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Interspecies Justice: Agency, Self-Determination, and Assent

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Introduction

Many people now accept that nonhuman animals have morally significant interests.¹ This is illustrated by public support for animal welfare legislation and the widespread condemnation of individuals and corporations who treat animals cruelly. Among philosophers, nearly all agree that making animals suffer unnecessarily is morally impermissible. Yet in thinking about exactly what we owe to other animals, most people still rely on a relatively simplistic picture about animals and the kinds of interests they possess. Roughly, on this picture, when animals have the capacity to experience pains (such as the physical discomfort of being cut or burned) and pleasures (such as eating a delicious meal), they have morally significant interests in avoiding such pains and in experiencing such pleasures, and we have *pro tanto* reasons to satisfy those interests.

Recently, however, animal rights theorists have begun to advance a more ambitious claim: that many sentient animals also possess important *agency* interests. For instance, Sue Donaldson and Will Kymlicka suggest that

[Many animals] have the need and desire to exercise control in their lives—not just to make temporally localized decisions ... about when to eat or to sleep, but also significant decisions about the general shape and structure of their lives ... concerning where and how they live; who they mate with, live with and associate with; what sorts of activities they learn about, engage in, and pursue mastery of.²

¹ From this point on we use the term ‘animal’ to refer to nonhuman animals. Though convenient, this decision has two negative consequences that must be noted. First, it implies that humans are not animals, which of course we are. Second, it obscures the diversity that exists between different animals. See further fn. 5.

² Sue Donaldson and Will Kymlicka, “Comment: Between Wild and Domesticated: Rethinking Categories and Boundaries in Response to Animal Agency” in *Animal Ethics in the Age of Humans*, eds. B. Bovenkerk and J. Keulartz (Switzerland: Springer Nature, 2016): 225-238 at p. 235. See also, Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University

On this view, animals' agency interests are not reducible to their interests in avoiding pain and experiencing pleasure. Rather, they are interests in being able to shape their interactions with others and choose for themselves what activities to pursue and how to spend their time. According to Donaldson and Kymlicka, these interests place us under duties of justice to create social conditions that will enable and facilitate the agency of those domesticated animals with whom we live, in order to give them greater control over their own lives. Indeed, Donaldson and Kymlicka claim that respect for animal agency and self-determination is "the first principle of interspecies justice."³

If correct, these claims have significant theoretical and practical implications for the understanding and realisation of social justice. However, while Donaldson and Kymlicka offer a forceful articulation of the guiding idea, they do little to specify either (i) the precise nature of animals' agency interests, or (ii) the precise nature of the normative relations that hold between us in virtue of these interests. The absence of a more detailed account poses two problems. On the one hand, it deepens the scepticism of those who doubt that animals possess normatively significant agency interests. On the other, it makes it difficult for those who are more sympathetic to work out what exactly respecting animal agency entails.

In this article, we respond to these problems by developing and defending an account of the normative significance of animal agency. In particular, we focus on how animals' agential capacities, and their concomitant agency interests, impact upon the moral permissibility of human interactions with them. As a first step, we argue that in virtue of their agential capacities, animals sometimes have rights to self-determination (Section I). Drawing on recent discussions of paternalism, we interpret such claims as claims to have one's will recognised as normatively authoritative within particular domains of activity. We then argue that many animals have significant interests in determining the course of their own lives within particular spheres, and that they can sometimes be competent decision-makers within these domains. When these two conditions are met, they have justified claims to self-determination.

Press, 2011); Sue Donaldson and Will Kymlicka "Farmed Animal Sanctuaries: The Heart of the Movement?", *Animals and Politics* 1 (2015): 50-74; Sue Donaldson and Will Kymlicka, "Rethinking Membership and Participation in an Inclusive Democracy: Cognitive Disability, Children, Animals" in *Disability and Political Theory*, eds. Barbara Arneil and Nancy Hirschmann (Cambridge: Cambridge University Press, 2016): 168-197.

³ Donaldson and Kymlicka, "Comment: Between Wild and Domesticated," p. 231.

However, this gives rise to a puzzle about the moral permissibility of many forms of interaction between humans and animals. In the context of adult human relations, the power of consent plays a crucial role in enabling interaction while respecting one another's agency and autonomy. Generally speaking, our autonomy rights set boundaries upon the ways in which others are permitted to interact with us. For example, a person would usually violate your rights if they performed surgery upon you or had sex with you. However, you can shape and alter these normative boundaries, and allow these interactions, by giving your consent to surgeons and sexual partners.

If animals sometimes have claims to self-determination, how might this requirement for consent apply to our interactions with them? For some, the centrality of consent to respecting one another's agency poses no problem for human-nonhuman interactions, because they believe that many animals are also capable of giving and revoking consent.⁴ We argue that this is false. On plausible empirical assumptions, animals lack the capacity to give and withhold consent (Section II). However, the central reason for this is *not* that animals lack the information necessary to give *informed* consent, as is often suggested. Rather, it is because they cannot understand, form, and communicate complex intentions about normative concepts like rights and duties.

This combination of claims returns us to the puzzle concerning the permissibility of human interactions with animals. If animals sometimes have rights to self-determination, but cannot give or withhold consent, then when, if ever, is it permissible for us to touch other animals, hold them, bathe them, confine them, or engage them in work or in sport? In Sections III and IV of the paper we develop a solution to this puzzle. We argue that although the idea of consent is unhelpful for thinking about just interspecies relations, two related notions show promise: assent and dissent. In short, we propose that an animal assents to an activity or interaction when they wilfully affirm it, and that their assent can enable permissible interactions with humans consistent with their rights to self-determination. Likewise, if they dissent from an activity or interaction then, so long as they are competent, they have a right against our interfering with them. This is an important conclusion for animal rights theory and interspecies justice. Indeed, by showing how human-nonhuman animal interactions can be consistent with animals' claims to self-determination, the account presented here makes the project of interspecies justice possible.

⁴ Mark Rowlands, *Animal Rights: All That Matters* (London: Hodder and Stoughton, 2013), pp. 88-9.

I. Animal Agency and the Right to Self-Determination

In this section we develop the core of our argument for the claim that animals sometimes have rights to self-determination.⁵ Our aim is not to establish that animals are fully autonomous and rational in the way that most adult humans are. Rather, we aim to defend an account of why and when animal agency is normatively significant. This argument will be reinforced by the discussions in Sections III and IV, and will serve as a basis upon which to approach the question of how animals' agency interests should impact upon our thinking about how to permissibly interact with them.

In attributing rights of self-determination to animals, we rely on the widely accepted idea that an individual who has a right to self-determination within a certain domain has a right that their will be recognised as *normatively authoritative* within that domain.⁶ Put simply, this means that the agent's will ought to be regarded as decisive, such that it is generally impermissible for others to interfere in the agent's choices or actions. For example, if you have a right to self-determination then you have the authority to decide whether to have another glass of wine, or pursue a doomed romantic relationship, or take up base jumping, despite the (sometimes serious) harms that these choices may bring about. In all of these cases, other agents would wrong you by preventing you from pursuing these options, even if they are right in thinking that your choices will not best promote your well-being.

More precisely, on our view, an agent's will is normatively authoritative within a domain when their will serves to silence or exclude considerations of their *well-being* from others' practical deliberations about how to act or interact with them in that domain.⁷ Consider, for instance, what happens when a competent patient refuses to undergo life-saving surgery. Their communicated will does not merely give the surgeon one reason against medical intervention – a reason that is then to be weighed against other reasons, such as their interest in continuing to benefit from goods they would enjoy in the future were they to live. Rather, the patient's will is *authoritative*,

⁵ Throughout the paper, we often make general claims about animals. We do so, despite great variation in the animal kingdom, to simplify the exposition of the argument. Specifying which animals these claims apply to would require detailed empirical work about which animals possess the kinds of capacities we highlight as significant. However, we suspect that these claims can be defended for many subjectively aware animals.

⁶ See, for example, Daniel Groll, "Paternalism, Respect, and the Will," *Ethics* 122, no 4 (2012): 692-720, at pp. 700-01; Seana Valentine Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation," *Philosophy and Public Affairs* 26, no. 3 (2000): 205-250.

⁷ Groll, "Paternalism, Respect, and the Will," p. 701. Here and throughout we are particularly indebted to Groll's excellent paper.

and therefore serves to render appeals to the good of the patient, on the part of the surgeon, *inadmissible*.

When an individual has a right to self-determination, then, they have the authority to choose how to act, and their choices place others under duties of non-interference. For present purposes, we will assume that an agent has a right to self-determination with regard to a particular domain or decision D when (1) they have an interest in determining the course of their own life with regard to D that is sufficient to ground duties in others,⁸ and (2) they are competent with regard to D. We argue that animals, as well as humans, can meet these conditions. Let's consider each in turn.

(1) *Do animals have interests in determining the course of their own lives?*

It is uncontroversial that some animals have preferences and desires, and that they act intentionally to satisfy them.⁹ Those with companion animals will have first-hand experience of animal individuality in preferences for food, play, physical contact, exercise, rest, and so on. And many of us have borne witness to our companions acting to satisfy these preferences. More generally, evidence abounds of animals learning, planning, problem-solving, deceiving, cooperating, compromising, and communicating in order to realise their goals. For example, many animals use tools to acquire food,¹⁰ abide by social norms and rules in order to realize their desires for friendship, status, and play,¹¹ and engage in tactical deception to secure some kind of

⁸ For this general conception of the grounds of rights see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 166.

⁹ For philosophical reflections on animal cognition and agency that are relevant to the discussion of this section, see David DeGrazia, *Taking Animals Seriously: Mental Life and Moral Status* (Cambridge: Cambridge University Press, 1996); David DeGrazia, "Self-Awareness in Animals," in *The Philosophy of Animal Minds*, ed. Robert W. Lurz (Cambridge, England: Cambridge University Press, 2009); Fred Dretske, "Minimal Rationality," in *Rational Animals*, eds. Susan Hurley and Matthew Nudds (Oxford: Oxford University Press, 2006): 107–116; Hans-Johann Glock, "Can Animals Act For Reasons?" *Inquiry* 52, no. 3 (2009): 232–254; Tom Regan, *The Case for Animal Rights* (updated version) (Berkeley: University of California Press, 2004); Jeff Sebo, "Agency and Moral Status," *Journal of Moral Philosophy* 14, no. 1 (2017): 1–22; and Natalie Thomas, *Animals Ethics and the Autonomous Animal Self* (London: Palgrave Macmillan, 2016).

¹⁰ DeGrazia, "Self-Awareness in Animals," p. 206.

¹¹ See, for example, Mark Bekoff and Colin Allen, "Intentional Communication and Social Play: How and Why Animals Negotiate and Agree To Play," in *Animal Play: Evolutionary, Comparative, and Ecological Perspectives*, eds. Marc Bekoff and John Alexander Byers (Cambridge: Cambridge University Press, 1998): 97–114; and Mark Bekoff and Colin Allen, "Animal Play and the Evolution of Morality: An Ethological Approach," *Topoi*, 24 (2005): 125–135.

advantage.¹² This makes it apparent that animals are *agents* who, by acting, determine the course of their own lives in various important respects.

Crucially, we want to claim that in virtue of possessing these agential capacities, nonhuman animals have a significant interest in determining what happens in a variety of domains, and so in being able to exert control over the contents of their lived experience.¹³ To begin, it seems relatively straightforward that animals have an instrumental interest in self-determination. Being free to pursue their own ends means not experiencing the frustration of having their preferences and desires overridden by others, and likewise, experiencing pleasure at actively satisfying their wants.¹⁴ Moreover, individual nonhuman animals are often better placed than we are to know whether particular activities or interactions are in their own interest; that is, whether such interactions are enjoyable, interesting, soothing, rewarding, and so forth. Thus, respecting the wills of nonhuman animals will often contribute to their good instrumentally, by serving and protecting other interests of theirs.

More controversially, however, we also want to claim that self-determination has non-instrumental value for animals. When animals are self-determining, it is they, through the exercise of their own agency, who shape the contours of their lives. We hold that having this kind of control can be an important *constituent* of a good animal life, independent of the benefits or harms that occur as a result of self-determined action.¹⁵

Compare the human case. Personal autonomy is good for human beings in part because we enjoy actively shaping our own lives, resent the interference of others, and are often epistemically privileged with regard to our own good. Nevertheless, the value of personal autonomy for humans outstrips the extent to which it realizes these goods. This is because we generally think that living an autonomous life is partly constitutive of a good life. It matters, for example, that you be the one to choose which

¹² Stan Kuczaj, Karissa Tranel, Marie Trone, and Heather Hill. "Are Animals Capable of Deception or Empathy? Implications for Animal Consciousness and Animal Welfare," *Animal Welfare*, 10 (2001): 161-173; and Andrew Whiten and Richard W. Byrne (eds.), *Machiavellian Intelligence II: Extensions and Evaluations* (Cambridge: Cambridge University Press, 1997).

¹³ Cf. Seana Valentine Shiffrin, "Harm and its Moral Significance," *Legal Theory* 18, no. 3 (2012): 357-398 at p. 382.

¹⁴ Regan, *The Case for Animal Rights*, p. 92.

¹⁵ To be sure, some people hold that personal autonomy is only of instrumental value for humans. However, insofar as proponents of this view nonetheless generally recognize robust autonomy rights for humans, for a variety of instrumental reasons, we believe that a very similar story can be told for many nonhuman animals. Others hold that autonomy is not a constituent of well-being but an independent source of normative demands. Such a view is also compatible with our argument.

profession to take up, which relationships to develop, which hobbies to pursue, and so on. It matters, as Joseph Raz puts it, that you are the author of your own life.¹⁶

We think a similar story holds for many animals. While differences in cognitive capacities are relevant to determining the kinds of valuable options one requires, it nonetheless seems plausible that an important component of autonomy's value is located in the free and deliberate exercise of agency by a wilful being.¹⁷ In other words, while there are sometimes important differences between the cognitive capacities of humans and animals, there remains something normatively significant about the fact that an "individual has a special, intimate relation to her mind, body, experience, and environment that she must especially endure."¹⁸ While the full value of personal autonomy or self-determination may only be realized by those capable of long term planning and self-reflection, there is no reason to think that these cognitive capacities are required in order for it to be in the interest of an agent that they be able to exert deliberate control over their experience and environment.¹⁹

This claim receives further support from reflection on the fact that, in the human case, self-determination is not only valuable in the context of major life decisions, but also when it comes to more mundane and quotidian exercises of our agency. For example, we value self-determination when deciding if to engage in physical contact (such as cuddling), whether to go for a run, what to have for dinner, and when to engage in joint activities like playing games or watching a film. Indeed, our ability to pursue or refrain from pursuing such activities represents a significant portion of what is protected by autonomy rights.²⁰ Yet many animals can engage in analogous forms of decision-making and activity, and plausibly have weighty interests in being able to do so without interference.

Consider Esther, a 650lb domesticated house pig, who likes to spend her mornings rooting around in the garden, playing with her toys, and, when it's warm enough, lazing in the sun.²¹ Plausibly, Esther has significant interests in being self-determining as she goes about her day. For instance, Esther has an interest in determining whether her human companions pet or groom her, when and what she

¹⁶ Raz, *The Morality of Freedom*, p. 369.

¹⁷ For accounts of the value of autonomy that put the exercise of agency front and centre, see Thomas Hurka, "Why Value Autonomy?" *Social Theory and Practice* 13, no. 3 (1987): 361-38; Raz, *The Morality of Freedom*, Ch. 13; Seana Valentine Shiffrin, "Autonomy, Beneficence, and the Permanently Demented," in *Dworkin and His Critics*, ed. J. Burley (Malden: Blackwell, 2004), pp. 202-03; and Shiffrin, "Harm and its Moral Significance."

¹⁸ Shiffrin, "Harm and its Moral Significance," p. 382.

¹⁹ *Ibid.*; Shiffrin, "Autonomy, Beneficence, and the Permanently Demented," p. 202.

²⁰ Shiffrin, "Harm and its Moral Significance," p. 380.

²¹ <https://www.estherthewonderpig.com/>

eats or drinks, whether she exercises or sleeps, what toys she plays with and when she engages in games with her companions. Of course, these choices are quite different from some human decisions such as which career to pursue. But again, it is a mistake to understand the value of self-determination as only being realised when an agent makes such life-changing decisions. For these reasons, and given the variety of sophisticated ways in which animals exercise their agential capacities in pursuit of their own goals, we submit that many animals have significant interests in determining the shape of their own lives.²²

(2) *Are animals ever competent?*

One might agree that some animals have interests in self-determination, given their agential capacities, but deny that they can ever meet the competence condition. Perhaps one thinks that other animals are simply incapable of understanding all of the material information relevant to any particular choice of action. Thus, given our understanding of the right to self-determination, they will always fail to meet the second condition for the possession of this right.

Once again, we disagree. Despite on-going philosophical dispute over the nature of competence, one idea that is widely accepted is that competence should be assessed relative to specific domains, decisions, or interactions.²³ You may, for instance, be competent to drive a car but not to prove complex mathematical theorems. Likewise, a patient may be competent to decide whether they will take a mild sedative, but not competent to decide on a serious and complex treatment plan. This observation undermines an initial source of scepticism about animal competence. Even if we assume that most animals will not be competent to judge how to act on *every* occasion or in *all* situations, it simply does not follow that they are incompetent in all spheres of their lives.²⁴

When, though, is an agent competent? In discussions of human competence in the context of medical decision-making, an individual is generally regarded as competent with regard to a decision D if they can (i) understand and reason about the

²² The idea that nonhuman animals are autonomous is controversial and some may want to retain the label of “autonomy” for those with certain cognitive capacities (e.g. persons). We take no stand on this issue. To remain ecumenical, we refer to the good of nonhuman animals in being able to exert control over their lives as the good of self-determination.

²³ Tom Beauchamp and James Childress, *Principles of Biomedical Ethics – Seventh Edition* (New York: Oxford University Press, 2013), p. 115; Allen Buchanan and Dan Brock *Deciding for Others: The Ethics of Surrogate Decision Making* (Cambridge: Cambridge University Press, 1989), p. 18.

²⁴ We address the question of how we should relate to non-competent animals in Section IV.

material information regarding D, and (ii) communicate a choice or judgement about D, that (iii) reflects their values.²⁵ In the remainder of the paper, we will be defending the claim that animals can meet condition (ii), despite lacking the ability to give or withhold consent. This leaves conditions (i) and (iii). The claim that animals can meet condition (i) gains support from intuitive examples. A dog understands the information pertinent to whether she wants to rest on the couch or go for a walk with her human companion. Similarly, a cat understands the information pertinent to whether he wants to be outside in the snow or inside in the warm, or whether he wants to be stroked by humans or not. And, in the case of wilderness animals, it would be difficult to make sense of their continued survival if we did not acknowledge that individual animals are competent agents who navigate a hostile world in a myriad of successful ways. Indeed, life is only possible for wilderness animals because they can understand the world around them and make appropriate decisions based on the information available to them.²⁶

This leaves condition (iii), the requirement that judgements or actions be sufficiently aligned with an agent's values. Presumably, many would be tempted to reject the idea that animals can meet this condition on the grounds that they do not have values, perhaps because they cannot critically reflect upon their motives or preferences. However, we can admit that animals do not have the same evaluative set up as humans without accepting that they cannot meet a parallel version of condition (iii). As Allen Buchanan and Dan Brock explain, the reason this condition is needed in the human case is that individuals need "to be able to evaluate particular outcomes as benefits or harms, goods or evils, and to assign different relative weight to be accorded to different values."²⁷ Yet as we have already noted, animals do possess preferences and goals, and act in light of these. Indeed, as Christine Korsgaard has recently argued, the world is "valenced" for sentient animals, as it is for humans, because they experience things as being good or bad for them and act in light of this understanding.²⁸ Thus, even if animals cannot subject their preferences to the same kind of reflective scrutiny as most humans, they nonetheless possess a set of values

²⁵ Paul Appelbaum and Thomas Grisso, "The MacArthur Treatment Competence Study I," *Law and Human Behavior* 19, no. 2 (1995): 105-126; Beauchamp and Childress, *Principles of Biomedical Ethics*, p. 116; Buchanan and Brock *Deciding for Others*, p. 23. Of course, the precise specification of these general conditions is a matter of significant debate. Here we rely on an intuitive understanding of the conditions.

²⁶ Donaldson and Kymlicka, *Zoopolis*, pp. 175-176.

²⁷ Buchanan and Brock *Deciding for Others*, p. 25.

²⁸ Christine Korsgaard, *Fellow Creatures: Our Obligations to the Other Animals* (Oxford: Oxford University Press, 2018), pp. 20-21. See also Joseph Raz, *Value, Respect, and Attachment* (Cambridge: Cambridge University Press, 2001), p. 153.

(or “quasi-values”) that enable them to evaluate outcomes as benefits or harms to them and act accordingly.

II. Nonhuman Animal Consent?

In light of the preceding discussion, we conclude that there is a strong case for the claim that animals sometimes possess rights to self-determination. These rights will generally be less expansive than those possessed by competent human adults, because the contexts in which the specified conditions are met will be more limited, but they are no less important for that. If this is correct, then we must consider the question of how we can interact with animals in a way that respects these rights.

In the context of human relations we frequently rely on the power of consent as a means of interacting while respecting one another’s rights to self-determination. Indeed, the idea that competent agents have the authority to make certain decisions about their own lives is central to understanding the normative significance of consent. When a competent adult has the power to give or withhold consent, they have the final say over whether or not they release others from certain duties owed to them, thereby exercising normative control over the permissibility of a range of interactions.²⁹

If animals are capable of communicating their preferences to us, perhaps we can understand such communications as the giving and withholding consent. Mark Rowlands suggests, for example, that we can understand a dog’s enthusiastic response to the question “Do you want to go for a walk?” as consent to going out walking, and her sitting down and refusing to move when she realises how hot it is outside as the withdrawal of consent.³⁰ If it were true that animals gave and withdrew consent in something like this manner, we would have a simple answer to the question of how we can interact with them while respecting their rights to self-determination.

However, we reject the claim that animals possess the capacity to give and withhold consent. Unsurprisingly, we are not the first to take this position. Yet our reasons differ from standard accounts; a fact that is important for our argument. Several philosophers have suggested that animals cannot give consent “because they cannot be *informed* in the relevant way.”³¹ But as we pointed out in the previous section, intuitively, there are contexts in which animals understand the relevant

²⁹ Neil Manson, “Permissive Consent: A Robust Reason-Changing Account,” *Philosophical Studies* 173 (12): 3317-3334, at pp. 3329-3330.

³⁰ Rowlands, *Animal Rights*, pp. 88-9.

³¹ Regan, *The Case for Animal Rights*, p. 381. See also Korsgaard, *Fellow Creatures*, p. 177.

information. For example, a dog will generally understand the information pertinent to whether she wants to go out for a walk in the sun, or stay behind and rest in her favourite shady spot. Even so, she is still incapable of giving her human companion consent. Why is this?

Consent is an example of a normative power. Normative powers enable individuals to intentionally and directly alter rights and duties that apply to themselves and to others.³² The power of consent enables agents to *waive* claim-rights of theirs, thereby releasing others from duties they owe to them. Thus, valid consent will generally make an impermissible course of action permissible because a consent-receiver will no longer wrong the consent-giver by violating her rights. For example, if you consent to surgery then you release the surgeon from her normal duty not to operate on you, making it the case that the surgeon will not violate your rights by performing the surgery.

An important feature of the power of consent (like other normative powers) is that the power is exercised *intentionally*.³³ Specifically, to exercise the power of consent an agent must *intend* to waive a right and thereby give another permission. For example, when you ask me whether you can come into my house, and I say, "Sure, go ahead," I give you consent because I intend to give you permission by doing so. I also understand that if I refuse to give you permission then you will be required to refrain from entering my house (in normal circumstances) and would violate my property rights were you to disregard my lack of consent. Thus, in order to possess the power of consent, an individual must have the capacities to *know that* they have rights, *know that* they can waive those rights, and *intend* to give permission to others.³⁴

If consent requires the intentional giving of permission, it is very unlikely that we can obtain consent from animals. While it is ultimately an empirical question, it seems unlikely that many animals will have (i) the concepts of RIGHT, CONSENT, or PERMISSION (ii) the knowledge of the relevant normative facts (e.g. that they have certain rights against us, that these rights can be waived through certain intentional acts of consent), and (iii) the ability to form and communicate the relevant complex intentions concerning such concepts.³⁵ Thus, most animals are unable to waive rights by giving consent because they cannot understand that by performing a certain action

³² David Owens, *Shaping the Normative Landscape* (Oxford: Oxford University Press, 2012); David Enoch, "Authority and Reason-Giving," *Philosophy and Phenomenological Research* 89 (2014): 296-332; Victor Tadros, *Wrongs and Crimes* (Oxford: Oxford University Press, 2016), p. 205.

³³ Owens, *Shaping the Normative Landscape*, p. 165; Enoch "Authority and Reason-Giving," pp. 302-03; Tadros, *Wrongs and Crimes*, p. 209.

³⁴ Tadros, *Wrongs and Crimes*, p. 211.

³⁵ See Enoch "Authority and Reason-Giving."

they are hereby giving another permission. Put differently, they do not understand that by performing a certain action they are deliberately waiving a moral complaint against another's action.³⁶

Someone might object that this is an overly demanding conception of consent, and that we are therefore unnecessarily excluding animals from the group of agents capable of giving or withholding consent. Instead, one might think that obtaining consent from an individual only requires that we be appropriately responsive to their desires and preferences, something we can do without requiring that they form and communicate complex intentions about normative concepts.

However, there are good reasons to refrain from rejecting the account of consent we have outlined. Note that in paradigm cases involving competent humans, responsiveness to another's desires or preferences is not regarded as sufficient for consent. For instance, I may fear for my life and want the doctor to perform the operation that she says is necessary. However, if I refuse to consent (say, for religious reasons), then she will not be permitted to operate. Indeed, this is true even if I hope that my refusal to consent will be overruled (perhaps in the belief that by refusing to consent I have done all that is required of me), and even if this is clear to those involved. Similarly, Mary may strongly desire to have sex with Jack, but if she does not consent (perhaps because she is married to someone else), then Jack is not permitted to have sex with her. In cases of this kind, it is widely held that responding appropriately to an individual's interests in self-determination requires responding to their actual consent or non-consent: their communicated will concerning whether they wish to give permission to some interaction. This is so even when there is a significant tension between the communicated normative will and the manifest desires or preferences. Thus, we require the more robust notion of consent that we have articulated, and, on this conception, animals generally lack the capacities necessary for giving or withholding consent.

III. Assent and Dissent: Two Tools for Achieving Interspecies Justice

So far we have argued that animals sometimes possess rights to self-determination, but cannot give and withhold consent. This combination of claims puts us in something of a quandary. How are we to permissibly interact with animals while respecting their rights to self-determination if they are unable to give consent and thereby release us from the negative duties grounded in that right? Indeed, the

³⁶ Larry Alexander, "The Moral Magic of Consent (II)," *Legal Theory*, 2, no. 3 (1996): 165-174 at p. 166.

argument so far might be regarded as grist to the mill of so-called abolitionists – those who call for the end of *all* animal use – because our relationships with animals will necessarily be exploitative and authoritarian.³⁷

We think that this abolitionist response is not only unnecessary but also fails to be appropriately responsive to animal agency. For example, it fails to take into account the fact that animals (especially domesticated animals) often act in ways that express preferences *for* interactions with humans, such as when they initiate physical contact with a human, allow a human to brush or bathe them, or express enjoyment at undertaking work with a human. Thus, in this section we develop alternative normative tools – animal assent and dissent – for determining the scope of permissible interactions between humans and other animals. In offering our account, we outline what constitutes an act of assent or dissent, when assent is required, and when assent is morally transformative. Then, in the following final section, we map this account onto our claims about self-determination, and consider some cases in order to draw out the implications of the view.

(a) Assent and Dissent

Let us begin with a definition of assent. We will say that an individual assents to some act or course of action when they *wilfully affirm* it. While our usage of the term is continuous with ordinary usage, the definition we offer here is partly stipulative. It is designed specifically to be of use in describing our moral and political relations with other animals and the project of achieving interspecies justice.³⁸

On our view, wilful affirmation requires *observable behaviour* that gives us reason to believe that an individual *desires, prefers, or chooses* the option or state of affairs. Insofar as animals have limited linguistic capacities and are generally unable to verbally communicate their wants and dislikes in language, their assent will be made manifest by non-linguistic behaviours. Moreover, the wilful affirmation of assent does not involve any intention to waive rights. This means that acts of assent, unlike acts of consent, are not performed with the intention of altering the normative relationships that an individual stands in with others. Rather, when an agent assents to an option, their behaviours manifest an attitude of desire, preference, or choice toward that option.

³⁷ Christine Korsgaard offers a clear articulation of this abolitionist argument (which she later rejects, albeit for different reasons). See Korsgaard *Fellow Creatures*, pp. 176-179.

³⁸ For this reason, we bracket the question of how our account of assent and dissent applies to relationships between humans.

To illustrate this idea, let us consider some examples. Karen knows that her companion dog, Jay, has been in the car before. She is confident that he understands what going in the car involves and she knows that he's usually a happy passenger. So when Karen asks Jay to get in the car and he obliges, we should see his actions as expressing assent. Similarly, if Karen suggests that they go for a walk, Jay may indicate assent by picking up his ball and meeting her at the gate. Alternatively, Jay might assent to being brushed by allowing Karen to do it without too much resistance. Note, that even when Jay's assent is more passive, it is clear that he wilfully affirms the interaction because he knowingly – with sufficient understanding of what brushing involves – allows it to happen (rather than, say, running away).

Importantly, what constitutes assent will depend in significant ways upon the context. In the previous examples, Jay's assent takes place against the backdrop of his on-going relationship with Karen; a relationship constituted by a series of interactions and behaviours. Such relationships often inform the permissibility of how we relate to one another. In this case, Karen and Jay's shared history shapes both of their expectations about future interactions and provides them with a greater understanding of how to interpret one another's behaviours. For instance, when Karen opens the car door Jay knows this means a trip in the car. And when Jay sits alone in the kitchen, Karen knows that he is tired and does not want to be bothered. Knowing one another in this way allows Jay to meaningfully assent to activities and interactions initiated by either one of them.

Of course, not all interspecies interactions occur in the context of on-going relationships, and new relationships are being forged all of the time. Can we understand animals as assenting when there is a lack of shared history, underdeveloped means of shared communication and understanding, and where the relevant parties have little knowledge about one another's behaviour and preferences? We think that reading animal assent in these cases is often difficult, but it is certainly not impossible. There is much that humans can intuit about our fellow animals (and vice versa) and in some cases the voluntary affirmation of an option will be very clear. Think, for instance, of how humans and domesticated animals who are unfamiliar with one another might interact in public. On greeting a dog with whom you do not have a pre-existing relationship, it is important that you do not loom over them or try to touch them without soliciting their assent first. To do this, you should crouch down to their level and allow them to sniff and approach you at their own pace. Depending on whether your invitation is accepted (the dog relaxes, tries to engage with you etc.), this will determine whether it would be permissible for you to touch them.

In general, humans in new interactions or relationships with other animals ought to proceed with caution. It is vital, for instance, that humans do not infer assent from their experiences with other like animals, and we must be sensitive to what the *individual* is communicating to us through their actions and behaviour. Furthermore, whether it is appropriate to regard particular forms of behaviour as manifesting assent will depend upon the nature of the activity or intervention in question. Where more weighty interests are at stake, we will require stronger evidence that an animal wilfully affirms this course of action. For example, while passive indifference may sometimes suffice as evidence of an animal's assent to being stroked, it will not suffice as evidence of assent to having their bodies used in more intrusive ways, such as for sport (e.g. being ridden by humans), work (e.g. being asked to labour for humans), or entertainment (e.g. being asked to perform physically demanding 'tricks' for human enjoyment).

Importantly, however, soliciting assent from a animal is not necessarily about observing enjoyment or happiness (although it can be). Rather the solicitation of assent should be regarded in the same way as the solicitation of consent: it provides the agent with the opportunity to make decisions about things that affect them and leaves it to them whether they choose to accept what is offered.³⁹ As with consent, assent does not necessarily imply great enjoyment or positive attitudes toward the interaction in question. (Think, for example, of appointments with the dentist.) It rather implies that the will of the agent in question is appropriately oriented toward the interaction in question. Like humans, other animals have an interest in being able to express indifference, reluctance and tolerance while also affirming certain interactions, activities, or states of affairs. For example, a dog may reluctantly assent to a bath in order to avoid being banished to the kitchen.⁴⁰ Thus, animals can assent to some act or course of action by actively affirming it or, at least in some cases, passively allowing it.

In discussions of assent in medical ethics, many people find the idea of acquiescence as a mode of assent troubling. One serious concern is that vulnerable individuals may be too frightened or traumatized to dissent, and so their acquiescence to some state of affairs ought not to be taken to indicate assent. These worries are not without force, especially when viewed in the context of potentially harmful

³⁹ Amanda Sibley, Andrew J. Pollard, Raymond Fitzpatrick, and Mark Sheehan, "Developing a New Justification for Assent," *BMC Medical Ethics* 17, no. 2 (2016): 1-9.

⁴⁰ Barbara Smuts, "Reflections," in J. M Coetzee, *The Lives of Animals*, ed. Amy Gutmann (Princeton: Princeton University Press, 1999): 107-120 at p. 117.

biomedical research.⁴¹ Furthermore, as mentioned above, the more important the interests at stake, the greater the need for positive affirmation; acquiescence in some circumstances is simply not enough. However, just as one can consent without enthusiasm, it seems plausible that one can also assent without enthusiasm or enjoyment. We, of course, need to be sensitive to *why* an animal is indifferent, reluctant, or tolerant of some activity or interaction, and we may have reason to doubt that their assent is meaningful. But this does not mean that there is no scope for meaningful assent that is established without enthusiasm and absent any sense of joy.

If it is possible to manifest assent to an activity or state of affairs without manifesting enthusiasm for it, then *dissent* must generally be understood as something stronger than a lack of enthusiasm. (Though again, as with assent, what precisely should be regarded as constituting dissent will be context-sensitive, and in some cases a lack of enthusiasm may suffice.) In the central cases, we propose that dissent is registered by forms of active resistance such as physical struggle, hiding, a refusal to go along with something, or the avoidance of certain interactions or activities. Dissent, then, is the opposite of assent: it is a refusal to affirm some invitation, activity, or state of affairs. Like assent, dissent expresses the preferences of the agent; unlike assent, dissent corresponds with some affective experience of displeasure or disavowal. Finally, like assent, dissent is morally significant. Where an animal has a right to self-determination and expresses dissent to some activity or interaction A, then we will violate their rights by going ahead and A-ing.

(b) When must assent be obtained?

With this initial sketch of assent in place, we can now ask when assent must be obtained. Not all situations in which animals make choices, or where we make decisions that affect their lives, demand that we obtain their assent.

As with consent in the context of adult humans, the most general thing that we can say is that we ought to obtain assent whenever animals have a right to self-determination. Thus, a full account of assent-apt situations would require a near full account of when animals have these rights. For present purposes, however, we do not need such an account to make progress. Rather (and once again, as with consent), we can instead rely on some illustrative examples. Return to the case of Esther the pig. It

⁴¹ The idea of assent developed in this paper is intended to guide us in realizing just interspecies relations. Incarcerating animals in research facilities and using them as test subjects is antithetical to respecting them as subjectively aware agents with basic rights, so the issue of whether animals can assent to particular interactions in biomedical research contexts is generally beside the point.

is very plausible that Esther's rights to self-determination include rights against humans petting her, pushing or pulling her to get her to move, and grooming her, unless she assents to these interactions. Likewise, if Esther makes it clear that she does not want to play right now (perhaps by sitting resolutely on her bed), then she has a right that her human companions do not try to force her to play, and they will wrong her by doing so. Instead, Esther's human companions must wait until she assents to play. When Esther does assent to an activity or invitation, then her human companions can permissibly proceed without violating her rights.

(c) *Validity conditions*

So far we have said that assent is a non-linguistically communicated affirmation of some activity or course of action, which must be obtained by humans in circumstances where they wish to act in ways that would otherwise violate the rights of their nonhuman fellows. As with consent, not all acts of assent should be regarded as morally transformative. Rather, for an act of assent to be morally transformative, it must meet certain *validity conditions*. Specifically, a particular act of assent is morally transformative if and only if it is proffered *voluntarily* and with *sufficient understanding*. In the most general terms, this means that assent is only valid when there are genuine opportunities to dissent and it is not solicited under threat of violence or deprivation. It also means that assent is only valid when humans have a justified belief that the animal(s) that they wish to interact with understands what they are being asked to assent to.

The range of contexts in which assent might be sought is indefinitely varied, making it difficult to characterize these conditions in a general, yet informative way. This means that a full discussion of these conditions, while very much needed, is beyond the scope of this paper. However, there are a few things that we want to note. First, the weightier the interests at stake, the more demanding the validity conditions are likely to be. In general, humans must be confident that the animal whom they are seeking to interact with freely volunteers and understands what is being asked of them, but when weightier interests are at stake the burden of proof is higher.

Second, being able to know that a particular animal meets the two conditions in a given context will likely depend upon how well the animal(s) are known to the human(s) involved. This is of particular importance for the *sufficient understanding* condition. Someone who spends a lot of time with a companion animal is much more likely to know what their companion knows or understands, as compared with someone who has no relationship with that animal. For example, while Karen knows

that Jay knows that an open passenger door means a trip in the car, a stranger will not.

Third, the fact that an animal lacks sufficient information to give valid assent does not mean that they are not competent to make decisions in this area. Rather, they are like a patient sitting in the doctor's office before a medical procedure has been explained to them. In that case, the patient has the *capacity* to understand the relevant information and make an authoritative decision about whether to consent, but they cannot *give* valid consent until the relevant information has been communicated to them. Similarly, an animal may have the capacity to make decisions in some sphere of their life but not yet have access to information about a particular situation in that sphere that would make their assent or dissent valid. Thus, it does not follow from the fact that an animal lacks the information necessary for their assent to be valid, that they lack a right to self-determination. Where they have this right they should have the relevant information communicated to them when possible.

There are, of course, many complicated issues here. What evidence must one have to be sure that assent is given with sufficient understanding? What level of coercion will invalidate assent? Unfortunately, these questions are for another day. For current purposes, it suffices to note that animals can give valid assent or dissent to interactions or activities when they are free to choose to do so, and when they have a sufficient degree of understanding about the options on the table.

IV. Assent, Dissent, and Normative Authority

In this final section, we pull the threads of the preceding discussion together. We begin by mapping the notions of assent and dissent onto the idea of normative authority and the right to self-determination. We then provide some examples to make the implications of our account more vivid. Finally, we consider how we should interact with an animal when they have interests in self-determination but lack the competence required to have normative authority over a particular sphere or decision.

As we noted in Section I, if an agent has a right to self-determination in a certain sphere then their will is normatively authoritative within that sphere. This right not only gives others a reason not to interfere in the sphere protected by the right but also serves to exclude from consideration some or all of the reasons grounded in that agent's well-being. Individuals have normative authority in this way when they have sufficient interests in being self-determining and are competent to make decisions in the given sphere of activity.

To qualify as competent, animals must be able to communicate their preferences or choices to us. Assent and dissent offer alternative communicative mechanisms through which agents can exercise their normative authority. As we have seen, assent differs in important ways from the related notion of consent. When an agent gives consent she intends to hereby waive a right of hers and thereby give another agent permission. By contrast, when a competent agent assents, she voluntarily manifests desires and preferences that indicate that her will is sufficiently well disposed toward the activity for it not to constitute a rights violation. Nevertheless, assent and dissent can, like consent and non-consent, make a direct difference to the permissibility or impermissibility of certain actions, actions that would otherwise constitute rights violations. That is to say, assent and dissent can have the same *normative consequence* as consent or non-consent. This normative consequence is simply achieved via a different normative mechanism.

On the account outlined above, acts of animal assent and dissent manifest wilful affirmation or rejection of an activity or state of affairs. These acts communicate animals' preferences, choices, and decisions. To determine whether a particular act of assent or dissent to X is normatively authoritative, we must ask (i) whether a given animal has a right to self-determination regarding X, and (ii) whether they are giving their assent (or dissent) to X voluntarily and with sufficient information. We have already seen that there are many cases in which it is intuitive to hold that an individual animal should be able to decide whether or not they engage in an activity. If this is correct, then we should often recognise animals as exercising normative authority in their relations with us through valid acts of assent and dissent.

To illustrate how we envisage normatively authoritative assent and dissent being operationalised in human-nonhuman relations, let's consider some cases.

Invitation accepted. Ollie is a human who lives with his rat companion Marley. Marley enjoys spending time with Ollie and being physically close to him, and Ollie with her. When Ollie invites Marley to sit inside his shirt – which involves her being handled by him and being in a confined space – Marley assents.

What is important here is that Marley chooses to accept Ollie's offer (perhaps by climbing onto his open hand, or sniffing at his shirt) thereby allowing him to pick her up and place her inside his shirt. The fact that Marley accepts his invitation indicates that she has a preference for being inside his shirt rather than outside. Respecting Marley's agency means respecting her assent in this instance.

Let us consider a slightly different case where an invitation is declined:

Invitation declined. Dan has been caring for a stray cat – Hubert – during the harsh Canadian winter. Dan invites him to come inside to rest in warmth and get something to eat. Hubert knows that he can stay for as little or as long as he likes and that when he is ready to leave he need only let Dan know. When Dan sees Hubert in the backyard he opens the door and calls to him, and by so doing invites him inside. Most of the time Hubert takes Dan up on the offer, but occasionally he does not. Sometimes he prefers to sit stoically in the snow. When he declines Dan’s invitation, Dan leaves him be.

When Hubert chooses to stay outside, Dan takes his choice to be authoritative. Dan believes that Hubert has sufficient understanding of his situation, that Hubert has made his choice voluntarily, and that Hubert could choose to come inside if he so preferred. As a stray, Hubert is vulnerable to many dangers, but they are a part of his day-to-day and Dan is confident that Hubert understands the risks of being outside. Dan has no good reason to doubt that Hubert is a competent judge of the situation. Moreover, Dan’s belief that the comfort and safety of being inside is better than the excitement and freedom of life outside is irrelevant to how he should proceed. All that matters, in this instance, is that Hubert expresses his preference to remain outside and since he does not accept Dan’s invitation, Dan would violate Hubert’s right to self-determination if he were to physically restrain Hubert and force him indoors. This is the case even though there is a chance that Hubert will be hit by a car, attacked by another cat or raccoon, get frostbite, or come up against one of the many other hazards in his urban territory.

Still, the normative authority of animal action has limits; limits largely determined by their competency to make decisions in a given context. In situations where animals are constitutionally unable to understand important information about why we want to contravene their expressed preferences, and we have good reason to override those preferences, it might be permissible that we do so. For example:

Deadly virus. Dan knows that a deadly virus is affecting the local street cat population with devastating consequences and that Hubert is at serious risk of being infected unless he is vaccinated. The vaccination is not very painful and has no harmful side-effects, but Hubert will have to be forcibly captured, contained, and handled because he dissents.

Assume in this case that the harmful risks associated with non-vaccination will fall only on Hubert. Nevertheless, we contend that Dan would be justified in catching Hubert and taking him to the vet for his vaccination and that Dan’s actions would not, therefore, constitute a rights violation. Dan has significant welfare-based reasons for

pursuing this course of action, and Hubert is not capable of understanding and assessing those reasons.

As we saw in *invitation declined*, when Hubert's actions have normative authority, welfare-based reasons cannot be introduced. In *deadly virus*, however, Hubert's actions lack authority because he cannot understand important facts about the situation, and so cannot be classed as competent. Dan cannot explain to Hubert what he is going to do, what the vet will do, how it will affect him, and why Dan wants to pursue this course of action. Given that Dan cannot communicate the relevant information to him, Hubert cannot make competent judgments about the situation. Thus, it would be permissible for Dan to override Hubert's dissent to being placed in the carrier and any subsequent manifestations of dissent in the course of having him vaccinated and returned to the street.

This does not mean, however, that Hubert's expressed preferences and choices have no normative weight. In cases where animals lack sufficient understanding to have normative *authority* over their interactions with us, their expressed preferences and desires should still be counted in an all-things-considered judgement about how to act. That is, animal interests in self-determination (that we described in Section I) still affect how we ought to act, and, depending on the context, their will may still be decisive in determining what we ought to do.⁴²

To elucidate, let's continue examining Hubert's case. Even though Hubert lacks normative authority in this situation, there are two reasons why his expressed preferences make a normative difference. The first is that acting in accordance with Hubert's preferences may still *instrumentally* contribute to Hubert's good. If Hubert is very resistant to receiving the vaccine, then vaccinating him is likely to cause Hubert some trauma and discomfort, and thereby set back his interests. This fact is clearly relevant to what is best for Hubert (even if these considerations are easily outweighed).

The second reason why Hubert's expressed preferences should factor into our reasoning about what to do, is that, even if Hubert is not competent to make the final decision, acting in accordance with his preferences may still *non-instrumentally* contribute to his good. That is, the fact that Hubert gets what he wants may be, by itself, good for Hubert. The idea behind this second claim is that, as Daniel Groll explains, "the threshold for being...competent may well be higher than the threshold for whether one has the kind of will that can nonderivatively play a role in one's well-being."⁴³ So, while Hubert is not competent to make the final decision, the fact that he

⁴² Groll, "Paternalism, Respect, and the Will," pp. 704-05.

⁴³ Ibid.

would get what he wants if we refrain from catching him and giving the vaccination can still constitute *one* consideration against giving him the vaccine. It is just that, since he lacks normative authority in this context, we are permitted to weigh this consideration against other considerations of Hubert's good, including the fact that without the vaccine he will likely become ill and die.

This is importantly different from the view that we need only consider an individual's welfare interests irrespective of what they themselves want. Indeed, for the reasons just outlined, an animal's will may be *substantially decisive* even where they lack normative authority.⁴⁴ In such cases the best thing to do for an animal will be, all things considered, to act in accordance with their will, even though they lack normative authority over the decision. Consider the following:

Sorensen at the vets. The vet has advised Kristin that her companion cat Sorensen needs a surgical procedure to correct a non-life threatening medical complaint. Sorensen is terrified of the vet and his last visit was very traumatic for all involved. Without the procedure, Sorensen will experience some compromise of his welfare interests – he may suffer some minor physical discomfort, or limited mobility, for example – but he will otherwise continue to have a healthy life.

In this case, it may be that Sorensen's preferences are substantially decisive. This means that Kristin should make an all-things-considered judgement against the surgery. Given Sorensen's fear of the vets and the inevitable distress he will suffer, it may be that on balance it will be best for him to suffer some physical discomfort as opposed to going to the vet and undergoing the procedure. In such cases, doing what Sorensen wills is all things considered the best thing to do because it leads to a higher overall level of well-being for Sorensen. So, while Sorensen lacks normative authority over the decision – because he lacks the capacity to understand all of the information relevant in the context – his will still determines how we ought to act.

V. Conclusion

Our aim in this paper has been to consider the normative significance of animal agency, and to think carefully about how it should inform and structure our interactions and relationships with them. We have argued that many animals possess significant interests in having control over the nature of the interactions and activities they engage in with us. Specifically, we argued that in those domains in which these interests are sufficiently weighty, and the individual in question is competent, these

⁴⁴ Ibid.

interests ground rights of self-determination, which means that their will should be regarded as normatively authoritative. When an animal has a right to self-determination, we argued that we can be appropriately responsive to their will by recognising the significance of their assent and dissent. While the details of this framework require further elaboration, we hope that this account paves the way for the realisation of just interspecies relations.