards them. And even inside species, where individuals also vary in these aspects, we should be wary about generalizations. Humans are just one species in a whole web of diverse creatures, and we cannot possibly hold that only where other animals resemble us, they can be significant.

Thus, looking for a theory that treats everyone in accordance with their individual qualities, I found the convincing case of the Capabilities Approach.

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<sup>1</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 78.

### *Nussbaum's criticism of other scholars*

My main argument will draw upon the work of Martha Nussbaum. Nussbaum defended her Capabilities Approach in her book 'Frontiers of Justice'.<sup>2</sup> She uses the contractarian approach of Rawls as a starting point for her theory, criticizing as well as developing it.<sup>3</sup> Nussbaum is very critical about contemporary theories about justice and morality which, for the bigger part, only think of the decision-making citizens as able men who make a contract with each other. Nussbaum points to three groups that are systematically excluded from the "demos": people who are disabled in some way or another, non-citizens and non-human animals.<sup>4</sup> The biggest problem is that, in deciding upon the norms and values that will shape society, only people who are able to take part in the decision-making process will be able to shape the social contract. The basis of a contractarian approach is that people join in a society as people would join in a relation with each other by signing a contract.<sup>5</sup> When put this way, people or animals who are not able to "sign" such a contract are not considered valuable partners in making up society, and thus, are ignored by these theories. Nussbaum argues that this is wrongly exclusive to the before mentioned groups. The questions "Who make the contract?" and "For whom is the contract made?" are being conflated in the process.<sup>6</sup> According to Nussbaum, we have to look at a different way to shape our moral convictions, thus, the Capabilities Approach.

In this paper, I will of course be concerned with the argument Nussbaum uses for how we should treat non-human animals and their rights. This is not to say that I do not value the rest of Nussbaum's theory for disabled people and non-citizens. I do agree with a lot that she has to say on those two topics, but as long as they do not serve a purpose for my current research, I will not discuss these parts any further.

Continuing my argument, I will have a closer examination of why Nussbaum thinks non-human animals are not being treated as they should by contractarian approaches. A lot of theorists declare that we do not have any direct moral duties to animals, or they argue that we only have indirect moral duties.<sup>7</sup> In the starting chapter of her book, Nussbaum makes some basic presumptions about how theories of justice and cooperation are shaped. One of the presumptions she mentions is that people are viewed to be "free, equal and independent". Scholars often use an account about the individuality as well as the equality of people, explaining why they would cooperate and make a social contract amongst them.<sup>8</sup> People who find themselves in a state wherein the best course of action would be cooperation, would be willing

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<sup>2</sup> Nussbaum, *Frontiers of Justice*.

<sup>3</sup> *Ibid.* p. 69.

<sup>4</sup> *Ibid.* p. 14-22.

<sup>5</sup> *Ibid.* p. 10.

<sup>6</sup> *Ibid.* p. 21.

<sup>7</sup> *Ibid.* p. 21-24.

<sup>8</sup> *Ibid.* p. 28-34.



to use a social contract to make some rules in order to defend themselves and their resources. Nussbaum points out that such an account about the basic strength and power, physical and mental, is problematic for the problems she just described. These theories cannot, and maybe were not interested in, solve the problems concerning how we should deal with animals, human and non-human, who lack these equal strengths. As for independence and freedom, Nussbaum sees similar issues; her problematic cases are a reflection of people who are not by rule free and independent. The theories of Locke, Rousseau, Rawls and the other scholars she mentioned, are not equipped to clarify how these beings could be treated as part of the state. Her aim now is not to abolish these theories completely. Nussbaum argues that they have great fundamental value and we should not forget nor underestimate the contributions they have made to the understanding about justice. Rather, she would like to make a contribution to the three problematic fields she has encountered, and develop both theories until they end in similar assumptions. Then, she believes, "we are on the right track".<sup>9</sup>

Nussbaum is also critical of Utilitarianism. According to her, a utility approach is not seriously considered with each person individually, thus treating some as a means to an end.<sup>10</sup> What utilitarianism does wrong, like certain other approaches that try to measure human development, is that it aggregates results. This means that everything is measured against each other, whereas Nussbaum rightly states that certain things should not be weighed out against each other, like health against wealth. Utilitarianism is also only concerned with *status quo* preferences. It does not try to look at social constructs that may be the reason that some people want certain things.<sup>11</sup> As a final note, Nussbaum claims that utilitarianism has a blind eye for everything else that matters except feelings of satisfaction. She gives the famous example that Nozick proposed with the "Experience Machine"; a feeling of satisfaction can be artificially given, but the striving and actual active participation for something is valuable too. Utilitarianism does not regard this in aggregating the social good.

As I have noted before, Nussbaum points to the fact that in contemporary theories, a lot of our duties towards animals are still human-based. This is because theorists do not see nonhuman animals as valuable in themselves; they only have value in so far as that is placed upon them by humans. This is founded, says Nussbaum, in the Jewish and Christian tradition that human-beings were given sole authority over the world of nature.<sup>12</sup> The Aristotelian tradition tells a different story. All living creatures should be respected. Nussbaum holds that her account has an important Aristotelian ground which makes it very compatible with animal

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<sup>9</sup> Ibid. p. 69.

<sup>10</sup> Ibid. p. 72-73.

<sup>11</sup> Nussbaum says, for example, that women or other marginalized groups sometimes adjust their preferences and wants to what they think is actually achievable for them.

<sup>12</sup> Nussbaum, *Frontiers of Justice*. p. 328.

dignity. This is lacking in the contractarian approaches. With Kant, animals are excluded from the realm of justice because they lack self-consciousness. We should only treat animals kindly because this enforces our kind behavior towards humans.<sup>13</sup> Similarly, Rawls believes that we owe duties of justice to people who can form a conception of the good and have a capacity for justice. These capacities are not inhabited by all animals, which will exclude them from principles of justice. To Nussbaum, this is not acceptable.

### *Nussbaum's Capabilities Approach*

As an alternative to the social contract theories, that have proved to be weak defenders of the problematic cases, Nussbaum presents her "Capabilities Approach". She uses her theory to argue for certain basic human values that should be respected worldwide, as respect for basic human dignity. These capabilities are basic human strengths, that is, what human beings can do when they live a life that is worth living, according to human dignity. She makes a list of the basic capabilities humans have and argues that these are the ones that should be respected by the political realm. When focusing on these capabilities, one can rise above the underlying differences that people have about which lives are valuable to live, and make the capacities of humans the object of decision-making. Also, Nussbaum holds that this theory will treat everyone as an end, independent of others' goals or issues. Lastly, she will show that there is a threshold of the capabilities under which "...truly human functioning is not possible".<sup>14</sup>

Nussbaum uses the human capabilities as a benchmark for what is required for people to live a life of human dignity. With her principles in mind, one can see if societies have secured a good standard of living for its citizens. Each society must defend these capabilities as general goals, but can specify some more according to the individual principles this society holds. What is not allowed is the promoting of some, while ignoring others. Nussbaum holds that this does not pay enough respect to these human capacities, and the human dignity that follows from them. Nussbaum is critical of her own account, acknowledging that it cannot deal with inequalities that fall above the basic threshold for every capability, and that there may be important other values that can be added to the list. It can be revisited and modified over time. For now, the list she provides us with is the following:<sup>15</sup>

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

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<sup>13</sup> Ibid. p. 329.

<sup>14</sup> Ibid. p. 71.

<sup>15</sup> Ibid. P. 76-78. The lengthy quotation was needed to properly explain and refer to the theory.

3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason-and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.

5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety.

6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. **Affiliation.**

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. **Play.** Being able to laugh, to play, to enjoy recreational activities.

10. **Control over One's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life, having the right of political participation, protections of free speech and association.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reasoning and entering into meaningful relationships of mutual recognition with other workers.

These capabilities are deliberately phrased in a general way. This leaves the room for societies to decide how they will interpret them. Nussbaum wants the capabilities to be used as a freestanding, partial moral conception. This means that the list is to be used as a political guide, for people who overall may have different morals. Furthermore, every citizen must be able to decide whether they want to make use of the capabilities; the option is protected, but should not be obligatory.

The basic list Nussbaum provides is for the bigger part a theory about humans, and animals do not yet seem to fit the picture. In the last part of the first chapter, she explains how this approach can help us to find a way in which one can value nonhuman animals.<sup>16</sup> Because not only rationality but also other virtues are considered, an argument about why we should take animal capabilities in regard is fairly easy. If we claim that these capabilities bring about a form of a human dignified life, so can we say that animals should be able to act according to their capabilities and lead their life as dignified beings. It is also very sensible of differences between animals; this theory is not only for sentient beings, but can judge every animal differently. Political debate should be stimulated by these capacities, asking which we should protect to ensure a dignified animal life. It is certainly not an easy approach, but it is showing some great advantages in respect to a contractarian approach. In the deliberating view of the contractarian theories, there is no room for developing an account for nonhuman animals.

In contrasting Utilitarianism with her view, Nussbaum points to the fact that her account, as well as the utilitarian doctrine, is an outcome-based theory. This means that the procedure is not what is important in developing issues of justice, but the results are. This is very important, because the contractarian approach has such a big problem with the fact that it conflates the questions "Who frames the principles of Justice?" with "For whom are the principles framed?" It has to come up with some argument for why beings who cannot participate in the making of the contract are still to be considered. Her Capabilities Approach, as well as Utilitarianism, has no problem in that regard. What makes her theory to be preferred over Utilitarianism are some basic assumptions Utilitarianism makes that are problematic when considered in relation to animals. The consequentialist component, which argues that the best outcome is the one that overall brings the most good consequences, has its downfalls because it holds that there is such a conception of the good that it can be applied generally. In Nussbaum's theory, only dignity and the according capabilities should be counted as general goals. It leaves enough room for societies to define these principles in ways according to their further values. The overall good is not to be

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<sup>16</sup> Ibid. p. 93-94.

preferred over the individual good, because that disregards the capability to have practical reason and to have control over one's own environment.

Nussbaum further argues that the theories of Singer and Bentham, wanting to maximize pleasure or preferences, are flawed in the way that they too try to aggregate everything into one single feeling that needs to be maximized.<sup>17</sup> Some principles cannot be compensated for by large amounts of another. Furthermore, there are also needs and pursuits that cannot be aggregated to a feeling of pleasure or frustration. These needs have value and need to be considered, like free movement and physical achievement. Finally, Utilitarians have a "numbers problem"; so long as a life has a small amount of utility, for a utilitarian it is worth bringing more life into existence. This is certainly a problem when it comes to animals. Considering the meat industry, Utilitarians cannot make a substantive argument against the breeding of more animals. Thus, Nussbaum concludes, Utilitarianism has great merits, but also has its defects when trying to defend animal rights.

There are a number of Utilitarians who are more concerned with these problems and have incorporated another version of Utilitarianism. One of these is Derek Parfit. Parfit believes that we should not narrow ourselves to straightforward Utilitarian terms like happiness and suffering. Quality can be added to a life in other ways, like health or education.<sup>18</sup> Parfit develops a view that he calls Prioritarian. This view entails wanting to benefit the people who would gain more from it, but it also prioritizes the people who need the benefit the most.<sup>19</sup> In this way, we would favor people who are worse off instead of people who would benefit more, but are already better off. Benefiting the worst-off is better because it increases the value the benefit has, making the utility greater, but it also produces more equality. According to Parfit, this theory has a built-in bias towards equality, but is not in fact egalitarian.<sup>20</sup> Another example of an author that has developed a different form of utilitarianism is R. M. Hare. Hare has developed a theory where we should think about the preferences we have, and we should decide according to two levels of thinking: critical and intuitive.<sup>21</sup> He asserts that with a critical and intuitive component, utilitarianism is more able to deal with the obvious replies, such as the experience machine. An intuitive question would be replied with an intuitive utilitarian answer, and vice versa. Also, preferences will be construed with a better understanding of which situation someone prefers, instead of only the emotive outcome.<sup>22</sup>

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<sup>17</sup> Ibid. p. 344-345.

<sup>18</sup> Parfit, "Equality and Priority." p. 83.

<sup>19</sup> Ibid. p. 101.

<sup>20</sup> Ibid. p. 106.

<sup>21</sup> Hare and Hare, *Moral Thinking*. p. 45-46.

<sup>22</sup> Ibid. p. 143.

Some of Nussbaum's objections would be defeated by this view. Parfit asserts that his theory can avoid the Levelling Down objection that challenges equality.<sup>23</sup> Parfit also seems to tackle the objection that Utilitarians are solely outcome-based, because his theory is concerned with equality as well as utility. Similarly, Hare defeats this objection by placing some value on the method that is used in the way of thinking. But still, utilitarianism is insufficient when it comes to defending animal rights.. The theory does nothing with the distinction between animals and humans – it does not take into account the difference between how easy it is to measure utility with humans and how difficult it is to measure with animals. We would need an arguably complicated system to establish the impacts that every decision has on an animal, and relate that to everyone involved, including humans. Moreover, for a rights theory, utilitarianism has only one basis to build on, which is utility. I would argue there is more that has to be incorporated in a justice system; utilities are blind for situations people or animals are in, and presuppose an ability to prefer. Not every being will be able to actively enjoy something, but that does not mean its capabilities and rights must be ignored.

### Dignity and individuality

Nussbaum begins her theory of the Capabilities Approach with a conception of human dignity. But, she argues, this dignity can also be extended to animals.<sup>24</sup> It is the respect for a form of life, which should be able to flourish and live a life worth living. This respect follows from the kinds of things this form of life is able to do. Once we respect the way in which its natural powers drive the being, we should respect the being in itself. Nussbaum draws upon Aristotle, who told his pupils that they should wonder about every kind of animal, for human-beings are no different from animals. If you wonder about and respect humans, you should do the same for animals. Once you are convinced that what makes humans flourish should be protected, you have to adopt the same kind of argument for the same kinds of reasons to animals.

When trying to extend the notion of social cooperation to the realm of animals, Nussbaum claims that we should not make up some kind of conception of the "good of animal lives".<sup>25</sup> Instead, we should look at the diversity of animals and respect them individually. Just like with humans, we do not want to prescribe some form of living well. We want to try to come up with some basic principles that we should endorse to protect the animal's dignity, while making sure we do not impose some way of living on them that disrespects this dignity. Nussbaum will use theory and imagination to try and reach an understanding of the functioning of animals, as she

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<sup>23</sup> The Levelling Down Objection contains that, whenever only equality is important, this would mean we would make people worse off when we cannot make them better off because that serves equality. This, according to Parfit, is an unhappy result which should be avoided.

<sup>24</sup> Nussbaum, *Frontiers of Justice*. p. 346-348.

<sup>25</sup> *Ibid.* p. 352.

argues that both will prove useful, and imagining in particular is crucial to the understanding of animals.<sup>26</sup>

Thus, Nussbaum's theory is concerned with individual animals. She clearly states that her theory does not, for example, have an answer for the continuation of species.<sup>27</sup> She says that if she is right about why animals need justice, it is because they suffer individually and we have to protect them individually to ensure that they make use of their capacities. It is irrelevant what species the animal belongs to; what matters are individual capacities. But, how does that work? Because different animals, even from the same species, can have different capabilities. How do we evaluate an animal's capability? Singer, for example, depends on sentience; Regan depends on an intrinsic value of animals who have reached the age of one year. Nussbaum tells us that we can only harm an animal in taking away something he had before. This means that, for example, denying the right to drive a car to a rabbit is useless. This is in line with the Capabilities Approach; harming should be judged by what capabilities an animal has. In addition, Nussbaum explains that an animal must have one of the capabilities she mentioned, for it to have a moral stance. It is thus not necessary to have all of the capabilities. Another question she answers is if species membership matters for the evaluation of the individual. Nussbaum thinks the Capabilities Approach is likely to say yes, because it seems to place a lot of value upon capabilities that can be characteristic for specific animals.<sup>28</sup> Although characteristics can differ between members of the same species, species-membership cannot be said to be irrelevant. Only in the community of your own species you can flourish; a human cannot flourish as a chimpanzee, and vice versa. This too, one can argue, can be explained as a capability to flourish. Concluding, Nussbaum says that species-membership is important for judging which capabilities should be protected for being to be able to flourish, whereas differing capabilities or defects can give rise to obligations of special care to ensure the development of the animal – human or nonhuman.

### *In defense of the Capabilities Approach*

After this extensive summary of the Capabilities Approach, one may ask what the importance is of this theory. In light of a good defense and development of my own version of this argument, I will also use some other scholars who have drawn upon the Capabilities

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<sup>26</sup> Nussbaum states that imagination is the primal way to understand animals and argue against cruelty, but still there remains a problem of anthropomorphism. This will arguably always be a problem, since no one else but humans can describe to humans how an animal feels. Still, it is important to know that every assumption we make about the feeling of animals will always be human-induced.

<sup>27</sup> Nussbaum, *Frontiers of Justice*. p. 357.

<sup>28</sup> *Ibid.* P. 361-363. Nussbaum also admits here she must add that she is, after all, more concerned with sentient animals, stating that the harm a mosquito can do to a sentient being may override the protection of his capability to live.

Approach to defend their position. In the next section, I will review the Capabilities Approach as endorsed and criticized by other theorists. It must be clear that there are several versions, and this is in no way an unimportant or underdeveloped strategy to argue for justice.

The Capabilities Approach is developed by the scholar Amartya Sen. Sen evolved his theory about the assumption that what makes a life valuable, is not what people can consume. It is the available standard of living, which falls back on what we are able to do. It is our functioning that establishes our welfare.<sup>29</sup> Martha Nussbaum, as we have seen, has modified the theory by making a list of capabilities that we should defend. Our political decisions must be aimed at defending these capabilities and ensure that people, as well as animals, will have the opportunity to use them.<sup>30</sup> This is her idea of a just society.

When Sen developed his Capabilities Theory, he was mainly concerned with the way our individual freedoms are correlated and sometimes work in opposite directions. His book is meant to give us a new idea of how politics, economics and social constructions should work together. Individuals should be seen as the changers of society, and not just the recipients of whatever is given and stable.<sup>31</sup> Sen aims at achieving another way of focusing on development; he wants to inspire public discussion by presenting his work for a broad public and welcoming criticism and skepticism. But, he has a clear message for the reader: we must change the way we look at progress and development.

Development, Sen asserts, must be focused at expanding freedom. We must not concern ourselves with the concepts that economists tend to look at, such as GNP or economic growth, but we should aim at enhancing people's freedoms. In this way we will focus on what is important for people, rather than letting the economical means to this goal blind us.<sup>32</sup> Unfreedom is the result of poor economic circumstances. Thus, we should develop these circumstances, but not because we value economics, but because we value their outcome: more freedom. Sen claims that these are not the same. For example, people who earn more do not necessarily have a longer life-expectation than people with lower income.<sup>33</sup> Also, a market system can work restrictive for parties that want to enter the market, but on the other side we must not forget the big benefits such a market system can produce.<sup>34</sup> Eventually, a political system that cherishes human capabilities and substantive freedoms should increase differing instrumental freedoms. Sen talks about five: political freedoms, economic facilities, social opportunities, transparency guarantees and protective security.<sup>35</sup> According to Sen, he will show

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<sup>29</sup> Deneulin, Nebel, and Sagovsky, *Transforming Unjust Structures*. p. 1.

<sup>30</sup> *Ibid.* p. 2.

<sup>31</sup> Sen, *Development as Freedom*. xii-xiii.

<sup>32</sup> *Ibid.* p. 3-4, 14.

<sup>33</sup> *Ibid.* p. 6.

<sup>34</sup> *Ibid.* p. 7.

<sup>35</sup> *Ibid.* p. 10.



that these instrumental freedoms link to each other and to the importance of valuing human freedom in general. We must keep in mind that this empirical link to each other is crucial in understanding that, as well as the end of development, instrumental freedoms are also the means towards this development.<sup>36</sup>

Sen sees that a lot of inequality in the world has to do with unfreedom. He mentions famine, which leads to the unfreedom to survive, or inequalities between men and women, that undermine certain basic freedoms that women should have.<sup>37</sup> There are two main causes of a lack of freedom. The first is inadequate processes; Sen notes that in a democracy, famine is not likely to occur.<sup>38</sup> The second is inadequate opportunities for citizens, such as basic opportunities to escape premature mortality. Sen's theory, which focuses on enhancing freedom and individual capabilities, wants to deal with both issues. In his theory, freedom and capabilities go hand in hand; to increase freedom is to make sure that people have the capabilities to lead the kind of life they value, and have reason to value. Focusing on capabilities gives us a clearer view of the real causes that lead to unfreedom. Sen argues, for example, that unemployment not only causes low income, but also leads to unfreedom in the sense of skill development and initiative. Sen also states that functioning is not always correlated to means.<sup>39</sup> A disabled person is not able to do the same as a normal abled person, while they can have the same economically relevant properties. When we focus on capabilities rather than economic faculties, we will discover that such issues of actual functioning are far more problematic than we first acknowledged.<sup>40</sup>

What is notable in Sen's theory, is that it differs from Nussbaum's theory in one – for me – very important aspect. Nussbaum, as we have seen, focuses on capabilities we have as a human being or as an animal, and maintains that we should aim to protect these capabilities. With Sen, capabilities are presented as a set of options, of different life paths we can take. When Sen talks about optimizing capabilities, he means that in a way that links specifically to freedom; you have to be capable in a sense that you can *choose* the life that you value.<sup>41</sup> With Nussbaum, a capability can be there, in the actor, but the actor is unable to use it. With Sen, the actual inability to do as you wish is proof that you do not have a capability to act.<sup>42</sup> Both authors thus stress the importance of capabilities, but Nussbaum tries to enforce them, while Sen tries to create them. With capabilities as a foundation of rights, I have to presume that some capabilities are present,

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<sup>36</sup> In the same way in my theory, capabilities are a means to rights as well as the end which rights are created for.

<sup>37</sup> Sen, *Development as Freedom*. p. 15.

<sup>38</sup> Ibid. p. 16-17. Famine does not occur in democracies as often as in other political systems, because leaders in democracies can be held accountable for their actions.

<sup>39</sup> Sen, "Human Rights and Capabilities." p. 154.

<sup>40</sup> Sen, *Development as Freedom*. p. 20-21.

<sup>41</sup> Ibid. p. 75.

<sup>42</sup> See also: Crocker, "I - Functioning and Capability - the Foundations of Sen's and Nussbaum's Development Ethic." p. 599, for the difference between Sen's and Nussbaum's capabilities.

even when they are not visible. If I would not do that, I would not have a foundation to grant someone a right whose capabilities are interfered with by someone else.

### The Neutrality and Arbitrariness of the Capabilities Approach

Eric Nelson is one of the scholars who replied on the Capabilities Approach. He mainly criticizes the list Nussbaum provides, for a number of different reasons. Nelson captures Nussbaum's theory as trying to provide a Rawlsian account of justice and the good life, meaning that it does not dictate a particular way of living. Rather, it defends the different life paths people may want to choose, and the capabilities that Nussbaum specifies in her theory would be important for everyone and every life path. Nelson argues that he does not think everything on the list of Nussbaum's capabilities actually counts as a capability. The capability to have shelter, for example, seems more like a basic need than an actual capability. Having shelter can be a prerequisite for properly acting on other capabilities, but Nelson holds that it is not a capability in itself.<sup>43</sup> He also contests Nussbaum's supposition that shelter can be a state of being, and therefore can be a capability.

Moreover, Nelson criticizes Nussbaum because she claims that her list of capabilities are not ordered; she argues that they are all equally important. Nelson says that this is not in order with the way she describes these different capabilities. Some she says are fundamental for human functioning, and it would be terrible to delete them from the list. Others she mentions are more open for discussion or modification.<sup>44</sup> Nelson questions this distinction, and he seems to have a good reason for it. Why would we judge the quality of some capabilities according to equality (like bodily integrity), and others on some basic threshold (shelter)?

In his discussion about the neutrality of Nussbaum's list, Nelson's argument ends in that he thinks a list of capabilities that everyone would want in any circumstance would be impossible to make.<sup>45</sup> Making such a list is in contrast with the 'state neutrality' principle of Rawls. If we make any capability more important than another, and we dictate to people what they should find important, we cannot ever be neutral. I think that this argument is not solid. I agree that we should question the neutrality of Nussbaum's argument; we cannot know if all her capabilities are important for everyone, and some would be rejected by certain societies. But I do think that it is possible to point to certain freedoms that every species should have without treating them

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<sup>43</sup> Nelson, "From Primary Goods to Capabilities." p. 96.

<sup>44</sup> Ibid. p. 97-98. Nelson refers to Nussbaum's work *Women and Human Development*, where she indeed clearly states that she thinks her principles are equally important. She makes these remarks too in *Frontiers of Justice*; on page 84-85, Nussbaum argues that her principles are all equally valuable and trade-offs are not possible. Nussbaum stating the reverse is mentioned on pages 292-293, which Nelson also quotes.

<sup>45</sup> Ibid. p. 103.

unequally. Goods should not always be provided by the state, but freedom should. Nelson makes it look like providing freedoms can be the same as giving a dollar to someone who wants to buy a pizza, and someone who wants to buy a Bentley; it would be irrational to give more to the person who demands more. But freedom is not an interchangeable good with absolute value; it is an end, where goods such as Bentleys can only be a means to.<sup>46</sup> Freedom is allowing people to choose, and only restraining them when necessary. A better example would be for two kids; one demands playing in the yard, another wants to jump off a plane. In this situation, it is obvious that we do not give equal freedom to each, while we do not treat them unfairly.

Moreover, if a state refrains from including important freedoms in its laws, we must conclude that it actually does the opposite; it promotes unfreedom. Nelson argues that if a state promotes the freedom of people to enjoy sex, it can be referred to as non-neutral to people who believe sex is sinful. If we take this seriously, and the state would not promote freedom of sex because it may seem non-neutral, the state would in fact tell their constituents that their choice is not important. It is a (small) group of people that judges their choice as sinful and dictates the law. Promoting freedom of choice is something else; it tells people that, whatever they think, they are free to be and do what they want. It does not mean this state has a conception of "the good"; it means, on the contrary, that people are *free* to choose what is good, which is exactly the objective of the Capabilities Approach.

The real worry here is what happens if two capabilities conflict. Although it is hard to answer the kinds of questions in general, it must be mentioned here. We could think of situations in which the state would promote freedom of choice, but this freedom would coincide with capabilities. People may choose goods that would prevent them from functioning fully or flourishing. How would we handle such a case?

Nussbaum acknowledges that her theory is not founded on a strong procedural foundation. But that is also the strong part of her theory; what matters in life is not a single quality, but a plural set of capabilities.<sup>47</sup> Her theory is an outcome-based one, meaning that it will base its preferred outcome on an intuitive idea about justice. According to Nussbaum, if there are two capabilities that clash, this means that society is not well-designed. The questions we ask ourselves when deciding between different capabilities will help us with better construing society so as these inconsistencies do not occur.<sup>48</sup> Hence, in the above example we should think about the intuitive best outcome, and shape our judgement correspondingly. I confess that this answer is not the most satisfying, but it likely is the best we can ask from the theory, since the basis of the theory is purely intuitive and outcome-based.

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<sup>46</sup> Crocker, "I - Functioning and Capability - the Foundations of Sen's and Nussbaum's Development Ethic." p. 595-596.

<sup>47</sup> Nussbaum, *Frontiers of Justice*. p. 83-85.

<sup>48</sup> Nussbaum, "The Costs of Tragedy." p. 1005.

David Crocker also attempts to summarize and reflect on the Capabilities Approach. His focus is on the comparison between Rawls on the one hand and Sen and Nussbaum on the other. He acknowledges the previous discussion and elaborates on it further. In his view, both the theories from Rawls and Sen are non-neutral, because they rule out certain other views. Crocker says that Sen's theory is more determinate, because he rules out certain non-authoritarian views too, whereas Rawls only rules out authoritarian views that would force certain principles upon citizens.<sup>49</sup> Sen demands more from states, because he would also urge the state to protect positive liberties, not only negative ones. He himself does not argue for a comprehensive doctrine with predetermined values, but he would argue that we can reach the conclusion that certain doctrines are just not enough to protect the freedoms of citizens.

Nussbaum tackles Rawls in a different way. Where Sen tries to show their doctrines are both neutral, but his must be more extensive because Rawls fails to be neutral regarding anyone, Nussbaum's strategy is to argue that Rawls is not neutral to begin with. His belief is also inspired by an idea about the functioning of people.<sup>50</sup> He cannot, in Nussbaum's view, make his argument without first admitting that he values human capabilities. Crocker argues this is due to how Nussbaum and Sen both see capabilities. As I mentioned, Nussbaum regards a capability as a power to act, where Sen views a capability as a possibility. With Sen's emphasis on the freedom of choice that people should have, it is clear why he would be more inclined to argue that his theory is neutral. Nussbaum seems to think of neutrality as a more uncomplicated issue. She would argue that her theory is neutral to all affected by it, but probably would not say the doctrine is completely neutral, because she clearly incorporates faculties that she thinks important for human – and animal – dignity, such as freedom.

Neutrality or objectivity remains the most important problem scholars encounter with the capabilities theories. Christopher Morgan Johnson, in his book about Nussbaum's theory and his objections to it, argues that there are certain unavoidable problems with Nussbaum's theory. Although she sidesteps the problems she sees with Sen's theory, her values raise a problem for her own.<sup>51</sup> Nussbaum claims that people should agree upon her capabilities, but their reason for agreeing does not have to be the same. In this way she does not force convictions upon people; her theory provides citizens with valuable capabilities while maintaining their right to choose their own way of life.<sup>52</sup> Johnson is not so sure that she accomplished this. The main part of his book is devoted to finding out if Nussbaum's assertions are politically liberal, as she argues, or

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<sup>49</sup> Crocker, "I - Functioning and Capability - the Foundations of Sen's and Nussbaum's Development Ethic." p. 593-594.

<sup>50</sup> Ibid. p. 599.

<sup>51</sup> These problems will be mentioned later in this chapter.

<sup>52</sup> Johnson, "Political Liberal or Comprehensive Capabilities?" p. 87.

are rather more a comprehensive liberal doctrine, already prescribing particular values.<sup>53</sup> Johnson also involves Rawls when he explores what his problem is exactly. According to Johnson, Rawls defends his philosophy that *justice as fairness* is the theory that does the most in terms of equality and is the best liberal justice system, but he acknowledges the legitimacy of other political liberal theories. This is where Nussbaum disagrees; she agrees with Rawls principle that equal liberty is of main importance in a system of justice, but asserts that we need more from states than Rawls argues.

Nussbaum's list is about the choices you should have as a citizen and does not force anybody to follow a way of life they do not endorse. This is, in her opinion, what sets it apart from comprehensive liberal doctrines, that impose their values upon their constituents.<sup>54</sup> But Nussbaum argues for an overlapping consensus that goes much beyond only political ideas. In her view, the state must intervene in every social construction whenever it can be better shaped according to justice and equality.<sup>55</sup> The question to be asked is whether her theory is still only a political one, when clearly the state may intervene in every field it finds itself necessary. Nussbaum is also more demanding in her assertion that every citizen will in time admit to her capabilities list, whereas Rawls argues his moral values are already closely related to the convictions people already have. Nussbaum expects a major shift in moral sentiments and requires, apart from mutual understanding and acceptance, that people constantly look out for each other's dignity.<sup>56</sup>

Johnson's overall argument is that Nussbaum is disrespectful to citizens who do not already endorse her principles.<sup>57</sup> Though for some people the acceptance of the capabilities will come without many problems, for others it will be very difficult to uphold these values. Nussbaum believes that she touches core qualities of human-beings that everyone enjoys. Therefore she argues that, no matter the cultural distinctions, reasonable citizens will always be able in time to comply with her capabilities.<sup>58</sup>

I find these points compelling and will admit that we cannot call Nussbaum's theory neutral. Although the objection is legitimate, I do not think it has to be a difficulty. What needs to be proven is that the theory is plausible enough that we can take the risk of invoking on some people's beliefs first. I think the theory has shown to be adequately accepting of most ways of life that can be chosen by reasonable people and there are not many who will object to people having the choice to enjoy their capabilities. While it may be true that the people who do not

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<sup>53</sup> Ibid. p. 89.

<sup>54</sup> Ibid. p. 108-109.

<sup>55</sup> Ibid. p. 115. Nussbaum will allow states to intervene in family matters or situations where it can support women, whereas Rawls would think that implementing an assertion of the good.

<sup>56</sup> Ibid. p. 118-121.

<sup>57</sup> Ibid. 154.

<sup>58</sup> Ibid. 158.

agree with it will be overlooked at first, the theory still gives plenty of room for these people to live the way they want to. Only when they restrain other people's capabilities they will be interfered with.

### Other Evaluations About the Capabilities Approach

We have put a lot of effort in the debate about neutrality. This was necessary, but I would like to focus also on some other, smaller objections. In his book, Johnson states some other features about the capabilities theories which he questions too. He cites other authors but also contributes with his own view about how the Capabilities Approach lacks argumentative power, or where Sen's and Nussbaum's theories differ from each other. He points to the quite obvious problem, that I have not discussed yet: capabilities are hard to measure, while the rules of justice should be easy to obtain for citizens.<sup>59</sup> In a state where justice is served, people should be able to know when they have not been treated according to just principles. It will be too hard for citizens to estimate whether their capabilities have been infringed on or not. While this objection is reasonable when we talk about only humans, it will not concern me here. Assuming that animals have no capability to even know what justice is, they will never be able to know when their rights are being violated. Respecting animals is of main concern, but humans will remain the sole defenders of their justice. If one would still argue that also for human-beings, which in the animal case are the safe keepers for justice, should be able to know whether justice is served, Johnson provides me with the answer. Although the question seems legitimate, we cannot hold off a theory of justice because we think it will be too hard to pursue.<sup>60</sup> If all other arguments for the Capabilities Approach turn out to be solid, it would be odd to discard it based on the difficulty of the theory. Johnson goes into more detail about how capabilities theorists say we could measure capabilities. Without mentioning every possibility, I will note that measurement of unknown capabilities is also a known concern of mine. Imagination, research and intuition should help us with this difficulty.

In his next chapter, Johnson encounters a problem that I have not paid attention to yet, but is a distinction between Sen and Nussbaum that should be mentioned. Sen, as we have seen, thinks constituents of a country should be able to decide for themselves which capabilities they want to pursue. One of the problems Nussbaum finds with that tactic is that people could adjust their preferences to what they think they deserve or can accomplish. This could lead to lower expectations and actual injustice, because people in different situations will value things more or

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<sup>59</sup> Ibid. p. 42.

<sup>60</sup> Ibid. p. 43.

less important. For instance, a homeless man will have other aspirations than someone who has grown up in a wealthy environment.<sup>61</sup> Her list with capabilities is thus important because it establishes for *all* people what their standard of life should be. Preferences adjusted to, for example, differing social situations, will be tested against Nussbaum's evaluative norms. In this way, she tries to ensure that social structures or the biases of a country will not establish the preferences people have and what they aspire to.<sup>62</sup> Thus, although she values the legitimacy of the state or individuals to choose which capabilities they want to enforce, Nussbaum's list is a guideline which also can be an incentive to better policies. Sen relies too much on political concepts, such as engagement of citizens and proper discussion, that he seems not to be realistic about the power structures within a country and how policies are chosen and implemented.<sup>63</sup>

Finally, as one scholar, Streeten, noted, Sen's capabilities cannot be measured by their net outcome.<sup>64</sup> The value of the life one leads is decided by looking at the options one had to lead this life, and if the path one leads is actually chosen or just an outcome of the freedoms and capability one had. According to Streeten, we could ask whether it is a better idea to distinguish freedom of choice here, rather than calling freedom of choice and achievement together 'capability'. But by doing that, we would miss the point Sen tries to make. Streeten wants to keep measuring poverty in achieved accomplishments, and judge the freedom of choice separately. He neglects that these are not separate matters; if one chooses not to eat because of religious reasons, one is not poor. Streeten does not develop his assertion here, so we cannot know for sure what he meant by this short claim, but it seems foolish to overlook the interlocking Sen calls out in his book.

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<sup>61</sup> Ibid. p. 62-63.

<sup>62</sup> Ibid. p. 65.

<sup>63</sup> Ibid. p. 71.

<sup>64</sup> Streeten, "Freedom and Welfare." p. 159.

## ***Chapter Two: Developing the Capabilities Approach***

### *Capabilities and Rights*

In the development of the Applies Capabilities Approach, I will here address the concepts of rights and justice. My theory will be that capabilities give a solid basis to attribute rights. To support my claim, I will now discuss how we began to create rights, according to some scholars. Why did we need justice and how do we decide who gets which right? I will show that my theory is very close to the way natural rights theorists thought about the creation of rights, and how we can expand this logic to animals.

As Regan points out, legal rights are always subject to change<sup>1</sup>. Over the years, they seem to get more inclusive than exclusive, giving women and people of different races more opportunities than they had before. My theory will state that animals too need more basic rights. The supposition itself is clear; animals share certain valuable capabilities with human-beings. When we focus more on these individual capabilities and less on the species than one is part of, we are free to re-examine the rights that we want to attribute to animals and humans alike. But capabilities do not directly lead to rights. Being able to do something does not mean to have a right to something. This, I will discuss too.

We have already seen some ways philosophers have argued for basic human rights. Rawls, as you may recall, claims that these would be what people would find acceptable to agree on.<sup>2</sup> His assumption is that everyone would choose the same rights, given the same, fair circumstances.<sup>3</sup> This means that Rawls' conception of rights is mostly based on what he thinks reasonable people would agree on. Rawls builds partly on older, more basic theories about justice and the state. As he mentions himself, he wants to rely on these assumptions, and create a theory on a higher level of the known social contract theories.<sup>4</sup> It is not unwise then to seek for the base of rights in these theories. I will begin with discussing Locke and Hume as natural rights theorists. Then I will work my way through the conception of a right with more contemporary philosophers. Ending this first part of the chapter, I will talk about rights related to animals, and the most important animals rights theorists. My main question in this part of my thesis will be the following: How do we go from capabilities to rights, and how does this help us towards a better justice system including animals?

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<sup>1</sup> Regan, "The Case for Animal Rights." p. 267.

<sup>2</sup> Rawls, *A Theory of Justice*. p. 11-12.

<sup>3</sup> *Ibid.* p. 13.

<sup>4</sup> *Ibid.* p. 11.



### Natural Theory and Convictions

Locke was a classical liberal and one of the first authors who established a doctrine which inhabited natural rights and freedom. His views about how the state should function and protect its constituents are about as little interference as is needed. Only to protect the public good or the possessions of the people, the state can intervene.<sup>5</sup> And in a State of Nature, which is the state people are in without government of laws, we are only ruled by reason, which prevents us from harming each other.<sup>6</sup> Though, it seemed that reason is not enough basis to trust each other. Men will join together in a community to protect themselves against each other, and they will do that by giving their mutual consent.<sup>7</sup> We have already seen that this consent is a problem in the case of animals. What must be noticed is why men are driven to form a community with each other. According to Locke, we can punish the people who want to do us harm, but it would be impractical for everyone to be their own judge and executioner. Human passions could take punishment too far.<sup>8</sup> Still, we want to be able to protect ourselves. The protection thus will be the job of the state, and in the uncertain circumstances of the State of Nature man will quickly begin to establish such a state.<sup>9</sup> However, the contractarian theory only allows reasonable people to join a society. But not only reasonable people can be harmed by the people that act on their own ill passions. So why do only reasonable people have the opportunity to join a society and protect themselves?

David Hume examines human behavior and moral code by studying our natural and artificial beliefs. Hume thinks that justice is one of the artifacts that we created between humans because only humans use it. We judge people by the actions they take and judge them for their motives to act.<sup>10</sup> Hume argues that in the end, we cannot believe that justice comes natural to us. That is because, although we may agree on which acts are virtuous or not, we cannot find a sound reason for what we should think without relying on existing just structures, such as societies.<sup>11</sup> So we learn in our interactions with each other which acts are just and how we should judge them. Justice, thus, is also in Hume's perspective mainly intuitive.<sup>12</sup>

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<sup>5</sup> Locke, *Two Treatises of Government*. p. 268.

<sup>6</sup> *Ibid.* p. 271.

<sup>7</sup> *Ibid.* p. 276, 278.

<sup>8</sup> *Ibid.* p. 275.

<sup>9</sup> *Ibid.* p. 352.

<sup>10</sup> It must be noted that not everyone thinks that we should judge people solely on their motives, but also on the outcomes of their actions. Since this point is not of relevance here, I will not further discuss it.

<sup>11</sup> Hume, *A Treatise of Human Nature*. p. 308-311. Hume explores the reasons why we could be certain that acts are virtuous or not, but cannot find such a reason. Since he thinks that a virtuous act can only be virtuous with a good motive, and he does not find a natural motive for virtuous acts, he is convinced such a natural motive does not exist.

<sup>12</sup> Note that this intuitive conception of justice links to what Nussbaum tells us about how we can judge what is just. We reason from the preferred outcome of justice, and then judge what actions we should take to create this outcome.

Hume notes that, although our sense of justice is artificial, he does not mean that virtuous motives cannot be 'natural' in the sense that they are most basic to the human functioning. In this respect, animals too possess natural instincts of what is just. Different studies have suggested that animals have a conception of what is good, or can at least show complex emotions that hint towards compassionate and virtuous behavior. Rhesus monkeys have shown an example of this. In an experiment where the monkeys had to shock another monkey in order to get food, the surplus of the monkeys would choose to starve rather than to harm their fellow beings.<sup>13</sup> So this animal case supports Hume's assertion that animals can feel compassion, which he makes in another part of his book, and his idea that we can make a natural distinction in virtuous acts.<sup>14</sup>

While the first sense of common interests is created by the human nature, rights and property too are not given or fixed. They are created by the passions of humans. Humans want ownership, and will not be restrained by some benevolent quality. Their wants for possessions will be restrained by just that; in order to be secure in ownership, humans must create recognition of possession of others.<sup>15</sup> Justice is then also driven by passions. Hume maintains the following:

Here then is a proposition, which, I think may be regarded as certain, *that 'tis only from the selfishness and confin'd generosity of man, along with the scanty provision nature has made for his wants, that justice derives its origin.*<sup>16</sup>

Hume furthermore makes an important remark. He claims that, because society derives from our different passions and interests, and because every man is here concerned with himself, a conception of society is never natural. Man would not constrain each other in such a way if brotherhood came natural to us.<sup>17</sup> Thus, the passions that drive us into creating the rules of justice are certainly natural and human, but the concept of justice itself remains a human construct to preserve society and make sure everyone's possessions are safe.

What makes this such an important remark is that justice is clearly human. While the passions Hume describes are certainly also present in animals, they have not established justice among them. They stay forever in superficial societies with each other, relying on each other when needed in mutual agreement, but fighting each other when that is the necessary action. Brotherhood and cooperation, which does not come naturally to humans, does to animals. Some

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<sup>13</sup> Rachels in Regan and Singer, *Animal Rights and Human Obligations*. p. 214-216.

<sup>14</sup> Hume, *A Treatise of Human Nature*. p. 255-256.

<sup>15</sup> *Ibid.* p. 316.

<sup>16</sup> *Ibid.* p. 318.

<sup>17</sup> *Ibid.* p. 319.

would say that this means that justice and rights are only applicable to humans, but I would argue against that. The fact that human beings created justice is because their passions stand in the way. Their need for possession, even if it is not necessary for survival, drives them towards securing their own possessions from other people. It is exactly these passions that animals must be protected from.

We can establish this too by looking at evidence from animals studies. Mary Midgley has claimed that human-beings are far more "beastly" than other animals. We have used the word beastly to describe dangerous animals, while in fact humans are the most dangerous creatures of all. When not provoked or hungry, animals are not likely to attack. Conversely, humans attack for very different reasons, from being unreasonably anxious to "just for fun".<sup>18</sup> It is very understandable then why the act of justice only applies to human-beings, since they are the only beings who need this justice because of their brutish passions, and why other animals should be protected from these passions too. The differences between humans and animals that have always been used to indicate that justice is only applicable to humans, now seems to show justice must be broadened to apply to at least some animals.<sup>19</sup> Animals should participate in justice, but only as recipients. As John Plamenatz notes: rights can only be rights against rational beings.<sup>20</sup>

Still, many theorists would hold that animal cannot be recipients of rights or be part of a society because they lack the specific qualities that are required for that. Despite I think that this objection might in essence prove to be unsuccessful against the arguments for animals being able to have rights, I want to pay some attention to the discussion due to its importance as a main criticism. The most common argument of this nature is that animals lack moral agency and cannot contribute to society, making them unfit for rights-bearing. Philosophers like Thomas Aquinas and Descartes have questioned animal agency to defend their distinguished nature from humans.<sup>21</sup> But also more contemporary philosophers have made this argument. One example is Tibor Machan, who holds that human-beings are the only species who are in need of moral 'space'.<sup>22</sup> But this argument is flawed for an important reason, which has already been brought forward shortly: in this line of argument, a lot of humans would be excluded too.

This argument is commonly named the argument of 'marginal cases'. Robert Garner, for example, has written about this subject in combination with a defense of animal rights. The

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<sup>18</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 96-98.

<sup>19</sup> In Midgley, *Beast and Man*. Mary Midgley defends that there is something called "human nature", which is comparable to animal nature. Certain capabilities that we would find evil in animals are also present in humans, and even more dangerously so.

<sup>20</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 221.

<sup>21</sup> Harrison, "Descartes on Animals." ; Aquinas, *Summa Theologica*, V5. Q3 A2.

<sup>22</sup> Machan, "Do Animals Have Rights?" p. 164. Machan bases his convictions on Nozick's views, claiming that the moral nature of humans is what gives rise to rights and liberties.

argument goes like this: if we assert that there are human-beings who have the same or less mental capacities as animals but still are members to the moral society, consistency demands that we should make animals members of this moral society too.<sup>23</sup> Even though this argument seems strong, it has not yet succeeded in changing the way we treat animals. The problem here is probably that it does not only challenge the way in which we treat animals, but also the way in which we handle our elderly or mentally disabled people.<sup>24</sup> This argument defeats the moral agency objection, and paves the way for a more plausible theory of rights that includes animals as well as marginal humans.

### From Animal Capabilities to Animal Rights

The previous section considered the reasons for joining in a society. I have shown that, although not every being has the rational capacity to enter a society, that does not mean that they should not be allowed to join. In this part, I will bring forward some authors who have claimed that animals, just like human-beings, have rights that we have to protect. I will demonstrate that these arguments are about singular animal capabilities, which are being translated into rights. Similar capabilities are the most important method of measurement that animal welfare theorists have used to make a case for animal rights. I will try to explain this transition in light of what we have already spoken about, thereby denying also some critical reviews.

One might object to my theory that I can assume that there is a basis on which we can attribute rights according to capabilities, but I cannot yet prove that having a capability automatically means one has a right. I would agree, and I will now shortly defend why this connection is present.

Paul Ricoeur has made this transition rather convincingly in a piece which was printed in a recent book about capabilities.<sup>25</sup> He has a slightly different view of what capabilities are, claiming that a capability is self-recognition of something which you caused. The transition from capabilities to rights then can be viewed, according to him, as the transition from self-recognition to recognition of the causality of others.<sup>26</sup> Here Ricoeur means distinguishing as recognition, meaning to recognize something as the one, and not the other.<sup>27</sup> One would have a need for a right when one has a need for mutual recognition, which gives a sense of fulfillment and satisfaction. With mutual recognition of capabilities, there come more opportunities to develop these capabilities, which in term leads to claims to more rights. Where one is able to

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<sup>23</sup> Garner, *A Theory of Justice for Animals*. p. 142-143.

<sup>24</sup> Garner, "Animals, Ethics and Public Policy." p. 127.

<sup>25</sup> Deneulin, Nebel, and Sagovsky, *Transforming Unjust Structures*.

<sup>26</sup> Ibid. p. 21.

<sup>27</sup> Ricoeur, *The Course of Recognition*. p. 150.

influence and recognize that someone else is able to influence as well, and they recognize each other's desire to be recognized, they will grant each other the right to express their capabilities.

Robert Savage has written an essay about the connection between Ricoeur's recognition of capabilities and Nussbaum's work concerning enhanced rights for underprivileged groups. He too emphasizes the correlation between the treatment of people who are less well-off, and the unjust restriction of their capabilities.<sup>28</sup> The great injustices done to human beings encompass the inability of these humans to act on their capabilities. Here we see a clear connection to Sen's theory.<sup>29</sup> Sen, Ricoeur and Nussbaum seem to agree on a correlation between injustice and incapability; failing to recognize someone's being human and enabling some less than others is fair or just. The opposite will be beneficial on the same, multiple accounts: give someone an opportunity to work, and his ability to take care of himself will also encourage him to do other things he never had the means to.

This theory has a strong similarity with the natural rights theories I have used in the previous sector. Mutual agreement leads to the development of the state. But, where the natural rights theorists focus on a need for protection and ill passions which would destroy possession, Ricoeur explains the need for rights in terms of capabilities. He states that not being able to act on capabilities is what leads to frustration and – especially – contempt. When capabilities are not recognized, the underdeveloped or underprivileged will not feel like capable beings.<sup>30</sup> These people will not be able to flourish like they should be able to. Conversely, with mutual recognition and cooperation, people will enhance each other's capabilities. When a person feels capable, this person will develop himself more and contribute more to the world, and from this contribution other people will in turn profit. It is thus in the interest of all to ensure recognition and stimulation of capabilities. As Savage puts it:

The harm done to the confidence in one's own capacities consequently redoubles the harm inflicted by the power that an individual or a group exercises over another. Intimidation, coercion, and manipulation thus figure among the forms of violence intrinsic to those instrumental strategies that enforce and maintain asymmetrical cultural, economic, social, and political relations.

Kymlicka and Donaldson also contribute to this discussion. According to them, we need to acknowledge each other to admit to our mutual dependency to make use of our capacities.<sup>31</sup> Dependency in itself is not a problem, but the way in which we handle dependency is crucial. If

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<sup>28</sup> Savage, "Fragile Identities, Capable Selves." p. 64.

<sup>29</sup> Recall that Sen argues that injustice is not only measured in economic terms, but also in what humans are capable of.

<sup>30</sup> Savage, "Fragile Identities, Capable Selves." p. 66.

<sup>31</sup> Donaldson and Kymlicka, *Zoopolis*. p. 84.

we do not recognize what people or animals are able to do themselves and enable them to act, we would cause harm to their dignity. In the case of domesticated animals, for example, we should look further than their current dependency on us. Instead, we should be concerned with their capability to be a functioning being as much as they can and take their preferences in consideration.

Thus, from a just as well as a moral perspective, we should emphasize the importance of capabilities and ensure that they are protected by law. Capabilities are a primal source of functioning animals and people, and ensure that they are able to shape their own life-path. Dealing with animal rights in essence means enforcing their right to make their own choices in life. Although many will argue that capabilities are not the only source of justice, I would argue that everything else that is good in the world, is produced by capable beings. We cannot shape a justice system without the requirement of capable beings, which are the only example of dignified beings. Justice gives us reason to require a Capabilities Approach when implementing animal rights.

The recognition of certain capabilities has been widely used in contemporary literature, and is definitely a starting point for animal rights theories. Albert Schweitzer asserts that the chief task for morality is knowing our own will to live and recognize this in others as well.<sup>32</sup> Pain is pain, says Salt, when he addresses the question if animals can in fact have rights.<sup>33</sup> Pain seems to be a very common theme when we look for recognizable human qualities in animals that would be a foundation for animal rights. Utilitarians use this concept very often, sometimes hidden in another notion like suffering or being conscious.

In defending animal rights, Robert Regan claims that we should consider the consciousness of animals. Regan attacks the assertion of René Descartes, who stated that only human beings are conscious creatures.<sup>34</sup> Regan disagrees and cites for example Darwin, claiming that there is survival value in consciousness, which is proven with human beings. With the evolutionary theory in mind, one cannot but imagine that there are other animals who are conscious of what they do and how they can better adapt their behavior.<sup>35</sup> Regan builds his statement on his argument that animals too can have beliefs, desires and expectations. He defeats several other theorists and claims that, because he has proved there is no good reason to believe that animals do *not* have consciousness, we can only reasonably believe they have. The burden of proof now lies with the opposing camp to establish the opposite.

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<sup>32</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 133.

<sup>33</sup> *Ibid.* p. 176.

<sup>34</sup> Regan, "The Case for Animal Rights." p. 3.

<sup>35</sup> *Ibid.* p. 19.

It is crucial here to show which arguments are being defeated by Regan. First he addresses R. G. Frey, who holds that animals cannot have desires because they cannot have beliefs, and they cannot have beliefs because only beings who have a language can have those.<sup>36</sup> Regan fights this argument with his claim that this leads to nobody being able to believe anything. In order to be able to learn a language, one must be able to believe. A child, for example, has to be able to have a concept of a ball to learn what the word "ball" means.<sup>37</sup> Hence, a belief is prior to a language. Another theorist, Stephen Stich, provides another objection. He says that in so far that beliefs are psychological states, animals can have beliefs and desires. But in his opinion, those also have content, and we do not know *what* animals believe or desire. It is indeed hard to tell what animals believe, since we have to deduce it from their non-verbal communications.<sup>38</sup> But Regan thinks we can know that animals do share some of the beliefs we have by observing how they behave. He shows the case of Fido the dog, who exhibits a clear case of being able to recognize a bone. His excitement of seeing a bone or his willingness to dig up a bone provides us with a clear case of recognition and a stable belief.<sup>39</sup>

There are more ways in which scholars try to prove that, due to the similarity of animals' capacities to people's, animals should be awarded certain rights. As I shortly mentioned already, one of the examples is the capacity to suffer. This particular characteristic is used most prominently by Utilitarians like Jeremy Bentham and John Stuart Mill.<sup>40</sup> According to Bentham, qualities like the number of fingers or the color of skin are of no significance. What matters is the question of suffering.<sup>41</sup> Bentham claims that we should aim at happiness, as all Utilitarians. In his view, happiness is the absence of pain and suffering.<sup>42</sup> Mill stands by him, arguing that for too long we have been too caught up with our existing ideas about brotherhood. It is time we recognize the mistakes we made by differentiating between man and woman, white and black people, are the same mistakes we make now by differentiating between animals.<sup>43</sup> What is good about this theory is that Bentham deliberately correlates significant factors to each other. If the suffering is what is important in cases where harm is done, we should be concerned with *all* sentient, and not just humans.

Conversely, there remain authors who do not agree with this kind of classification. They still hold that there is something significantly different about human-beings which gives us reason to defend humans more than animals. From ancient – and not so ancient – philosophers, we learn

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<sup>36</sup> Ibid. p. 38.

<sup>37</sup> Ibid. p. 45.

<sup>38</sup> Ibid. p. 80.

<sup>39</sup> Ibid. p. 73.

<sup>40</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 131.

<sup>41</sup> Ibid. 130.

<sup>42</sup> Nussbaum, "Mill between Aristotle & Bentham." p. 61.

<sup>43</sup> Regan and Singer, *Animal Rights and Human Obligations*. 132.

that the original ideas are that animals exist for the sake of humans.<sup>44</sup> In more recent writing there is for example Michael Fox, who disagrees with the notion that we need some kind of 'animal liberation'.<sup>45</sup> He focuses on the writings of Singer and aforementioned Regan, and asserts that it is curious that they think suffering is the only important quality that should be taken into account when we consider if a being has rights. Moreover, the fact that we can prove animals have interests, does not mean their interests count as much as humans' interests. Fox maintains that, although he agrees that we can be occupied with the fates of animals and try to make their life pleasurable, we cannot speak about "moral rights" regarding animals. What Fox does not seem to have though is a conception of what he thinks we can prove about animal rights. His only defense is that we should be critical towards the arguments Singer and Regan promote, because we cannot be sure that animal interests and human interests are of the same value. But he does not have an argument to refute that idea either. It does not seem compelling to maintain there is a difference between two things, when we cannot point to the exact difference.

One of Fox's better arguments is when he attacks the idea that suffering is the right common denominator to decide whether a being has rights. As he correctly notes, there are people who suffer from a medical condition that does not allow them to feel pain, thereby removing the condition that holds us back from hurting this person. Still, we would not find it acceptable to harm this person.<sup>46</sup> I would agree with this argument; it seems that more needs to be proven valuable when we want to prove that it is immoral to harm each other. On the other hand, Fox also states that we cannot just ignore that there are important differences between animals and humans. In his view, the burden of proof is not on the people who claim that animals are different from humans, since we can all basically agree that animals are in very many aspects very different from humans.<sup>47</sup> In my opinion, it is true that humans and animals differ greatly, but the same can be said for animals amongst each other. The better theories thus do not only distinguish in their attribution of (moral) rights between humans and animals, but also between various kinds of animals. It is as clear that a dog differs from a human as that it differs from an eagle. We have to provide a justice system that deals with all the significant particularities.

### *Developing the Alternative Capabilities Approach*

After the work I have done explaining the Capabilities Approach and gathering evidence to support these claims, I have now finally reached the heart of my argument. Some of the claims I will make will seem familiar, because I mentioned them before. It is now that I will join the pieces together in the Applied Capabilities Approach as a rights theory that I have developed.

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<sup>44</sup> Ibid. See Aquinas on p. 119.

<sup>45</sup> Fox, "Animal Liberation." p. 107.

<sup>46</sup> Ibid. p. 110.

<sup>47</sup> Ibid. p. 111.



My main theme is that I want a theory where we can unite the bases for treatment in the most equal and indifferent way. By that I mean that there are two things considered when we decide which rights we should attribute to whom. The first is the base of affection: what is happening to someone? How is someone affected? As an example, take suffering; someone suffers when he feels pain. This can be emotional pain, physical pain, but pain makes us believe that someone suffers. This may be the most obvious example, but we can think of multiple factors that affect beings, and also beings in different ways. In the same way, every right we have protects us from ways in which people can act against us. The most basic rights we have as humans are summarized in the Universal Declaration of Human Rights.<sup>48</sup> These entail the right to freedom, the right to security, the right to not to be a slave, and a fair number of other rights. Those rights protect us from being affected in unjust ways. When considering who can be attributed which right, we must first ask ourselves how people are affected by the action that denies this right. So the question is: Which capabilities are affected?

The second basis we consider when we talk about a right is *who* it affects. Think about voting. In contemporary society, the presence or absence of the ability to vote is very influential for people. But this works different for animals. They have no ability to vote because they do not have an ability to reason, so giving them a right to vote is useless.<sup>49</sup> With every right in particular, we can think of a capability which would decide if someone is affected by the right or not. The right to freedom, for example, will be attributed to the ones who *can* have total autonomy in their lives without reasonable expectation they would hurt others or themselves with this freedom. This is why we would want the right to freedom for every human-being, but do not extend it fully to children. Children can have the freedom to choose which sport they want to perform, because they have the capability to know what they like and what not. But we do not want children to drive a car or make a financial plan. They need their full capacity of reason to know which decisions are to be made in these situations. This is also true for a right to abortion; only women would benefit from this right, since only women can get pregnant.<sup>50</sup> When attributing a right, it is important to know if the recipient will benefit from this right. So the second question is: Who inhabits the capability that is affected?

The same goes for animals. Animals have a capability to know what they want to do with their lives. If they are left alone in the wild, most of them would be able to survive, only restrained by their natural enemies. But when it comes to domestic animals, it is different. They

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<sup>48</sup> "Universal Declaration of Human Rights | United Nations."

<sup>49</sup> Not everyone would agree with the statement that it is impossible for animals to vote. Kymlicka and Donaldson have argued for a 'trust' system in which we humans could interpret animals and act on their account (*Zoopolis*, p. 106.)

<sup>50</sup> See for a short discussion on capabilities and right also Singer, "Animal Liberation." p. 29-30.

have been put in a society where they need protection, because they do not have the capability to know when to cross a road or how to gather food. So when we consider their corresponding capabilities with the right of freedom in this environment, we would not give animals full autonomy over their lives.

The paths for animal rights that have been chosen before were focused on one particular issue, whereas I see there are many that should be considered. Utilitarians focus on the capacity to feel pain or pleasures. Singer chooses pain as one of his core concerns and argues that we have to assume that animals can feel pain. He rightly notes that it does not matter if someone can express the pain he feels in a linguistic way. If that were true, we would believe that a speechless human does not experience pain too.<sup>51</sup> What other qualities do we need to judge whether we should or should not hurt a being, than that the being can suffer? And what other qualities do we need to establish whether someone should have the right to vote than that this being can reason? What other qualities do we need to judge whether a being has a right to his own life, other than the fact that the being *has* a life, and the capability to enjoy it, manage it himself, and lose it? How is not every right we have in principle based on some very distinguished capabilities we have as human-beings, and why do we not consider animal rights in the same way?

We should establish a theory that takes every capability and corresponding right into account. Similarly, this theory should be able to conflate the two bases of rights. A theory that joins together the questions of what capabilities are protected by a right and who possesses these capabilities will be the goal. This is most effectively done by establishing which creature inhabits which capabilities, and focus on how these should be protected. Conclusively, the most just way to attribute rights is to combine them with capabilities. The best way to protect beings is also to protect their capabilities.

I will now explain what my understanding of a right is to further elaborate on what actions should be taken to defend animal capabilities. There are a lot of different approaches to determining what counts as a right or what we mean by a right. I have chosen to use a particular conception that is to be preferred for the purpose of my thesis. As I do not have further opportunity in this piece to explore all the options, I hope it will suffice that I make an argument for why I have chosen to use the concept of a right by Joseph Raz.

Raz describes a right as follows:<sup>52</sup>

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<sup>51</sup> Regan, "The Moral Basis of Vegetarianism." p. 186.

<sup>52</sup> Raz, "On the Nature of Rights." p. 195.

*Definition:* 'x has a right' if and only if x can have rights, and other things being equal, an aspect of x's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty

*The Principle of Capacity to have Rights:* An individual is capable of having rights if and only if either his well-being is of ultimate value or he is an 'artificial person' (e.g. a corporation).

The simple explanation of why it is convenient for me to use this theory will probably be clear. Not only does Raz use a notion of a capability when he talks about a being that can have rights, he also asserts that wellbeing has to be taken into account. As wellbeing is a very broad demand, it can easily be translated to no pain, no freedom, etc. Raz himself does not think animals, such as dogs, are able to be bearers of rights.<sup>53</sup> But he does not defend this view argumentatively. He only uses the example of an animal when he explains whose wellbeing is of ultimate value, and whose is not. As I have in length spoken about this subject and have claimed already that there is no reason to believe animals are different from humans in their values, I will not be concerned with his view on the matter. So when I talk about a right, it will be understood that I talk about the duties that others have to ensure wellbeing. In this thesis, that means the actions humans have to take to ensure the wellbeing of animals.

The reason why I have chosen to focus on Nussbaum's theory rather than Sen's, I have already given. I think Nussbaum's definition of capabilities is more like the definition I have in mind. Also, I do think we should establish some kind of list to ensure the protection of (animal) rights, unlike Sen.<sup>54</sup> In the case of animal justice, we have to keep looking at different capabilities of varying species. According to their unique set of capabilities, we should understand what rights they need to flourish. My claim is that, although a fixed set of capabilities is hard to defend, there are certain rights and corresponding capabilities that are inviolable. We cannot take the risk that states interpret the list as they want, endangering animal justice. Although that would take a substantial amount of time, we have to reflect on our existing rights and why we endorse them, in order to expand them to the realm of animals. We should make a list according to the capabilities and corresponding rights and establish this connection in some sort of record. In this way, we can force states and other institutions to take the capabilities and corresponding rights seriously. Thus, I would argue for one list that is susceptible to change and modification.

Moreover, would I endorse the conception that Sen argues for, I would place too much influence in the hands of people of the country that the animals live in. Sen would want a society

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<sup>53</sup> Ibid. p. 205-206.

<sup>54</sup> Sen, "Human Rights and Capabilities." p. 158.

to decide, according to their public reasons, which rights they want to endorse.<sup>55</sup> Only through public debate a society can be legitimately just and contributing to social progress, which would not be possible with a fixed list of capabilities.<sup>56</sup> In the animal case, this would prove problematic. Animals have nothing to do with the culture or the preferences of the people who decide their fate. Deliberation about which rights should be inhabited for the sake of animals without strict guidelines would presumably, when we consider contemporary thoughts about animal rights, be often in their disadvantage. For the protection of animals, a universal standard is required, which is the connection between animal capabilities and rights and a list of these inviolable rights that stretches across the world.<sup>57</sup>

### Complications and moving forward

I have laid out some ground principles about how we should inhabit capabilities into our understanding of rights. I will now more thoroughly defend the steps we would have to take to ensure that the right connections are made and what framework would prove to be the best to attribute rights.

As I have defended, alongside Nussbaum, Singer, Regan and other theorists, a species-based argument is not valid. What we have learned from how we think about rights is that we created them to protect ourselves; we should protect every species that needs the same protection likewise. The first step we should take is to take a closer look to the existing rights we have and evaluate what it is these rights protect. The case is not always as straightforward as it seems.

I have mentioned one of the objections that Fox has on Regan and Singer. Recall the man who has a medical condition and does not feel pain. We would still find it unjustifiable to harm this man. Clearly, our idea about harm does not only entail physical pain; we can recognize that being harmed, even when we do not feel any pain, is unjust and should be prevented. Another example is the case in which an unconscious person is raped. Maybe afterwards this person would not notice any effect at all. Still, the matter of being sexually assaulted while unconscious is unsettling. It is evident that in this case, we should focus on more capabilities than just being able to experience physical pain. It seems that the capability of bodily integrity would add a requirement to this case. If one has the capability of bodily integrity, we should respect that and not harm the body or interfere with this being without consent or the intention to help the being. Thus, when we consider to whom it may be important to have a right not be harmed, it would be

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<sup>55</sup> Sen, "Capabilities, Lists, and Public Reason." p. 78.

<sup>56</sup> Johnson, "Political Liberal or Comprehensive Capabilities?" p. 60-61.

<sup>57</sup> It could also be noted that much of the resistance that Sen performs against a fixed list is that a list is not considerate towards individual preferences, whereas animals would have much less differentiating preferences than humans. Therefore, this worry is not as valid as it is in the human case.

for beings who can suffer as well as beings who have bodily integrity, and probably more capabilities would come to mind if we further scrutinize the case of harming.

Also an interesting case is that of a coma patient. If we have a patient who is proven to be unable for the rest of his life to do anything, but still is not dead, we would not consider this patient the same as a plant or a rock with no capabilities at all. We could think of a capability to live, which would guide as the baseline capability to guide our actions. As long as someone is capable to live, his interests should be taken into account. This means that, whatever capability may disappear, some rights would still have to be attributed.

This example shows the method which should be followed when implementing rights. The theory requires lawmakers to look at individual capabilities. There are, of course, capabilities which are inhabited by animals and not by humans at all. It is more difficult to establish what an animal needs or what rights it should have when we cannot recognize the capability. Still, we can make an assumption about what that kind of capability is based on and how we can protect it against humans. It is, for example, evident that the capability to fly has a lot to do with a right to freedom and to move freely. When we deny a bird the right to move itself around in the way it is used to, we are hindering this bird in being what he wants to be or is supposed to be. We can imagine that not being able to fly would cause deep feelings of dissatisfaction and we can recognize the need to be free. When we allow the animals who transport themselves by foot to move freely, we should do the same for flying creatures.

Still, this argument has a strong anthropocentric component which I have not yet defeated. If extended, this will prove that once we cannot imagine the importance of a capability, we are not bound to attribute rights accordingly. This for me is an uncomfortable outcome, but very challenging to counter. Since humans are the only creatures that create justice, the welfare of animals in relation to humans is solely in our hands. The fact that the creation of rights by humans is the only option, does not make it a justifiable option. How will we make sure, to the best of our capabilities, that animals are protected in a sufficient way? Is the theory not still too focused on humans?

In her investigation about environmental issues and anthropocentrism, Onara O'Neill claims that we can have a sufficient justice system based on human-beings as actors.<sup>58</sup> She asserts that an anthropocentric theory is not in itself unjust. An anthropocentric theory can have humans as its main focus, without unfairly giving humans more than other non-human animals.<sup>59</sup> Speciesism is not an automatic component of an anthropocentric theory. In her view, an obligation-based theory has advantages over a rights-based theory, because we cannot take a

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<sup>58</sup> O'Neill, "Environmental Values, Anthropocentrism and Speciesism." p. 132.

<sup>59</sup> *Ibid.* p. 129.

right as a moral basis, just the action that is required when we take that right seriously.<sup>60</sup> Her theory is strong in argument; she too argues from the point of view that only humans can be understood as just or unjust creatures, and focusing on human obligations has the advantage of protecting everything which can be affected by humans.<sup>61</sup> She admits that her theory will be unsatisfactory for animal rights advocates who would want to argue for actual animal rights instead of only human obligations, but still praises the tactic and claims that it has considerable merits.<sup>62</sup>

I obviously do not agree with her whole theory. To me, it seems unavoidable that with the recognition of certain capabilities there come corresponding rights. O'Neill also does not deny that, and only makes the case that for environmental rights theorists should focus on the ethical components of obligations instead of rights to make their arguments more justifiable. Still, her theory is important in that it is smart in distinguishing between the anthropocentrism of acting and of receiving. The worry might be that animal rights theories are solely based on human faculties, not acknowledging animal features. O'Neill is effective in showing that an anthropocentric rights theory does not automatically discriminate against non-humans, because the basis of acting is not the same as receiving. When we regard not only humans as bearers of obligation-implying worth, the receiving end is diverse in species. Only the act-based end of the spectrum is solely focused on humans. As we have seen, this distinction is justified.

In conclusion, we should not worry about falling short sometimes. I would like to refer back to the remark Johnson made: we cannot abolish the theory just because it will be hard for us to understand every important capability an animal has. We have to be aware of our responsibility and keep on evaluating our rights and the ones we ascribe to animals, thereby taking the obligations they take with them seriously. When we encounter difficulties, we should call on scientists and our imagination to help us explain animal behavior. This should make us more understanding towards the capabilities they inhabit and the rights that would accompany them. We should take on this responsibility, as the only possible actor of justice.

I will now turn to the last complication that I want to address in my approach. This is the worry concerning the individuality that I argue for. Singer, for example, maintains that relying on individual characteristics would lead to discrimination too, only on another level.<sup>63</sup> We could judge people based on their individual qualities and in that way judge people with a high IQ differently than someone with a lower IQ. Fortunately, I have proved that this will be only a problem where the basis of judgement is the same as the basis of the right. And in most cases, it

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<sup>60</sup> Ibid. p. 132-133.

<sup>61</sup> This is important for her, since she is primarily concerned with environmental difficulties.

<sup>62</sup> O'Neill, "Environmental Values, Anthropocentrism and Speciesism." p. 140.

<sup>63</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 151.

seems justified to judge an individual based on its individual capabilities. Whenever we treat someone with a lower IQ differently, it will only be because he has no capability to enjoy the right he is denied. However, one could still argue that we should let anyone participate in intelligence contests or let them apply for a selection procedure for a job if they want to. Denying them that based on a quality such as IQ seems to treat this person as a lesser human or already incapable.

This example may seem more clear if we take an example of enjoying a sport, like baseball. Some people are too small to be a baseball player, or are simply no good at it. Will we stop these people from enjoying this sport? This is, in fact, a difficulty. However, a capability to enjoy something could be another reason to grant someone a right to do it. Whenever we find a situation in which the Capabilities Approach seems discriminatory, there will most likely be a capability which grants us room to attribute rights. And, in all situations, the capabilities in play must be weighed against each other and tested against the intuitive best outcome. In that way we ensure that a right will not be granted when that would be harmful or wrong.

### *Capabilities and Animal Rights in Contemporary Society*

Nussbaum herself says that states should hold the capabilities as general goals. But, she also holds that state intervention is not necessarily permitted when a state fails to defend the capabilities.<sup>64</sup> State intervention, according to her, is only permitted in certain very grave situations. Do I agree with her? I have already stated that I think we can force states towards better treatment of animals. In this last part of my thesis, I will explore certain consequences of my theory, as well as ways in which to deal with societal problems. I think the question of actual state intervention might be too soon to answer, but we can develop a guide towards incorporating animal rights. The question of how to deal with a Capabilities Approach and existing systems of justice is answerable, at least in a very foundational way. I will try to show that it is possible to think of methods to implement capabilities in a justice.

I will consider some ground-breaking theories regarding animals in societies. One of the main theories that should be discussed is the work by Kymlicka and Donaldson, named *Zoopolis*. Their arguments about animal citizenship are intriguing at least and allow us to think more broadly about our options for including animals in our societies. However, I will show that my Applied Capabilities Approach is not in congruence with the kind of citizenship that is argued for in *Zoopolis*. I will defend another view of how animals should function among human beings and how we should regard them. This view is not at all complete, but it will give incentive to think about our relationship with animals in a different way.

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<sup>64</sup> Nussbaum, *Frontiers of Justice*. p. 80.

I quoted Mary Midgley before, who made a claim about the bruteness of animals and humans. She correctly asks the question why reason is the only quality on which we judge human-beings. Humans have the most distinguished sexual lives, where they are not only driven by a passion to procreate, but also by pleasures. Also, they are not kind to their own species; unlike almost every other animal, humans are capable of killing someone from their own tribe out of passion.<sup>65</sup> It is important here to notice that difference. What we want to do is create an environment where animals are safe from human passions, who have proved to be the most brute, unreasonable and dangerous. We humans have created a justice system to feel safe. It is time to do the same for animals. I can imagine that people would ask me how I would deal with animals amongst each other, but the answer is, I do not have to. I have shown the reason for the rights and justice system, and they are all human. The capability of humans to act in an unjust way is the reason that a justice system will regulate only human actions. For the animals do not know what just or unjust is, and will sometimes act wrongly, like the mentally disabled or a child, but never unjust. We would restrain them only in situations in which our intervention is necessary for the sake of justice, but never punish them or hold them accountable, like we do with reasonable humans.

This is especially important when we look at the implications my account would have when we would enforce the capabilities animals possess. Certain animals would gain rights, for example rights to residence and a safe environment, which would require an amount of food or at least the opportunity to look for food, shelter and water. But there is a fair chance that these rights would somehow coincide with rights from other species, human or non-human. Consider for example a village who wants to build a road to the city, but discovers on the way that they would have to cross animal habitat and have to drain a river, because it is the only possible way to get to their destination. The city would be the only way for them to provide for themselves. How would we deal with these kind of problems?

It would be very hard to distinguish between which rights and corresponding capabilities would be the most important in such cases. As I have said, it will be a long process of distinguishing capabilities for particular species, and this job may never be finished. Though, it seems fair to give some kind of direction. I want to remark firstly though that there is never a theory of rights which claims to know exactly what should be preferred in which situation. But in my case, we can still rely on the importance of the capabilities involved. This would mean that the village could build the road, if they would care for compensatory remedies, such as an artificial source of water somewhere else. Whenever there is only one option on each side, we could indicate how bad the capabilities would be hurt. A case of life and death always wins, as the capability to live is the fundamental capability that all capabilities rely on.

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<sup>65</sup> Regan and Singer, *Animal Rights and Human Obligations*. p. 101-102.



What about a case between animals? Consider the example of a domesticated dog stealing the catch of a fox. The dog does not need it for food, since we can reasonably assume that the dog gets his food from humans. But, the fox captured his catch, and must live off it. In this case, we would side with the fox, because he needs his food and he caught it. Another example might prove more difficult. In Britain, it has been proved that a virus that is being spread by the grey squirrels, which are not affected by it, kills red squirrels. Volunteers have gathered and shot hundreds of grey squirrels to protect the red from getting sick.<sup>66</sup> How would we deal with that? This case is harder, because both species die. The ideal option would be to separate the squirrels, giving them each a space in which they can live in peace. But this would be tough to accomplish. We would think about sterilize the grey squirrel, so that it would decrease in population. In the absence of a better alternative, we may have to rule for or against one of the squirrels. These kinds of cases need thorough investigation. What is clear, is that in a justice system based on capabilities, killing without investigation would be unacceptable. The merits of the capability approach here is that is required careful consideration, valuing and protecting the life of each animal before a decision is made.

Most people would think that animal rights theory goes beyond concepts like states and citizenship. According to Lowe and Ginsberg, for example, it is generally accepted between animal rights theorists that they work within the scope of post-citizenship, where people act for other who are not part of their community.<sup>67</sup> There is one work in particular that I want to discuss that is different. I quoted Kymlicka and Donaldson earlier when we talked about the relationship between capabilities and animal rights. The section I used there is where they consider domesticated animals. Kymlicka and Donaldson claim that domestication is part of the relationships between animals and humans. It is natural for certain animals to look for interaction with humans, or to live off the benefits that humans bring.<sup>68</sup> According to them, the goal should not be to disentangle these connections, but to explore a healthy relationship that is beneficial for humans and animals alike.

Kymlicka and Donaldson hold that animals can be divided in three different categories: domesticated, wild, and liminal.<sup>69</sup> They are critical of Nussbaum, stating that she relies too much on the species-specific norm that a being should be able to thrive as how it is supposed to. Rather, Kymlicka and Donaldson would like a community to adapt to the socialization that has

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<sup>66</sup> "Kill Them, Kill Them, Kill Them."

<sup>67</sup> Lowe and Ginsberg, "Animal Rights as a Post-Citizenship Movement."

<sup>68</sup> Donaldson and Kymlicka, *Zoopolis*. p. 87.

<sup>69</sup> *Ibid.* p. 62-63. The liminal animal is not domesticated, but is known to live near humans and to thrive in an environment where humans live.

already taken place between animals and humans, and take in account the individual capacities that beings can have.<sup>70</sup>

Their disagreement with Nussbaum brings forth some familiar concerns. I would claim that individual capacities and needs would be defended, especially with the capability theory implemented in a theory of rights. The fact that an animal has a right to an own place, does not prevent the animal to choose human companionship. Moreover, Kymlicka and Donaldson seem to romanticize the concept of socialization. This process can come natural, but a lot of the human-animal relationships have been forced upon animals. A dog has no say in being adopted or not, a monkey has not consented to being chased away from its forest. It may well be that liminal animals have become adapted to and dependent of humans because humans have changed the environment in a way that they cannot be self-sustaining anymore. It seems dangerous to just accept the fact that animals and humans have socialized, while this socialization might have been another infringement upon animal rights.

That being said, we do have to think about how to deal with the animals that are already domesticated. Kymlicka and Donaldson assert that we should grant domesticated animals some kind of citizenship. They think that animals can be agents in a society, participating and contributing alongside humans. Their theory comprises an understanding about how animals could coexist with humans in a community. They use arguments that come from the defense of people with disabilities, whose interests must also be supported.<sup>71</sup> The main argument is that granted citizenship will allow us to look at individual needs of animals, take into account their interests, and not control their lives more than needed.<sup>72</sup> There is a distinction between the treatment of people who pass by and citizens, and the way in which we should treat animals is more in congruence with citizen rights.<sup>73</sup>

I have a few problems with this theory. The first one is that the logic seems reversed; animals would be granted rights because of their status as citizens, but not because of their status as animals. I value the distinction between the different kinds of animals and the appropriate actions we should take towards them. But where Kymlicka and Donaldson argue that domesticated animals should have more rights, also against other animals, I cannot agree. Extending their person-passing-by argument, this visitor has as much a right to protection as citizens, which Kymlicka and Donaldson would not agree to in the case of animals. Furthermore, rights linked to citizenship would mean that, outside the territory of the state, these rights would cease to exist. We need basic animal rights, alongside basic human rights, that keep them

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<sup>70</sup> Ibid. p. 95-99.

<sup>71</sup> Ibid. p. 107.

<sup>72</sup> Ibid. p. 53.

<sup>73</sup> Ibid. p. 132.

protected also outside the scope of the state. We are just as responsible for the domesticated and dependent animal when he is from another country.

Also, there are multiple theories about citizenship and the right to choose who you share a community with. It is not uncommon for scholars to defend the right of a state and its citizens to deny people access to their society.<sup>74</sup> Kymlicka and Donaldson would have to deal with the fact that there is already a problem with the legality of forcing states to take in refugees, for example. They would have to show how their theory of animal citizens fits in with such widespread concern with granting citizenship.

Although I think that Kymlicka and Donaldson are right in contrasting different types of animals, I argue that this distinction is better made with my Capabilities Approach as a basis for rights. It allows us to even further distinguish between what diverse needs animals have. Animal citizenship, in my opinion, stands in the way of treating animals as beings that have a right to flourish. The argument Kymlicka and Donaldson present for the enabling of wild animals seems much stronger to me. There they suggest that we let animals act upon their own sovereignty, but without denying these animals a right to protection or help when needed.<sup>75</sup> Such treatment seems sensitive to their capability to take care of themselves, and their capability to live, which gives them a right to be helped when threatened by disasters, for example. This would be more in line with my Capabilities Approach and the level of consideration it demands.

Nussbaum herself has another idea about domesticated animals that I would be inclined to agree with. She states that we should not consider domesticated animals as fully capable beings, because of the big dependency they have on humans. Nussbaum holds that a species-specific paternalism should be in place, that considers the interests of animals as well as treats them with the amount of guidance they need.<sup>76</sup> She contrasts her approach again with Utilitarianism. The possibilities that the Capabilities Approach creates is a good balance between caring for an animal as well as respecting his authority over his own life. Utilitarianism would be too narrow to take in account the plural, distinctive and not necessarily conscious preferences animals have.

The appropriate way is thus not to grant animals citizenship, but to create a way in which animal rights are applied everywhere. This would mean that we establish something like the Universal Rights of Animals to regulate how states treat *all* their beings. When having such an account, we would be able to hold countries accountable if they act against the rights we specify in that treaty. The Universal Declaration of Human Rights was developed right after the atrocities of World War Two, to prevent further situations in which these acts against humanity

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<sup>74</sup> See for example David Miller, "Immigration: The Case for Limits" in Cohen and Wellman, *Contemporary Debates in Applied Ethics*. Kymlicka himself has argued for a more cosmopolitan view in "'Territorial Boundaries: A Liberal Egalitarian Perspective", a chapter of Miller's *Boundaries and Justice: Diverse Ethical Perspectives*.

<sup>75</sup> Donaldson and Kymlicka, *Zoopolis*. p. 180.

<sup>76</sup> Nussbaum, *Frontiers of Justice*. p. 376-378.

could occur.<sup>77</sup> In the same way, the way in which we exploit animals could be a direct reason for developing a similar testimony. A standard must be set for every country to handle their animal inhabitants, human and non-human alike. This standard must be linked to a recognition of capabilities. A global declaration of rights based on the capabilities in a being is the best way to guarantee that every being is dealt the rights that they should receive.

Of course, this theory needs more specification. But it gives an idea of the path that we need to take to improve the condition of animals. The right path is not that which leads to animal citizenship, because this would hinder the method of the Capabilities Approach. We need a theory applicable to all animals, but not considering them as a whole. In the ideal situation, every individual being would obtain the rights based on their individual needs. In order to reach that situation, we should apply the Capabilities Approach.

### *Conclusion*

As we have seen, one of the biggest concerns Nussbaum had with contractarian theories was that they are persistent in conflating the question of "Who frames the Principles of Justice?" with "Whom are the Principles of Justice framed for?". I have shown in my discussion about natural rights theorists that these are clearly different questions. The wish to join a society comes from a feeling of unsafety that is caused by humans. Principles of justice are designed to protect against humans and should thus be concerned with just that: the protection against humans. My theory wishes to separate these two questions, attributing the responsibility to frame principles of justice to humans, while stressing the need to keep animals' interests in mind. Animals, like humans, have something to lose. Capabilities are a source for development, for drive and flourishing, with the capability to live as the fundamental inalienable capability that every living creature exhibits. Animals need to be protected the way as humans are protected: by justice and the law.

The Capabilities Approach itself focuses on the ways of life that people, as well as animals, can choose from. We have to focus on these capabilities because being capable in the fullest sense is what makes a dignified being. Recognizing each other's capabilities strengthens the community and pushes development, not in an economical way, but in flourishing. Not being able to use capabilities can lead to negative feelings, such as frustration. On the other hand, being capable means being able to contribute and evolve. Hence, I have succeeded in my objective. I have shown that capabilities are valuable for all beings and there are good reasons to extend the realm of justice to animals. Intuitively, it makes sense to link the capabilities to corresponding rights. It makes sense to attribute rights to the individuals that need these,

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<sup>77</sup> Sjoberg, Gill, and Williams, "A Sociology of Human Rights." p. 13.

according to their capabilities. Capabilities are important in two ways: they are essential to the flourishing of a being and the only correct means to protect themselves in a justice system.

However, a lot has to be determined. For a justice system to work, we must determine for every species what the capabilities are that should be defended, and what rights are to be implemented. It is probably impossible to ever have a perfect list of all capabilities and corresponding rights. Still, this should not hold us back in our effort to take down animal injustices.

I have discussed that the theory is not completely neutral, placing great emphasis on freedom and choice. However, it aims at pleasing the most beings as possible by enabling the ones who choose a life path that do not deter others. Another probable complication is the choice we must make when different capabilities conflict. Nussbaum tells us that we should look at the just outcome, and according to that outcome calculate our just decision. This too will not always be easy. When exactly does someone's freedom interfere with another's? And when do we intervene when someone is blocking his own capabilities? What matters more: his freedom to choose his own life path, or the importance of his capabilities? The implementation of just institutions will have to deal with these kinds of questions. But a further investigation into the tension between freedom and capabilities could be interesting.

I have argued that I do not think the Capabilities Approach is compatible with animal citizenship, like Kymlicka and Donaldson argue for. I think the Capabilities Approach calls for more distinction than just dividing animals in three categories and attributing rights accordingly. The notion of citizenship is one that is created for people and I believe that only people can be the agents that citizenship requires. This does not mean that we ignore animal rights, but ideally, we would develop a global treaty that protects animals everywhere evenly

The sceptic, who is not already convinced that animals can be right-bearers, may not have been convinced by my piece. I have not been able to attack the various arguments that scholars have against animals as right-bearers, although I have mentioned the most important objections. I have briefly shown that the argument of marginal cases defeats the assumption that animals cannot be recipients of justice. If we can grant rights to children, elderly or mentally disabled people, animals should not be any different. I have also defeated some objections made by Frey and Fox, in the beginning of Chapter Two. But the clearest defense of the worth of animals, according to my theory, is that it is not one quality that makes a life meaningful, but many. Most animal rights theorists base their theory on one quality that they think is most important in the theory of rights, and their attackers try to disprove this. But when we trade this all-or-nothing strategy for an approach that highlights different qualities and admits certain shortcomings of animals, while stressing some important other capabilities, we have a case that is more convincing and harder to disprove. Critics would have to demonstrate that capabilities are not

important at all when it comes to a theory of rights, while developing another approach that does not rule out any humans. That seems like an impossible task.

Concluding, the essay leaves a number of questions open or vague. More research or more intuition and imagination should bring us closer to a complete doctrine of rights combined with capabilities. It is the best way in which we can protect the dignity of every being and treat them properly. For now, I have demonstrated my main ambition in confirming the connection between capabilities and rights.

## Bibliography

- "Animal Testing 101." *PETA*. Accessed June 6, 2017. <https://www.peta.org/issues/animals-used-for-experimentation/animal-testing-101/>.
- "Animal Welfare Parties in Europe." *ESDAW-EU*. Accessed June 6, 2017. <http://www.esdaw-eu.eu/animal-welfare-parties-in-europe.html>.
- Aquinas, Thomas. *Summa Theologica*, V5. WESTMINSTER: CHRISTIAN CLASSICS, 1981.
- Cohen, Andrew I., and Christopher Heath Wellman. *Contemporary Debates in Applied Ethics*. John Wiley & Sons, 2014.
- Crocker, David. "I - Functioning and Capability - the Foundations of Sen's and Nussbaum's Development Ethic." *Political Theory* 20, no. 4 (1992): 584–612.
- Deneulin, Séverine, Mathias Nebel, and Nicholas Sagovsky. *Transforming Unjust Structures*. Springer, 2006.
- Donaldson, Sue, and Will Kymlicka. *Zoopolis: A Political Theory of Animal Rights*. Oxford University Press, 2011.
- Eaton, Akisha Townsend. "Animal Politics: The Rise of Animal Advocacy Parties." Accessed June 6, 2017. <http://worldanimal.net/world-animal-net-blog/item/363-animal-politics-the-rise-of-animal-advocacy-parties>.
- Fox, Michael. "'Animal Liberation': A Critique." *Ethics* 88, no. 2 (1978): 106–118.
- Garner, Robert. *A Theory of Justice for Animals: Animal Rights in a Nonideal World*. Oxford University Press, 2013.
- . "Animals, Ethics and Public Policy." *The Political Quarterly* 81, no. 1 (2010): 123–130.
- Hare, Richard M., and R. M. Hare. *Moral Thinking*. Oxford University Press, 1985.
- Harrison, Peter. "Descartes on Animals." *The Philosophical Quarterly* (1950-) 42, no. 167 (1992): 219–27.
- Hume, David. *A Treatise of Human Nature*. Courier Corporation, 2003.
- Johnson, Christopher. "Political Liberal or Comprehensive Capabilities? A Critique of Nussbaum's Capabilities Approach." ProQuest Dissertations Publishing, 2014.
- Jukes, Nick, and Mihnea Chiuia. *From Guinea Pig to Computer Mouse: Alternative Methods for a Progressive, Humane Education*. 2nd ed. / Nick Jukes, Mihnea Chiuia.. Leicester: InterNICHE, 2003.
- "'Kill Them, Kill Them, Kill Them': The Volunteer Army Plotting to Wipe out Britain's Grey Squirrels." *The Guardian*, n.d., sec. Environment. <https://www.theguardian.com/environment/2017/jun/02/kill-them-the-volunteer-army-plotting-to-wipe-out-britains-grey-squirrels>.
- LaFollette, Hugh. *Ethics in Practice: An Anthology*. John Wiley & Sons, 2014.
- Locke, John. *Two Treatises of Government*. 2nd ed.. London: Cambridge University Press, 1967.
- Lowe, Brian M., and Caryn F. Ginsberg. "Animal Rights as a Post-Citizenship Movement." *Society & Animals* 10, no. 2 (2002): 203–215.
- Machan, Tibor R. "Do Animals Have Rights?" *Public Affairs Quarterly* 5, no. 2 (1991): 163–173.
- Midgley, Mary. *Beast and Man: The Roots of Human Nature*. Psychology Press, 2002.

- Miller, David, and Sohail H. Hashmi. *Boundaries and Justice: Diverse Ethical Perspectives*. Princeton University Press, 2001.
- Nelson, Eric. "From Primary Goods to Capabilities: Distributive Justice and the Problem of Neutrality." *Political Theory* 36, no. 1 (2008): 93–122.
- Nussbaum, Martha C. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2006.
- . "Mill between Aristotle & Bentham." *Daedalus* 133, no. 2 (2004): 60–68.
- . "The Costs of Tragedy: Some Moral Limits of Cost-Benefit Analysis." *The Journal of Legal Studies* 29, no. S2 (2000): 1005–1036.
- . *Women and Human Development: The Capabilities Approach*. Vol. 3. Cambridge University Press, 2001.
- O'Neill, Onora. "Environmental Values, Anthropocentrism and Speciesism." *Environmental Values* 6, no. 2 (1997): 127–142.
- "Overtollige En Ongeschikte Dieren - NKCA Alternatieven Voor Dierproeven." Accessed June 6, 2017. <http://www.nkca.nl/dierproeven/feiten-en-cijfers/zorg-voor-proefdieren/overtollige-en-ongeschikte-dieren/>.
- Parfit, Derek. "Equality and Priority." *Ratio* 10, no. 3 (1997): 202–221.
- Rawls, John. *A Theory of Justice*. Harvard university press, 2009.
- Raz, Joseph. "On the Nature of Rights." *Mind* 93, no. 370 (1984): 194–214.
- Regan, Tom. "The Case for Animal Rights." *Moral Issues in Global Perspective* 1 (2006): 199.
- . "The Moral Basis of Vegetarianism." *Canadian Journal of Philosophy* 5, no. 2 (1975): 181–214.
- Regan, Tom, and Peter Singer. *Animal Rights and Human Obligations*. Englewood Cliffs [etc.]: Prentice-Hall, 1976.
- Ricoeur, Paul. *The Course of Recognition*, 2005.
- Savage, Roger WH. "Fragile Identities, Capable Selves." *Etudes Ricø Euriennes/Ricø Eur Studies* 4, no. 2 (2014): 64–78.
- Sen, Amartya. "Capabilities, Lists, and Public Reason: Continuing the Conversation." *Feminist Economics* 10, no. 3 (2004): 77–80.
- . *Development as Freedom*. Oxford Paperbacks, 2001.
- . "Human Rights and Capabilities." *Journal of Human Development* 6, no. 2 (2005): 151–166.
- Singer, Peter. "Animal Liberation." In *Animal Rights*, 7–18. Springer, 1973.
- Sjoberg, Gideon, Elizabeth A. Gill, and Norma Williams. "A Sociology of Human Rights." *Social Problems* 48, no. 1 (2001): 11–47.
- Streeten, Paul. "Freedom and Welfare: A Review Essay on Amartya Sen, Development as Freedom." *Population and Development Review* 26, no. 1 (2000): 153–162.
- "Universal Declaration of Human Rights | United Nations." Accessed May 8, 2017. <http://www.un.org/en/universal-declaration-human-rights/>.