

# *Affirming animal rights, anthropocentrically*

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## Affirming animal rights, anthropocentrically

Aleardo Zanghellini \*

School of Law, University of Reading, Reading, UK

### ABSTRACT

Calls to recognise animal rights and to abandon anthropocentrism are now virtually ubiquitous in pro-animal literature. However, these calls are plagued by conceptual confusion and theoretical misapprehensions. I recommend distinguishing between two meanings of anthropocentrism: epistemic anthropocentrism (the truism that we can only know the world as humans) and normative anthropocentrism (the idea that humans hold a special place in ethics). Anthropocentrism, in both these senses, is unavoidable. But this conclusion is without prejudice to the question of whether animals have (moral) rights. Animals have such rights because their well-being matters independently of our own; and yet we can only affirm animal rights anthropocentrically. The fact that animals have moral rights, however, does not entail that making animals holders of fundamental legal rights is the unmitigated good it has been recently assumed to be. Not only would introducing legally protected fundamental animal rights risk compromising human rights practice and prove divisive; there is also little reason to think it would constitute the solution it is touted to be for the shortcomings of underinclusive and underenforced animal welfare laws.

### KEYWORDS

Anthropocentrism; animal rights; animal welfare; speciesism; animal ethics

## 1. Introduction

Do animals have rights? Increasingly, scholars and activists argue that they do. Many recent calls for recognising animal rights use the vocabulary of 'anthropocentrism'. They invite us, either implicitly or explicitly, to embrace a non-anthropocentric ethics,<sup>1</sup> a non-anthropocentric conception of rights, or even – as at conference panel I chaired in 2023 – a non-anthropocentric conception of human rights. Such calls hold a deceptively simple appeal, and possibly have some rhetorical value in prompting pro-animal mobilisation.<sup>2</sup> But is it desirable, or even possible, to abandon

**CONTACT** Aleardo Zanghellini  [a.zanghellini@reading.ac.uk](mailto:a.zanghellini@reading.ac.uk)

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<sup>1</sup>Jan-Harm de Villiers, 'Metaphysical Anthropocentrism, Limitrophy, and Responsibility: An Explication of the Subject of Animal Rights' (2018) 21 *Potchefstroom Electronic Law Journal* <<https://doi.org/10.17159/1727-3781/2018/v21i0a5320>> accessed 21 January 2025.

<sup>2</sup>Tim Hayward, 'Anthropocentrism: A Misunderstood Problem' (1997) 6 *Environmental Values* 49, 57–59.

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anthropocentrism in ethical thought concerning our relationship with non-human animals? And if it is not, is that fatal to normative projects intent on defending animal rights?

This article answers both questions in the negative. My argument is to the effect that anthropocentrism is inevitable, but also no impediment to recognising that our ethical responsibilities towards animals are appropriately conceptualised in terms of their having moral rights. Indeed, we can only affirm those rights from an epistemically and normatively anthropocentric perspective. It does not necessarily follow, however, that those moral rights should be positivised into legal guarantees of fundamental animal rights. Although enforceable legal obligations appear a necessary means of fostering respect for animal moral rights, making animals holders of legally protected fundamental rights is not the unmitigated good it has been recently argued or assumed to be.

The second section of the article highlights the increasing deployment of the concept of anthropocentrism in animal rights literature, and proceeds to distinguish between two senses of anthropocentrism: epistemic anthropocentrism (the truism that we can only know the world as humans) and normative anthropocentrism (the idea that humans hold a special place in ethics). The third section argues that epistemic anthropocentrism is inevitable; it also responds to two possible objections to this claim, one invoking empathy and one inspiration. The next section deals with normative anthropocentrism: it argues that animal rights ethics is necessarily anthropocentric because it centres humans (a) as responsible agents; (b) as the paradigmatic (not the only) case of entities enjoying moral status; and (c) as the entities whose well-being (as distinct from mere desires) matters most in scenarios involving genuine inter-species conflicts of interests, particularly where vital interests are at stake. The fifth section distinguishes between animals' moral and legal rights. The following section argues that animals have moral rights because their well-being is intrinsically and independently valuable, but maintains that those rights may only be affirmed from an anthropocentric perspective. Finally, the seventh section explains why it does not follow, from the proposition that animals have moral rights, that it is necessarily a good idea to positivise those rights into legal statements of principle. Current, widespread abuses of animal moral rights may be best addressed by a genuine commitment to strengthening animal welfare laws. This recommendation will bring home the fact that the distinction between '(1) those who believe that animals have an extensive array of robust rights (animal rightists) and (2) those who believe that humans have obligations to protect basic welfare interests of animals (animal welfarists) ... is a crude tool for dividing up the world of protective support for animals.<sup>3</sup>

Before turning to the analysis, let me clarify what this article is not about. Human activity has profoundly altered the composition of the Earth's biomass, resulting in a dramatic imbalance between domesticated and wild animals.<sup>4</sup> This gives rise to two problems. First, opportunities for human mistreatment of individual animals have exponentially increased; second, intrinsically valuable states of the world (wilderness, biodiversity

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<sup>3</sup>Tom L Beauchamp, 'Rights Theory and Animal Rights' in Tom L Beauchamp and RG Frey (eds), *The Oxford Handbook of Animal Ethics* (Oxford University Press 2011) 200–01.

<sup>4</sup>Yinon M Bar-On, Rob Phillips, and Ron Milo, 'The Biomass Distribution on Earth' (2018) 115(2) *Proceedings of the National Academy of Sciences of the United States of America* 6506.

etc) have been badly compromised. Both these problems demand urgent attention, but they require different conceptual tools. The concept and language of rights help us think well about what we owe to individual animals, but is ill-suited to address questions pertaining to conservation or ecological restoration.<sup>5</sup> It follows that, in focusing on the concept of animal rights, my analysis in this article is circumscribed to the former problem (the treatment of individual animals, whether domesticated or wild), and that I will largely bracket broader ecological questions.

## 2. Unpacking anthropocentrism

Recent literature centrally or tangentially concerned with animal rights frequently assumes or argues that animal rights and a non-anthropocentric ethics go hand-in-hand. For example, de Villiers harnesses critical theory to reorient animal rights discourse towards ‘an approach to the question of the animal (in law) that identifies and challenges anthropocentrism as its critical target’.<sup>6</sup> Bilchitz contrasts animal rights approaches with ‘anthropocentric’ ethical positions that deny animals’ moral dignity and/or are based on purely utilitarian and instrumentalist concerns.<sup>7</sup> Similarly, in their tetrapartite classification of ‘animal ethics orientations’, Bøker Lund et al distinguish ‘anthropocentrism’ from ‘animal rights’, arguing that they are at opposite ends of the spectrum, and that only according to the latter ‘non-human sentient animals matter in the same way that humans do’.<sup>8</sup> As a last example, Jena declares that ‘[c]onstructing an animal welfare policy that does not encompass the rights of animals ... appears to be formulated on the basis of an anthropocentric idea.<sup>9</sup>

Literally, anthropocentrism means an attitude or perspective or approach that centres humans. Much animal rights literature argues or implies that an anthropocentric orientation necessarily devalues the non-human. Like ‘deep ecologists’, these authors regard anthropocentrism ‘not merely in its literal sense as “human centredness” but as the view that humanity has been conditioned to regard itself as a superior species’.<sup>10</sup> It seems true that much of the Western philosophical tradition has maintained that ‘all

<sup>5</sup> Any non-human, fundamental rights that may be invoked in relation to these questions pertain to nonindividual entities such as species, habitats or nature itself. This is problematic for several reasons. Since I am concerned with animal rights, let me focus on species rights. If species had rights, they would be collective in nature, but collective rights force us to refer back to individual interests, as ‘collective interests are a mere ... way of referring to individual interests which arise out of the individuals’ membership in communities’. Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986) 208. Because, however, the relevant individual interests in this context would be largely those of future animals, we face nonidentity-type problems (on which see MA Roberts, ‘The Nonidentity Problem’ (21 July 2009; revised 19 July 2024) *Stanford Encyclopedia of Philosophy* <<https://plato.stanford.edu/entries/nonidentity-problem/>> accessed 30 June 2025. If we forego rights talk when reasoning about the grounds for our duties concerning conservation and habitat restoration, we stand a better chance to think well about, and effectively articulate, the values and stakes involved.

<sup>6</sup>de Villiers (n 1) 3.

<sup>7</sup>David Bilchitz, ‘Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals’ (2009) 25 *South African Journal of Human Rights* 38; David Bilchitz, ‘Why Conservation and Sustainability Require Protection for the Interests of Animals’ in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar 2019).

<sup>8</sup>Thomas Bøker Lund, Sara Vincentzen Kondrup and Peter Sandøe, ‘A Multidimensional Measure of Animal Ethics Orientation – Developed and Applied to a Representative Sample of the Danish Public’ (2019) 14(2) PLoS One <<https://doi.org/10.1371/journal.pone.0211656>> accessed 21 January 2025.

<sup>9</sup>Nibedita Priyadarshini Jena, ‘Animal Welfare and Animal Rights: An Examination of Some Ethical Problems’ (2017) 15 *Journal of Academic Ethics* 377, 394.

<sup>10</sup>Eddy de Jonge, ‘An Alternative to Anthropocentrism: Deep Ecology and the Metaphysical Turn’ in Rob Boddice (ed), *Anthropocentrism: Humans, Animals, Environments* (Brill 2011), 307.

and only human beings are worthy of moral consideration',<sup>11</sup> but I argue that such a view is not logically entailed by anthropocentrism. If I am right, animal rights literature that denounces anthropocentrism hits the wrong target. This matters because normative concepts such as anthropocentrism are employed in our practical thought, and confusion about them has implications for action.

'Anthropocentrism' is used in varying ways,<sup>12</sup> and is riddled with 'crucial ambiguity'.<sup>13</sup> Mitchell usefully distinguishes 'the absolutist position that other species have no value other than their value to humans', from the view that 'allows animals to have interests' while maintaining that 'human interests ... take priority'.<sup>14</sup> Critiques of anthropocentrism are often plagued by conflation of these two meanings. Consider the claim that, from an anthropocentric perspective, 'humans are the single and most important bearers of intrinsic value'.<sup>15</sup> This is internally incoherent: either humans are the single bearers of intrinsic value, or they are not, but are the most important ones. Likewise, Kopnina et al.'s claim that we can only either anthropocentrically deny or eco-centrally assign moral value to non-human life<sup>16</sup> is at odds with the definition of anthropocentrism they themselves endorse, which speaks of human life being the 'central or most important element of existence', not the exclusively valuable one.<sup>17</sup>

For my purposes in this paper, I distinguish between two meanings of anthropocentrism: epistemic and normative. Epistemic anthropocentrism is a thesis about knowledge: it maintains that we, as humans, can only come to understand the world through human intelligence (which I use as shorthand for perception, introspection, reason, emotion, etc). Therefore, this must inevitably hold primacy in shaping our efforts to relate appropriately to the world. When scholars comment (all too rarely) on anthropocentrism 'as an acknowledgement of human ontological boundaries',<sup>18</sup> it is to epistemic anthropocentrism that their comments should be understood to apply.

Epistemic anthropocentrism exceeds 'perceptual anthropocentrism', namely, the fact that humans come to understand the world by collecting 'sense data through their [distinctive] sensory organs'.<sup>19</sup> Epistemic anthropocentrism highlights that not only does data about the world come to us through our human senses, but also that the ways in which we make sense of this data, process it, organise it, determine its significance, and work out its normative implications rely on our own human mental faculties and constructs.<sup>20</sup> Epistemic anthropocentrism is a pre-condition of all ethical thought, even thought that purports to decentre-humans.

<sup>11</sup> Gary Steiner, *Anthropocentrism and Its Discontents: The Moral Status of Animals in the History of Western Philosophy* (University of Pittsburgh Press 2005) 42.

<sup>12</sup> Robyn Trigg, 'Intersectionality: An Alternative to Redrawing the Line in the Pursuit of Animal Rights' (2021) 26(2) *Ethics and the Environment* 73, 80.

<sup>13</sup> Bryan G Norton, 'Environmental Ethics and Weak Anthropocentrism' (1984) 6(2) *Environmental Ethics* 131.

<sup>14</sup> Jerry Mitchell, 'Sorting out Animal Policy: Ideas, Problems, and Solutions' (2022) 4 *Forum* 340, [6].

<sup>15</sup> Edwin Etieyibo, 'Anthropocentrism, African Metaphysical Worldview, and Animal Practices: A Reply to Kai Horsthemke' (2017) 7 *Journal of Animal Ethics* 145, 149.

<sup>16</sup> One can either accept that other species and life processes have moral value (ecocentrism) or not (anthropocentrism); 'speciesism and human chauvinism are fundamental aspects of anthropocentrism'. Helen Kopnina et al, 'Anthropocentrism: More than Just a Misunderstood Problem' (2021) 3 *Journal of Agricultural and Environmental Ethics* (2018) 109, 113.

<sup>17</sup> *ibid.*

<sup>18</sup> Rob Boddice, 'Introduction' in Rob Boddice (ed), *Anthropocentrism: Humans, Animals, Environments* (Brill 2011) 1.

<sup>19</sup> Ben Mylius, 'Three Types of Anthropocentrism' (2018) 15 *Environmental Philosophy* 159, 166.

<sup>20</sup> See Boddice (n 18) 7; Bernd Ladwig, 'Do Animals Have Rights?' (2023) 13 *Animals* 1220.

Conversely, normative anthropocentrism is not a theory about knowledge but refers to an evaluative ranking process. It is the view that human interests hold a special place in our normative universe. It is, emphatically, not the view that human interests and well-being are the only things that matter. It is also different from Mylius's definition of ('active') normative anthropocentrism as the claim of humans' superiority to nature, and the ethical or legal prescriptions purported to follow from that claim;<sup>21</sup> for, as will be clarified, humans need not assert their superiority in order to take human interests as a special (central) object of concern.

According to the definition I propose, normative anthropocentrism is the view that human interests, compared to other sorts of interests, matter in a special way for ethics. The concept need not be fully worked out beyond this for present purposes, except for spelling out one of its implications: when conflicts of vital interests are concerned, as in cases where one or more members of a species pose a significant and fairly immediate threat to human life or physical integrity,<sup>22</sup> normative anthropocentrism dictates that human interests be given priority.

The implications of normative anthropocentrism as defined are less sinister than one might think: 'in the kind of major emergency we have at present ... really enlightened self-interest would not dictate seriously different policies from species-altruism'.<sup>23</sup> Indeed, broad overlaps between human and animal interests exist even apart from global warming and other such contingencies. Human interests are aspects of human well-being, not the desires individual humans happen to have, which may often be against our own interest and interfere with our flourishing. Assuming that any plausible conception of human flourishing requires a harmonious relationship with nature, the genuine interests of humanity will often morally pull in the same direction as the interests of nature and its other inhabitants.<sup>24</sup>

Even so, conflictual, even violent, inter-species relationships are ineliminable as one of the conditions of possibility of the existence of ecosystems. To this extent, widespread normative preference for one's own species relative to others seems inevitable from an evolutionary psychology perspective. While some humans might exhibit allophilic for other species (in many ways I myself do), acting on such preferences would be a case of maladaptive behaviour. Indeed, a preference for one's own species makes humans attuned to, not at odds with, the dynamics of the natural world: humans' anthropocentrism is matched by other species' tendency to act in ways consistent with their own, not another species's, survival.<sup>25</sup>

<sup>21</sup>Mylius (n 19) 185.

<sup>22</sup>Examples include my facing an aggressive bear in a forest, or your living in a place where mosquitoes carry dangerous diseases.

<sup>23</sup>Mary Midgley, 'The End of Anthropocentrism?' (1994) 36 *Royal Institute of Philosophy Supplement* 103, 111.

<sup>24</sup>Note that this point is not the same as Norton's defence of an environmental ethics based on what he calls 'weak anthropocentrism' – namely, the view that, although all value resides in humans, it is our 'considered preferences' (roughly, our interests) rather than our felt preferences (contingent desires) that matter. Norton (n 13) 131–48. Normative anthropocentrism as understood in the text (the view that human interests hold a special place in our normative universe) is not the position that all value resides in humans. Rather, it accepts the view that ecosystems and animals are intrinsically valuable, and is comfortable with acknowledging that their intrinsic value is often a morally more compelling reason for their protection than any benefit they bring to humans. Although Kopnina et al (n 16) misconstrue Norton's normative thesis as a theory of motivation, and although I disagree with them on the point that treating animals and nature as intrinsically valuable involves a departure from anthropocentrism, I think they are right in concluding that Norton's 'weak anthropocentrism' cannot yield the same conservation outcomes as the view that animals and nature matter in themselves.

<sup>25</sup>Charles R Darwin, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life* (John Murray 1859) 210–11.

Because normative anthropocentrism is not the same as speciesism, it still leaves ample room for establishing ethical relationships with other species. In affording special value to human interests, normative anthropocentrism of the defensible variety does not commit itself to the speciesist view that what is in humans' interest justifies indiscriminate interference or suppression of the interests of other beings. Speciesism is itself defined in different ways; but if understood, as it should be, to imply unjustifiable differential treatment on the ground of species,<sup>26</sup> then the conflation between normative anthropocentrism and speciesism is unhelpful. While human speciesism is always anthropocentric, normative anthropocentrism is not always speciesist.

The next section deals with epistemic anthropocentrism.

### 3. The inevitability of epistemic anthropocentrism

The call for non-anthropocentric animal ethics/rights misfires in part because of the inevitability of epistemic anthropocentrism.

We can only know the world in the first person, as a matter of our individual experience, albeit mediated by frames of meaning that are intersubjectively constituted and validated.<sup>27</sup> Although the primacy of individual experience means that there are limits to the extent to which we may be said to share a perspective, to the extent that such sharing is possible, it is so thanks to the cognitive similarities between different humans and the communicative faculties that are distinctive of our species.<sup>28</sup> It is, in other words, dependent on our embodiment as members of that species. Admittedly, differences between species may be conceptualised as a matter of degree rather than categorical; but it is still the case that there are many more degrees of difference between the neurocognitive structures of humans and dogs than there are between two different humans. I cannot experience the world as another species; nor can I will myself to do it.<sup>29</sup>

This does not preclude some form of inter-species communication; but many moments of opacity remain, which cannot be dispelled simply by asking, 'What's on your mind?' Whatever hope I have of doing right by my dog, for example, is based on my (human) observation, my (human) capacity for empathy, my (human) understanding of the dangers and opportunities of this world, my readings of scientific literature or online advice on dog's biology, psychology and behaviour, my (eminently human) normative assessment or intuitions about the correct balance between freedom and safety, and a fair deal of projection of my own human needs, thoughts and desires onto him.<sup>30</sup> Even 'when we try to imagine what it might be like to have the point of view of (or be) a bat, a tree, or a mountain ... we are still looking at the

<sup>26</sup>Onora O'Neill, 'Environmental Values, Anthropocentrism and Speciesism' (1997) 6 *Environmental Values* 127, 129; Hayward (n 2) 52.

<sup>27</sup>Donn Welton (ed), *The Essential Husserl* (Indiana University Press, 1999).

<sup>28</sup>Giuseppe Pulina, 'Anthropocentrism, Natural Harmony, Sentience and Animal Rights: Are We Allowed to Use Animals for Our Own Purposes?' (2023) 13 *Animals* 1083.

<sup>29</sup>Thomas Nagel, 'What Is It Like to Be a Bat?' (1974) 83 *The Philosophical Review* 435, 437–42.

<sup>30</sup>This explains why scholars who declare themselves committed to adopting the 'animal standpoint' in practice end up adopting a different thing: 'the attitude ... of taking into equal consideration and respect the lives and interests of non-human animals'. Núria Almiron and Laura Fernández, 'Including the Animal Standpoint in Critical Public Relations Research' (2021) 10 *Public Relations Inquiry* 139.

world anthropocentrically – the way a human imagines that a nonhuman might look at the world'.<sup>31</sup>

Is there really no way, though, to bypass epistemic anthropocentrism? On some accounts, the mechanisms of empathy bypass the epistemic filter of individual experience: could they not similarly bypass the filter of species embodiment? Hume and Smith pioneered the philosophical treatment of empathy/sympathy.<sup>32</sup> For Hume, an observer comes to sympathise with others via a mechanism of sympathetic transmission, grounded in her perception-based inferences; and the common physiological and emotional structure of human beings means that we are able to sympathise even with strangers.<sup>33</sup> Hume's account of sympathetic transmission is like contagion: as a result of sympathetic transmission, I feel the self-same passion you are experiencing. Neuroscientific literature on so-called 'mirror neurons' may be seen as continuous with this account of empathy. If, as a result of your reading cues of my experiencing a certain feeling, your brain responds by activating the same brain areas my brain activated when experiencing that feeling,<sup>34</sup> this makes it sound rather as if the self-same, unadulterated feeling is being transmitted from me to you, thanks to humans' neural structural similarities.

However, not only has this contagion-based account of empathy been disputed by philosophers,<sup>35</sup> contemporary neuroscientists,<sup>36</sup> and psychologists,<sup>37</sup> but we would also run into serious difficulties if we tried to adapt to inter-species relations the theory of intra-species empathy that is based on the mirror neuron system (MNS). First, Hume's model of sympathetic transmission and its MNS counterpart presuppose that the empathiser and the empathised-with share the same *intraspecific* bodily/neural constitution. Secondly, cues that reliably inform us about the emotional state of other people do not work between species.<sup>38</sup> Thirdly, empathy underdetermines the outcomes of practical reason:<sup>39</sup> empathetic responses interact with frameworks of meaning and value, and these are thoroughly human. In sum, while a contagion-type account of empathy might at first blush appear to be able to bypass the filter of the empathiser's distinctive cognitive structure, and hence potentially avoid, in the case of interspecies empathy, epistemic anthropocentrism, on further inspection that impression proves illusory.

<sup>31</sup>Eugene C Hargrove, 'Weak Anthropocentric Intrinsic Value' (1992) 75 *The Monist* 183, 201.

<sup>32</sup>Until the early 20th century, what we today designate as 'empathy' was commonly referred to as 'sympathy'. Karsten Steuber, 'Empathy', Stanford Encyclopedia of Philosophy (31 March 2008; revised 27 June 2019) <<https://plato.stanford.edu/entries/empathy/>> accessed 21 January 2025.

<sup>33</sup>David Hume, *A Treatise of Human Nature* (1739–40) (Project Gutenberg) <<https://www.gutenberg.org/cache/epub/4705/pg4705-images.html>> accessed 21 January 2025.

<sup>34</sup>Giacomo Rizzolatti and Corrado Sinigaglia, and Frances Anderson (tr), *Mirrors in the Brain: How Our Minds Share Actions and Emotions* (Oxford University Press, 2007).

<sup>35</sup>Smith questioned Hume's account by insisting on an irreducible gap between the feelings of the person who is being sympathised with and those of the person sympathising. Adam Smith, *The Theory of Moral Sentiments* (1759), Part 1, Section 1, Ch 1 (Project Gutenberg) <<https://www.gutenberg.org/files/67363/67363-h/67363-h.htm>> accessed 21 January 2025.

<sup>36</sup>Jean Decety, 'To What Extent is the Experience of Empathy Mediated by Shared Neural Circuits?' (2010) 2 *Emotion Review* 204, 206.

<sup>37</sup>Martin L Hoffman, 'Empathy, Justice and Social Change' in Heidi L Maibom (ed), *Empathy and Morality* (Oxford University Press 2014) 75–76.

<sup>38</sup>Matteo Mameli and Lisa Bortolotti, 'Animal Rights, Animal Minds, and Human Mindreading' (2006) 32 *Journal of Medical Ethics* 84, 87.

<sup>39</sup>Steuber (n 32); Hoffman (n 37).

Inspiration is a form of knowledge transmission which purportedly conveys an unadulterated object from an extra-human realm into a human mind. As such, it too could be considered to bypass the usual modes of knowledge acquisition, and to deliver to humans a perspective that is not epistemically anthropocentric. Divine revelation is perhaps the most obvious form of inspiration, alongside the inspiration from which artists benefit.

Can divine inspiration provide us with the kind of knowledge we need for a non-anthropocentric ethics? Since we disagree about the ultimate source of values, it is unclear that normative knowledge purported to be revealed by divine inspiration should automatically be discounted. Nonetheless, given value pluralism, any divinely inspired normative knowledge or commitments should be capable, both as a practical matter and as a matter of principle, of being defended by appealing to non-sectarian arguments that we can expect reasonable interlocutors to accept, despite differences between theirs and our own comprehensive doctrines.<sup>40</sup> But this process of rational justification brings us back to quintessentially human forms of knowledge, understanding and reason-giving. So, while we cannot rule out cases where ethical knowledge about animals has a transcendental source, before such knowledge could do any kind of political work, it would need to be filtered through an epistemically anthropocentric lens.

What about artistic inspiration? Artists sometimes declare that they are inspired by nature. In so doing, many may simply mean to highlight the mimetic quality of their work; but others may be alluding to something more profound: it is not uncommon for artists to talk about artistic creation as a compulsive process, somewhat akin to revelation.

Unfortunately, the challenges for artistic inspiration to work as an epistemically non-anthropocentric form of ethical knowledge serviceable to the project of asserting animal rights are formidable. On the one hand, popular literary texts that have attempted to take the point of view of animals turn out to reinstate an anthropocentric perspective,<sup>41</sup> casting serious doubt on inspired artists' abilities to transcend their human perspective. Besides, even assuming that artistic inspiration could supply us with non-anthropocentric knowledge about animals – as has been claimed of the works of authors ranging from Lewis Carroll<sup>42</sup> to Kazuo Ishiguro<sup>43</sup> – this kind of knowledge could hardly spontaneously generate prescriptions about the treatment of animals for the purposes of practical thought.<sup>44</sup> Any normative implications of the (purportedly) non-anthropocentric knowledge we may have acquired through artistic inspiration would still require being worked out through ethical deliberation (an exquisitely human, and hence epistemically anthropocentric, practice).

<sup>40</sup>John Rawls, *Political Liberalism* (Columbia University Press 1993).

<sup>41</sup>Karin Lesnik-Oberstein, 'Literary Pedagogy, and Extinction Rebellion (XR): The Case of *Tarka the Otter*' in John Parham (ed), *The Literature and Politics of the Environment* (Boydell & Brewer 2023).

<sup>42</sup>Anna Kérchy, 'Alice's Non-Anthropocentric Ethics: Lewis Carroll as a Defender of Animal Rights' (2018) 88 *Cahiers Victoriens et Edouardiens* <<https://doi.org/10.4000/cve.3909>> accessed 21 January 2025.

<sup>43</sup>David P Rando, 'Nonhuman Animals and Hope: Kazuo Ishiguro's *Never Let Me Go* and Philip K Dick's *Do Androids Dream of Electric Sheep?*' (2023) 69 *Modern Fiction Studies* 466.

<sup>44</sup>Plato points out the discontinuities between artistic and normative forms of knowledge. Inspired literature thrives on undecidability and irreducibility, through the representations of irreconcilable commitments and perspectives; conversely, 'the lawgiver in his law ... must always publish one single statement about one matter'. Plato, *Laws*, 719c-19d.

The fact that neither the neural mechanisms of empathy nor the ineffable ones of inspiration may deliver mental content generating an epistemically non-anthropocentric animal ethics, however, is no cause for despair. We may, after all, not need epistemically non-anthropocentric knowledge when thinking about how to do right by animals. An empathy-driven anthropocentric projection of human feelings/desires/interests onto animals may be a perfectly good starting point.<sup>45</sup>

Contemporary animal studies and animal rights literature now challenge ‘the taboo against anthropomorphism’,<sup>46</sup> as illustrated by Taylor<sup>47</sup> and Anderson.<sup>48</sup> Even without embracing anthropomorphism, it hardly stretches credibility to postulate important cross-species similarities. These, together with careful ethological and ecological observation and research, can form a good (epistemically anthropocentric) basis for attributing certain interests to animals, which will then feature in our (epistemically anthropocentric) ethical deliberations. Indeed, the ‘five freedoms’ worldwide standard for the treatment of livestock ‘are based quite clearly on the “four freedoms” applicable to human beings that ... Roosevelt had already formulated in 1941’.<sup>49</sup>

While it may be true that ‘human attributions of mental states to animals are often extremely inaccurate’,<sup>50</sup> the greatest challenge is less in coming up with a working conception of animal interests/well-being, than in figuring out its implications for practical thought, given certain ineliminable facts of life (such as resource scarcity and inter-species conflicts of interests). This brings us from the question of epistemic anthropocentrism to the question of normative anthropocentrism.

#### 4. The inevitability of normative anthropocentrism

If epistemic anthropocentrism is inescapable, so is normative anthropocentrism. A first sense in which animal ethics cannot but be normatively anthropocentric is the ‘inescapable anthropocentrism of responsibility’.<sup>51</sup> This is not the sense of normative anthropocentrism I described above, but it is one useful way of thinking about normative anthropocentrism. It draws attention to the fact that it is always humans who are the addressees of ethical obligations towards animals.

Consider, specifically, the case of animal rights. Any question about animal rights is necessarily also a question about humans, centrally so. To state that a right exists is to make a claim about somebody being under a duty to respect, protect, or promote the interest in which the right is grounded.<sup>52</sup> But the duty-holders, when it comes to

<sup>45</sup>Compare Thomas Kelch, ‘The Role of the Rational and the Emotive in a Theory of Animal Rights’ (1999) 27 *Boston College Environmental Affairs Law Review* 1, 38–39.

<sup>46</sup>Rando (n 44) 468.

<sup>47</sup>Nik Taylor, ‘Morality and Our Lives with Animals’ (*The Conversation*, 10 September 2014) <<https://theconversation.com/morality-and-our-lives-with-animals-30726>> accessed 22 April 2025.

<sup>48</sup>Elizabeth Anderson, ‘Animal Rights and the Value of Nonhuman Life’ in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005) 291–92.

<sup>49</sup>Anne Peters, ‘Liberté, Égalité, Animalité: Human-Animal Comparisons in Law’ (2016) 5 *Transnational Environmental Law* 25, 34.

<sup>50</sup>Mameli and Bortolotti (n 38) 84.

<sup>51</sup>Heiner Bielefeldt, ‘Moving Beyond Anthropocentrism? Human Rights and the Charge of Speciesism’ (2021) 43 *Human Rights Quarterly* 513, 524–26.

<sup>52</sup>Joseph Raz, ‘On the Nature of Rights’ (1984) 93 *Mind* 194.

animal rights, are always humans.<sup>53</sup> Even ethical questions about the relations between different animals or species presuppose human intervention to manage those interrelationships. Should you rescue that butterfly from the spiderweb? It is idle to say the butterfly has a right to life, if spiders exist in the world which have evolved to trap and eat them, but there are no humans around able to make the spiders go hungry. The concept of right would be redundant under these circumstances, inherently failing to do any practical work. Thus, any question of practical ethics involving animals is necessarily anthropocentric: it will always centre humans as the agents with responsibilities or duties to act in particular ways, to let nature run its course, etc.

If practical questions about animal ethics are normatively anthropocentric in the sense that they must centre humans as duty-holders, need they also be normatively anthropocentric in the sense I foreground in this article – that is, in the sense of centring human well-being over and above that of animals? This is the most controversial point in discourse on anthropocentrism and animal rights. Those who call for animal rights and/or who invite us to abandon an anthropocentric ethical perspective are primarily concerned precisely with the ways in which human interests are put above those of animals and nature.

As we have seen, realising the (genuine) interests of humans in many cases does not require trade-offs with the interest of nature or animals; but in just as many cases the relationship between human and non-human interests is genuinely conflictual, as it may be between members of different non-human species (think of all predator-prey or parasite-host relationships).

What would it be like to be normatively non-anthropocentric in resolving such conflictual scenarios? It cannot mean that we must treat all animal life on a par with human life. It would be practically impossible to do so. The most basic activities necessary for human survival require us at the very least to tolerate loss of non-human life as collateral damage, in ways that would be ethically unacceptable if those losing their lives were human. Thus, even sustainable, ethical vegetable farming cannot avoid the loss of countless invertebrate lives in the interest of feeding humans.

Nonetheless, perhaps we can be normatively non-anthropocentric, in the sense of valuing animal and human interests exactly alike, at least in our dealings with more complex life forms. Numerous justifications are advanced for drawing such distinctions between more and less complex animal life. It has been argued, for example, that we have greater ethical obligations toward life forms that possess sentience,<sup>54</sup> or ‘the capacity to have propositional attitudes, emotions, will, and an orientation to oneself and one’s future’,<sup>55</sup> or a list of capabilities for functioning and flourishing,<sup>56</sup> or ‘capacities and

<sup>53</sup>O’Neill (n 26) 133.

<sup>54</sup>Peter Singer, ‘Ethics beyond Species and Beyond Instincts: A Response to Richard Posner’ in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005) 79; Sue Donaldson and Will Kymlicka, ‘Linking Animal Ethics and Animal Welfare Science’ (2016) 1 *Animal Sentience* 1, 2; Christine M Korsgaard, ‘Précis of Fellow Creatures: Our Obligations to the Other Animals’ (2022) 105 *Philosophy and Phenomenological Research* 216, 218. The concept of sentience is now used in some legislation to encourage or require ethical treatment of (certain) animals. See for example Animal Welfare (Sentience) Act 2022 (UK).

<sup>55</sup>Anderson (n 48) 278, citing Tom Regan, *The Case for Animal Rights* (University of California Press 1983).

<sup>56</sup>Martha Nussbaum, ‘Beyond “Compassion and Humanity”: Justice for Nonhuman Animals’ in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005).

interests',<sup>57</sup> or 'welfare and agency interests' whose thwarting makes their holders vulnerable,<sup>58</sup> or vulnerability to intense suffering.<sup>59</sup>

But it seems doubtful that our sense of ethical obligations towards more complex forms of life, whether grounded in one or the other of these attributes, can be divorced from an anthropocentric appreciation of the ultimate value of specifically human life. Don't we value the kinds of attributes listed above in part because we possess them ourselves? Are human beings not always in the background of our minds as the paradigmatic case of life form endowed with moral status? Unsurprisingly, Nussbaum's list of animal capabilities as a ground for animal rights is explicitly modelled on human capabilities;<sup>60</sup> Fasel candidly justifies ascribing fundamental rights to at least some animals on the basis of scientific findings revealing similarities between them and humans;<sup>61</sup> even Ladwig's apparently non-anthropocentric argument for animal rights turns out to re-centre the human where it declares that 'an animal possesses a right in precisely that respect in which it sufficiently resembles a human being who possesses a right in this very regard'.<sup>62</sup>

Even if it were possible to accord special ethical treatment to sentient animals (or animals that have relevant capabilities, etc) without implicitly reinscribing normative anthropocentrism in the sense just clarified, normative anthropocentrism will come back to haunt us whenever a genuine conflict between human and animal vital interests occurs. Imagine a hoard of starving rats threatening to consume scarce food supplies that are necessary to guarantee a human community's own survival. Do we accord the rats' interests in feeding and surviving the same importance as their human counterparts? Does that ethical question even arise?

Crucially, no assumption of human superiority need be made to justify the anthropocentric choice to favour human lives over those of rats. This can readily be appreciated by considering another hypothetical scenario. Imagine a master-race of vampires showing up on earth, whose survival depends on human victims, and who are superior to us in form and rational capacity, more exquisitely sentient, and better endowed than us with any of the attributes or capabilities humans especially pride themselves on. We would hardly feel the need to morally deliberate whether or not to submit to the vampires' claim to treat us as food on the basis of the vampires' objective superiority to us. We would, rather, assert our own right to live against theirs, even if that leaves us, so objectively and abjectly inferior to them, with no choice but to exterminate them.

The special value of human life in our ethical universe has less to do with its being a superior form of life, than with its being human. Indeed, a moment's reflection reveals that I am very much inferior to my dog on a wide range of physical and sensory measures;<sup>63</sup> even when it comes to cognitive development, 'there is no single dimension of cognitive complexity along which all species can be arrayed'.<sup>64</sup> It is therefore a mistake

<sup>57</sup> Alasdair Cochrane, 'Cosmozoopolis: The Case against Group-Differentiated Animal Rights' (2013) 1 *Law, Ethics and Philosophy* 127, 139–40.

<sup>58</sup> Angela K Martin, *The Moral Implications of Human and Animal Vulnerability* (Palgrave Macmillan 2023).

<sup>59</sup> Maneesha Deckha, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders* (University of Toronto Press) 2021, 14, 88–89, 143, 162.

<sup>60</sup> Nussbaum (n 56).

<sup>61</sup> Raffael N Fasel, *More Equal Than Others: Humans and the Rights of Other Animals* (Oxford University Press 2024).

<sup>62</sup> Ladwig (n 20).

<sup>63</sup> See Paul W Taylor, 'The Ethics of Respect for Nature' (1981) 3 *Environmental Ethics* 197.

<sup>64</sup> Mamei and Bortolotti (n 38) 86.

to conflate, as is frequently done,<sup>65</sup> normative anthropocentrism (the view that human interests especially matter) with the assumption that human life is superior to other forms of life. Whilst speciesism wrongly makes that assumption, no such assumption is required for taking the inevitably normatively anthropocentric perspective involved in human attempts at grappling with animal ethics.

We necessarily take a normatively anthropocentric perspective in cases genuinely involving inter-species conflicts of interests, not because human life is superior to other forms of life, but because it is our life. ‘We have no choice but to be specially interested in ourselves and those close to us’.<sup>66</sup> Other cases discussed in animal rights literature – such as Regan’s example of four humans and a dog on a lifeboat that can carry only four,<sup>67</sup> or Epstein’s hypothetical of limited supplies of a pill that cures a disease widespread between both chimps and humans<sup>68</sup> – are also best accounted for in these terms. They are not properly explained by appealing to humans’ superior capacities for sentience, reason, awareness, project-making, etc. when compared to dogs or chimpanzees.

Normative anthropocentrism comes with the territory of being human, and of experiencing ourselves as a distinct species. That experience of ourselves is not an arbitrary construct: it is based on extra-linguistic realities which the language of biology attempts to capture. The logic of what I call normative anthropocentrism is not a kind of tribalism or nationalism writ-large, in contrast with what some commentators who embrace it sometimes imply.<sup>69</sup> Tribalism or nationalism are not based on extra-linguistic experiences of the kind that make it appropriate to accord different weight to different people’s human rights depending on tribe or national membership. The whole point of international human rights is precisely to transcend the barriers of that kind of membership. Species membership, on the other hand, cannot be wished away when considering genuine inter-species conflicts of interests. Unlike conflicts of interests between tribes and nations, certain inter-species conflicts of interests are a structural feature of ecosystems and the natural world, not a contingent human artefact.

One radical objection to normative anthropocentrism as conceived here (the view that accords special value to human interests and well-being) might proceed from Korsgaard’s argument that it does not make sense to ask if human good is more important than animals’ good. For Korsgaard, there ‘is no point of view from which we can plausibly give a rank ordering of the subjects for whom things are good’.<sup>70</sup> It is indeed true that there is no Archimedean viewpoint from which the question of the importance of human interests relative to animal interests can be answered; but why should we need

<sup>65</sup> Helen Kopnina et al, ‘Uniting Ecocentric and Animal Ethics: Combining Non-Anthropocentric Approaches in Conservation and the Care of Domestic Animals’ (2023) 26 *Ethics, Policy & Environment* 265, 268; Louis Arthur Gough, ‘Veganism’s Anti-Anthropocentric Capacity. A Critical Analysis of the Advocacy Discourse of Three Prominent Vegan Organisations’ (2023) 11 *Relations* 9, 10–11.

<sup>66</sup> Midgley (n 23).

<sup>67</sup> Regan (n 55) 285–86.

<sup>68</sup> Richard A Epstein, ‘Animals as Objects, or Subjects, of Rights’ in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005) 156.

<sup>69</sup> Richard A Posner, ‘Animal Rights: Legal, Philosophical, and Pragmatic Perspectives’ in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2005) 64; Bernard Williams, ‘The Human Prejudice’ in Bernad Williams (ed), *Philosophy as a Humanistic Discipline* (Princeton University Press 2008) 150.

<sup>70</sup> Korsgaard (n 54) 216.

one? Being human, we have a natural viewpoint readily available to us: the human one. Questions about ethical obligations arise for us because we are humans, and we can only address them anthropocentrically. Precisely because goodness and importance are, as Korsgaard puts it, 'tethered',<sup>71</sup> human good must, for humans, rank more highly than nonhuman good. Korsgaard's surprising conclusion that we cannot fully meet our moral obligations to animals<sup>72</sup> is an artefact of failing to take the only viewpoint that is available to ethical thought as an irreducibly human practice: a normatively anthropocentric viewpoint.<sup>73</sup>

For the human species, human/animal dualism is an ineliminable fact of life, which explains the inescapability of normative anthropocentrism. Thus, to say that (normative) anthropocentrism 'undergirds the human/animal dualism'<sup>74</sup> gets the issues exactly the wrong way round. Commentators also miss the point when they claim that normative anthropocentrism is ethically and scientifically displaced by advances in scientific knowledge providing evidence of animal sentience, agency, cognition, etc.<sup>75</sup> Such advances do not displace the phenomenological significance of species membership.

Note that explaining the inevitability of something is not the same as justifying something. I don't know that normative anthropocentrism is susceptible to justification – no more so than our desire to live is. Williams comes closest to a justification where he illustrates, through hypothetical scenarios, that giving up on what he calls 'the human prejudice' would be likely to lead to radical self-doubt and self-hatred.<sup>76</sup> If such dispositions (unattractive in themselves) would – as seems to me likely – also undercut our capacity for practical thought, then his arguments also seem to vindicate the intuition that normative anthropocentrism is an inescapable feature of the human practice that goes under the name of ethics.

The fact that 'the leading contemporary theories of the moral status of animals ultimately privilege the interests of human beings over nonhuman animals'<sup>77</sup> is not, in itself, the problem that some pro-animal philosophers think it is. Far from it, it is one of the very pre-conditions of ethical thought. Once we appreciate this, we can usefully turn to the crucial ethical question of whether, in any given case where non-human interests are impinged upon, this is as a result of (legitimate) normative anthropocentrism or (illegitimate) speciesism.

## 5. Animal rights: moral and legal

What are the implications of this for animal rights? A pervasive assumption in the literature on animal rights is that if we hold on to anthropocentrism, then we cannot extend rights to animals. But this holds true – as matter of tautology – only if we arbitrarily

<sup>71</sup>ibid.

<sup>72</sup>ibid 218.

<sup>73</sup>As Williams notes, rejecting normative anthropocentrism (his preferred terminology is 'human prejudice') 'shares a structure with older illusions about there being a cosmic scale of importance in terms of which human beings should understand themselves'; but the conclusions of practical reason cannot 'be licensed in some respects and condemned in others by credentials that come from another source, a source that is not already involved in the peculiarities of the human enterprise.' Williams (69) 147.

<sup>74</sup>Trigg (n 12) 78.

<sup>75</sup>Almiron and Fernández (n 30) 2021.

<sup>76</sup>Williams (n 69) 151–52.

<sup>77</sup>Steiner (n 11) 4.

restrict anthropocentrism to the (speciesist) view that animal interests have no intrinsic value.

First, a distinction is in order between legally created, positive rights and our (or other species') important moral rights. When it comes to legally created rights, it is hard to see why animals could not be made holders of rights. If the law can ascribe rights to entities such as companies, there is no reason why it cannot choose to do so in respect of animals. The interesting question is whether it would be a good idea.

If the law ascribed rights to animals, it would not do so for the kinds of purposes for which it tends to ascribe them to companies. Although human rights bodies have found corporations bearers of human rights,<sup>78</sup> and although it might be desirable to regard companies as subjects of human rights when certain conditions obtain,<sup>79</sup> the paradigmatic case of corporate rights is not that of corporate human/fundamental rights; rather, it is the ascription to companies of ordinary legal rights to enable them to carry out practical functions related to their profit-making goal. As humans, the law may similarly entrust us with legally created rights in order to facilitate our day-to-day business. Humans, however, also have important moral rights that the law itself is often thought of as merely recognising rather than creating.

In the debate about animal rights, rights are understood along the latter lines – as the animal equivalent of human rights. Animal rights advocates are saying that animal well-being matters a great deal, that it calls for protection as a matter of sound morality, and that rights are the appropriate concept to do the practical moral and legal work. Thus, the key question is not whether or not the law could make animals rights-holders, but whether it should. More precisely, this question can be broken down into two more specific questions: first, whether animals have important moral rights; and secondly, if they do, whether these should be transposed onto the legal plane, in the form of legally recognised fundamental animal rights.

Such distinctions are not always clear in animal rights literature, and the attendant questions are not always addressed systematically. This is because there is ‘widespread confusion over the term “animal rights”,<sup>80</sup> and even ‘most legal writing in this field operates with a hazily assumed, rudimentary and undifferentiated conception of animal rights.’<sup>81</sup> The next section addresses the question of whether animals have moral rights, and some of its implications. The question of whether animal rights should be positivised into law is addressed in the section preceding the Conclusions.

## 6. Affirming animals' moral rights, anthropocentrically

There is consensus that if animals only have instrumental value – if their value is exhausted by the positive consequences they can have for human life – then they have no rights. We may dismiss the instrumental view. Laws permitting animals to be treated in such a way as if they only had instrumental value are badly in need of reform.

<sup>78</sup>Marius Emberland, *The Human Rights of Companies: Exploring the Structure of ECHR Protection* (Oxford University Press 2006).

<sup>79</sup>Andreas Kulick, ‘Corporate Human Rights’ (2021) 32(2) *European Journal of International Law* 537.

<sup>80</sup>Jane Kotzmann and Nick Pendergrast, ‘Animal Rights: Time to Start Unpacking What Rights and for Whom’ (2019) 46(1) *Mitchell Hamline Law Review* 156, 165.

<sup>81</sup>Saskia Stucki, ‘Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights’ (2020) 40 *Oxford Journal of Legal Studies* 533, 534.

If animals do not have merely instrumental value, it means that their life and well-being are intrinsically valuable. Does it follow that they have (moral) rights? Animal rights theorists tend to rely on the so-called interest theory of rights, because its emphasis on well-being rather than agency better accommodates animals as rights-holders.<sup>82</sup> Stucki and others argue that an entity can be a right-holder just as long as it is capable of having interests that are intrinsically valuable: on this view, if animals' well-being is intrinsically valuable, animals have the capacity for rights.<sup>83</sup>

Raz, however, articulates a more complex version of the principle of the capacity for rights. He argues that (barring the case of artificial persons) only entities whose well-being is of ultimate value can be holders of rights. He illuminates this point precisely by discussing animal rights. He says that those who think that animals' well-being is of ultimate value will conceive of animals as rights-holders, unlike those who believe that only human well-being is of ultimate value. The latter will not necessarily be committed to the view that animal well-being has no intrinsic value. Raz says that, for example, his neighbour's dog is not valued only as a tranquilizer (that is, because of its instrumental value); rather, the dog non-instrumentally contributes to the neighbour's own well-being, to the extent that a life with dogs is a valuable form of life. This means that the dog's well-being is intrinsically, and not merely instrumentally, valuable; yet, if it is not also of ultimate value (because it remains valuable only to the extent that it non-instrumentally contributes to human life and its quality), then the intrinsic value of the dog's life will not qualify the dog as a right-holder.<sup>84</sup>

Raz's analysis suggests that it is conceivable to establish duties to treat animals in ways consistent with the view that they have intrinsic value, yet without ascribing rights to them. After all, rights are only one of the grounds for duties: what is distinctive about them is that they ground duties in the interests of other beings (the right-holders). But we might establish duties to treat animals in ways that are consistent with the recognition of their intrinsic value on some ground other than the animals' own interests. For example, if pet dogs' well-being is a necessary element of a valuable form of human life (a life with dogs), then the justification for holding owners to be under a duty not to mistreat their dogs may be that their own well-being (as people who happen to have pet-dogs) demands it. Even our duties towards animals with which we have no involved relationship may be justified on this kind of basis. Imagine a small rodent colony which is neither instrumentally harmful nor beneficial to humans, and plays no key role in the local ecology. When planning a path to make a beauty spot accessible to human visitors, we may have a duty to design the route so as not to harm the colony, despite some loss of views. Our reason for the duty may be that we care about human virtues: we do not want to be the sort of species that causes avoidable distress. These examples illustrate that we may have and rely on certain moral justifications for our duties to treat animals in ways that are consistent with a recognition of their intrinsic value, but which do not depend on conceptualising animals as rights-holders – a conceptualisation that, according to Raz, would commit us to the (controversial) view that animals' well-being is not only of intrinsic, but also of ultimate value.

<sup>82</sup>ibid 542; Matthew H Kramer, 'Do Animals and Dead People Have Legal Rights?' (2001) 14 *Canadian Journal of Law and Jurisprudence* 29, 30; Peters (n 49).

<sup>83</sup>Stucki (n 81) 542.

<sup>84</sup>Raz (n 52) 205–06.

Yet, there is something contrived about such examples purporting to bring home the distinction between intrinsic and ultimate value, and its conceptual relationship to rights. If it is virtuous for humans to refrain from inflicting distress, is it not because we acknowledge that those at the receiving end have an interest in not experiencing it?<sup>85</sup> Similarly, if a life with dogs only goes well when humans treat their dogs well, it must be because it is good for the animals to be so treated: otherwise, we cannot experience the virtue of so treating them.

Contrast this with the case of art. Art also non-instrumentally contributes to human well-being as a necessary ingredient of a valuable form of life (a life with art). Like many others, I take the view that art is intrinsically valuable, and that we have moral duties not to destroy good art. But that is not because art has any interests of its own that come into the equation. Animals, on the other hand, do have such interests, and we cannot account for their non-instrumental contribution to human well-being apart from the fact that animals have interests that matter in themselves, in their own right, independently of how they benefit us.

The upshot is that, in the case of animals (but not art), the distinction between intrinsic and ultimate value seems to collapse. The attempt to establish that animals have more than instrumental value and less than ultimate value, where having ultimate value is understood as one's well-being mattering in its own right, fails. If we abandon, as we should, the view that animals only have instrumental value, we are bound to acknowledge that animals' intrinsic value is just the fact of their well-being mattering in its own right, and hence qualifying them for being rights-holders. To say that they have rights is to say no more than that we have duties towards them that are grounded in, that is justified by, their own interests (interests being aspects of their well-being).<sup>86</sup>

My discussion has been to the effect that if we have duties towards animals, and if animals have intrinsic value, then animals have rights. Their intrinsic value exceeds the sense in which a work of art has intrinsic value. The intrinsic value of art means that it matters to humans for the kind of thing that it is. Some animals may also have intrinsic value in that sense, but all animals' intrinsic value additionally means that their interests matter quite independently of any instrumental or non-instrumental contribution they make to human life and its quality. To the extent that these interests matter enough to ground certain duties in us towards animals, then animals have rights.

There is nothing epistemically non-anthropocentric about this conclusion. It has been argued that the recognition that animals 'have sakes or goods of their own (independent of human interests) ... which are then defined as (intrinsically valuable) ends (to them)' may be seen as 'a matter of discovery rather than judgement', and hence may be treated as epistemically non-anthropocentric.<sup>87</sup> However, the determination to treat such goods as intrinsic goods within our normative universe is dependent on human judgements about the goodness of inclusivity, benevolence, or any of the other grounds that may be advanced for so treating

<sup>85</sup>Compare Bilchitz, 'Moving Beyond Arbitrariness' (n 7) 44–46 (arguing that it is artificial to justify animal welfare laws in light of humans' interest in not having their sensibilities offended by cruel behaviour).

<sup>86</sup>While Beauchamp's ((n 3) 208–09) claim that all duties are ultimately grounded in rights (and hence in the right-holder's interests) is controversial, it seems true that when it comes to animals, our duties to them are (principally) so grounded.

<sup>87</sup>Hargrove (n 31) 187.

them.<sup>88</sup> In short, it is nothing if not epistemically anthropocentric. For after 'discovering that something has a good of its own, ... humans must decide to intrinsically value it'.<sup>89</sup>

The recognition that animals have rights is also normatively anthropocentric. This is because it does not displace the special value of human well-being.<sup>90</sup> Thus, from recognising that animals have rights it does not follow that the duties correlative to those rights track the ones correlative to the important moral interests of human beings.<sup>91</sup> Because normative anthropocentrism – the fact that we cannot genuinely treat nonhuman interests on a par with human interests – is a structural feature of ethical thought, conflicts between human and animal rights do not morally resemble conflicts of human rights. In the case of conflicts of human rights, the parties are theoretically interchangeable and the outcome would remain the same: if A's right to x prevails over B's right to y, then if B were similarly positioned to A and vice-versa, B's right to x would prevail over A's right to Y. But inter-species conflict of rights defy engagement in that kind of thought experiment. Any obligations we have towards animals – even if ultimately grounded in their own interests – must leave room, say, for neutralising disease-carrying or simply bothersome mosquitoes in ways that would be unacceptable if applied to humans. Both certain forms of inter-species collaboration and widespread inter-species conflict (particularly predator-prey relationships and conflicts over scarce resources) are structural features of the natural world. In such a context, and where reasoning about our and other species' interests occurs necessarily through the lens of normative anthropocentrism, individual mosquitoes' interests in life and reproduction fairly easily give way to human concerns.

More controversially, since natural plant-based food sources do not provide humans or most humans with all essential or desirable nutrients/nutrient levels,<sup>92</sup> the moral obligatoriness (if any) of veganism may be contingent on the modern-day availability and affordability of nutritional supplements or artificially enriched vegan food.<sup>93</sup> Even when the most fundamental moral rights of sentient animals hang in the balance, human well-being matters in a special way relative to them, when we look at rights from the only perspective from which rights claims can be assessed – an epistemically and normatively anthropocentric one.

Even domesticated animals, who, as a result of incorporation into human society, have rights to positive provision and rights of social standing, such as the right to roam our homes,<sup>94</sup> do not enjoy them in the same way as relevant humans do. If resources become scarce, my first duty of provision would be towards my children (if I had

<sup>88</sup>For example, Taylor ((n 63) 201) espouses a quasi-Kantian principle not to treat life 'as if it were a mere object or thing whose entire value lies in being instrumental to the good of some other entity.'

<sup>89</sup>Hargrove (n 31) 191.

<sup>90</sup>If (normative) anthropocentrism were defined as the view that 'it is to humans and only to humans that all duties are ultimately owed' (Taylor (n 63) 198), then the conclusion that animals have moral rights (because it takes animal well-being to matter in its own right) would be non-anthropocentric. But remember that normative anthropocentrism for the purposes of my analysis in the text is defined differently: it is the idea that human well-being matters in a special way for ethics, not the view that it is the only thing that ultimately matters.

<sup>91</sup>See Anderson (n 48) 290.

<sup>92</sup>Wolfgang Herrmann, Heike Schorr H, Rima Obeid, and Jürgen Geisel, 'Vitamin B-12 Status, Particularly Holotranscobalamin II and Methylmalonic Acid Concentrations, and Hyperhomocysteinemia in Vegetarians' (2003) 78(1) *American Journal of Clinical Nutrition* 131; Brenda C Davis and Penny M Kris-Etherton, 'Achieving Optimal Essential Fatty Acid Status in Vegetarians: Current Knowledge and Practical Implications' (2003) 78(3 Suppl) *American Journal of Clinical Nutrition* 640S.

<sup>93</sup>Pulina (n 28); compare Nussbaum (n 56) 318.

<sup>94</sup>Anderson (n 48) 284–85.

any). Normative anthropocentrism is not defeasible; domesticated animals' incorporation into human society does not make it so.

## 7. Questioning animals' legal rights

Stucki notes that although 'animal rights have originally been framed as moral rights, they are increasingly articulated as potential legal rights'.<sup>95</sup> This is in part driven by pro-animals advocates and scholars' disappointment at the performance of animal welfare statutes, as well as their critique of what they see as the flawed logic of the welfare approach.<sup>96</sup> Indeed, animal welfare statutes have a history of being applied in ways that suggest the dice is almost invariably loaded to yield outcomes unduly disadvantageous to animals.<sup>97</sup> Nonetheless, my view is that the problem is better addressed by strengthening animal welfare laws (which suffer from both underenforcement and limited coverage)<sup>98</sup> than by translating animal moral rights into legal statements of justiciable fundamental rights. The latter strategy carries two risks not involved in the former.

The first risk is that animal-human conflicts of interests may be misjudged by being assimilated to human rights cases. Positivised into law, animals' fundamental rights may be taken to carry with them a special, uncompromising, near-irresistible force, as well as a presumption that correlative obligations are of the same order as those owed to other human beings.<sup>99</sup> Indeed, animal rights advocates intend the introduction of express animal rights into law to have precisely the effect of making the balancing of human and animal interests/rights more or exactly like the balancing of different human rights.<sup>100</sup> For many, the goal of deploying the language of animal rights is to abolish all uses of animals for human purposes, which they object to as a matter of principle.<sup>101</sup> They lament that the kinds of moral animal rights that underpin animal welfare laws 'are highly infringeable' and 'evaporate in the face of consequential considerations'.<sup>102</sup> They expect that positivised fundamental animal rights would make a difference to this, and they do so on the basis of assimilating animal to human rights, as 'a particularly robust kind of legal protection against conflicting individual or collective interests'.<sup>103</sup> This logic assumes a false equivalence between animal and human rights which, in obscuring the structural centrality of normative anthropocentrism to ethics, may lead to poor outcomes.

The second risk is the precise converse of the one just discussed. Modes of rights balancing appropriate to the context of conflicts between animal and human rights may spill over to contexts where they are less appropriate – namely, conflicts of human rights.

<sup>95</sup>Stucki (n 81) 534.

<sup>96</sup>Jane Kotzmann, 'Sentience and Intrinsic Worth as a Pluralist Foundation for Fundamental Animal Rights' (2023) 43 *Oxford Journal of Legal Studies* 405. See generally Gary L Francione, 'Reflections on Animals, Property and the Law and Rain Without Thunder' (2007) 10 *Law and Contemporary Problems* 9; Will Kymlicka, 'Membership Rights for Animals' (2022) 91 *Royal Institute of Philosophy Supplement* 213, 215–16; Kotzmann and Pendergrast (n 80).

<sup>97</sup>Bryan Vayr, 'Of Chimps and Men: Animal Welfare vs. Animal Rights and How Losing the Legal Battle May Win the Political War for Endangered Species' [2017] *University of Illinois Law Review* 817, 823–24.

<sup>98</sup>Cass R Sunstein, 'Introduction: What Are animal Rights?' in Cass R Sunstein and Martha Nussbaum (eds), *Animal Rights : Current Debates and New Directions* (Oxford University Press 2005) 6.

<sup>99</sup>See Anderson (n 48) 293–94; Fasel (n 61) 3.

<sup>100</sup>Peters (n 49) 49.

<sup>101</sup>Kotzmann and Pendergrast (n 80) 159, 169–71.

<sup>102</sup>Stucki (n 81) 550.

<sup>103</sup>ibid 548.

Sound reasoning about human rights balancing (already a practice fraught with complexity) may be diluted by analogy to new cases involving animal-human conflicts of rights.

Edmundson's defence of animal rights anticipates these objections.<sup>104</sup> But his response that neither of these consequences is guaranteed to materialise does little to assuage the concerns of those who think that the risks are not worth taking, at least if welfare frameworks can be made to work properly. We should, therefore, be cautious in moving from the recognition that animal well-being matters enough to ground animal moral rights, to the conclusion that those moral rights should be translated into legal statements of (fundamental) animal rights. Rather, awareness of animals' moral rights should implicitly underpin the design, reform, and enforcement of legal statements about well-defined and circumscribed legal obligations that humans owe to animals, as found in animal welfare statutes.

'Existing animal welfare laws,' as Stucki argues, 'are not framed in the language of rights and do not codify any explicit animal rights.'<sup>105</sup> Rather, they are duty-focused: they deliberately set out relatively well-defined obligations. Yet, it is a mistake to assume that this must proceed from an ideology according to which 'animals are a means to an end, rather than having value in and of themselves.'<sup>106</sup> Welfare approaches may not signal as unequivocally as rights-based ones that 'animals hold intrinsic value',<sup>107</sup> but Bilchitz shows that, properly understood and enforced, animal welfare statutes are consistent with the view that animal interests are intrinsically valuable, and that these interests provide the justification for the obligations set out in animal welfare legislation.<sup>108</sup>

In sum, animal welfare legislation presupposes animals' moral rights, without positivising them.<sup>109</sup> In so doing, the law makes a deliberate choice: it antecedently spells out the human duties grounded in the implicit rights, rather than spelling out the rights and leaving the range of duties open to evolving specification by adjudicators. This means that when courts extrapolate positivised animal rights from animal welfare statements,<sup>110</sup> it is a classic case of judicial overreach.<sup>111</sup>

Seeking to protect animals' well-being through welfare legislation rather than positivised animal (fundamental) rights is defensible not only in light of the risks involved in assimilating inter-species to intra-species conflicts of rights, but also for reasons (well-rehearsed in other contexts) of legitimacy and institutional competence. As animal rights advocates note,<sup>112</sup> the duties grounded in rights are dynamic and their catalogue

<sup>104</sup> William A Edmundson, 'Do Animals Need Rights?' (2015) 23 *Journal of Political Philosophy* 345, 347–48.

<sup>105</sup> Stucki (n 81) 544.

<sup>106</sup> Kotzmann and Pendergrast (n 80) 177.

<sup>107</sup> *ibid* 186.

<sup>108</sup> David Bilchitz, 'When is Animal Suffering "Necessary"?' (2012) 27 *South African Public Law* 3. See also Kotzmann (n 96).

<sup>109</sup> But see Bilchitz, 'Moving Beyond Arbitrariness' (n 7) 48 ('if the duties to animals arise as a result of their interests in not being subject to suffering, then it is unclear why such duties do not confer rights upon animals not to be subjected to suffering by human beings').

<sup>110</sup> Catherine Hall, 'Diffusing the Legal Conceptions of the Global South and Decolonizing International Law: Crystallizing Animal Rights through Inter-Judicial Dialogue' (2023) 4 *Frontiers in Animal Science* 6; Stucki (n 81) 535; Kristen Stilt, 'Rights of Nature, Rights of Animals' (2021) 134 *Harvard Law Review* 276, 279–80.

<sup>111</sup> In the handful of Constitutions that protect animals (some from the very jurisdictions where animal rights were judicially extrapolated), constitutional language appears to have been deliberately chosen to avoid mentioning rights. Stilt (n 110) 277.

<sup>112</sup> Edmundson (n 104) 349; see also Peters (n 49) 50.

is not closed.<sup>113</sup> Positivising animals' fundamental moral rights, if the rights were treated as justiciable and not simply aspirational, would therefore result in the courts having to make decisions with wide-ranging consequences for human individuals and populations.<sup>114</sup>

To maintain that decisionmakers' discretion should be confined to applying animal welfare laws is not the same as eliminating their discretion. Courts play a key role in ensuring that we make real our commitment to animal welfare, as illustrated in a case from Israel discussed by Bilchitz,<sup>115</sup> where the Supreme Court engaged in a sensitive balancing act, concluding that the current government regulations conflicted with relevant animal welfare legislation.<sup>116</sup> While the Court's approach was similar to human rights proportionality analysis, the context involved the adjudication of definite statutory obligations concerned with a moral limit-case (cruelty). This context is less likely to give rise to the risks involved in the more open-ended exercise of adjudicating something like a Bill of Animal Rights.

But what of the well-rehearsed shortcomings of welfare-based approaches – the systematic underenforcement animal welfare statutes, their under-inclusivity, their failure to go far enough?<sup>117</sup> Animal rights advocates argue that welfare statutes 'always relegate consideration of animal interests below consideration of any rights or interests of humans',<sup>118</sup> and that they discriminate between species, favouring certain classes of animals, such as cats and dogs, perceived to have more value to humans.<sup>119</sup> I argue, however, that these critiques do not expose flaws inherent in the welfare approach as such; at any rate, it is doubtful that a rights-based approach would assist in remedying these flaws.

As is the case with other areas of law (including criminal law protections against violence and deception, argued to be the minimum moral core of any functioning legal system),<sup>120</sup> underenforcement of animal welfare statutes is indeed a staggering problem.<sup>121</sup> Underenforcement is linked, among other things, to enforcements agencies' underfunding and under-resourcing.<sup>122</sup> If fundamental animal rights were introduced in law, rights claims brought in court could afford redress in individual cases of a government agency failing to meet its enforcement responsibilities (in a similar way to how judicial review actions are already available to challenge the legality of public bodies' decisions that affect animal welfare).<sup>123</sup> But rights claims would be much less suitable

<sup>113</sup>Raz (n 52) 199–200.

<sup>114</sup>See *ibid* 285.

<sup>115</sup>'Noah' The Israel Association for the Protection of Animals v Attorney-General In the Supreme Court Acting as High Court of Justice, HCJ 9231/01 [2002–3].

<sup>116</sup>David Bilchitz, 'Does Transformative Constitutionalism Require the Recognition of Animal Rights?' (2010) 25 *South African Public Law* 267. The applicants sought the banning of *foie gras* on the basis of a law that aimed to prohibit cruelty against animals.

<sup>117</sup>Kotzmann and Pendergrast (n 80) 175–76, 183–84.

<sup>118</sup>*ibid* 184.

<sup>119</sup>*ibid* 177.

<sup>120</sup>HLA Hart, *The Concept of Law* (3rd ed, Oxford University Press 2012) 91.

<sup>121</sup>*The Enforcement Problem* (The Animal Law Foundation, 2022) <<https://animallawfoundation.org/enforcement>> accessed 24 June 2025.

<sup>122</sup>*Improving the Effectiveness of Animal Welfare Enforcement* (All-Party Parliamentary Group for Animal Welfare, 2023) 19 <<https://apgaw.org/wp-content/uploads/2022/08/Improving-Animal-Welfare-Enforcement-Report-1.pdf>> accessed 24 June 2025.

<sup>123</sup>Alan Bates, 'The Law as a Driving Force for Animal Welfare Reform' (UK Centre for Animal Law) <<https://www.alaw.org.uk/the-law-as-a-driving-force-in-animal-welfare-reform/>> accessed 24 June 2025. Judicial review, which in the UK can

than activism, lobbying and deliberative parliamentary processes as a means to challenge the structural problems – prime among them budgetary decisions – at the root of enforcement failures. This is both because those decisions are widely perceived to lie outside the courts' expertise and competence, and because they appear tied up with structural features of our economic and taxation model. This is not an argument for complacency, but one about what we can reasonably expect rights claims specifically to do, given the sorts of things that rights are, and how they work.

As to welfare laws not going far enough in protecting animal interests, three responses suggest this is not a convincing reason to depart from a welfare-based approach and embrace a rights-based one. First, not everything that animal rights activists think is a shortcoming in welfare statutes is necessarily one. If welfare statutes are appropriately responsive to normative anthropocentrism, rather than unjustifiably biased towards human interests, then they are not failing in striking a fair balance between human and animal interests merely because they do not afford to them the same weight. Relatively, it is not speciesist *per se* for welfare laws to draw distinctions between species on the ground that humans are particularly invested in the well-being of certain classes of animals, such as pet dogs and cats. As we know, obligations codified in welfare statutes are ultimately grounded in animal moral rights; but often a right-holder's interests possess the importance required to ground the duties that they do (and hence to establish relevant rights) because of a combination of their intrinsic value to the right-holder with their indirect value to others.<sup>124</sup> The fact that this routinely occurs where human fundamental rights are concerned<sup>125</sup> shows that it is a red herring to raise it as a reason for concern when it comes to animal welfare laws.

Secondly, and relatedly, it is a misconception that welfare laws are necessarily built on a speciesist and instrumental ideology that somehow necessitates their shortcomings. As we saw, a recognition of animal moral rights provides the most convincing justification for welfare protections: therefore, to the extent that welfare laws fail to codify appropriate obligations towards animals, grounded in their moral rights, they can and should be reformed. If animal rights advocates can contemplate the radical step introducing positivised animal rights, there is no reason why they should doubt the feasibility of strengthening welfare laws.

Thirdly, it is doubtful that a strategy based on introducing animal rights in law would strengthen governmental accountability for meaningful reform.<sup>126</sup> As with enforcement, rights claims in the courts would be the wrong way to go about prompting policy change. The normatively and conceptually fraught nature of animal rights suggests that this is an area where there is something to be said for the 'epistemic benefits'<sup>127</sup> of collective decision-making of the sort that occurs in deliberative democratic settings. Even if a court came to the right decision about the policy changes needed for the law to align with fundamental animal rights, having the court instruct the government to carry out reform in such a contested area would probably prove so divisive as to be

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be initiated by anyone with sufficient interest, effectively already grants animals the 'voice' that animal rights advocates (such as Kotzmann and Pendergrast (n 80) 188) argue it is characteristic of rights to provide.

<sup>124</sup>See Raz (n 52) 207.

<sup>125</sup>Richard H Pildes, 'Why Rights Are Not Trumps: Social Meanings, Expressive Harms and Constitutionalism' (1998) 27 *The Journal of Legal Studies* 725.

<sup>126</sup>Kotzmann and Pendergrast (n 80) 188.

<sup>127</sup>Jeremy Waldron, *The Dignity of Legislation* (Cambridge University Press 1999) 81–82.

counterproductive. Rather than in the courts of justice, it seems more promising to hold governments accountable in the court of public opinion, at the ballot box, and through the accountability function of Parliament for their failure<sup>128</sup> to deliver on their purported commitment to better protect animals.<sup>129</sup>

## 8. Conclusions

Despite some wishful thinking to the contrary,<sup>130</sup> epistemic anthropocentrism is inescapable. A ‘way to conceive of … [non-human] forms of valuing on their own terms’ may well be needed if we want to displace human experience as the necessary point of reference to understand the world.<sup>131</sup> But because it seems dubious that the extension of the word-concept ‘valuing’ can include anything carried out by nonhumans, the point of such a non-anthropocentric project is, for me, hard to grasp.

In showing attachment to epistemically impossible goals, projects committed to epistemic non-anthropocentrism inadvertently assume the near-omnipotence of human mental capacities. Ironically, this misplaced faith seems a hangover from the very position that Mylius has dubbed ‘active normative anthropocentrism’ – namely, the view that humans are superior to nature.<sup>132</sup> We can and should eschew this kind of normative anthropocentrism, whether it takes the form of assertions of human superiority, or recommending epistemically impossible moves that, in the name of disclaiming such superiority, ratify belief in our omnipotence. But the fact that we belong to the human species means that we cannot fail to treat human interests as especially important relative to other species: we cannot, that is, avoid normative anthropocentrism in the different sense used throughout this paper.<sup>133</sup>

Just because epistemic and normative anthropocentrism are inescapable, however, does not mean that animals do not have rights. Animals have moral rights because they have sufficiently important interests, which matter independently of our own, and matter to the extent of grounding duties in us. But this normative statement can only be arrived at and affirmed anthropocentrically; and its implications cannot be worked out other than from an epistemically and normatively anthropocentric perspective.

Saying that animals have fundamental moral rights is not the same as arguing that those rights should be positivised into legal rights. There is nothing suspect about such divergence: as Fasel argues when defending his own pragmatic approach to animal rights, ‘law plays by different rules than philosophy’.<sup>134</sup> Several practical and some

<sup>128</sup>As illustrated, to name one, in the ill-fated Animal Welfare (Kept Animals) Bill 2023 (UK).

<sup>129</sup>In the British context, see for example Department for Environment, Food and Rural Affairs, *Our Action Plan for Animal Welfare* (2021) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/985332/Action\\_Plan\\_for\\_Animal\\_Welfare.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985332/Action_Plan_for_Animal_Welfare.pdf)> accessed 21 January 2025.

<sup>130</sup>de Villiers (n 1); Elisa Aaltola, ‘The Philosophy behind the Movement: Animal Studies versus Animal Rights’ (2011) 19 *Society & Animals* 393, 395.

<sup>131</sup>Mylius (n 19) 179.

<sup>132</sup>*ibid* 185.

<sup>133</sup>The ordinary meaning of anthropocentrism emphasises the central, not the exclusive, significance of human well-being: ‘Anthropocentric’, *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/Anthropocentric>. It is only by redefining (normative) anthropocentrism narrowly, as the view that only human beings have intrinsic value, that pro-animal commentators (such as Etieyibo (n 15); Thaddeus Metz, ‘How to Ground Animal Rights on African Values: Reply to Horsthemke’ (2017) 7 *Journal of Animal Ethics* 163) are able to resist the charge that their own ethical system is anthropocentric. But such a narrow definition of anthropocentrism deprives it of conceptual distinctiveness, effectively conflating it with speciesism.

<sup>134</sup>Fasel (n 61) 11.

principled considerations suggest that strengthening both the content and enforcement of welfare laws is preferable to enacting bills of animal rights, let alone extrapolating such legal rights from laws or Constitutions that deliberately fail to mention them.

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### **ORCID**

*Aleardo Zanghellini*  <http://orcid.org/0000-0001-8997-4941>