

KIMBERLY K. SMITH

GOVERNING ANIMALS

Animal Welfare and the Liberal State



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Kuala Lumpur Madrid Melbourne Mexico City Nairobi
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Published by Oxford University Press, Inc.
198 Madison Avenue, New York, New York 10016

www.oup.com

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Library of Congress Cataloging-in-Publication Data

Smith, Kimberly K., 1966–

Governing animals : animal welfare and the liberal state / Kimberly K. Smith.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-19-989575-5

1. Animal welfare—Government policy. 2. Animal rights—Government policy.

3. Liberalism—Social aspects. I. Title.

HV4708.S62 2012

179'.3—dc23 2011046913

9 8 7 6 5 4 3 2 1

Printed in the United States of America
on acid-free paper

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Preface

IN 2005, SHORTLY after Hurricanes Katrina and Rita devastated the Gulf Coast, I began thinking about animal welfare. Granted, this was not an obvious move in response to the Gulf Coast tragedy, nor to the problems of poverty, racial oppression, and environmental degradation that it uncovered. Social inequality and environmental management are arguably the major challenges of the twenty-first century. Why, at this moment, should we be thinking about animals?

One answer, of course, was famously formulated by Claude Lévi-Strauss: animals are good to think with.¹ Thinking about animal welfare may help us to extend and enrich liberal political theory, to make it more relevant to the deeply interconnected social and environmental problems we face. That is part of my project. But I hope this book makes the case that animals are also an interesting and important subject of public policy in their own right. They deserve greater attention by political theorists and, indeed, by the general community of policy makers, activists, and ordinary citizens. This book, then, is intended for that broad audience. It aims to introduce readers to some of the tools and concepts that political theorists use to think about political obligation, the role of the government, and related issues as they apply to animals. But because I don't think political theorists have all the answers, the book attempts to bring others, such as historians and legal scholars, into the conversation. You will find here a lot of theoretical argument but also a lot of excursions into history, law, and public policy—excursions that will, I hope, encourage some creative and critical engagement with the theory presented. We need to improve our ability to govern the natural world, to make the world a better, richer, more sustaining habitat for humans and other species. This is a collective project, and thinking together about our political relations with animals is a good place to start.

Thus although this book focuses on animal welfare, it does so with the understanding that human welfare matters and that animal welfare matters to us largely because all of us are deeply interdependent with animals. I *don't* assume that pursuing animal welfare will necessarily be helpful to human welfare. There are ways of protecting animals that could make social inequality among humans even worse. But there are also ways of not attending to animals that could make life worse for the socially marginalized. My goal here is to consider how we can design political practices and institutions to improve the welfare of the mixed human/animal community overall. In particular, I try to be attentive to the fact that humans' life chances are still too greatly determined by race, class, gender, and ethnicity. These inequalities affect our relations to animals, and the politics of animal welfare will affect these inequalities one way or another. Ultimately, I hope that by investigating the political morality of our treatment of animals, we can figure out how to design practices and institutions that protect the most vulnerable members of our society. In short, this work asks how we can make of our shared world a more fitting home for human lives—lives that embrace the nonhuman beings and phenomena to which we are so deeply, intimately, and variously connected.

I had quite a lot of help writing this book. I benefited considerably from conversations on these issues with Sheri Breen, Ted Clayton, Andrew Rehfeld, Kerry Whiteside, Melvin Rogers, and Jennifer Rubenstein. Jane Caputi, Gavin Van Horn, Adrienne Cassel, Bryan Bates, David Keller, and the other members of the 2009 NEH summer workshop on Aldo Leopold were also very helpful. And I would like to thank my many readers for their generous and insightful feedback. They include Tun Myint, Clara Hardy, David Schlosberg, Rebecca Potter, Annette Nierobisz, Chris Heurlin, Lester Spence, David Schraub, Daniel Groll, Breana Holland, and most of the members of the Environmental Political Theory section of the Western Political Theory Association, as well as the anonymous reviewers for Oxford University Press. Mike and Shane Peterson, Marlene Halverson, and Charlotte Laws generously agreed to be interviewed for this book, and Carleton College, as always, provided the vibrant and supportive intellectual community in which the work took shape. Finally, I am grateful to Don Herzog and Dale Jamieson, whose scholarship, in different but complementary ways, inspired this project.

Introduction

[A] human being is by nature a political animal.

—ARISTOTLE, *Politics*

[A] land ethic changes the role of Homo sapiens from conqueror of the land-community to plain member and citizen of it.

—ALDO LEOPOLD, *A Sand County Almanac*

IN 2002, SENATOR Jesse Helms proposed an amendment to the federal Animal Welfare Act with the aim of preventing the US Department of Agriculture from extending the Act's protection to certain classes of animals. The Act, first passed in 1966 and amended several times since, sets standards of care for warm-blooded animals used by breeders, dealers, exhibitors, and researchers. It mandates, among other things, humane care, training for those who handle animals, and supervision of animal experimentation by Institutional Animal Care and Use Committees. But in 1972, the US Department of Agriculture, which is responsible for enforcing the Act, adopted regulations exempting birds, rats, mice, horses, and farmed animals from its coverage, leaving a relatively small class of animals protected. The regulation was supported by the scientific research community but strongly criticized by animal welfare advocates as unfair and inhumane to the excluded animals. The animal welfare advocates very nearly won their point: In 1998, a lawsuit brought by the Alternatives Research and Development Foundation, a subsidiary of the American Antivivisection Society, resulted in a settlement with the USDA providing that rats, mice, and birds would be brought under the statute's mandate. But before the regulation could be changed, Senator Helms persuaded his colleagues to amend the statute to preserve the exclusion.

Helms's principal argument in favor of the amendment was to "make sure that none of the important work taking place in the medical research community will be delayed, made more expensive, or be otherwise compromised by

regulatory shenanigans on the part of the US Department of Agriculture.” He stressed the importance of animal research to human health and dismissed the proponents of the regulation as “professional activists who delight in creating mischievous controversies like this.” But he did not neglect the animal welfare argument: Noting that the NIH already imposes regulations on the humane care of all vertebrate research animals, he insisted that “a rodent could do a lot worse than live out its life span in research facilities. Isn’t it far better for the mouse to be fed and watered in a clean laboratory than to end up as a tiny bulge being digested inside an enormous snake?”¹ His colleagues apparently agreed, and the amendment passed.

The debate over the AWA suggests that our political relations with animals involve complex ethical judgments. Our laws reflect in part the interests of human beings, but ethical arguments revolving around duties to animals are not out of place in the legislature. Indeed, such arguments resurfaced a few years later, in June 2005, when air force officers had to decide whether Air Force Technical Sergeant Jamie Dana could keep her dog, Rex, a military working dog trained to detect bombs, had worked with Sergeant Dana for three years, until a roadside bomb left Dana critically injured. Dana, no longer on active duty, wanted to take Rex home with her, but Rex was still several years away from his official retirement age. (German shepherds work until they are ten to fourteen years old.) The law was clear: Section 2583 of Title 10 of the US Code permits military working dogs to be adopted by their handlers, but only when they are no longer useful to the military. The law was a recent one; from 1949 until 2000, military working dogs were classified as “equipment” and were therefore kept until they were no longer useful, then “disposed of” (euthanized).² That law was amended in 2000 to allow adoption, and Rex’s case led to another amendment, in 2006, to allow early retirement for working dogs after traumatic events.

Representative Roscoe Bartlett, speaking in support of the 2000 amendment, focused on the community’s duties to these dogs. He told the heart-rending story of Robby, an eleven-year-old Belgian Malinois suffering from missing teeth and arthritis. No longer deployable, he was scheduled to be euthanized. Such a policy defied “normal logic,” according to Bartlett. Surely Robby should “have the opportunity to experience the comforts and joys of normal companionship.” He had “faithfully served [his] country” and enjoyed a “special bond” with his handler that deserved to be respected. Bartlett’s argument carried the day and won him his colleagues’ praise for “looking out for those who cannot speak for themselves.”³

Representative Bartlett was making an appeal to our ethical intuitions, but the ethical judgments involved in these policy debates are not always

straightforward and obvious. For example, in St. Paul, Minnesota, citizens have been discussing how to respond to a growing population of feral cats. Milder winters may account for the increase, which is packing animal shelters to capacity. The chief justifications for trying to reduce the population are the beliefs that feral cats can spread harmful diseases to humans, that they kill a significant number of songbirds and other desirable wildlife, and that life in the wild simply isn't good for cats. But some officials suggest that the problem is overstated, and measures to stabilize the population are controversial. Minnesota law treats feral cats as a nuisance animal that may be shot, like gophers and skunks—but a measure allowing feral cats to be hunted recently failed in neighboring Wisconsin, despite significant public support. Animal rights advocates insist that shooting strays is not humane and will not stabilize the population (because cats' reproductive rate is so high). They propose instead trapping the cats, then spaying or neutering, vaccinating, and releasing them. Several animal welfare organizations in Minnesota have already begun trap-neuter-release programs, which reportedly can be effective in controlling feral cat populations, at least after the programs have been in place for several years. In 2007, St. Paul became the first municipality in the state to adopt such a program.⁴

A similar but more multifaceted problem was the controversy over the navy's decision in 1977 to exterminate the feral goat population on the navy enclave of San Clemente Island. The navy was implementing a decision by the US Fish and Wildlife Service, which concluded that eradicating the goats was necessary to protect endangered plants and animals on the island. The navy planned to shoot the goats from helicopters.

The navy's proposal was challenged by the Animal Lovers Volunteer Association (ALVA), which filed a federal lawsuit on the grounds that the navy's environmental impact statement (required by the National Environmental Policy Act) was woefully inadequate. The court never reached that issue, though; it decided that the association lacked standing to challenge the navy's decision. The group had no special interest in the goats, the judges argued—that is, no interest lying within the “zone of interests” that the National Environmental Policy Act was intended to protect. Goats are not an endangered species; members of ALVA do not, and indeed are not permitted, to visit the island and see the goats; and their general interest in preventing inhumane treatment of animals is not specific enough to count as a legally cognizable injury.

After the lawsuit failed, the navy exterminated most of the estimated fifteen thousand goats. A small number, though, were removed and resettled, or adopted as pets. The American Livestock Breeds Conservancy managed to secure a small breeding population, and the San Island Goat Association is

now attempting to preserve what it calls a “critically-endangered heritage breed.”⁵

These cases, all examples of political practices under attack or in the process of reform, are complicated because they raise questions of animal ethics intertwined with questions of political theory. Is Senator Helms a better representative for animal interests than the “mischievous” professional activists? Should Representative Bartlett be confined by his role to considering only human military personnel, or does he have a duty to represent the interests of military working dogs as well? If so, when does a dog cease to be military property and become a fellow soldier? More generally, how and when does an animal’s welfare become the responsibility of the political community, with a valid claim on the public treasury? If animals’ interests are relevant to policy decisions, who should represent those interests in legislatures, city council meetings, and courts? How do we decide what is fair, what is morally and politically appropriate, in the government of animals? To be sure, certain answers—certain ethico-political principles—are implicit in our practices, but it takes some work to discover what those principles are, whether they are the right principles, and whether our practices adequately instantiate them.

It might seem natural to look to the ethical literature on animal welfare and animal rights for answers to these questions. Since the 1960s, ethicists have developed a large body of scholarship arguing persuasively that animals and humans have morally relevant similarities, that animals can have moral standing, and that we as individuals have important moral obligations to animals.⁶ Moreover, many of these ethicists have pressed the political system to recognize these duties, with a fair degree of success. This literature is an important foundation for my study, but unfortunately it does not address directly the questions I’m asking. Ethicists typically focus on the moral duties we have as private individuals rather than the political duties we have as citizens. But my questions concern *political* obligations. Specifically, I’m concerned with whether and how the state, and more specifically the liberal state, can defend animal welfare. To illustrate the difference: We may agree that you have a private moral duty not to lie to your spouse, but that doesn’t mean the state can legitimately punish you for doing so. Similarly, we may agree that we have individual moral obligations not to inflict wanton harm on animals, but it takes further reasoning and argument to determine what the state’s role is in enforcing that duty—not to mention the numerous related questions, like who should represent animal interests in the political and legal systems or whether the state should recognize property rights in animals.

This work of determining whether a liberal government can defend animal welfare and what tools it can use to do so is the proper domain of liberal political theory. The liberal tradition in political theory is of course a bit difficult to define, but its touchstones include the early social contract theorists (like John Locke) and their heirs (from the American founders to contemporary philosophers such as John Rawls). It is generally characterized by (1) an assumption of human equality and (2) a concern with preserving human liberty, usually (but not always) conceptualized as preserving individual rights from government power. Unfortunately, its focus on human liberty and human equality means that liberal political theory has been remarkably unhelpful on animal governance. Indeed, liberal theorists rarely mention animals except to assert in what respects humans are different from them. Animals (we are told) are those creatures without reason, without language, without autonomy or freedom—and therefore without interests, rights, political status, or representation. Political theory, it seems, can have little to say about such creatures.

Happily, a few political theorists are beginning to challenge that view. Martha Nussbaum, Elizabeth Anderson, Alisdair MacIntyre, Marcel Wissenburg, and Robert Garner have addressed important subjects like whether animals can be members of the social contract and how liberal citizens ought to value animals.⁷ But thus far none of them have offered a fully developed version of liberal political theory that takes seriously the moral status of animals. Indeed, some have suggested that liberalism is too focused on a narrow conception of human freedom to be helpful in protecting animal welfare. I think that conclusion is too hasty. This book attempts to develop liberal political theory so that it can answer the kinds of questions posed above. Specifically, I take up three key liberal concepts—the social contract, property rights, and representation—and explore how they should be understood when applied to animals. I argue against the skeptics that liberalism properly understood can recognize the moral status and social meaning of animals, and it can give us guidance in fashioning animal welfare laws. Liberalism may not take us as far as the more radical defenders of animal rights would like, but it does, I believe, support broader protections for animal welfare than any nation currently provides.

But the skeptics do have an important point about the limits of liberalism. The philosophical problem is this: Liberal theorists typically begin their investigations by dividing the moral universe neatly into people and things. People have moral status and are both the subjects and agents of politics; things, by contrast, have neither intrinsic moral status nor agency of any sort.⁸ Since animals serve primarily to mark the boundary between moral subjects

and things, liberal theory would seem to be wedded firmly to maintaining a bright line between humans and (nonhuman) animals and to treating animals as things.

This dualistic moral universe is of course merely a model—an admittedly simplified conception of the world it is meant to explain—and is perfectly valid to the extent that it is useful for making sense of political phenomena. No doubt it would be adequate if the political community did not have such extensive, complex, and meaningful dealings with animals. But these dealings, I contend, make it impossible to treat animals as mere things, even for the limited purpose of explaining our political world. Animals (a term I will use to encompass not only mammals but also birds, fish, reptiles, and insects)⁹ are too deeply involved in the political sphere—as subjects of regulation, members of families and communities, and even workers—to be treated as mere undifferentiated, nonsentient, inanimate things. They are best understood as neither human persons nor mere things but *fellow creatures*, co-inhabitants of our ecological and social spaces. They form a wildly diverse set, differing among themselves in terms of physical, emotional, intellectual, social, and, accordingly, moral characteristics. Our laws and practices must attend to those differences, as well as their similarities to and differences from humans.

So a liberalism suitable for a state committed to animal welfare cannot be grounded on a strict metaphysical distinction between persons and things. But I won't be arguing that we should simply replace that metaphysical distinction with a different metaphysical foundation. On the contrary, I don't believe liberalism needs a metaphysical foundation per se; our liberal theory can be based on a broad *social* consensus about the status of animals. This book follows the approach taken by John Rawls in *Political Liberalism*: We are trying not to discover universal political truths but to develop a public philosophy for a particular pluralist community—namely (for reasons explained below), for the contemporary United States. In such a community we can expect to find many different comprehensive moral and religious doctrines, reflecting different metaphysical assumptions. So, as Rawls puts it, this public philosophy “should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm.” Instead, it should be supported by an “overlapping consensus” of such doctrines.¹⁰ The liberalism on offer here depends on an overlapping consensus (explained and defended in chapters 1 and 2) that some animals are members of the social contract. A liberal state that enjoys such a consensus has a sufficient social foundation for animal welfare policy, even if citizens disagree about the metaphysical principles supporting it.

This nonmetaphysical approach may worry some readers: After all, what if our social consensus is faulty? Perhaps we mistakenly value some animals more than others, or perhaps we overvalue them. How can we be sure our social practices are justified without delving into metaphysical questions about what sorts of beings have moral status? I address in the following chapters how we can critique, justify, and reform our social practices without resolving these deeper philosophical questions. I leave such philosophical inquiry to others. My aim is more limited: to show that there is a coherent version of liberalism, grounded on a widespread social consensus, that makes sense of the animal welfare policies found in the United States (and many other twenty-first-century industrial democracies). This liberalism is consistent with several plausible animal welfare and animal rights ethics, but it is not based on any particular one.

This point is worth emphasizing: This book is an exercise in political theory, not moral philosophy. Scholars in these respective fields often work on the same problems, including liberal theory and animal rights. But political theory tends to be less abstract, appealing more to empirical data and history than to metaphysical principles. We theorists are more interested in institutions and practices than metaphysics, and we are more likely to treat politics as distinct from other realms of ethics. Moreover, political theory arguments don't always aim for an analytical rigor that compels assent; they may aim instead for a richness that fosters new insights and may change the way one understands the problem. Whether I achieve such richness is for the reader to judge.

More specifically, this book is not a defense of animal rights in the traditional sense. That is, I am not going to spend a great deal of time in this study rehearsing the ethical arguments supporting our direct moral duties toward nonhuman animals. Much has been written about the mental and emotional lives of animals; debates about their cognitive capacities, their ability to feel pain and pleasure, and their sociability and autonomy are rich and ongoing.¹¹ As interesting as those debates are, I would like to move beyond them to explore the political questions that these ethical arguments raise. Thus, for the purposes of this study, I will simply take as settled that animals can have moral standing. That standing may be based on their capacity for suffering, the fact that they are subjects of a life, or their social relationships with humans. Although they are not moral agents, they can be what Tom Regan calls "moral patients"; they can be not only harmed but also *wronged*.¹² For our purposes it is not that important that we settle on one philosophical basis for moral standing. What matters is that virtually all of those doctrines

support, one way or another, moral duties to animals. To be sure, different subcultures have different practices of animal husbandry; in some communities, animal sacrifice is consistent with showing respect for animals, while in others, animal sacrifice is abhorred but hunting is acceptable. But defenders of these practices typically have no trouble acknowledging that animals deserve respect and consideration; they differ on the meaning of the practice at issue, not the moral status of animals.¹³ Thus the moral standing of animals is a *political* fact, a widespread and enduring consensus that supports our laws and public policies.

I will also take as settled that animals can have interests. The concept of interest—understood either as a rational desire or as that which is objectively good for an individual—looms large in liberal theory. Animals may lack the sort of rationality implied by a subjective concept of interest; most of them probably do not weigh alternatives and choose which ends to pursue. But surely in many circumstances they do have an objective good. As Regan puts it, things can go well or ill for them.¹⁴ Animals vary quite a bit in the kinds of interests they have, of course. An animal's degree of sentience and intelligence, and our social relationships with it, all have a significant bearing on whether we (as citizens) must attend to its interests, and on which interests we must attend to. So, for example, I will argue in the following pages that we do *not* have political duties toward all animals; dolphins and deer are after all quite different from dogs and cats, and these differences are critical in the political sphere.

Finally, I will assume that we can usually with a reasonable degree of confidence figure out what animals' interests are. Admittedly, the chief difficulty with according political status to animals is the communication barrier; we can't just ask them what they want. But that barrier must not be overstated. The animals with whom we have the most significant social relationships (pets and livestock) are precisely those with whom we are best able to communicate and whose needs we are best able to satisfy. Otherwise, they would not thrive under our care. In fact, the needs and capacities of many animals may be less difficult to decipher than the more complex needs and capacities of humans. There is always a degree of uncertainty in determining any subject's true interest; the question is whether that uncertainty is so great that it defeats any attempt to satisfy that interest. This issue will surface later, in the chapters on the social contract and representation, where we will consider in greater depth what political difference the social bond and the communication barrier make. But we should begin our investigation with confidence that there is no impenetrable epistemological barrier standing in our way.

But before beginning that inquiry, I would like to consider some general objections to this project. I see four principal concerns: One might object that liberal political theory is primarily concerned with justice, and animals cannot be subjects of justice; that our relationship to animals isn't, properly speaking, "political"; that improving our ethical relationships with animals isn't a liberal value; or that our relationships with animals are too unequal for liberal political theory to apply. If any of these reasons holds water, then animals should *not* be part of the liberal model of politics. That conclusion would not, of course, be equivalent to saying that animals are moral ciphers. Animals might be among those things that can be very important to our moral lives but that needn't appear in our theory of politics, like God or Gaia. But I argue the contrary: Unlike God or Gaia, animals are distinctive subjects of political duties and political concern.

I. Are Animals Subjects of Justice?

Few would deny that to be cruel to animals is a moral failing of some sort. At the very least it is a failing of charity or compassion, and we should be ashamed of it. But the claim that we owe animals justice is thought to be stronger than the claim that we should be kind to them. Regan, for example, argues that "kindness is not something we *owe* to anybody, is not *anyone's* due. To be the beneficiary of a kind act no doubt generally is to be blessed, but no one has a claim on anyone else's kindness." He insists instead that animals are subjects of justice—more precisely, that they have rights we *must* attend to.¹⁵ Justice is not supererogatory.

Of course, as an empirical matter, it is probably not true that justice is a stronger claim than compassion. The animal welfare movement has been remarkably successful in making appeals to compassion, while the animal rights movement, when it appeals solely to our sense of justice, meets considerably more resistance. I'm not sure it is true as a philosophical matter, either, that "kindness is not something we *owe* to anybody." But much of the scholarly literature on animal ethics accepts Regan's argument that our task is to defend duties of justice and not just an ethic of kindness to animals.

A lot of ink has been spilled over this point. Arrayed against Regan we find theorists such as R. G. Frey, who insists that animals cannot have rights because they cannot have interests, and they cannot have interests because they cannot have desires—they lack the cognitive capacity for formulating the beliefs necessary to have desires.¹⁶ A more sweeping attack on the idea of justice toward animals comes from David Hume, who claims that only beings

who are roughly equal in power can owe justice to one another. As he writes in *Enquiry Concerning Morals*:

Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment, the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them. . . . Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other.¹⁷

He goes on to describe animals as beings that are “servilely obedient” and therefore not subjects of justice. And, finally, there are theorists who conceptualize justice as *reciprocal* obligation. Under this view, we respect the rights of others because we expect them to respect our rights in return. These theorists conclude that subjects of justice must therefore have moral agency, which animals lack.¹⁸

This debate is of great interest and importance to philosophers. But it doesn’t seem to matter at all to Representative Bartlett, who spoke quite confidently and successfully about what we *owe* to military working dogs. What Bartlett understands is that even if we define justice so narrowly as to exclude duties to moral patients, we may still have political obligations to them. Whether we call these duties of quasi justice, metaphorical justice, or simply compassion, they still fall within the domain of political morality and are therefore a proper subject of political theory. As Joseph Raz helpfully reminds us, the sphere of political morality extends beyond rights and justice. It consists of all the principles that should guide political action.¹⁹ Those principles must include the ones underlying our political relations with animals.

II. Do Humans Have Political Relations with Animals?

This conclusion that animals can be subjects of justice only invites a broader attack: We might consider that we have duties, even duties of justice, to animals but still deny that those duties fall within the political sphere. They are

(we could argue) purely a matter of personal ethics, not considerations relevant to state action or to being a good citizen. After all, one hallmark of liberalism is the principle of limited government. As I suggested above, the political system does not concern itself with everything that should be done, only with the things that should be done by political actors and institutions. Like religious duties in a secular state, duties toward animals may be important but not relevant to public policy.

Of course, that comparison reveals a major difficulty with the concept of limited government; after all, political actors cannot simply ignore the fact that citizens have religious duties. Even if a set of duties falls entirely within the private sphere, we still need to think about how to fashion public policy to maintain that private space. But I want to make a more general claim: There is an important sense in which we can achieve political relations with (some) animals.

There is of course a long tradition in Western letters of using political terms to describe human/animal relations. When Aldo Leopold suggested that we are “plain member[s] and citizen[s]” of the biotic community, he was challenging the more common notion of humans as rulers, holding dominion over animals. Hector St. John de Crèvecoeur, in the eighteenth-century classic *Letters from an American Farmer*, followed a standard literary convention in having his narrator use such terms to describe how he “governs his cattle,” acting as “a bridle and check to prevent the strong and greedy from oppressing the timid and weak.”²⁰ Indeed, some animal behavior is best understood using political terms, like “dominance” and “submission” among canines or primates.²¹

Is all of this just an appealing metaphor, or do we really have political relations with animals? In the most ordinary sense of the word “political,” certainly we do. Government actors, in their political capacity, make public policy concerning animals and use the machinery of the state to implement those policies. But when normative theorists use the term “political,” they’re usually up to something more than simply describing what governments do. They want to show why what legitimate governments do isn’t the same as tyranny, or armed robbery. “Political,” in this sense, means something deeper and richer than merely “concerning government.”

Aristotle, for example, reserves the term “political” for rule over equals—over free-born citizens who can rule in turn. Rule over slaves, by contrast, is mastery, which is also the form of rule that tyrants exercise over their subjects. Political rule, for Aristotle, is *good* rule (for equal human beings), and it is possible only under certain kinds of constitutions and by citizens with the

right sort of character. John Locke's definition, which closely tracks our modern, liberal understanding of "political," also contains an element of aspiration: Political power is "*a Right of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Common-wealth from Foreign Injury, and all this only for the Publick Good.*"²² Political rule thus has to do with certain functions (regulating and preserving property, defending the community, serving the public good); it is exercised through rules backed by force (penalties); it is principally the domain of the state or government (employing the force of the community); and—a key point—it is the exercise of legitimate or justified power (it is a "*Right*"). This is consistent, too, with Max Weber's definition of the state as the entity that claims a monopoly on the *legitimate* use of force within its borders.²³ For both Locke and Weber, the concept of the political is deeply attached to the act of *justifying* the use of force.

To be sure, Locke's and Weber's focus on the state may be too narrow; feminist theorists have argued persuasively that we can talk about political relations within the family and can identify exercises of social power and relations that take place in the private sphere but are intimately connected to political status.²⁴ But we face a deeper problem: Can our exercise of power over animals be considered "political" even in Locke's narrower sense? Is it the exercise of *legitimate* power?

Joseph Raz's discussion of authority helps us think this through more clearly. Raz defines "authority" as the ability to impose an obligation to obey.²⁵ This is a useful way to differentiate between a thug and a police officer: You obey the thug out of fear, not because you have a moral obligation to obey him. He has power, but not *legitimate* power. The police officer, by contrast, has authority: you recognize that in some cases, he can impose on you a moral obligation to obey his orders. If we accept this distinction, it is clear that one can have authority *only with respect to a rational, moral being*—that is, someone capable of being obligated, of understanding what "authority" and "obligation" mean. Animals, we assume, don't understand these things. Since they don't have the capacity to recognize and follow obligations to obey,²⁶ it seems inappropriate to say we have authority (much less political authority) over them.

Of course, the notion of authority with respect to animals is perfectly coherent when we find the state defending its right to exercise power over an animal against the claims of another human actor. For example, an animal control officer might have to defend her authority over a dangerous dog against the claims of the dog's owner. But in this case, although we might say

that the officer has authority over the dog, what we mean is that the officer has authority over the owner with respect to the dog. That is, she can impose an obligation on the owner to obey her orders.

But Raz points out that authority and illegitimate power aren't the only options. What the animal control officer has with respect to the dog is, according to Raz, *justified power*. This term covers those cases in which one may justifiably exercise power over another while the other still has a right to resist (or, more precisely, no duty to obey). For example, as Raz says, "I do not exercise authority over people afflicted with dangerous diseases if I knock them out and lock them up to protect the public, even though I am . . . justified in doing so." Interestingly, he adds, "I have no more authority over them than I have over mad dogs."²⁷

Political rule, then, can refer to the exercise of justified power by the government (and perhaps by others, if we use the term "political" more broadly) with respect to animals. But that possibility raises another quandary: When we exercise power over animals, to whom do we justify ourselves? We might think that we have to justify ourselves to the animal, but only in an "as if" sense. That is, we might consider that an act is justified only if the animal could agree to it, if the animal were in fact capable of reasoning about such things. (In chapter 2 I will argue that, odd as it sounds, this is precisely what we should do.) But it is also possible that those actors might simply be concerned about justifying their actions to other humans, especially humans who sympathize with the animal.

For example, in the case of the San Clemente Island goat extermination program, the dispute turned on whether the navy's killing of the goats was justified with respect to the goats, but it was ALVA and the courts to whom the navy had to justify itself. However, the chief issue *for ALVA* was whether the policy constituted humane treatment of the goats—or, more precisely, whether the goats' interests were given sufficient weight in developing the program.²⁸ My point is this: Whether we are justifying government actions to the animals themselves or to sympathetic humans, the justification will have to take into account the fact that we believe animals have moral status. That is, the justification will have to refer somewhere to the animal's interests, rights, or welfare (even if those aren't the deciding consideration). Our beliefs about our moral duties to animals play an important role in justifying the use of state power against them.

Let us say, then, that a person (or institution) can have authority over other persons (or institutions) with respect to animals, and can have justified power over animals with respect to the animals themselves. But only

when the justification of power includes reference to the animals' welfare, interests, or rights does our rule deserve to be called "political" in the sense suggested by Aristotle and Locke, as something to be achieved by the best regimes. Under this view, Representative Bartlett's relations with the military working dogs he defended can properly be called political, and so can Senator Helms's relations with the lab mice (although, in my view, to a lesser extent). To refuse to consider the welfare of these animals at all would have been (with respect to the animals) acting like a tyrant or a thug.

Defending that claim, and developing a fuller account of what political rule over animals looks like, will be the task of the rest of this book.

III. Is Achieving Justified Relations with Animals a Liberal Value?

It is possible, of course, that it simply isn't the job of a liberal state to look after animal welfare. Liberalism is first and foremost aimed at protecting liberty, usually understood as individual autonomy: the capacity to make reasonable choices and live life as one chooses. Animals do not have the capacity for that sort of freedom, so perhaps liberal states need not concern themselves with animals' good.

I address this point in more depth in chapters 2 and 3, but here I can briefly offer three reasons liberal states should concern themselves with animals' welfare: First, relations with animals are important to many persons' visions of the good life; they can even figure centrally in a person's life. If the liberal state seeks to preserve and expand citizens' abilities to pursue their own conceptions of the good life, it must give some attention to making possible meaningful, morally justifiable relations with animals.²⁹ The possibility of such relations depends on a background of social practices and beliefs in which such relations can develop. The state may have a role to play in supporting those practices and beliefs, and it may need to regulate institutions and practices—like the mass marketing of animals or animal experimentation—when they erode the more positive and enabling social background we are trying to preserve.

Second, animal lives may have some of the features we value in a free human life. They enjoy a *kind* of natural freedom, or freedom from domination, that many humans find valuable and worth respecting.³⁰ Animals may be guided more by instinct than by reason, but they still have ways of dwelling intelligently in the world. Indeed, aspects of that freedom are shared by

humans; humans, too, may act according to habit, emotion, and other nonrational drives in socially valued ways. This sort of behavior is also included in our liberal conception of a life free from domination.³¹ I would suggest, then, that there is nothing inconsistent or illiberal about including animal liberty among our public values.

Finally, the fact that a liberal state privileges human autonomy does not mean it is free to neglect other values, like kindness and compassion. Such neglect could lead to an inhumane sort of liberalism that leaves no place for communal and spiritual values. Of course, serving other values can sometimes promote and sometimes undermine human autonomy; certainly, many measures to promote animal welfare could detract from human liberty. So we need to think carefully about how to fashion liberal institutions and practices to maximize all the values the state must support in order to create a community conducive to a flourishing human life. Our question is whether we can protect animal welfare and promote enriching animal/human relations in a way that serves—or at least does not undermine—what we value in human liberty. That, certainly, is a proper subject for liberal theory.

IV. Can a Democratic Regime Govern Nonequals?

The discussion above invites a final concern about including animals in liberal theory: Would a strong commitment by the liberal state to animal welfare erode our commitment to human equality? We may be, as Leopold suggests, “plain member[s] and citizen[s]” of the biotic community, but the fact remains that we’re the governing class. If nonhumans are part of the political community, they are a considerably less powerful part. Our political relations with them must accordingly differ considerably from our relations with coequal citizens. Would recognizing animals as a kind of second-class quasi citizen undermine our hard-won egalitarian norms?

This question brings us into conversation with the literature on recognition and identity politics, which has a vexed relationship with the animal rights movement. Most animal rights advocates emphasize similarities between human and nonhuman animals (sentience, reasoning, emotional life, and so on), and these similarities become the grounds for arguing for similar treatment under law and policy (like granting them rights). But that approach often leads animal rights activists to compare animal and human suffering, which in turn seems (to some) to trivialize human suffering. Should factory farms be compared to the Holocaust, and zoos to prison camps? Doesn’t calling our treatment of animals “slavery” simply reinforce the pernicious