

MORE THAN HUMAN RIGHTS

An Ecology of Law, Thought and
Narrative for Earthly Flourishing

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Rethinking Human Rights for a More-Than-Human World

Will Kymlicka

One task facing defenders of more-than-human rights (hereafter MOTH rights) is to change public attitudes toward animals and nature, so that people come to understand and appreciate the value, significance, potentialities, and needs of the more-than-human world. But this task may be impossible if we do not simultaneously change people's attitudes toward the *human*.¹ Many commentators have argued that the denigration and exploitation of the nonhuman world is intimately tied up with a particular image of humanity as separate from and superior to the nonhuman world. To be fully

1 Sections of this chapter draw on Will Kymlicka, "Human Rights without Human Supremacism," *Canadian Journal of Philosophy* 48, no. 6 (December 2018), updated and revised for the MOTH Project.

human, in this view, is to rise above mere animality and nature, and to assert our categorical difference from and superiority to other animals and nature. These ideas of human exceptionalism and human supremacism are deeply embedded in Western societies and cultures, which are grounded in both religious and secular worldviews. Where people define their humanity in this way—as categorically different from and superior to other animals and nature—it may be very difficult to generate support for MOTH rights.

This suggests that any project to defend MOTH rights must offer not only alternative images of the more-than-human world but also of the *human*. This will require rethinking many humanist concepts: human nature, the human condition, human dignity, among others. In this chapter, I want to focus on one specific dimension which is of particular relevance to the MOTH Project: namely, the idea of human rights (hereafter HR). All too often, the theory and practice of HR has been grounded in ideas of human supremacism and has thereby been complicit in many of the harms and injustices done to the more-than-human world. To make room for MOTH rights, I believe it is essential to sever HR from human supremacism. This is a challenge, given the historic links between HR and human supremacism, but one that is not insurmountable, and I will argue that a nonsupremacist conception of HR may be better for humans as well as for the more-than-human world.

This chapter will focus primarily on the way HR have been defended on the backs of animals, and why I think this is a mistake. Of course, the more-than-human world includes more than animals, and rethinking the human/animal divide is only one part of the MOTH Project. Indeed, some commentators have argued that there may be a conflict between *animal rights* narrowly conceived and the *rights of nature* more generally. I will conclude by briefly considering the prospects for reconciling HR, animal rights, and MOTH rights.

Species Hierarchy in the HR Tradition

The link between HR and human supremacism is visible at the very origins of the Universal Declaration of Human Rights (UDHR, 1948). One of its theoreticians, Jacques Maritain, explained that the purpose of HR was to insist on “the radical distinction between persons and all other beings,” to elevate humanity above “animality,” and to liberate humanity from the “animality which enslaves him.”² For Maritain, the duty to treat someone as an end in themselves and not as a means is grounded precisely in this distinction/distance between humanity and animality.

This basic idea is repeated by more recent HR theories. Catherine Dupré summarizes the contemporary European jurisprudence on HR this way: “The legal system of human rights protection in Europe (and more generally in the West) rests on the assumption that, as human beings, we are born with the unique quality of dignity that distinguishes us from other beings (primarily animals), justifying and explaining the special protection of our rights.”³ She notes that the core of HR jurisprudence is a principle of noninstrumentalization, rooted in the idea that humans should be treated as an end in themselves and not simply as resources or means, and she ties this explicitly to species hierarchy: “We are here at the philosophical roots of the constitutional concept of human dignity as it is largely understood today, namely a concept that is exclusive to human beings, so that it can be used to distinguish them from other beings, which do not have dignity but a relative worth . . . dignity is used to define humanity not with

2 Jacques Maritain, *Christianity and Democracy* (San Francisco: Ignatius Press, 2012), 37, 66, 101.

3 Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Oxford, UK: Hart, 2015), 28.

reference to God, but by distinction from other beings which only have a ‘relative worth,’ namely animals or things.”⁴

We see here the clear link between HR and human supremacism. For Maritain and Dupré, the task of HR is not just to protect the rights of humans but also to elevate us over animals and nature. This is the heart of human supremacism. As Angus Taylor puts it, advocates of human supremacism “cannot countenance just any ethical view that protects humans, for it is not enough to include all humans within the moral community—one must simultaneously exclude all nonhumans. And this is crucial: *human exceptionalism is at least as much about whom we are determined to exclude from the moral community as about whom we wish to include within it.*”⁵ Maritain and Dupré are supremacist in this specific sense: their aim is not just to protect the rights of humans but to do so in a way that exalts humans over animals and nature, and that preserves “the Kantian distinction between value or market price that can be attributed to things and animals, and dignity or intrinsic worth which is an exclusively human quality.”⁶

Insofar as the theory and practice of HR rests on these supremacist views, it is in clear tension with the project of MOTH rights, which rejects the idea that intrinsic value is an exclusively human quality. Below, I will explore nonsupremacist ways of defending HR, but we need first to understand why these supremacist ideas are so strong in the HR tradition.

4 Dupré, *The Age of Dignity*, 34–35.

5 Angus Taylor, “Review of Wesley J. Smith’s ‘A Rat Is a Pig Is a Dog Is a Boy,’” *Between the Species* 10 (August 2010): 228, emphasis in original.

6 Dupré, *The Age of Dignity*, 124.

Intrinsic versus Strategic Species Hierarchy

While human supremacism lies deep in the jurisprudence of HR, it is useful to distinguish two different rationales for invoking species hierarchy, which we might call *intrinsic* and *strategic*. In some of the passages quoted above, species hierarchy is defended for its own sake, as the right and proper way of acknowledging the differential moral worth of different lives and different bodies. This is true of Maritain, a proponent of Catholic social thought who believed that humans alone were made in the image of God, that humans alone had an immortal soul, that God created animals to serve us, and that we therefore have a religious obligation to elevate and exalt humans above animals. Dupré offers a secularized version of this idea of a great chain of being.

Critics have called this intrinsic version of species hierarchy a form of “species aristocracy”⁷ or “species narcissism”⁸ and have discussed how it is complicit in the ongoing moral catastrophe of our relations with the more-than-human world. As Rossello puts it, theories of HR grounded in species aristocracy “risk turning the human family into new Bourbons or Tudors, at the expense of the underdog of other forms of life.”⁹ Any project of MOTH rights needs to challenge this sort of species aristocracy.

However, it’s important to note that species hierarchy is sometimes defended by HR theorists and practitioners not as an intrinsic principle but as a strategic resource. Even those who do not have an intrinsic commitment to species hierarchy may believe that it has strategic value in battling prejudice and discrimination against

7 Diego Rossello, “All in the (Human) Family? Species Aristocratism in the Return of Human Dignity,” *Political Theory* 45, no. 6 (December 2017): 749.

8 Ted Benton, “Humanism = Speciesism? Marx on Humans and Animals,” *Radical Philosophy* 50 (Autumn 1988): 7.

9 Rossello, “All in the (Human) Family?,” 765.

marginalized groups, including racialized groups, women, the poor, immigrants, Indigenous peoples, and people with disabilities. Why might asserting species hierarchy combat the mistreatment of these groups? Because one of the central features of these status hierarchies is *dehumanization*: that is, treating members of these groups as less than fully human. Of course few people today deny that members of these groups belong to the human species. Dehumanization is not literally a matter of denying that someone is *Homo sapiens*. Rather, dehumanization involves viewing others in ways that denies them what are seen as distinctively human qualities. Animals are widely seen as sharing certain basic emotions or traits with us, such as happiness, fear, or nervousness, but as lacking more refined emotions and traits, such as guilt or embarrassment, curiosity or self-restraint. The members of dehumanized groups are seen as lacking these (supposedly) distinctly human qualities and as driven by the more basic impulses we share with animals. Social science research has repeatedly shown that dominant groups do indeed view outgroups in this dehumanized way and that dehumanization in this sense results, not just in prejudice or stereotypes, but in deeply pernicious forms of discrimination, even violence.¹⁰ After all, if members of these groups lack refined sentiments and capacities for self-regulation based on those sentiments, then it seems that they can only be governed by force. As a recent summary of the dehumanization literature puts it: “Viewing others as lacking core human capacities and likening them to animals or objects may reduce perceptions of their capacity for intentional action, but it may also make them appear less sensitive to pain, more dangerous and uncontrollable, and thus more needful of severe and coercive forms

10 Brock Bastian, Jolanda Jetten, and Nick Haslam, “An Interpersonal Perspective on Dehumanization,” in *Humanness and Dehumanization*, ed. Paul Bain, Jeroen Vaes, and Jacques-Philippe Leyens (Abingdon, UK: Routledge, 2014), 212.

of punishment.”¹¹ Dehumanization, therefore, is a profound threat to HR, and combating dehumanization must be one of the central tasks of the HR movement.

But how should defenders of HR combat dehumanization? Many people assume that the best way to do so is to reinscribe a sharp hierarchy between humans and animals, and to emphasize that the good of a human life is radically discontinuous with and superior to that of animals, and that therefore we must not treat any humans as if they were animals. On this view, a steep moral hierarchy between humans and animals is a crucial resource and effective tool for subaltern groups. Such groups can best assert their right to a dignified existence by emphasizing the moral significance of their humanity, and their categorical discontinuity with, and superiority to, animality. By sacralizing “the human” and instrumentalizing “the animal,” we provide a clear and secure foundation for protecting the rights of all humans, including vulnerable racial groups.

Claire Jean Kim calls this the “sanctification of species difference” and notes that the African American civil rights movement invested heavily in this strategy to combat dehumanization.¹² Defenders of this strategy may not be philosophically committed to species hierarchy—in fact, in their own theoretical reflections, many Black intellectuals have articulated a more “fugitive” humanism that does not involve a sharp separation from animals or nature.¹³ However, when engaged in legal advocacy, the civil rights movement has

11 Bastian, Jetten, and Haslam, “An Interpersonal Perspective on Dehumanization,” 212.

12 Claire Jean Kim, “Moral Extensionism or Racist Exploitation? The Use of Holocaust and Slavery Analogies in the Animal Liberation Movement,” *New Political Science* 33, no. 3 (September 2011).

13 Lindgren Johnson, *Race Matters, Animal Matters: Fugitive Humanism in African America, 1840–1930* (Abingdon, UK: Routledge, 2017); Zakiyyah Jackson, “Review: *Animal: New Directions in the Theorization of Race and Posthumanism*,” *Feminist Studies* 39, no. 3 (2013).

often upheld the species aristocracy view as a strategic tool. The fear is that if the line between human and animal is blurred, then vulnerable human groups will be the ones whose humanity will be put into question, relegating them to some subhuman or dehumanized status. Species hierarchy is seen as an essential guardrail against their dehumanization.

A similar strategic appeal to species hierarchy can be seen among other disadvantaged groups. Many Indigenous worldviews, for example, do not draw a sharp distinction between humans and the rest of nature.¹⁴ Yet when engaged in legal advocacy for their HR, they too may strategically invoke tropes about the intrinsic value of humans and the instrumental value of animals.¹⁵ As Vanessa Watts notes, the strategic requirement to invoke human supremacist ideologies to fight dehumanization, while simultaneously fighting to sustain cultures and worldviews that are built upon kinship with animals, puts Indigenous peoples in a double bind: “In the context of settler colonialism, Indigenous peoples are confronted with paradoxes of being: we must fight against being animalized! We must fight for our animality! We are not subhuman! Our beingness is intimately tied to animality!”¹⁶ In short, human supremacism has a double function in HR theory and practice: originally, it reflected an intrinsic commitment to species hierarchy, but this

14 Margaret Robinson, “Animal Personhood in Mi’kmaq Perspective,” *Societies* 4, no. 4 (December 2014).

15 Fiona Probyn-Rapsey and Lynette Russell, “Indigenous, Settler, Animal; a Triadic Approach,” *Animal Studies Journal* 11, no. 2 (2022); Constance MacIntosh, “Indigenous Rights and Relations with Animals: Seeing Beyond Canadian Law,” in *Canadian Perspectives on Animals and the Law* (Toronto: Irwin, 2015).

16 Vanessa Watts, “Growling Ontologies: Indigeneity, Becoming Souls and Settler Colonial Inaccessibility,” in *Colonialism and Non-Human Animality: Anti-Colonial Perspectives in Critical Animal Studies*, ed. Kelly Struthers-Montford and Chloë Taylor (Abingdon, UK: Routledge, 2020), 119.

has been supplemented by a more instrumental belief that species hierarchy is a necessary tool to combat the dehumanization of particular subgroups.

This dual function puts defenders of MOTH rights in a potential bind. Defenders of MOTH rights clearly need to challenge the intrinsic commitment to species narcissism and species entitlement, given their role in legitimizing the exploitation of animals and nature, but it is less clear how we should respond to the strategic argument. If sanctifying species is in fact an effective strategy to fight dehumanization, then defenders of MOTH rights face a genuine dilemma. It would imply, in Alison Suen's words, that there is no way to "curb racism without throwing the animal under the bus"¹⁷ or, conversely, no way to defend MOTH rights without throwing racialized minorities under the bus.

To grapple with this potential dilemma, it is important to know whether species hierarchy is, in fact, effective in fighting dehumanization. This is obviously an empirical question and, as I read the evidence, the answer is clear: this strategy is neither necessary nor effective in fighting dehumanization. On the contrary, the evidence shows that the more sharply people distinguish between humans and animals, the *more* likely they are to dehumanize other humans, such as women and immigrants.¹⁸ Belief in human superiority over

17 Alison Suen, *The Speaking Animal: Ethics, Language and the Human-Animal Divide* (Lanham, UK: Rowman and Littlefield, 2015), 99.

18 Petra Vesper, Kathy Taylor, and Susanne Singer, "Diet, Authoritarianism, Social Dominance Orientation, and Predisposition to Prejudice," *British Food Journal* 117, no. 7 (July 2015); Christina Roylance, Andrew Abeyta, and Clay Routledge, "I Am Not an Animal but I Am a Sexist: Human Distinctiveness, Sexist Attitudes towards Women, and Perceptions of Meaning in Life," *Feminism & Psychology* 26, no. 3 (August 2016); Catherine Amiot and Brock Bastian, "Solidarity with Animals: Assessing a Relevant Dimension of Social Identification with Animals," *PLoS one* 12, no. 1 (January 2017): e0168184; Kristof Dhont et al., "Social Dominance Orientation Connects Prejudicial Human-Human and Human-Animal

animals is not only empirically correlated with but also causally connected to the dehumanization of human outgroups. Social psychologists have shown that inculcating attitudes of human superiority over other animals worsens, rather than alleviates, the dehumanization of minorities, immigrants, and other outgroups. For instance, when participants in studies are given a newspaper story reporting on evidence for human superiority over animals, the outcome is the expression of greater prejudice against human outgroups. By contrast, those who are given a newspaper story reporting on evidence that animals are continuous with humans in the possession of valued traits and emotions become more likely to accord equality to human outgroups. Reducing the status divide between humans and animals helps to reduce prejudice and to strengthen belief in equality among human groups.¹⁹ Multiple psychological mechanisms link negative attitudes toward animals to the dehumanization of human outgroups.²⁰

Relations,” *Personality and Individual Differences* 61 (April 2014); Ashley Allcorn and Shirley Ogletree, “Linked Oppression: Connecting Animal and Gender Attitudes,” *Feminism & Psychology* 28, no. 4 (November 2018); Yon Soo Park and Benjamin Valentino, “Animals Are People Too: Explaining Variation in Respect for Animal Rights,” *Human Rights Quarterly* 41, no. 2 (February 2019); Lynne Jackson, “Speciesism Predicts Prejudice against Low-Status and Hierarchy-Attenuating Human Groups,” *Anthrozoös* 32, no. 4 (July 2019).

- 19 Kimberly Costello and Gordon Hodson, “Exploring the Roots of Dehumanization: The Role of Human-Animal Similarity in Promoting Immigrant Humanization,” *Group Processes and Intergroup Relations* 13, no. 1 (January 2010); Kimberly Costello and Gordon Hodson, “Lay Beliefs about the Causes of and Solutions to Dehumanization and Prejudice: Do Nonexperts Recognize the Role of Human-Animal Relations?,” *Journal of Applied Social Psychology* 44, no. 4 (April 2014).
- 20 Brock Bastian et al., “When Closing the Human-Animal Divide Expands Moral Concern,” *Social Psychological and Personality Science* 3, no. 4 (July 2012); Dhont et al., “Social Dominance Orientation”; Kristof Dhont, Gordon Hodson, and Ana Leite, “Common Ideological Roots of Speciesism and Generalized Ethnic Prejudice,” *European Journal of Personality* 30, no. 6 (November 2016).

This finding—known in the literature as the “interspecies model of prejudice”—has now been widely replicated, including among children. The more children are taught to place the human above the animal, the more they dehumanize racial minorities.²¹ Conversely, humane education regarding animals—emphasizing interspecies affinities and solidarities—is known to encourage greater empathy and prosocial attitudes toward other humans.²² As Gordon Hodson, Cara MacInnis, and Kimberly Costello summarize the evidence: “overvaluing humans, relative to nonhumans, lies at the heart of problems not only for animals but also for humans. . . . We may collectively need to face an inconvenient truth: The premium placed on humans over animals—overvaluing humans as an unchallenged truism—fuels some forms of human dehumanization.”²³ This suggests that the instrumental argument for species hierarchy is overstated and may indeed be counterproductive. Challenging ideas of species aristocracy need not undermine the fight against dehumanization and may indeed assist it. Both subaltern human groups and the more-than-human world could benefit from articulating a nonsupremacist account of HR.

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- 21 Kimberly Costello and Gordon Hodson, “Explaining Dehumanization among Children: The Interspecies Model of Prejudice,” *British Journal of Social Psychology* 53, no. 1 (March 2014).
 - 22 Kelly Thompson and Eleonora Gullone, “Promotion of Empathy and Prosocial Behaviour in Children through Humane Education,” *Australian Psychologist* 38, no. 3 (November 2003).
 - 23 Gordon Hodson, Cara MacInnis, and Kimberly Costello, “(Over)Valuing ‘Humanness’ as an Aggravator of Intergroup Prejudices and Discrimination,” in *Humanness and Dehumanization*, ed. Paul Bain et al. (Abingdon, UK: Routledge, 2014), 106.

Nonsupremacist Approaches to HR

What would such a nonsupremacist account of HR look like? I've already mentioned that many subaltern groups have their own intellectual traditions of "fugitive humanism" that do not rest on ideas of species hierarchy. Mainstream HR theories have much to learn from these traditions for rethinking HR in a more-than-human world, as other contributions to this volume discuss.

But even within the mainstream Western legal tradition, there are alternative ways of thinking about HR. It is worth recalling that Maritain was writing in the 1940s, before the rise of the contemporary animal rights and environmental movements in the West. So when he grounded HR in species hierarchy, he was simply reproducing what was taken for granted by most participants drafting the UDHR. By the 1980s, however, theorists of HR were aware that assumptions of species hierarchy could no longer be treated as the self-evident grounds for HR. With the rise of an animal rights movement challenging the assumption that animals are resources rather than ends in themselves, any appeal to species hierarchy would need to be explicitly defended. And a careful read of the mainstream HR literature from the 1980s to 2000s suggests that many theorists were reluctant to take on this task. There are a variety of arguments in the Western canon defending species hierarchy—appealing to divine providence, reason, language, moral autonomy, potentiality, and so on—but by the 1980s, all of them had been systematically critiqued, in dozens of articles and books, and many HR theorists were unsure how best to counter these critiques. I also suspect that many HR theorists were unsure whether they even *wanted* to defend human supremacism. Many philosophers—and indeed many citizens—are unsure what to think about MOTH rights and have conflicting and evolving intuitions on the issue. Insofar as their motivation for writing on HR was to promote greater equality among

humans, not to defend inequality between humans and animals, they saw no need to embed the former in the latter.

As a result, many HR theorists in this period distanced themselves from Maritain's position and looked for ways of defending HR that did not depend on controversial assumptions about species hierarchy. We can see a marked ratcheting down of human supremacism in the HR literature. Consider two of the first and most influential discussions of the theoretical foundations of HR, by Henry Shue (1980) and James Nickel (1987).²⁴ Drawing on Joel Feinberg's influential account of the triadic structure of "rights,"²⁵ both developed theories of HR that were grounded in assumptions about (a) *basic interests* (e.g., in security, subsistence, liberty); (b) *standard threats* to those interests; and (c) *collective/institutional duties* to refrain from or prevent those threats. Neither Shue nor Nickel makes any appeal to the idea of species hierarchy: they make no reference to, or assumptions about, the relative moral status or significance of "humanity" and "animality."

Of course, this way of grounding HR raises the question whether animals might not also be entitled to basic rights, since they too have basic interests that are subject to standard threats from public institutions. Several animal rights theorists have argued that the logic of the Feinberg theory of rights applies naturally to animals.²⁶

24 Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 1980); James Nickel, *Making Sense of Human Rights* (Berkeley: University of California Press, 1987).

25 Joel Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry* 4 (December 1970).

26 For example, Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983); Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights* (Oxford, UK: Oxford University Press, 2001); Alasdair Cochrane, "From Human Rights to Sentient Rights," *Critical Review of International Social and Political Philosophy* 16, no. 5 (December 2013).

And indeed both Feinberg and Nickel acknowledge this possibility. Feinberg wrote an article defending the conceptual possibility of animal rights, and Nickel has a brief footnote in which he too acknowledges that possibility.²⁷ Neither actually endorsed animal rights—they simply left it as an open question. But, and this is the key point, neither viewed it as an objection to their account of rights that it might support rights for animals. And this is because, unlike Maritain, they did not see the purpose of HR as the defense of species hierarchy. Their aim was to identify compelling reasons why public institutions have a duty to protect individuals from standard threats to their basic interests, and they left it as an open question whether, or under what conditions, those reasons might also apply to animals.

This trend continued through the 1990s into the early 2000s. In this period, several exciting new approaches to theorizing HR emerged. For example, Bryan Turner argued that HR should be grounded in respect for people as “vulnerable subjects,” an idea also defended by Martha Fineman.²⁸ Amartya Sen and Martha Nussbaum developed capability-based theories of HR, Fiona Robinson elaborated a care-ethics approach to HR, and Judith Butler appealed to “precarious life” as the basis for HR.²⁹

27 Joel Feinberg, “The Rights of Animals and Unborn Generations,” in *Philosophy and Environmental Crisis*, ed. William Blackstone (Athens: University of Georgia Press, 1974); Nickel, *Making Sense of Human Rights*, 45.

28 Bryan Turner, *Vulnerability and Human Rights* (University Park, PA: Penn State Press, 2006); Martha Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition,” *Yale JL & Feminism* 20, no. 1 (2008): 1.

29 Amartya Sen, “Human Rights and Capabilities,” *Journal of Human Development* 6, no. 2 (July 2005); Martha Nussbaum, “Human Rights and Human Capabilities,” *Harvard Human Rights Journal* 20 (Spring 2007): 21; Fiona Robinson, “Human Rights and the Global Politics of Resistance: Feminist Perspectives,” *Review of International Studies* 29, no. S1 (December 2003); Judith Butler, *Precarious Life* (New York: Verso, 2006).

These theories have significantly enriched our moral vocabulary for discussing HR, adding ideas of vulnerability, precarity, capability, and care to the earlier, more Spartan vocabulary of needs and interests. And all of these approaches, I would argue, share with Shue and Nickel a nonsupremacist logic. When arguing that vulnerability or capabilities illuminate the basis and requirements of HR, these theorists did not take it as necessary that these ideas must also ground species hierarchy. Whether and how they might apply to animals was left as an open question.

Unsurprisingly, animal rights theorists quickly took up this open question and argued that these new accounts of HR do, indeed, push us toward the recognition of animal rights. Ani Satz and Maneesha Deckha, for example, argue that Fineman's account of the ethical significance of vulnerable subjectivity extends naturally to animals.³⁰ Similarly, the ethical significance of capabilities or care seems to extend naturally to animals, and so recent animal rights theorists have applied capability-based³¹ and care-based³² theories to animal rights. And everything in Butler's account about why we must nurture an ethic of respect for precarious life and challenge the denigration of some lives as ungrivable extends to animals, as animal rights theorists have shown.³³ A growing number of theorists

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- 30 Ani Satz, "Animals as Vulnerable Subjects," *Animal Law* 16, no. 1 (2009): 65; Maneesha Deckha, *Animals as Legal Beings* (Toronto: University of Toronto Press, 2021), 131–32.
 - 31 Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006); Anders Schinkel, "Martha Nussbaum on Animal Rights," *Ethics & the Environment* 13, no. 1 (April 2008).
 - 32 Josephine Donovan and Carol Adams, *The Feminist Care Tradition in Animal Ethics* (New York: Columbia University Press, 2007).
 - 33 Chloë Taylor, "The Precarious Lives of Animals: Butler, Coetzee, and Animal Ethics," *Philosophy Today* 52, no. 1 (February 2008); James Stanescu, "Species Trouble: Judith Butler, Mourning, and the Precarious Lives of Animals," *Hypatia* 27, no. 3 (Summer 2012).

defend the essential continuities and interdependencies of HR and animal rights.³⁴

In short, from the 1980s to the mid-2000s, the trend was to defend HR in a way that does not rest on species hierarchy, and the defense of HR was not seen as essentially tied to the assertion of superiority over animals. And this opened up space for a growing literature that attempted to integrate HR and MOTH rights and to explore their interconnections.

The Counterreaction: The New Dignitarian HR

I hope and expect that this trend will continue. However, in the past fifteen years, there has been a striking—and in my view disturbing—movement in the opposite direction, toward reasserting species hierarchy as the basis for HR. There are different versions of this reaction, but I will focus on the new wave of “dignitarian” writings within Anglo-American legal and political philosophy. These “new dignitarians,” as Fassel calls them,³⁵ make two core claims: (1) that protection of, or respect for, human dignity is the basis of HR; and (2) that a core component of human dignity is our radical difference from, and superiority over, animals. In this way, the new dignitarians seek to reinscribe species hierarchy at the heart of HR theory. This new dignitarianism is visible in Dupré’s statement, quoted earlier, that: “The legal system of human rights protection in Europe (and more generally in the West) rests on the assumption that, as human beings, we are born with the unique quality of dignity that distinguishes us from other beings (primarily animals), justifying and

34 Saskia Stucki, *One Rights: Human and Animal Rights in the Anthropocene* (New York: Springer, 2023).

35 Raffael Fasel, “The Old ‘New’ Dignitarianism,” *Res Publica* 25, no. 4 (November 2019).

explaining the special protection of our rights.”³⁶ There are many other recent examples. George Kateb, for example, argues that “the core idea of human dignity is that on earth, humanity is the greatest type of being—and that every member deserves to be treated in a manner consistent with the high worth of the species.”³⁷ He goes on to say that “the two basic propositions” underlying HR are that “all individuals are equal: no other species is equal to humanity.”³⁸

We can see the same idea in Jeremy Waldron’s influential account of human dignity as a high rank.³⁹ In some passages, he illustrates this idea by referencing the historic difference in rank between aristocrats and peasants, suggesting that HR involve attributing to all humans the high rank previously attributed only to aristocrats. But, in other passages, he makes clear that this rank is also high in relation to animals. In a world that respects HR, he says, the law may force people to do things, “but even when this happens, they are not herded like cattle, broken like horses, beaten like dumb animals, or reduced to a quivering mass of ‘bestial desperate terror.’”⁴⁰ This means that governing humans with dignity “is quite different from (say) herding cows with a cattle prod,” since the latter is a system of rule that works “by manipulating, terrorizing or galvanizing behaviour.”⁴¹ He sums up his theory this way: while some people say that “if we abolish distinctions of rank, we will end up treating

36 Dupré, *The Age of Dignity*, 28.

37 George Kateb, *Human Dignity* (Cambridge, MA: Harvard University Press, 2011), 3–4.

38 Kateb, *Human Dignity*, 6.

39 Jeremy Waldron, *Dignity, Rank and Rights* (Oxford, UK: Oxford University Press, 2012).

40 Waldron, *Dignity, Rank and Rights*, 64.

41 Waldron, *Dignity, Rank and Rights*, 52.

everyone like an animal . . . the ethos of human dignity reminds us that there is an alternative.”⁴²

In short, for Waldron, Kateb and Dupré—and many other writers in the past decade—the defense of HR is explicitly tied to species hierarchy: HR are intended to elevate us above animals, to sharply separate humans who are owed respect and dignity from animals who can be instrumentalized, manipulated, and terrorized.

Not all theorists who talk about “human dignity” endorse human exceptionalism or human supremacism. There are many different intellectual traditions for thinking about dignity, some of which extend ideas of dignity to the MOTH world. However, while human supremacism is not inherent in the concept of human dignity, I would also suggest that it is no accident that the word *dignity* is the vehicle for recent supremacist theories. In the midst of this “age of dignity” in which talk of dignity is “ubiquitous”⁴³ and “omnipresent,”⁴⁴ it is worth recalling that there are, in fact, many other moral concepts that are available to discuss ethical and legal obligations in general, and HR in particular. I noted above that HR theory from the 1980s to the 2000s generated a rich moral vocabulary, not only of interests and needs, but also respect for subjectivity, vulnerability, grievability, capabilities, and flourishing, all of which have been productively used to illuminate an ethics of HR. Dignity was just one of many concepts that were being proposed and tested as the ethical grounds for HR, by no means the only or even most prominent option. Why then, out of this varied moral toolbox, have so many theorists in the past ten years zeroed in on dignity as the core concept?

42 Waldron, *Dignity, Rank and Rights*, 69.

43 Dupré, *The Age of Dignity*, 1.

44 Christopher McCrudden, “In Pursuit of Human Dignity: An Introduction to Current Debates,” in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford, UK: Oxford University Press, 2013), 1.

There are many factors at play, but I would suggest that one reason is that ideas of *dignity* do not easily or naturally extend to animals or nature. As I've noted, virtually all of the other concepts standardly used to discuss and defend HR—interests, needs, well-being, capabilities, flourishing, vulnerability, subjectivity, care, justice—lead naturally to the recognition of animal rights, since animals are continuous with humans in all of these respects. The one concept in the moral toolbox that many people find more awkward or unnatural to apply to animals is *dignity*. If someone terrorizes a cow with a cattle prod, there is no question that this harms her basic interests and her well-being, assaults her subjectivity, exploits her vulnerability, renders her precarious, instrumentalizes her, and undermines her capabilities and flourishing. Insofar as any of these considerations ground the human right not to be terrorized, so too they would seem to ground a right of animals not to be terrorized. But does the routinized violence of factory farming violate cows' dignity? This is less clear. While there are compelling accounts of how humans routinely violate the dignity of animals,⁴⁵ they tend to focus on specific contexts of public/visible degradation (such as circuses and zoos) rather than the often-hidden structures of exploitation on farms or labs that are the heart of animal oppression in modern societies. While some defenders of animal rights argue that dignity can operate as the general grounding for animal rights,⁴⁶ others argue that it is not a helpful register for grounding basic

45 Sue Cataldi, "Animals and the Concept of Dignity" *Ethics & the Environment* 7, no. 2 (October 2002); Lori Gruen, "Dignity, Captivity, and an Ethics of Sight," in *The Ethics of Captivity*, ed. Lori Gruen (Oxford, UK: Oxford University Press, 2014); Rebekah Humphreys, "Dignity and Its Violation Examined within the Context of Animal Ethics," *Ethics & the Environment* 21, no. 2 (October 2016); Reed Elizabeth Loder, "Animal Dignity," *Animal Law* 23, no. 1 (2016).

46 David Bilchitz, "Moving beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals," *South African Journal on Human Rights* 25, no. 1 (January 2009).

animal rights,⁴⁷ if only because dignity talk is saturated with the idea that dignity involves not being treated as an animal. In any event, dignity is not the natural language of animal rights theory.

And so, for anyone who wants to defend species hierarchy and to resist the extension of rights to animals, one option is to shift away from vulnerable subjectivity, care, capability, or precarious life to instead ground rights on dignity. And, indeed, Kateb is quite explicit that this is his motivation in appealing to human dignity. He notes the tendency I have just described to recognize continuities between humans and animals—as he puts it, the tendency to “picture humanity as just another animal species among other animal species, with some particularities, even uniqueness, but none so commendable as to elevate humanity above the rest”—but he objects that this “unnecessarily tarnish[es] human dignity by taking away commendable uniqueness from it.” And to combat this tendency, he says, we need to emphasize human dignity: “These days, the notion of human stature is directed in part against these reductions, in the name of human dignity.”⁴⁸ Whereas other moral concepts seem to lead to the recognition of interspecies continuities and the flattening of species hierarchies, a central virtue of the concept of dignity for Kateb is precisely its ability to reassert a species hierarchy.

Thomas Williams, too, invokes human dignity to counteract the tendency of “the experimental and human sciences” to “ever more emphasize the continuity between man and other creatures” and to invoke that continuity as a basis for animal rights.⁴⁹ Con-

47 Federico Zuolo, “Dignity and Animals,” *Ethical Theory and Moral Practice* 19, no. 5 (November 2016).

48 Kateb, *Human Dignity*, 128.

49 Thomas Williams, *Who Is My Neighbor? Personalism and the Foundation of Human Rights* (Washington, DC: Catholic University of America Press, 2005), 207, 133–34, 271–72.

fronted with growing evidence that animals are continuous with humans in their morally significant traits and hence their potential rights claims, dignity is invoked by both Kateb and Williams to rescue human supremacy and to exclude animals from the sphere of rights.

I hasten to add again that I do not claim that all people who appeal to human dignity in their account of HR share Kateb's and Williams's supremacist aims. I simply note that the privileging of dignity over other moral concepts may have the effect of inhibiting efforts to reduce species hierarchy and that, for some theorists, this was precisely the intention of invoking dignity.

Paths Forward

If the analysis is correct, we are at an important crossroads in the relationship between HR and MOTH rights. More so than at any time since 1948, the HR movement is being invited today to recommit itself to species hierarchy. As I noted above, while previous HR theories did not necessarily embrace MOTH rights, they at least did not build human supremacy into the premises of their theories and did not view the possibility that their arguments for HR might apply to animals as grounds for rejecting their theories. They simply aimed to identify compelling moral reasons why there are obligations to protect the rights of others, and if some of the reasons also apply to animals, so be it. By contrast, the new dignitarians are supremacists in the sense defined earlier: their aim is to ensure not just that all humans are protected but that animals are not.

The return of supremacist thinking to HR theory is a striking development, and one with potentially profound consequences for both humans and animals. As Michael Meyer noted, "it would be a cruel irony indeed" if the idea of human dignity became "a source

for rationalizing harm toward nonhuman animals.”⁵⁰ However, it is not just animals who are at risk from this new dignitarian politics. I have suggested that this trend is likely to set off a cascading set of negative effects on the rights of humans as well. There is strong evidence that this sort of new dignitarian thinking may exacerbate racism, sexism, and other forms of dehumanization, deaden ethical sensibilities, and marginalize vulnerable human groups.

Against this supremacist trend, I have argued for the development of alternative moral vocabularies that reject species hierarchy and that acknowledge human kinship and reciprocity with the more-than-human world. Fortunately, as other chapters in this volume show, a rich array of these alternative vocabularies are already being formulated and articulated in struggles for MOTH rights around the world, drawing on diverse legal, cultural, and scientific traditions. I suspect we are in for a period of intense intellectual fermentation and experimentation in this respect, and it is too early to draw definitive conclusions about which of these vocabularies will prove most fertile and in which contexts.

In conclusion, however, I would flag what seems to me a potential blind spot in some of the emerging discourses of MOTH rights, which is precisely on the animal question. Most discussions of the rights of nature specifically include animals as part of nature and, hence, the rights of nature encompass the rights of animals. As I mentioned in the introduction, however, there is a widespread perception that the rights of nature framework is not only different from, but also incompatible with, many influential accounts of animal rights, and that theorists must therefore choose between them. This perception reflects a long history of strained relationships between the environmental movement and the animal advocacy movement.

50 Michael Meyer, “The Simple Dignity of Sentient Life: Speciesism and Human Dignity,” *Journal of Social Philosophy* 32, no. 2 (2001): 115.

Commentators have offered various diagnoses of this tension, but I would highlight two areas where MOTH rights and animal rights are often said to diverge. The first concerns the relationship between the individual and the species; the second concerns the relationship between “wild” animals and “domesticated” animals. In my view, recent work on MOTH rights is making important contributions to the first issue but is moving backward on the second issue.

Regarding the first issue, it is widely assumed that existing theories of animal rights are primarily concerned with protecting *individual* animals from harm, whereas the MOTH framework is primarily concerned with the protection of animal *species* and their ecosystem habitats. Where the killing of individual wild animals (e.g., in sport hunting) or the capturing of individual animals (e.g., for display in zoos or for medical experimentation) does not threaten the flourishing of the species or the integrity of their habitat, ecologists have often raised no objection. (Indeed they have often enthusiastically embraced sports hunting and fishing as a way for humans to “reconnect” with nature.) Animal rights advocates have long seen this indifference to the suffering of individual animals as a fundamental inadequacy of MOTH frameworks.

However, recent work has shown that MOTH frameworks can encompass concern for the rights of individual animals. In its recent *Estrellita* judgment, the Ecuadorian Constitutional Court ruled that the “rights of nature” provision of the constitution extends rights to animals both as species and as individuals, and therefore sets limits on how humans treat individual captive wild animals, such as *Estrellita*, a chorongó monkey. According to the court, individual animals like *Estrellita* have a right to “the free development of their animal behavior,” which includes “the right to behave according to their instinct, the innate behaviors of their species, and those learned and transmitted among the members of their population”; the right to “to freely develop their biological cycles, processes and

interactions”; and the right not to be forced to “assimilating characteristics different from those naturally possessed by their species, for the convenience or benefit of human beings.”⁵¹ Even if Estrellita’s confinement and captivity does not threaten the species’ viability or habitat, she has an individual right not to be oppressed or manipulated by humans.

Not surprisingly, the *Estrellita* judgment has been widely hailed by animal advocates as heralding a convergence or synthesis of animal rights and the rights of nature.⁵² Indeed, the judgment eloquently expresses many of the ideas I discussed earlier about the importance of embodied vulnerability and capabilities in grounding a nonsupremacist conception of rights.

However, a closer reading makes it clear that the court only accords these rights to wild animals, while explicitly and emphatically denying these rights to domesticated animals. The court says that because humans are “heterotrophs” who “cannot form their own food,” therefore it is right and proper that humans engage in animal agriculture, and that “the domestication of animals has served to enable humans to respond to threats to their physical integrity and the security of their possessions; to control pests that can endanger livestock, crops and human health; to provide transportation, help in work, for clothing and footwear; and even for recreation and leisure,” and that all of these human uses of domesticated animals “constitute forms through which individuals, communities, peoples and nationalities exercise their [constitutional] right to benefit from the environment and natural resources that allow them to live

51 Caso Mona Estrellita Final Judgment No. 253–20-JH22 (Corte Constitucional del Ecuador 2022), para. 112–15.

52 For example, “A Landmark Ruling for Animal Rights in Ecuador,” *Nonhuman Rights Blog*, Nonhuman Rights Project, March 23, 2022, <https://www.nonhumanrights.org/blog/landmark-ruling-animal-rights-ecuador/>.

well.”⁵³ In short, the court argues that, while it is wrong to confine, manipulate, or oppress wild animals for “the convenience or benefit of human beings,” the confinement, genetic manipulation, and killing of domesticated animals for the convenience and benefit of humans is permissible and, indeed, a constitutionally guaranteed right.

From an animal ethics perspective, this is a puzzling and disturbing position.⁵⁴ The court says that preventing animals from expressing their innate behaviors and developing their social relationships is wrong but then endorses an institution of animal agriculture that is built upon precisely these activities (forced breeding and reproduction, forced separation of mothers and offspring, forced bodily manipulations, etc.). In regard to wild animals, the court offers a progressive vision of human relations with the more-than-human world; in regard to domesticated animals, it reaffirms the worst ideologies of human entitlement.

Nor is this just an idiosyncrasy of the *Estrellita* judgment. There is a long tradition in environmental thought of denigrating domesticated animals and consigning them to an abject legal status. Whereas wild animals are to be protected and valorized, domesticated animals are instrumentalized. This implicit or explicit legitimation of the instrumentalization of domesticated animals can be

53 *Estrellita*, para. 109–10.

54 As Michael Gold notes, the *Estrellita* judgment literally naturalizes the instrumentalization of domesticated animals: it suggests that this relationship is not something that humans choose but it somehow inheres in the very essence or nature of our being. Humans are just the kinds of beings who use domesticated animals, and domesticated animals are just the kinds of beings who exist to be used. The judgment not only encourages us to view our relations with wild animals as a moral and political choice that we need to critically reexamine, but it also presents our relations with domesticated animals as predetermined by our “heterotrophic” nature. Michael Gold, “The Ubiquitous Acceptance of an Exterminatory Legality: Rights, Framing, and Legal Opposition to Animal Farming” (LLM diss., University of Toronto, 2022), 7–8.

found in a wide range of recent theorizing about “earth jurisprudence,” “the rights of nature,” or “wild law,” and this is increasingly noted as the central dividing line between MOTH theories and animal rights theories.⁵⁵

I have argued elsewhere that there is no ethical or scientific justification for this double standard, and I won’t repeat those arguments here.⁵⁶ I would just add that this position is not only philosophically arbitrary but also counterproductive. Defenders of MOTH rights emphasize that humans have not always or everywhere viewed animals and nature as resources to be exploited, and that the Western tradition needs to learn from other traditions that are built upon kinship with the more-than-human world. I fully agree. But this raises the questions: Where and when did these ideologies of human supremacism and human entitlement arise? When did humans stop viewing relations with animals and nature as relations of kinship or reciprocity and start viewing animals and nature as resources and property? The answer, most historians would say, is precisely when humans started domesticating animals: this was the moment when earlier relations of kinship and respect were replaced with ideologies of use and extraction.⁵⁷ The instrumentalization and commodification of domesticated animals has always been the lynchpin of ideologies of human supremacism and, so long as it remains untouched,

55 Glenn Wright, “Animal Law and Earth Jurisprudence: A Comparative Analysis of the Status of Animals in Two Emerging Critical Legal Theories,” *Australian Animal Protection Law Journal* 9 (2013); Steven White, “Wild Law and Animal Law: Some Commonalities and Differences,” in *Wild Law—In Practice*, ed. Michelle Maloney and Peter Burdon (Abingdon, UK: Routledge, 2014).

56 Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford, UK: Oxford University Press, 2011).

57 For example, David Nibert, *Animal Oppression and Human Violence: Domestration, Capitalism, and Global Conflict* (New York: Columbia University Press, 2013).

modern societies, cultures, and economies will continue to be defined and shaped by supremacist beliefs. MOTH rights will only be secure when this foundation of human supremacy is exposed and questioned. And that is a task that I believe requires the shared labor of both animal advocates and MOTH advocates.⁵⁸

58 Strategically, it might make sense in certain contexts to say that the rights of nature framework only applies to wild animals, and that some other moral and legal framework is required for thinking about the rights of domesticated animals. Since domesticated animals have (by definition) been brought into human society, we might think that the rights of domesticated animals are best theorized as rights of membership in a shared society, rather than as *rights of nature*. (For one version of this membership approach, see Donaldson and Kymlicka, *Zoopolis*). But whether domesticated animals fall inside or outside any specific version of a rights of nature provision, a crucial task is to ensure that the MOTH framework does not naturalize their instrumentalization and commodification.