

More Equal Than Others: Humans and the Rights of Other Animals. By RAFFAEL N FASEL.
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A challenge has come knocking at the doors of courts and governments worldwide: more and more animal rights scholars and activists are demanding that other animals have fundamental rights akin to those humans already possess. In his book, Fasel's task is to answer the 'most urgent question' this gives rise to: 'can animals be granted fundamental rights without putting human rights in jeopardy?' (p. 4).

This question produces profound disagreement, and the book provides a useful, and comprehensive map of its contours (chaps. 2-4). Fasel argues that most if not all accounts of human and animal rights sit somewhere on the spectrum between two opposing ideal-types: 'Aristocratic' accounts (chap. 3) and 'Meritocratic' accounts (chap. 4). Aristocratic accounts prioritise coherence with two principles: that humans are one another's equals (pp. 58-59) and that we are morally 'special' and 'separate' from other animals (pp. 59-60). In contrast, Meritocratic accounts base rights on purely natural properties (pp. 78-81), such as sentience. A range of contemporary views fall under the Aristocratic umbrella, including those of Jeremy Waldron and Anne Phillips. Similarly, a range of views are Meritocratic in nature, including the increasingly popular sentientist rights approach defended by Alasdair Cochrane and Martha Nussbaum (which Fasel analyses in chap. 5). Meritocratic accounts seek to unseat the Aristocratic claim that humans are special, but Fasel argues that in doing so they result in an objectionable inequality: they imply that vulnerable humans should receive an inferior status due to their different capacities and interests (pp. 99-105).

Fasel argues that this disagreement is so deeply rooted that it (often unknowingly) echoes debates already waged by philosophers of the past two and a half centuries (chap. 2). We can trace it back to the enlightenment human rights philosopher Jean-Baptiste Salaville, who

argued against Jean-Claude Delam  therie’s ‘ground-breaking’ case for animal rights (pp. 36-42). Much like modern aristocrats, Salaville concluded that Delam  therie’s meritocratic account of animal rights would be ‘actively harmful to human rights’ (p. 47).

The book attempts to convince readers that in light of this entrenched standoff we should steer ‘a middle course’ (pp. 135-138). To do so, Fasel proposes the ‘Species Membership Approach’ (SMA), which seeks to satisfy Aristocrats *and* Meritocrats (chap. 7). Fasel contends that this is plausible because he is providing *a legal theory* not a moral philosophy (pp. 171-173). So even though species ‘may not be a morally relevant criterion’ (p. 167), legal rights can still be extended to animals based on the typical capacities of each species (echoing Nussbaum’s species-norm approach (pp. 175-176)). The SMA can therefore take seriously meritocratic concerns about the inclusion of animals. For instance, meritocrats might hold that elephants possess fundamental rights in virtue of their sentience-based interests (pp. 181-182), and so Fasel’s proposal is that we should respond to this by *legally* instantiating a set of elephant rights. However, the SMA also allows Fasel to satisfy the Aristocratic concern with upholding ‘our commitment to egalitarianism’ (p. 170). It does so because contemporary conceptions of human rights that include *all* humans (including those with severe cognitive impairments) can still be maintained.

One of the many merits of Fasel’s book is its ability to navigate these debates with sensitivity to radically opposing viewpoints and the intricacies of legal practice. The SMA is highly pragmatic, and it can be easily applied within current legal systems (pp. 167-168). Indeed, it is designed to mirror pre-existing conventions, such as the rights of the child (an agreement reached on how to understand the *human* rights of children) (p.192). In my view, the SMA is a plausible *legal* proposal.

However, by focusing on legal practice, the SMA lacks the secure footing that only a *philosophical* justification can provide. If we adopt it as a ‘legal fiction’ for extending rights to animals (p. 172), it will require an explicitly *meritocratic* philosophical basis for at least three reasons.

First, as Fasel’s historical contextualisation makes clear, movements to extend the circle of rights-holders often involve meritocratic ‘rebellions against an Aristocratic conception’ (p. 148). The animal rights movement has this in common with ‘the struggle of women and black people to be recognized as rights-holders’ (p. 145). Indeed, Fasel acknowledges that part of *the very reason* why contemporary Aristocratic conceptions accept that *all humans* (not just white men) have rights is exactly because meritocrats relied on arguments about natural similarities to rebel against the order of the day (p. 148). In other words, meritocratic rebellions are what generate expansions of our moral circle, and so they are what lend the SMA legitimacy.

Second, this helps us to see that these two accounts are not quite so ‘evenly matched’ (p.137), as Fasel contends. Contemporary aristocratic accounts suffer from a critical flaw that meritocrats have made plain: there are good reasons to think that *human supremacism* is morally objectionable. Even if humans should have some priority in considerations due to their weightier interests, this priority does not justify speciesism nor make us special in the aristocratic sense. It simply places us on a continuum alongside the other animals. Proponents of Aristocratic accounts may stamp their feet. But they offer us no independent reasons to believe that all humans are separate from other animals (as Fasel himself observes (pp. 69-71)). In this light, the answer to Fasel’s opening question is that animal rights *do* put “human” rights in jeopardy in some sense. Specifically, they threaten the idea that there are distinctly “human” rights *without* threatening the idea that all humans (including those with severe cognitive

impairments) have rights. But to perform their rebellious function that is exactly what they *should* be doing.

Third, Fasel is right to be troubled by the vulnerable position Meritocratic accounts can and have put people with impairments in (pp. 66-68). Yet, this calls for a deeper investigation into why norms of (human) equality are important, and how Meritocratic accounts might accommodate them (a task which most Aristocrats are unwilling to pursue, precisely because it threatens to undermine their view (pp. 68-69)). Incorporating Aristocratic practical concerns on top of a more *explicitly* meritocratic philosophical basis might have helped develop Fasel's arguments in several places. For instance, even if humans do not share the exact same capacities, and so may not be meritocratic equals, we may still be *aristocratic* equals if we avoid relating to one another as inferiors. Many of us – including, and especially, the most vulnerable – have interests in not being treated as inferiors that Meritocrats can acknowledge.

In summary, Fasel's book is undoubtedly a cogent and original contribution to the literature on human and animal rights. It revitalises a centuries-old discussion. But in my view Fasel's excellent legal theory needs a *meritocratic* philosophical basis for it to have a secure footing. Fortunately, there is one waiting in the wings: an account of *sentient rights*. Fasel examines these views in chapter 5, but he ultimately rejects them for their failure to appease the aristocrats. The mistake, though, may be in thinking that modern aristocrats should be philosophically appeased at all.

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